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# Legal Issues in Special Education Compliance

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# Seminar Agenda

- ▶ Top 10 Practical Pointers
- ▶ Top ODE/OCR Complaint Issues
  - (1) Child Find & Eligibility
  - (2) IEP, 504, & PWN Procedures
  - (3) Nonacademic Services
  - (4) Behavior & Discipline Process
  - (5) Parent Participation
- ▶ Restraint and Seclusion
- ▶ Legal Update (Diabetes)



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# Top Ten Practical Pointers

# Practical Pointers

- ▶ “It's the little details that are vital. Little things make big things happen.” John Wooden
- ▶ All the knowledge and training you put in place won't amount to much if you don't ensure your staff attend to the little details that subliminally communicate:
  - That you care deeply about the student OR that the student is just a set of numbers
  - That you value the parent's input OR that you see the meeting as just another hoop to jump through
  - That you are highly educated and engaged professionals OR that teaching is just another job

# Practical Pointers

Before the meeting:

1. Have enough (adult) seats in the room and a big enough table.
2. Have sufficient copies in advance.
3. Ensure that all appropriate members of the team have received and reviewed information that is provided in advance by parents.
4. Bring paper and writing utensils.
5. Start on time with all required members (or have signed, written excusal and appropriate reports from missing members).

# Practical Pointers

At the meeting:

1. Greet parent and others parent brings (provide introductions as needed). Provide similar courtesies at the end of the meeting.
2. Propose an agenda – ask for input.
3. Have tissues handy.
4. Assign someone to keep a “to do” list as action items come up – review it as a team at the end of the meeting.
5. Productively occupy the time while copies are made at the end of the meeting (e.g. with Item 4, show nice examples of student’s work, tour facility, etc.).

# Practical Pointers

## After the meeting

1. Follow up in writing regarding action items, disagreements (PR-01), proposals rejected by parents (PR-01), etc. NOTE: Per new ODE rules/guidance, a PR-01 is required for essentially every IEP team meeting.
2. When trouble is expected, have a couple trusted members of the team informally confer regarding their notes to make sure nothing is missed.



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# Prevalence and Trends of ODE & OCR Complaints

# IDEA & Section 504 Law

- ▶ IDEA applies to students who are eligible under IDEA or suspected of a disability under IDEA
  - Ohio Department of Education and the Office for Exception Children help ensure compliance with IDEA
- ▶ Section 504 of the Americans with Disabilities Act, which is an anti-discrimination law, applies to IDEA eligible students, Section 504 eligible students, and students suspected of a disability under Section 504 or IDEA
  - Office for Civil Rights helps ensure compliance with Section 504



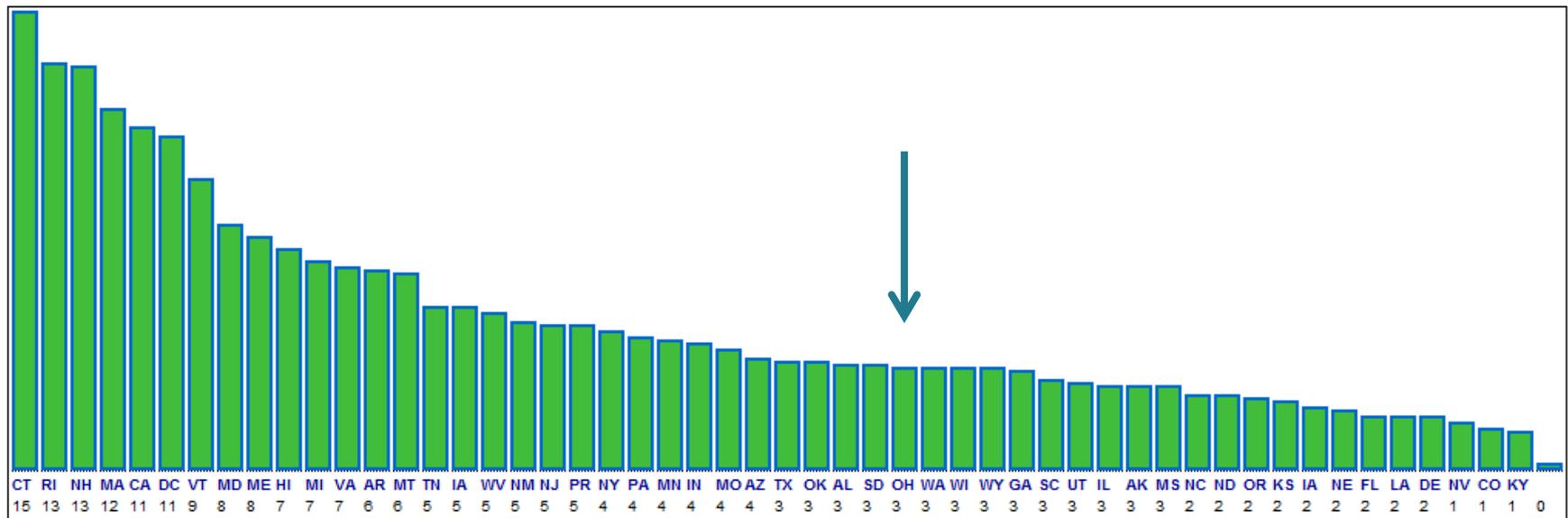
# ODE State Complaint Data

Complaints with reports issued in 2010-2011

Total complaints for 50 states, D.C. and Puerto Rico: 3184

Nationwide rate per 10,000 Special Education Students: 4.9

Graph below shows the rate of complaints per 10,000 special education students by state



Source: U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS), OMB #1820-0677: "Report of Dispute Resolution Under Part B of the Individuals with Disabilities Education Act" 2010-11. Data updated as of July 15, 2012.



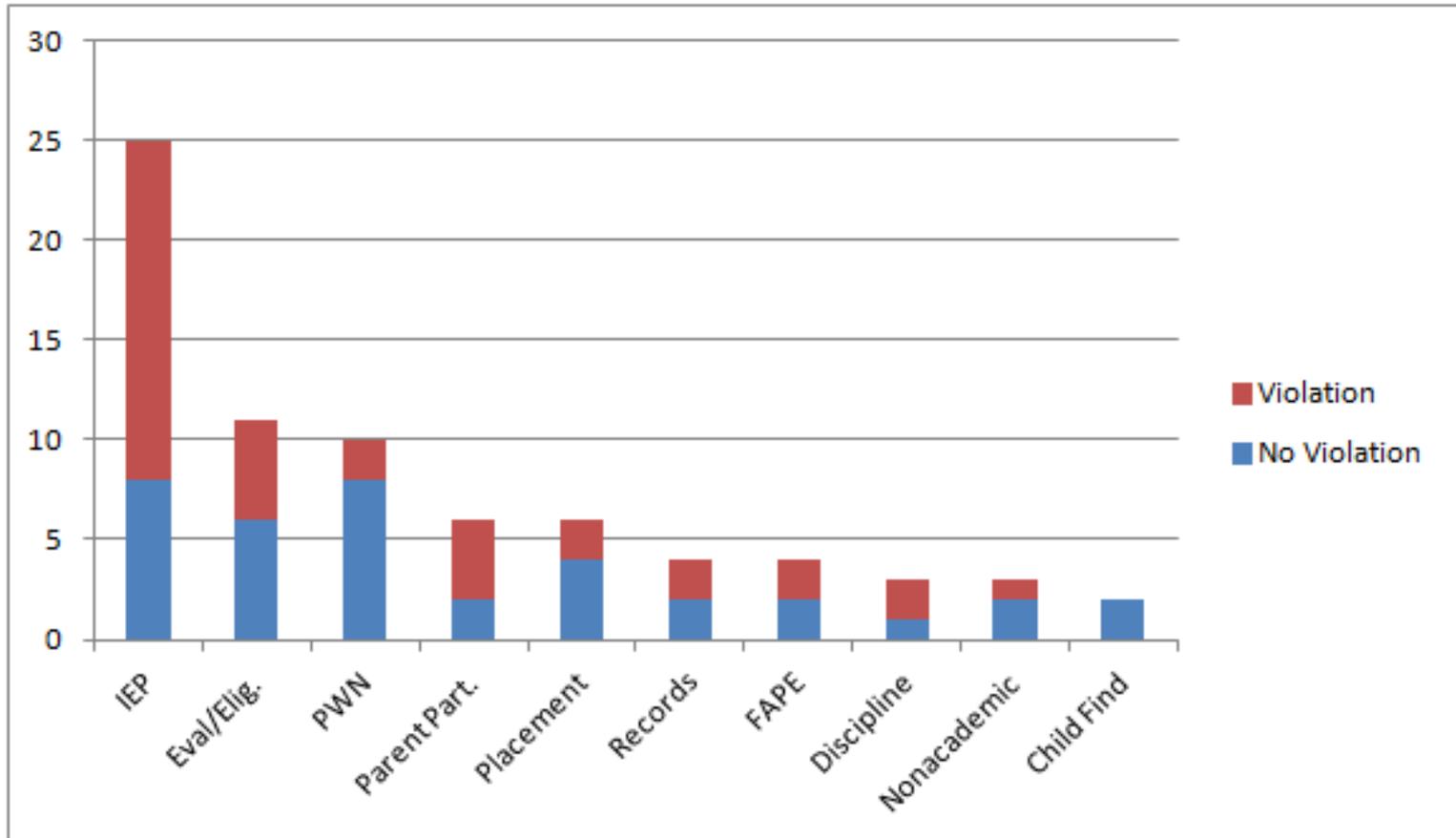
# ODE State Complaint Data

<b>Ohio</b>	
<b>Child count (Ages 3-21) 2010-2011</b>	<b>259,064</b>
<b>Complaints with reports issued 2010-2011</b>	<b>82</b>
<b>Complaints per 10,000 Special Education Students</b>	<b>3</b>
<b>Rate in 2009-2010</b>	<b>9.6</b>
<b>Rate in 2008-2009</b>	<b>7.4</b>
<b>Rate in 2007-2008</b>	<b>7.5</b>

Source: U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS), OMB #1820-0677: "Report of Dispute Resolution Under Part B of the Individuals with Disabilities Education Act" 2010-11. Data updated as of July 15, 2012.

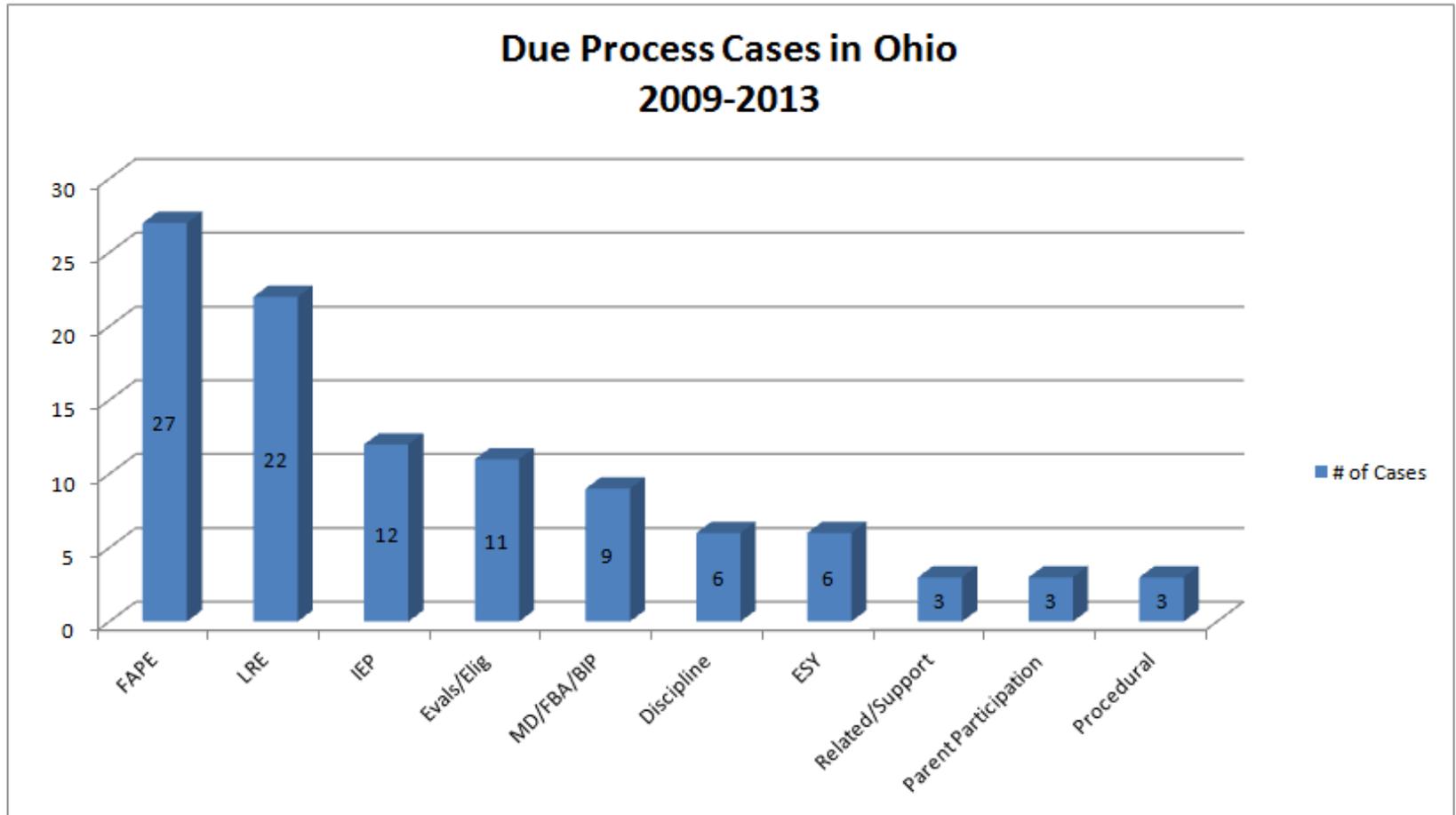


# Current ODE Complaint Issues-2014





# ODE Due Process Issues



# OCR Complaints

- ▶ 2009–2011: OCR received over 11,700 disability-related complaints nationwide
  - Increase from previous years
  - Disability-related comprises more than 55% of all OCR complaints
  - Most frequent issues of disability-related complaints:
    - (1) FAPE, (2) Retaliation, (3) Exclusion/Denial of Benefits
- ▶ OCR addresses complaints based on discrimination under Title II or Section 504
  - Discrimination based on disability
    - Could also be race disparity with disability identification
  - Failure to evaluate, provide FAPE, or provide appropriate notice under Section 504
    - OCR takes a procedural approach to determining whether a district complied with Section 504



# # of Complaints / Cases

- ▶ 2013 Ohio Complaints & Cases:
  - Due Process Cases: 7\*
  - ODE Complaints: 115\*
  - OCR Complaints: Unknown

\* This may be slightly underestimated due to delay in publishing cases online, length of time the cases are open, and decisions to settle cases



# Complaints v. Due Process

OCR Complaint	ODE Complaint	ODE Due Process
Procedural Requirements of Section 504	Appropriateness of Education	Appropriateness of Education
	Disagreement regarding Results of Evaluation	Disagreement regarding Results of Evaluation
	Whether Procedural Issues result in Substantive Harm	Whether Procedural Issues result in Substantive Harm
Resolution typically within 180 days*	Resolution typically within 60 days	Decision typically within 75 days
No liability for attorney's fees	No liability for attorney's fees	May impose liability for attorney's fees
Regardless of outcome with ODE or OCR complaint, parents may still come back and file due process		



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# Child Find & Eligibility

# Child Find & Absences

- ▶ Medical problems + a high number of medically related absences is likely notice of a suspected disability requiring the district to evaluation for Section 504, even if general education interventions and accommodations are effective
  - 1<sup>st</sup> Grade student had a history of hypoglycemia, migraine headaches, and frequent absences
    - Accommodations and medication were in place at school, but the student was not identified as a student with a disability
  - District had a history of failing to refer truant students for evaluations
    - Of the 33 court liaison reports for truancy in the district, 13 students had documented medical conditions which had potentially impacted attendance, but none had been referred for an evaluation
  - District required all students referred for an evaluation to go through the intervention team process first
    - Intervention team focused on academic or behavioral problems
    - Students with medical conditions were referred to the school nurse
  - OCR concluded that students with medical needs not affecting their academics or behavior failed to have access to the referral process
  - Additionally, if interventions were found to work, the student was not referred for an evaluation (even if interventions were necessary because of suspected disability)
- **Practical Tip:** Districts should have a process in place to identify students with health needs who are not referred to intervention teams.

# Child Find & Absences

- ▶ Knowledge of mental health diagnosis, high number of medical absences, and difficulty completing grade-level work should prompt an evaluation
  - 2 siblings with bipolar disorder were frequently absent from school (beginning in KG)
  - Parent provided school with psychiatric evaluations and reported that the side effects of medications (tiredness and nausea) caused the students to miss school
  - Reports cards documented below-grade level performance, even though teachers did not report any academic, behavioral or social problems impacting learning
  - School viewed issue as truancy that was not related to mental health diagnoses
  - OCR concluded that the students' truancy in conjunction with doctors' notes should have been a red flag that the medical concerns were impacting a major life activity
  - Specifically with one child, the request for the teacher to complete a Conner's rating form as part of a medical evaluation put the district on notice
- **Practical Tip:** Even when you suspect that absences are primarily due to truancy, be sure to carefully document which absences are due to a medical condition. Use caution before stating that the district can't "rule out absences/lack of instruction" before evaluating a student for a disability.

# Child Find & Medical Needs

- ▶ Failure to identify and evaluate students on Individual Health Care Plans (IHCPs) may violate Section 504 and Title II
  - During 2010–2011 school year, district had:
    - 1,206 students with IHCPs
    - 194 students with IEPs or Section 504 plans
  - Primary health concerns included allergies, diabetes, and asthma
  - OCR concluded that 235 of the students on IHCPs should have, at a minimum, been referred for an evaluation
  - IHCPs may comply with Section 504, as long as students with IHCPs are provided evaluations, placement, and procedural safeguards for Section 504
- **Practical Tip:** Districts should train school nurses regarding signs of suspected disability and establish a referral procedure for identifying students on health plans that are suspected of having a disability under Section 504.



# Race Discrimination & Referral for Evaluations

- ▶ An inconsistent referral process for general education interventions may lead to race discrimination and disparity in special education evaluations
  - District's % of Hispanic and Black students in various special education eligibility categories were higher than the % of those students in the overall student population
  - District did not have a standardized criteria for determining when to refer students to intervention team
    - Due to concerns about the long wait time for meetings, schools with higher Hispanic and black populations were less likely to attempt classroom based intervention prior to referral and more likely to refer the whole class to the intervention team
  - Data revealed different treatment of white students compared to Hispanic and black students by teachers with racially diverse classrooms (i.e., referring only Hispanic & black students to intervention teams when white students displayed the same concerns)
  - Principals at predominately white schools were more likely to attend intervention team meetings than principals at schools with higher Hispanic and black populations
  - When determining the needs of Hispanic students, the district typically did not bring in a Spanish-speaking psychologist or use tests appropriate for Spanish-speaking students
  - Teachers were more likely to recommend retention for Hispanic and black students than white students with the same concerns
  - No school routinely met to follow up on general education interventions and did not provide for systematic data collection of interventions and progress
  - **Practical Tip:** To avoid unintentional race discrimination, districts should have a systematic referral process for intervention teams based on set criteria. Higher needs schools will need more support, including a highly involved building administrator.

# Requiring Medical Documentation

- ▶ If a district requires medical documentation for Section 504 eligibility, the district must (1) provide a medical evaluation at no cost to the parent and (2) be willing to make exceptions, as some impairments may not require a medical diagnosis.
  - When a parent referred her 9<sup>th</sup> grade son for a 504 plan because he was struggling academically in school as a result of his ADHD, the district required the parent to provide medical documentation for her son's disability prior to completing a Section 504 plan
  - Section 504 procedures were not initiated until the parent provided an outdated medical diagnosis almost 1 ½ years later
  - Using the approximately 6-year-old medical diagnosis, the district implemented a Section 504 plan but did not complete an evaluation.
  - OCR concluded that the district denied the student FAPE when it delayed the evaluation due to the parent's failure to provide a medical diagnosis
  - Additionally, the medical diagnosis alone was unable to identify the impact of the disability on learning; therefore, the district should have provided an updated evaluation
  - Because the medical evaluation was outdated, OCR concluded "the plan based on that evaluation was inadequate"

# Section 504 Expanded Eligibility

- ▶ Eligibility decisions must be made without consideration of ameliorative effects of mitigating measures and must consider all possible major life activities (not just learning)
  - A second grade student was referred by the parent for a special education evaluation following a diagnosis of Bipolar Disorder, Organic Affective Disorder, and ADHD
  - Student had seizures, need for medication, and difficulty concentrating
  - The team did not find the student eligible for services under IDEA
    - Parents signed in disagreement
  - Student was not referred for a Section 504 plan because the student's evaluation placed the student in the high average ability with no processing deficits and average achievement
  - Evaluation acknowledges ability to participate in general education is contingent upon the student taking his medication
  - Since the student was later placed on a Section 504 plan and the district agreed to a resolution, OCR did not find any fault

# Section 504 & High Achievers

- ▶ Districts cannot assume that high achieving students are not eligible for Section 504
  - Parent verbally requested a 504 evaluation for her child with Tourette's syndrome and OCD after office referrals for behavior and missed instruction due to behavior
  - The student had good grades in honors classes
  - Special Education director unilaterally refused the evaluation and did not provide parent with procedural safeguards
  - OCR stated that factors other than grades can determine whether a student's learning is substantially limited, such as interactions with others, school attendance, behavior, and participation in the educational program
  - Additionally, other major life activities besides learning may be impacted by a disability
  - Decision of whether to evaluate should be made by a group of persons knowledgeable about the child
  - If the district denies an evaluation, it must provide the parent with procedural safeguards so that the parent may challenge the decision in due process
  - **Practical Tip:** Train teachers regarding the expanded eligibility under Section 504. Additionally, teachers should be required to inform the Section 504 coordinator and/or school psychologist of any parental request (including verbal requests) for an evaluation, regardless of whether the teacher suspects a disability.



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# IEP, 504, and PWN Procedures

# Failing to Develop Adequate IEP

- ▶ Verbatim information from one year's IEP to the next year's IEP may violate IDEA
  - A student's IEP had significant repetition from the 2013 IEP to the 2014 IEP
    - Profile: Almost word-for-word the same as previous year's IEP & lacked information regarding the student's current performance over the last year (72% was identical wording)
    - Goals: 3/5 goals had verbatim wording regarding the present levels and measurable annual goals
    - Math measurable objectives contained 2/4 verbatim objectives, but there was support for these in the present levels because the student had not yet mastered the skills
  - Due to an IDEA violation regarding the definition of an IEP, the district was required to engage in professional development
  - **Practical Tip:** There is the obvious...give yourself the time to revise the IEP based on the students current needs. In addition, when a student hasn't mastered an objective, make sure there is data to support continuing the same objective.

# Failing to Provide Progress Reports

- ▶ Failing to provide report cards and progress reports can deny a student FAPE
  - A district did not provide all the home instruction required by the student's IEP
  - The district also failed to provide reports cards or progress reports for the student
  - ODE concluded that because the district lacked documentation of the student's progress, the district was unable to show that the student received FAPE
  - **Practical Tip:** When a student's home instructor is someone different than the TOR, make sure the intervention specialists know who is responsible for providing progress reports.

# Failing to Complete Transfer IEP

- ▶ Districts cannot delay either accepting a transfer IEP or developing a new one
  - Second-grader who had been homeschooled on the Autism Scholarship enrolled in the district in September
  - The student's transfer IEP required educational aide support, assistance during lunch time, and aide support in the bathroom
  - The district was unwilling to adopt the IEP as written due to concerns that the student did not need many of the services on the IEP, but the district failed to schedule an IEP meeting to develop a new IEP until December (decided to wait until knew student better)
  - The district violated IDEA by failing to either adopt the transfer IEP or develop a new IEP in a timely manner
  - Because the district provided comparable services to his transfer IEP and the student demonstrated progress on his IEP goals and in the general education curriculum, he was not denied FAPE
  - **Practical Tip:** Encourage intervention specialists to collect as much data as possible in the first few weeks but timely adopt or develop an IEP. If needed, inform the parent that the IEP may need to be amended after more data has been collected

# Lack of Behavioral Data

- ▶ For students with behavioral needs, districts must have data to back up IEP decisions. If a student's behavior causes the district to be concerned about the student's placement, an FBA and BIP need to be completed, and behavioral interventions need to be in place
  - After a student ran from the building while placed at a separate facility, the parent withdrew the student from the facility and requested that the student return to the district's middle school
  - The district refused full-time placement at the middle school due to concerns with the student's behavior
  - Despite behavioral concerns:
    - The district's reevaluation only had one school report for social-emotional behavior, which fell into the average range
    - No one had observed safety concerns with the student, and although the district stated the student had "verbal outbursts," no documentation was provided
    - IEP did not include related services to address behavioral needs (psychological services)
  - ODE found that the district violated IDEA by failing to consider the use of positive behavioral interventions and supports, failing to provide related services to address the student's behavioral needs, failing to provide an appropriate evaluation including lack of an FBA, and failing to provide the student with a full school day



# Lack of Evaluation Data to Guide IEP

- ▶ IEP teams need evaluation data to support a need (or lack of need) for accommodations and related services due to medical conditions
  - ▶ A district's failure to adequately evaluate a student's medical and related service needs resulted in failure to address the needs in the IEP
  - ▶ Some of the student's medical needs were briefly mentioned in the nurse's record review and description of educational needs, but there was no discussion of how the educational program would address those needs
  - ▶ Because the evaluation failed to include OT and PT evaluations, the IEP team failed to address the student's fine and gross motor deficits and sensory needs
  - ▶ IEP accommodations did not address needs listed in the medical section of the evaluation
  - ▶ ODE concluded that district was in violation of FAPE due to a failure to adequately assess the student's medical and motor needs in the evaluations and the IEP

# Next meeting date written in IEP

- ▶ If an IEP specifies a timeline in which the IEP team will meet to review an IEP provision, the team must meet by the required date, or the IEP must be amended to reflect the team's desire to extend the date
  - District received a transfer IEP that included the following provision: "The IEP team will meet 3 weeks after school starts to examine/discuss aide support."
  - District did not schedule an IEP meeting until December
  - ODE found that the district violated the parent's right to participate in the IEP process because the district did not schedule a meeting within the timeframe specifically stated in the IEP



# Failing to Include all Team Members

- ▶ Failing to include a district representative in an IEP meeting may deny a student FAPE
  - No district representative attended a student’s annual IEP meeting
  - The court concluded that there was no individual at the meeting “qualified to provide or supervise the provision of special education services”
  - The student “was likely denied educational opportunity that could have resulted from a full consideration of available resources in relation to the [student’s] skills...”
  
- **Practical Tip:** Since the day-to-day realities of schools do not stop just because an IEP meeting is in progress, intervention specialists should (1) attempt to schedule IEP meetings at the best time for administrators, (2) check in with administrators prior to the start of the IEP meeting to make sure the administrator is still available, and (3) take a copy of the “OP-5 Parent/Guardian Excusal” form to every meeting in case of an emergency that causes the administrator to be unable to attend.

# Failing to provide accommodations

- ▶ Refusing to provide academic accommodations in honors courses is a violation of Section 504
  - Student diagnosed with ADHD & OCD was determined eligible for a Section 504 plan
  - Due to difficulties with focusing and completing work, the student was provided accommodations which included extra time for work and tests
  - In the 9<sup>th</sup> grade, the student enrolled in Honors Algebra and Honors English
  - The district removed accommodations from the honors courses, but allowed them for other courses
  - OCR concluded that the automatic exclusion of students with disabilities from honors classes due to their need for accommodations is typically in conflict with the requirement that placement decisions be based on the individual needs of the student
  - **Practical Tip:** Help teachers to understand that providing academic accommodations for students in honors classes is not providing a Cadillac. As long as the accommodation does not change the criteria of the honors class, the district is obligated to provide the accommodation based on the individual need of the student to ensure that the student has equal access to programs and services

# Failing to provide accommodations

- ▶ Make sure the Section 504 or IEP team consider whether the district's absentee policy requires modification for students with medically related absences
  - Remember the students with frequent absences and bipolar diagnoses that the district failed to timely evaluate?
  - The students' reassignments from their home school were rescinded due to failure to comply with the attendance policy
  - OCR concluded that the absences could have been a manifestation of the students' disabilities, which the district failed to timely evaluate
  - Therefore, if either student is identified as a student with a disability, the district may need to modify its attendance policy to ensure the student has equal ability to benefit from the district's programs
- **Practical Tip:** Collaboration with medical professionals is key. If possible, obtain consent for a release of information to be able to communicate directly with the medical professional.

# Failing to provide accommodations

- ▶ Again, be cognizant of the consequences of absences for students with medical disabilities impacting attendance
  - Remember the 1<sup>st</sup> grader with hypoglycemia and migraines who was frequently absent?
  - Due to the number of unexcused absences and district policy, the district forced the student to attend an online alternative program at home
  - Even after the district identified her as a student with a disability under Section 504, the district refused to modify its attendance policy based on her disability
  - OCR found the district in violation of Section 504 and concluded that the district's blanket alternative placement without regard to a student's disability does not allow the student to be educated with nondisabled peers to the maximum extent possible and does not consider whether the child can be educated in the general education setting with supplemental aids and services

# Failing to Document Services Provided

- ▶ Lack of documentation that accommodations are being implemented may result in a violation of IDEA
  - Student's IEP provided accommodations such as small group instruction, read aloud, and extended time
  - Students grades dropped significantly around the 4<sup>th</sup> week of school
  - The parent emailed the teacher stating that the student's accommodations were not in place
  - The district replied with a PWN stating "his IEP accommodations are being followed"
  - The district was unable to support this statement other than by providing some notes over the period of a week from some teachers, but these notes did not indicate which accommodations were being provided
  - ODE concluded that the district violated IDEA because the district failed to provide evidence to support its statement that accommodations were in place
  - **Practical Tip: DOCUMENT!** If a parent questions the implementation of accommodations, be sure that all the student's teachers know the required accommodations and are documenting their use. Communicate with the parent regarding the use of the accommodations, and keep the data in case a dispute arises.

# Failing to Implement IEP

- ▶ Districts should have a system in place to ensure that general education teachers are provided copies of IEP accommodations by the first day of school or first day of the semester.
  - Parent notified the high school principal that her daughter's IEP was not being implemented for the first 3 wks of the school year
  - The special education director investigated and confirmed that the intervention specialist had not informed the general education teachers of the students accommodations and had also not consistently provided the services in the student's IEP
  - The special education director provided the student with compensatory education and with a different intervention specialist, who ensured the IEP was implemented from that point on
  - The special education director also provided training to the building staff
  - ODE indicated that despite a violation, no corrective action was needed because the district had already taken appropriate action prior to the parent filing the complaint
  - **Practical Tip:** When an internal investigation reveals a violation of IDEA, take action to correct the problem and keep documentation of the corrective action. This could save you time and money if a complaint is filed.



# Staffing Issue resulting in failure to implement IEP

- ▶ When staffing issues arise, do everything possible to ensure students receive their IEP services...hire a substitute intervention specialist, temporarily move staff, and when all else fails, make sure to provide compensatory education for services missed
  - A community school failed to implement a student's IEP due to resignation of the intervention specialist
  - The school's intervention specialist resigned in August, resulting in a three week period without an intervention specialist on staff
  - The student's IEP stated that services were to be provided by an "intervention specialist" and "general education teacher" in the "resource room" and "general education classroom"
  - Additionally, due to a delay in transfer records, the school did not receive a full IEP for approximately 3 wks
  - ODE concluded that the school violated IDEA by failing to implement the IEP and failing to address the student's unique needs resulting from his disability
  - ODE's policy states that, at a minimum, an intervention specialist should consult with a general education teacher providing specially designed instruction

# Failing to provide PWN

- ▶ When a parent requests a meeting with the teacher to discuss her child's IEP, a district may be a violation of FAPE if the district refuses to convene an IEP meeting and fails to provide a PWN
  - Parent of a transfer student requested a parent teacher conference on two occasions
    - One request to the general education teacher mentioned the student's transition to the district
    - The other request written in the student's home/school communication notebook stated that the parent wanted to meet because of her child's IEP
  - No PWN was provided to the parent when the teacher refused to meet with the parent
  - ODE stated that although IDEA regulations did not require the district to schedule an IEP meeting every time the parent requested one, regulations do require the district to provide the parent with a PWN explaining the reasons for refusing a meeting
- ▶ **Practical Tip:** If you are unsure whether the parent is requesting an IEP meeting or just a parent teacher conference, ask the parent!



# Failing to provide Procedural Safeguard

- ▶ If a team discusses but decides not to refer a student for Section 504 after the student is found not eligible under IDEA, best practice is to provide the parent with Section 504 procedural safeguards and a PWN stating the reasons why the district does not suspect a disability (or why the student is not eligible) under Section 504
  - IEP team determined that a student was not eligible as a student with a disability under IDEA
  - When the team decided not to refer the student for a Section 504 plan, the team in essence indicated that the student was not eligible for services under Section 504
  - Therefore, OCR stated that the IEP team should have provided the parents with their procedural rights under Section 504, including the right to appeal

# Prior Written Notice Change

- ▶ On December 20, 2013, ODE announced an immediate change regarding the use of prior written notices (PWN)
  - An IEP “no longer meets the definition of written notice”
  - Previously:
    - Districts were not required to give parents a PWN following annual IEP meetings when the IEP provided notice of a change of placement (and the parent agreed to the change)
  - Now:
    - Districts must provide a PWN on the PR-01 form “for each IEP meeting held or IEP amendment done...even if a change never takes place.”
  - The change appears to be an effort to align Ohio standards with federal standards, which require the use of a prior written notice any time a change of placement is proposed
  - The change was effective immediately



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# Nonacademic Services

# Transportation Issues

- ▶ Review your district's transportation schedules to make they are not causing shortened days for students who do not require such an accommodation
  - Four districts in AL implemented transportation schedules that reduced the educational day of students with disabilities without documentation in the students' IEPs or Section 504 plans justifying a shortened day
  - The Alabama State Dept of Ed violated Section 504 by failing to provide appropriate supervision of districts' transportation schedules
  - Reducing a student's day due to a transportation schedule, when the student's individual needs do not require a shortened day, is a violation of Section 504, which requires nonacademic services, including transportation, be provided to students with disabilities such that they are provided equal access to participate in services and activities

# Failing to provide aide for field trip

- ▶ Although a district may request that a parent attend a field trip, a district cannot require a parent to attend a field trip as a condition of the child's participation
  - A parent filed an OCR complaint against a district who told her that her kindergartener was welcome to attend a field trip to a candy factory "so long as he is accompanied by a parent"
  - At the time of the OCR complaint, the district had already responded to an internal complaint from the parent concluding that it had denied the student FAPE and failed to follow his behavior plan
  - Because the district submitted an Agreement to Resolve (ATR), OCR did not complete the investigation or conclude on whether the district violated Section 504 or Title II.

# Unilateral decision violates Section 504

- ▶ Whether a student is able to safely participate in a field trip with supplemental aids and services is a decision for the IEP or Section 504 team
  - An 8<sup>th</sup> grade student began exhibiting anxiety approximately 2 months before a school field trip to Washington, D.C.
  - The parent declined a Section 504 evaluation, but the district still implemented informal accommodations
  - Following hospitalization of the student for anxiety and panic attacks, the principal and special education director refused to allow the student to participate in the field trip due to concerns with her health and safety (field trip was the day following her early release from the hospital)
  - OCR concluded that the district “regarded the student as having a mental impairment which substantially limited one or more major life activities” and excluded her from the field trip due to her impairment; therefore, the decision to exclude the student from the field trip should have been made by a group of people knowledgeable about the student
  
- **Practical Tip:** In a case where the onset and severity of the disability occurs quickly and unexpectedly and the student has not yet been identified, it is still best practice for a team knowledgeable about the student to make such decisions.



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# Behavior & Discipline Process

# Failing to follow discipline process

- ▶ When multiple suspensions add up to more than 10 days of removal, a district must address whether the removals are a pattern of behavior resulting in a change of placement
  - Student was suspended for 19 days total:
    - 5 days for hitting a student & calling her vulgar names
    - 7 days for slapping a student & calling her vulgar names
    - 7 days for getting into a fight with another student
  - School did not determine whether removals were due to a pattern of behaviors until the MD meeting (after 19 days out)
  - MD meeting was not held after 10 days of removal
  - Student was not provided special education services after the 10<sup>th</sup> day of removal
  - ODE concluded that the district violated the discipline provisions of IDEA

# Failing to follow discipline process

- ▶ If conduct is a manifestation of the student's disability, the team must return the child to the placement from which the child was removed (except when the behavior involves weapons, drugs, or serious bodily harm), unless the parent and the district agree to a change of placement as part of the modification to the BIP
  - District conducted MD meeting and determined that student's conduct was a manifestation of the student's disability
  - District then placed student on home instruction for 19 days, without parent permission to change the student's placement
  - After student returned to school, student was suspended for 6 additional days
  - District agreed that it violated IDEA by failing to follow the discipline requirements for students with disabilities who are removed for more than 10 days



# Failing to communicate services

- ▶ Make sure to fully inform parents of reasons for IEP meetings, and document the conversations
  - When a student was suspended more than 10 days (Day 11–18), the school sent an invitation by mail to the parent on a Friday (3 days before the Monday MD meeting)
  - Although the parent was contacted by phone about the MD meeting, there was confusion as to what the meeting was about and when it was to take place. Additionally, the parent was unable to take her 15 min break at work to participate
  - Team found the conduct was not a manifestation
  - School made numerous attempts (8+) to coordinate with the parent to provide home instruction services during the suspension & the district DOCUMENTED the contact
  - Parent's lack of flexibility with her work schedule was a primary reason for the difficulty coordinating meetings and services
  - ODE found that the school denied the student FAPE
  - ODE stated that notice to the parent regarding MD meetings and instruction were "inconsistent and not timely," the parent did not agree to the instructional services provided during the suspension, and the services were not compatible with the parent's work schedule
  - The district agreed to provide 33 hours of comp education for the home instruction services missed. ODE also required additional IEP planning for the compensatory education services and development of a formal process to document behavioral issues (including communication with parents and timely scheduling of MD meetings)



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# Parent Participation



# No Parent Consent for Placement

- ▶ Another reminder that a parent must consent to a change of placement
  - ▶ District sent an IEP meeting invitation to the parent for the purpose of changing the student's placement from homebound services to the district's school
  - ▶ At the start time for the meeting, the parent called to tell the district she was not comfortable coming to the meeting without a parent advocate
  - ▶ 30 minutes into the meeting the parent called to tell the team that she planned to enroll the student in the Virtual Learning Academy
  - ▶ The IEP team continued the IEP meeting and developed the IEP to reflect placement at the district's school (the parent did not sign the IEP)
  - ▶ ODE concluded that the district violated FAPE by changing the student's placement without parental consent
  - ▶ The district should have either developed the IEP to reflect the parent's placement decision or reschedule the meeting for a time in which the parent was able to attend

# Late IEP Invite to Parent

- ▶ A district may fail to provide parents the opportunity to participate if the district does not provide timely notice for annual IEP meetings
  - An intervention specialist provided a parent with 8 days notice for an annual IEP meeting (on the IEP's end date)
  - Other members the parent wished to invite, as well as the student, were unable to attend on that date/time
  - The parent asked to reschedule the meeting (for a date after the IEP end date)
  - The special education director quoted a section of "Whose IDEA is this?" referencing when a parent's consent is needed
  - The district proceeded with the IEP meeting without the parent or student to meet the required timeline
  - The district violated the parent's right to participate in the IEP process
  - ODE stated the district needed to provide notice early and determine a mutually agreed upon time to meet to ensure the parent had the opportunity to participate in the IEP process, regardless of whether a parent's consent is needed to implement an annual IEP
  - **Practical Tip:** Encourage intervention specialists and related service personnel to use electronic calendars to remind them to begin scheduling IEP meetings with parents at least 30 days before the IEP is due. For parents whose schedules are difficult to accommodate, start much earlier.



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# Policies, Procedures, & Follow Through

# Inadequate Policies

- ▶ Districts should make sure that 504 policies stay up to date and accurately reflect the law
- ▶ A district's 504 policy had the following compliance issues:
  - Inconsistently identified 504 coordinator
  - Did not provide contact information for 504 coordinator
  - Limited major life activities
  - Stated students covered under Section 504 are never eligible under IDEA
  - Placement and services were limited by a “reasonableness” standard instead of FAPE standard
  - Stated that district could discipline for drugs and alcohol without procedural requirements of Section 504

# Failing to Follow Through

- ▶ Even if a district investigates an internal complaint and disciplines an employee for discrimination, failing to inform the parent of the outcome of the investigation may result in a violation of Section 504
  - A district internally investigated a parent's complaint that a teacher discriminated against her child by putting a cardboard box around his desk labeled "Bad Kid Fort"
  - The district concluded that the teacher discriminated against the student due to his disability and disciplined the teacher with a 5 day suspension without pay
  - When the parent was not informed of the results of the investigation, she filed an OCR complaint
  - OCR concluded that the district failed to follow through with the complaint by providing the parent notice of the outcome of the investigation

# Failing to provide records

- ▶ Provide detailed responses to ODE's request for information. Responding with "n/a" may cause ODE to conclude that the district did not comply with the law.
- ▶ In a complaint regarding the parent's access to her child's records, the district failed to provide ODE information to show whether it provided the parent with all the records requested
  - ▶ The district provided the following responses:
    - ▶ Request to supply the record of access: "n/a"
    - ▶ Request to supply documentation to demonstrate that the parent was allowed to review the student's cumulative file: "parent did not make such a request"
    - ▶ Request to provide notes from the principal and special education coordinator's conversation regarding which records were released to the parent: "n/a"
  - ▶ ODE concluded that the district violated the parent's right to access educational records because the district failed to provide proof or documentation that the parent was provided access to the records
  - ▶ Because the district did not provide the documentation, ODE was left to conclude that the records were not provided to the parent

# Section 504 Policy Tips

- ▶ Review regularly and keep up-to-date as legal changes occur
  - Very important for OCR complaints!
- ▶ Make sure the policy clearly identifies the Section 504 contact person
- ▶ Ensure current policy includes the expanded disability definition consistent with ADA Amendments Act of 2008 & 2010 ADA Regulations
  - Without consideration of mitigating measures
  - Expansion of major life activities

# Section 504 Grievance Tips

- ▶ Document Everything
- ▶ Be up front with parents
- ▶ Involve parents in each stage of the investigation
- ▶ Communicate clearly and frequently
- ▶ Set expectations beginning in elementary school as to a child's skills and needs



# Resources

- ▶ ODE:
  - Complaint Form:
    - <http://education.ohio.gov/getattachment/Topics/Special-Education/Mediation-Complaints-and-Due-Process/Complaint-Form-2009.pdf.aspx>
- ▶ OCR:
  - Case Processing Manual:
    - <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html#l>



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# Questions?

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# Legal Issues in Special Education Compliance

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# Seminar Agenda

- ▶ Part 2:
  - Initiating a Complaint
  - Response from ODE/OCR
  - Further Investigation
  - Mediation/Settlement
  - Findings/Remedies
  - Next Level

# Initiating a Complaint

- ▶ ANYONE can file a complaint
- ▶ Required Components:
  - ODE– Specific requirements by mail
  - OCR– Slightly more flexible requirements by mail, email, fax, or in person
- ▶ Jurisdiction
  - ODE– Part B of IDEA & Ohio Operating Standards
  - OCR– Discrimination, including disability discrimination under Section 504 (institutions receiving federal financial assistance) & Title II (public schools)

# Response from ODE/OCR

- ▶ Notice by ODE/OCR to Complainant
  - Including any issues of sufficiency to Complainant
    - Provides reason insufficient and an option to correct insufficiencies prior to dismissing claim
- ▶ Notice to District
  - ODE– Provides notice of the complaint to the superintendent and special education director of the district
  - OCR– Provides notice of the complaint to the recipient
  - Both ODE and OCR will typically request records in the initial contact letter

# Further Investigation

- ▶ District's Responsibility:
  - Gather relevant information and compile information in understandable manner (chronologically, etc.)
  - Respond to ODE/OCR within timeframe given
  - Determine whether to engage in early resolution
  - Comply with interview and onsite investigation requests

# Mediation/Settlement

- ▶ ODE:
  - Mediation
  - Facilitated IEP Meeting
  - Proposal to parent to resolve complaint
- ▶ OCR:
  - Early Complaint Resolution
  - Proposal to resolve complaint during investigation

# Findings / Remedies

- ▶ Letter of Findings:
  - ODE/OCR will issue letter of findings outlining the issues, facts, and legal conclusions of compliance
- ▶ Remedies:
  - ODE:
    - Corrective action plan implemented within 1 year
      - Individual Needs of Student or Systematic Changes
  - OCR:
    - Option to Negotiate Resolution:
      - District provided opportunity to negotiate resolution
      - If no resolution, OCR will initiate enforcement action
    - Types of Remedies:
      - Individual needs of student or compliance review

# Next Level

- ▶ Regardless of the outcome of a complaint, a parent or district may chose to:
  - Initiate a Due Process Complaint
  - File a lawsuit in court
  
- ▶ ODE:
  - No reconsideration or appeals process
  - If district fails to comply with corrective action, ODE may implement progressive sanctions
  
- ▶ OCR:
  - Option to appeal w/in 60 days of letter
    - Ability to bring additional evidence forward
  - If district fails to comply with resolution agreement, OCR will enforce through administrative or judicial proceeding



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# Restraint and Seclusion



# ODE's Policy: Introductions and Applicability

~~Ohio Department of Education Policy on Positive Behavior Interventions and Support, and Restraint and Seclusion~~ Adopted by the State Board of Education January 15, 2013

## Introduction:

### ~~I. Purpose~~

~~The purpose of this policy is to create a statewide policy that applies to all school districts regarding the use of positive behavior intervention and supports, and the limited use of restraint and seclusion. The Ohio Department of Education promulgates this policy in accordance with the Governor's Executive Order 2009-135, the State of Ohio Policy on Restraint and Seclusion Practices dated May 17, 2010, and in accordance with guidance from the United States Department of Education.~~

~~Every effort should be made to prevent the need for the use of restraint and for the use of seclusion. The use of a non-aversive effective behavioral system such as Positive Behavioral Intervention and Supports (PBIS) shall be used to create a learning environment that promotes the use of evidence-based behavioral interventions, thus enhancing academic and social behavioral outcomes for all students. Restraint or seclusion shall not occur, except when there is an immediate risk of physical harm to the student or others, and shall occur only in a manner that protects the safety of all children and adults at school. Every use of restraint or seclusion shall be documented and reported in accordance with the requirements set forth below.~~

### ~~II. Applicability~~

~~This Ohio Department of Education Policy applies to all school districts in the State of Ohio, and is effective beginning with the 2013/2014 school year.~~



# ODE's Policy: Requirements & Definitions

## III. Requirements:

Each school district must develop, publish and implement written policies to govern the use of emergency safety interventions (physical restraint and seclusion) in all of its schools. Districts must make their written policies on the use of emergency safety interventions available to parents annually, and the school district must post the policy on its website.

At minimum, written policies must ~~conform to~~ **be consistent with** the standards, definitions, and requirements set forth in the Ohio Department of Education Policy. Ohio Adm. Code 3301-35-15(H).

Practices that do not adhere to the standards and requirements set forth in ~~this~~ **the District's** policy are prohibited, and physical restraint and seclusion shall not occur, except when there is an immediate risk of physical harm to the student or others. ~~The school district shall utilize physical restraint and seclusion only in a manner that protects the safety of all children and adults at school.~~

~~Any school that employs physical restraint or seclusion practices shall have established:~~

~~A. Pre-established emergency procedures,~~

~~B. Specific procedures and training related to the use of restraint and seclusion, and~~

~~C. A process for the collection of data regarding the use of restraint or seclusion.~~

## IV. Definitions:

**Aversive behavioral interventions** - means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors, including interventions such as: application of noxious, painful and/or intrusive stimuli, including any form of noxious, painful or intrusive spray, inhalant or tastes.



# ODE's Policy: Definitions

**Chemical Restraint** – means a drug or medication used to control a student's behavior or restrict freedom of movement that is not:

A. Prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

B. Administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State Law.

~~**De-escalation techniques** – are strategically employed verbal or non-verbal interventions used to reduce the intensity of threatening behavior before a crisis situation occurs.~~

~~**Functional Behavior Assessment** – is a collaborative problem-solving process that is used to describe the "function" or purpose that is served by a student's behavior.~~

~~Understanding the "function" that an impeding behavior serves for the student assists directly in designing educational programs and developing behavior plans with a high likelihood of success.~~

**Mechanical Restraint** – means

A. Any method of restricting a student's freedom of movement, physical activity, or normal use of the student's body, using an appliance or device manufactured for this purpose; and

B. Does not mean devices used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including:

1. Restraints for medical immobilization;
2. Adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or
3. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.



# ODE's Policy: Definitions

**Parent** means:

- A. A biological or adoptive parent;
- B. A guardian generally authorized to act as the child's parent, or authorized to make decisions for the child (but not the state if the child is a ward of the state);
- C. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
- D. A surrogate parent who has been appointed in accordance with rule 3301-51-05(E) of the Administrative Code; or
- E. Any person identified in a judicial decree or order as the parent of a child or the person with authority to make educational decisions on behalf of a child.

**Physical escort** - means the temporary touching or holding of the hand, wrist, arm, shoulder, waist, hip, or back for the purpose of inducing a student to move to a safe location.

**Physical Restraint** - means the use of physical contact that immobilizes or reduces the ability of a student to move their arms, legs, body, or head freely. Such term does not include a physical escort, mechanical restraint, or chemical restraint. Physical restraint does not include brief, but necessary physical contact for the following or similar purposes:

- A. to break up a fight;
- B. to knock a weapon away from a student's possession;
- C. to calm or comfort;
- D. to assist a student in completing a task/response if the student does not resist the contact; or
- E. to prevent an impulsive behavior that threatens the student's immediate safety (e.g., running in front of a car).



# ODE's Policy: Definitions

**Positive Behavior Interventions and Support** - means

A. A school-wide systematic approach to embed evidence-based practices and data driven decision making to improve school climate and culture in order to achieve improved academic and social outcomes, and increase learning for all students, and

B. Encompasses a wide range of systemic and individualized positive strategies to reinforce desired behaviors, diminish reoccurrences of challenging behaviors and teach appropriate behavior to students.

**Positive Behavior Support Plan** - means the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in behavior through skill acquisition and the reduction of problematic behavior.

**Prone Restraint** - means physical or mechanical restraint while the student is in the face down position for an extended period of time.

**School District** - means a local, exempted village, city, joint vocational or cooperative education school district as defined in Chapter 3311 of the Revised Code or an educational service center that operates a school or educational program. For purposes of this rule, the term does not include schools operated in facilities under the jurisdiction of the Department of Rehabilitation and Corrections or the Department of Youth Services.

**Seclusion** - means the involuntary isolation of a student in a room, enclosure, or space from which the student is prevented from leaving by physical restraint or by a closed door or other physical barrier.

**Student** - means a child or adult aged three to twenty-one enrolled in a school district.

**Student personnel** - means teachers, principals, counselors, social workers, school resource officers, teacher's aides, psychologists, or other school district staff who interact directly with students.

**Timeout** - means a behavioral intervention in which a student, for a limited and specified time, is separated from the class within the classroom or in a non-locked setting for the purpose of self-regulating and controlling his or her own behavior. In a timeout, the student is not physically restrained or prevented from leaving the area by physical barriers.



# ODE's Policy: Positive Behavior Intervention & Support

## V. Positive Behavior Intervention and Supports

A. Every student deserves to be treated with dignity, be free from abuse, and treated as a unique individual with individual needs, strengths, and circumstances. Schools shall implement **The District shall implement** an evidence-based school wide system or framework of positive behavioral interventions and supports **(PBIS) as defined above.**

B. Education environments shall be structured to greatly reduce, and in most cases eliminate, the need to use restraint or seclusion. Positive Behavior Intervention and Supports (PBIS) creates structure to the environment using a non-aversive effective behavioral system. It is a decision-making framework that guides selection, integration, and implementation of evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students.

C. The PBIS prevention-oriented framework or approach applies to all students, all staff, and all settings. Research supports the conclusion that PBIS, when integrated with effective academic instruction, provides the support students need to become actively engaged in their own learning and academic success.

D. Components of a system of Positive Behavior Intervention and Supports include:

1. Trained school staff to identify conditions such as:

a. Where, under what conditions, with whom and why specific inappropriate behavior may occur.

b. Preventative assessments should include:

i. A review of existing data;

ii. Interviews with parents, family members and students and

iii. Examination of previous and existing behavioral intervention plans.

c. With the analysis of these data schools shall develop and implement preventative behavioral interventions and teach appropriate behavior.

i. Modify the environmental factors that escalate the inappropriate behavior.

ii. Support the attainment of appropriate behavior.

iii. Use verbal de-escalation to defuse potentially violent dangerous behavior.

2. Schools must establish a system that will support students' efforts to manage their own behavior; implement instructing techniques in how to self-manage behavior; decrease the development of new problem behaviors; prevent worsening of existing problem behaviors; redesign

learning/teaching environments to eliminate triggers and maintainers of problem behaviors. The system should include family involvement as an integral part of the system.



# ODE's Policy: Prohibited Practices

## VI. Prohibited Practices:

The following are prohibited under all circumstances, including emergency safety situations:

- A. Prone restraint ~~as defined in Executive Order 2009-13S~~;
- B. Corporal punishment;
- C. Child endangerment as defined in R.C. 2919.22;
- D. Seclusion or restraint of preschool students in violation of the provisions of Ohio Adm. Code Rule 3301-37-10(D);
- E. The deprivation of basic needs;
- F. Restraint that unduly risks serious harm or needless pain to the student, including the intentional, knowing, or reckless use of any of the following techniques:
  1. Using any method that is capable of causing loss of consciousness or harm to the neck or restricting respiration in any way,
  2. Pinning down with knees to torso, head and/or neck,
  3. Using pressure points, pain compliance and joint manipulation techniques,
  4. Dragging or lifting of the student by the hair or ear or by ~~any type of~~ mechanical restraint,
  5. ~~Using other students or untrained staff to assist with the hold or restraint, or~~
  6. ~~Securing a student to another student or to a fixed object;~~
- G. Mechanical or chemical restraints (which does not include devices used by trained school personnel, or by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, or medication administered as prescribed by a licensed physician);
- H. Aversive behavioral interventions; or
- I. Seclusion of students in a locked room.



# ODE's Policy: Restraint

## VII. Restraint

~~A. Each school district must have a policy that specifically indicates that~~ The use of prone restraint, physical restraint that obstructs the airway of a student, or any physical restraint that impacts a student's primary mode of communication is prohibited.

B. Physical restraint may be used only when there is an immediate risk of physical harm to the student or others and no other safe and effective intervention is possible, and only in a manner that is age and developmentally appropriate. ~~School personnel may use physical restraint only in accordance with local policy and the requirements of this policy.~~

~~C. If a school district uses physical restraint~~ **When using a physical restraint**, staff must:

~~1. Be appropriately trained to protect the care, welfare, dignity, and safety of the student;~~

2. Continually observe the student in restraint for indications of physical or ~~mental~~ distress and seek ~~immediate~~ medical assistance ~~if there is a concern;~~ **as appropriate.**

~~3. Use verbal strategies and research based de-escalation techniques in an effort to help the student regain control;~~

4. Remove the student from physical restraint immediately when the immediate risk of physical harm to self or others has dissipated; **and**

~~5. Conduct a de-briefing including all involved staff to evaluate the trigger for the incident, staff response, and methods to address the student's behavioral needs; and~~

~~6. Complete all required reports and document staff's observations of the student.~~

~~D. If a student repeatedly engages in dangerous behavior that leads to instances of restraint and/or seclusion, the school district shall conduct a functional behavioral assessment to identify the student's needs and more effective ways of addressing those needs. If necessary, this functional behavioral assessment should be followed by a behavioral intervention plan that incorporates appropriate positive behavioral interventions.~~

**5. Be trained in safe restraint techniques, except in the case of rare and unavoidable emergency situations when trained personnel are not immediately available.**

**D. Physical restraint may not be used for punishment or discipline or as a substitute for other less restrictive means of assisting a student in regaining control.**



# ODE's Policy: Seclusion

## VIII. Seclusion

A. Seclusion may be used only when there is an immediate risk of physical harm to the student or others and no other safe and effective intervention is possible. Seclusion shall never be used as a punishment or to force compliance. Seclusion should only be used in a manner that is age and developmentally appropriate. ~~School personnel may use seclusion only in accordance with local policy and the requirements of this policy.~~

B. Seclusion is a last resort safety intervention that provides an opportunity for the student to regain self-control.

C. A room or area used for seclusion must:

1. provide for adequate space, lighting, ventilation, clear visibility and the safety of the student; and
2. not be locked.

3. not prevent the student from exiting the area should staff become incapacitated or leave the area

D. Seclusion shall not be used:

1. for the convenience of staff;
  2. ~~as a substitute for an educational program;~~
  3. as a form of discipline/punishment;
  4. as a substitute for less restrictive alternatives;
  5. ~~as a substitute for inadequate staffing;~~
  6. ~~as a substitute for staff training in positive behavior supports and crisis prevention and intervention;~~
- or
7. as a means to coerce, retaliate, or in a manner that endangers a student.

E. If a school district uses seclusion, staff must:

1. ~~Be appropriately trained to protect the care, welfare, dignity, and safety of the student;~~
2. Continually observe the student in seclusion for indications of physical or mental distress and seek immediate medical assistance if there is a concern;
3. ~~Use verbal strategies and research based de-escalation techniques in an effort to help the student regain control as quickly as possible;~~
4. Remove the student when the immediate risk of physical harm to self or others has dissipated;
5. ~~Conduct a de-briefing including all involved staff to evaluate the trigger for the incident, staff response, and methods to address the student's behavioral needs; and~~
6. Complete all required reports and document their observation of the student.

~~If a student repeatedly engages in dangerous behavior that leads to instances of restraint and/or seclusion, the school district shall conduct a functional behavioral assessment to identify the student's needs and more effective ways of addressing those needs. If necessary, this functional behavioral assessment should be followed by a behavioral intervention plan that incorporates appropriate positive behavioral interventions.~~



# ODE's Policy: Training & Professional Development

## IX. Training and Professional Development

~~A school district is required to have a plan regarding the training of its staff in accordance with this policy, and must~~ **The District must** maintain written or electronic documentation on training provided and lists of participants in each training. ~~Training shall include the following components:~~

~~A. All student personnel shall be trained annually on the requirements of this policy, Ohio Adm. Code 3301-35-15, and the district's policies and procedures regarding restraint and seclusion.~~

~~1. B. The district shall have a plan regarding training student personnel as necessary to implement PBIS on a system-wide basis, recognizing that this may be a multi-year process for a district that is not currently implementing PBIS on a system-wide basis.~~

~~C. The school district shall ensure that an adequate number of personnel in each building are trained in crisis management and de-escalation techniques, and that their training is kept current in accordance with the requirements of the provider of the training.~~



# ODE's Policy: Required Data & Reporting

## **X. Required Data and Reporting**

Each use of seclusion or restraint shall be documented in writing and reported to the building administration immediately; reported to the parent immediately; and documented in a written report. A copy of the written report shall be made available to the parent or guardian within 24 hours, and the school shall maintain a copy of the report in the student's file. ~~These reports are educational records subject to the Family Educational Right to Privacy Act, and a school district is prohibited from releasing any personally identifiable information to anyone other than the parent, in accordance with the requirements of that Act.~~ Every school district shall report information concerning its use of restraint and seclusion annually to the Ohio Department of Education as requested by the Ohio Department of Education.



# ODE's Policy: Monitoring & Complaint Processes

## XI. Monitoring and Complaint Processes

~~Periodic review of this policy shall be the responsibility of the Ohio Department of Education. Each school district shall make its records concerning restraint and seclusion available to staff from the Ohio Department of Education upon request. Any parent may report concerns about whether a school district has a policy that meets the requirements of this policy to the Ohio Department of Education.~~

### A. School District Monitoring and Complaint Procedures

Each school district shall establish a monitoring procedure as part of their restraint and seclusion policy to ensure policy and practice are implemented as set forth in policy. As part of its district complaint procedures, every school district shall have policies and procedures that include:

1. A procedure for a parent to present written complaints to the Superintendent of the school district to initiate a complaint investigation by the school district regarding an incident of restraint or seclusion; and
2. A requirement that the district will respond to the parent's complaint in writing within thirty (30) days of the filing of a complaint regarding an incident of restraint or seclusion.

### ~~B. Availability of IDEA Complaint Process to Students with Disabilities~~

~~The parent of a student with a disability may choose to file a complaint with the Ohio Department of Education, Office for Exceptional Children, in accordance with the complaint procedures available concerning students with disabilities. In accordance with the consent order entered in *Doe v. State of Ohio*, complaints alleging the improper use of restraint or seclusion on a student with a disability will be investigated by the Ohio Department of Education, Office for Exceptional Children, if the complaint otherwise falls within the procedures concerning state complaints under IDEA as set forth in Ohio Adm. Code Rule 3301-51-05(K)(4)-(6). Complaints alleging injuries to a student with a disability or the use of restraints or seclusion shall not be deemed insufficient on the face of the complaint if they are framed within the context of IDEA, including:~~

- ~~☐ A pattern of challenging behaviors that are related to the student's disability;~~
- ~~☐ Whether the student has had or should have had a functional behavioral assessment (FBA) and a positive behavior support plan (PBSP);~~
- ~~☐ Whether the FBA and PBSP are appropriate;~~
- ~~☐ Whether the student's behavior and interventions are addressed or should have been addressed in the IEP; and~~
- ~~☐ Whether staff has been sufficiently trained in de-escalation and restraint techniques.~~



# ODE's Policy: References & Special Education

## **XII. References**

Governor's Executive Order 2009-13S: <http://www.ohio.gov/sites/ohio.gov/files/u5/executive-order-ban-prone-restraints.pdf>

State of Ohio Policy on Restraint and Seclusion Practices (May 17, 2010):

[https://share.education.ohio.gov/Seclusion%20%20Restraint/OHIO%20RS%20POLICY%205-17-10%20FINAL%20\(2\).doc](https://share.education.ohio.gov/Seclusion%20%20Restraint/OHIO%20RS%20POLICY%205-17-10%20FINAL%20(2).doc)

Restraint and Seclusion: Resource Document: <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

## **XII. Special Education:**

Students who are identified as having disabilities that lead to repeated restraint or seclusion will have individualized plans regarding such restraint or seclusion. These plans are developed by the IEP or 504 team as needed. Decisions about free, appropriate, public education and least restrictive environment and how these concepts relate to the use of restraint and seclusion are to be made by these teams, as required by federal and state law. OAC 3301-35-15.

# Restraints & Seclusion

- ▶ The law does provide exceptions for emergency situations
- ▶ Districts continue to have a duty to keep students and staff safe in emergency situations

# Restraints & Seclusion

- ▶ Tips for Individualized Restraint & Seclusion Plans:
  - Multiple instances of restraint and seclusion are only acceptable under IDEA/504 when all other strategies fail
  - Some restraint and seclusion may allow a child to receive FAPE in a less restrictive environment
  - Effective de-escalation is highly individualized - look to each child's ETR and train staff accordingly
  - Make provisions to implement restraints away from other students, if possible. BUT, direct staff to implement restraints in the presence of other staff if at all possible
    - Consider naming and training a team of faculty and staff to serve as a physical intervention team. Provide these individuals with special training on the proper use and implementation of restraints.
  - Warn staff against using a restraint against a student who the staff member could be perceived as being angry with, if at all possible
  - Be very clear in the IEP, ETR, etc. if a child benefits from therapeutic restraints, requires safety-related restraints (e.g. vehicle harness), etc.



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# Legal Update

- **House Bill 264—Diabetes Care**
  - Signed by the Governor on June 12, 2014 to become effective in 90 days
  - H.B. 264 expands the care and services provided for students with diabetes in public schools
  - Schools must provide “appropriate and needed diabetes care in accordance with an order signed by the student’s treating physician”

# Diabetes Care

- The Act defines diabetes care to include:
  - Checking and recording blood glucose/ketone levels
    - Or assisting the student in checking and recording these levels
  - Responding to blood glucose levels outside the student's target range
  - Administering glucagon or other treatments in cases of severe hypoglycemia
  - Administering insulin
    - Or assisting the student in self-administering insulin
  - Providing oral diabetes medication
  - Understanding meal and snack schedules and food intake to be able to calculate proper medication dosages per the physician's orders
  - Following the physician's instructions regarding physical activity and food intake
  - Administering diabetes medications

# Diabetes Care

- Within 14 days of a receipt of an order signed by the treating physician of a child with diabetes, the school district must provide notice to the parent that the child may be eligible for a Section 504 plan
  - ODE will develop an information sheet that districts can provide parents
- A school nurse or, in the absence of a school nurse, a trained school employee may administer diabetes medication
  - Diabetes medications must comply with current provisions regarding the administration of drugs in schools
- Diabetes medications may be stored in an easily accessible location

# Training on Diabetes Care

- ▶ The Act permits schools to provide training to school employees on diabetes care as established by ODE's training guidelines
  - "School employee" is either (1) an employee of the school board or (2) a licensed health care professional of the local health department who is assigned to a school
  - Training must be coordinated by:
    - School nurse or
    - If the school does not employ a nurse, another licensed health care provider with expertise in the area of diabetes and approved by the school to complete the training

# Training on Diabetes Care

- Training must be completed:
  - Before the start of each school year
  - And, as needed, within 14 days of receipt of an order signed by a treating physician
- Once training is complete, the board must determine whether each trained employee is competent to provide diabetes care
- School nurse or Licensed Health Care Provider must “promptly” provide follow-up training and supervision to trained employees

# Notice of Training Opportunity

- The principal of a school attended by students with diabetes may provide written notice to all employees of the opportunity for diabetes training
- The notice must contain the following:
  - Statement that the school is required to provide diabetes care to students and is seeking employees who would like to be trained to provide diabetes care
  - Description of the tasks that would need to be performed

# Notice of Training Opportunity

- The notice must contain the following, cont.:
  - Statement that participation is completely voluntary and choosing not to volunteer will not result in negative action against the employee
  - Statement that the training would be conducted by a licensed health care professional
  - Statement that trained employees are immune from liability for providing diabetes care
  - The name to contact for employees interested in completing training

# Training on Emergency Care

- The Act permits schools to provide training to staff on the signs of hypoglycemia and hyperglycemia and actions to take in these emergency situations
- The training may be provided to:
  - School employees with primary care responsibilities for a student with diabetes
  - Bus drivers employed by the school district who are responsible for transporting a student with diabetes

# Diabetes Care

- Students with diabetes must be able to attend their home school
  - Regardless of availability of a nurse or trained employees
- School cannot pressure a parent into coming to school or school-related activities to provide diabetes care to his or her child

# Diabetes Self-Care

- If requested by the parent and authorized by a physician, a student must be:
  - Allowed to provide self-care at school and school-sponsored activities
  - Allowed to perform diabetes care tasks “in a classroom, in any area of the school or school grounds, and at any school-related activity”
  - Allowed to carry all necessary supplies on the student’s self at all times
  - Provided a private area for performing diabetes care tasks if requested by the student, parent, or person caring for the student
  
- \* Self-care permission can be revoked by the school if the student uses the diabetes care supplies for any other purpose than the student’s own care

# Liability & Reporting

- Consequences to Employees:
  - Employees cannot be disciplined for choosing not to be trained to provide diabetes care
  - Schools cannot discourage employees from providing diabetes care
  - Employees cannot be disciplined for providing diabetes care
    - Additionally, a school nurse of licensed health care professional cannot be disciplined by the board of nursing or other regulatory board for providing diabetes care that is consistent with professional standards



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# Questions?

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