

BSPK's PRIOR WRITTEN NOTICE

A Special Education Newsletter

Anti-Bullying: Policies, Best Practices, & Special Education Issues

Despite the best efforts of schools and their staff to prevent it, unfortunately, students may still bully their peers. One student's mother calls the principal to report that her fourth-grade daughter is being teased because of her weight. The bus driver completes an incident report after two sixth graders exchange ethnic slurs. A coach overhears several teens taunting another for "being gay."

What is the school district's obligation to address these incidents? What special education issues should educators consider? Formal complaints and lawsuits relating to bullying are on the rise nationwide, and it is important for districts to minimize liability whenever possible. Districts must enact policies to respond to school bullying and should engage in best practices to keep students safe and avoid litigation.

I. DISTRICT-WIDE POLICIES, GUIDELINES, & FORMS

Ohio law requires school districts to develop anti-bullying policies that prohibit bullying and harassment, establish reporting and investigation procedures, and create appropriate disciplinary procedures. These policies must be included in handbooks or rules and procedures manuals.

Districts should also train their staff to be familiar with anti-bullying and anti-harassment policies and guidelines. Although the Ohio Revised Code mandates only that policy information be "incorporated into employee training materials," districts should also seriously consider having employees sign that they read and understood those materials, and also provide additional training beyond simply including policies in written materials. Schools do not need an "expert" to do this – an administrator (for example, the compliance coordinator) could provide the instruction. Training is particularly important, because, in reviewing parents' complaints, courts and administrative agencies will examine carefully not only the district's policies and guidelines, but also the staff's understanding of, and compliance with, those rules.

Because your district's policies will require reporting and documenting of bullying incidents, make sure your forms are comprehensive and up-to-date. Forms for reporting bullying incidents should be easily available to parents, staff, and students, and their use should be widely encouraged.

II. BEST PRACTICES: PREVENTIVE STRATEGIES & STEPS TO TAKE WHEN PARENTS OR STUDENTS COMPLAIN ABOUT BULLYING

To decrease incidents of bullying and harassment, districts should implement preventive measures, such as individual interventions and anti-bullying programs. Districts should also examine whether staff communicate about bullying issues across buildings, and identify students who have a history of bullying or of being bullied.

Although all bullying claims should be taken seriously, pay extra attention to incidents alleging harassment based on protected characteristics, such as race, religion, disability, nationality, or gender, because such complaints are most likely to generate agency investigations and lawsuits. Districts should consider, for example, whether using racial epithets will result in a more serious consequence for the offender than general teasing.

Continued on p. 3



Legislative Updates

The Ohio Department of Education has issued new restraint & seclusion rules (OAC 3301-35-15), effective 8/1/13:

- Most types of restraint, including chemical restraint, mechanical restraint, & prone restraint, are prohibited.
- Physical restraint, if permitted, as well as seclusion, may only be used if the student's behavior poses an immediate risk of physical harm to the student or others & no other safe or effective intervention is available.
- Only school staff trained in the appropriate use of restraint & seclusion may utilize the techniques.
- Seclusion in a locked room is prohibited and a student must have adequate space, lighting, & ventilation, and must be visually observed at all times.
- Parents must be notified immediately of the use of restraint or seclusion, & a written report of the use must be available to parents within 24 hours.

Please contact us, or your district's legal counsel, for a complete description of the requirements for the use of restraint & seclusion.



Transition Planning: From 2-22

Districts must take certain steps to properly transition students with disabilities at specific times during the child's education.

Transition From IDEA Part C to Part B:

- For a child receiving early intervention services through the county *Help Me Grow* program (HMG), the HMG Coordinator will schedule a preschool transition conference with the child's district of residence at least 90 days, but not more than 9 months, before the child's 3rd birthday. If the district determines the child is eligible for Part B services, an IEP must be developed before the child's 3rd birthday.
- At the transition conference, the district must provide parents with a copy of *Whose IDEA Is This?* The district must also make an initial determination about whether the child has a suspected disability that could make the child eligible for Part B services.
- The district must then complete a *Referral for Evaluation PR-04* and a *Consent for Evaluation PR-05* not more than 30 days from the date of referral. The evaluation must be completed not more than 60 days after obtaining parental consent, and the district has 30 days after the evaluation to develop an IEP for an eligible child. The HMG Coordinator must be invited to the initial IEP meeting if parents request.
- If the district does not suspect the child has a disability, the district must complete a *Prior Written Notice to Parents (PR-01)* within 30 days of the determination.

Transition From Preschool to School Age Services:

- When a child completes preschool and transitions to school-age services in kindergarten, the district must conduct a reevaluation of the child.

Transition Planning on 14-Year-Old's IEP:

- The IEP completed during the year when the child turns 14 must include appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, independent living, and employment in a competitive, integrated work environment. The IEP must also include a statement of the transition services, including courses of study, needed in order to best prepare the student for his or her transition goals.
- The IEP team should invite the child to attend the IEP meeting.

Transition Planning on 16-Year-Old's IEP:

- The IEP in effect during the year when the child turns 16 must include (i) appropriate measurable post-secondary goals based on transition assessments related to training, education, employment, and independent living skills, and (ii) transition services needed to assist in reaching those goals. The district **must** invite the child to attend the IEP team meeting where postsecondary goals and transition services are discussed.
- At least one year before the transfer of rights, the child's IEP must include a statement that the child has been notified that the child's rights under the IDEA will transfer to the child at age 18.
- For a child over 18, the district must invite to the IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for transition services after the child graduates from high school or turns 22. This can include county social workers, rehabilitation counselors, counselors from employment agencies, or independent living center staff. FERPA-compliant releases may be required for such participation.

Department of Education Lessens Cumbersome Consent Requirements for Billing Public Benefit Programs for Special Education Services and Issues Model Notice of Parental Rights

School districts can bill public insurance and benefit programs, including Medicaid, for certain special education services provided to students. In order to do so, a school district must first obtain parental consent. The U.S. Department of Education recently amended the cumbersome rules for obtaining such consent, and school districts are now only required to obtain parental consent one time rather than each time they want to receive reimbursement through such programs.

The Department of Education also now requires that school districts provide written notification to parents prior to accessing the child's or parent's public benefits or insurance for the first time, and annual thereafter. The notice must include four components: (1) a statement identifying what parental consent involves, (2) a statement explaining that any use of such benefits will be at no cost to the parents, (3) a statement identifying that parents can refuse consent or withdraw consent to disclosure of their child's personally identifiable information to the agency in question, and (4) a statement clarifying that the family will incur no costs even if they exercise their right or refuse to consent to provide such information in the first place.

The Department of Education also released a model notice of parental rights that school districts can use to satisfy their initial parental notification responsibility. School districts are not required to use the model policies, and can develop their own notification consistent with the rules stated above. The notice can be found at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accmodelwrittennotification-6-11-13.pdf> (last accessed 7/11/2012).

Upon report of bullying:

- **DO** reduce any complaint about bullying to writing, and include details.
- **DO NOT** assume a computer program, such as Public School Works, suffices to document investigations or bullying claims because such programs may categorize the infractions by the offender and not by the victim.
- **DO** contact the alleged victim's parents to inform them of the incident and your district's procedures for addressing and investigating the situation.
- **DO NOT** assume emails or phone conversations are enough to document the incident or follow up with parents.
- **DO** conduct a thorough investigation.
- **DO** discipline the bully if the complaint is substantiated in a manner designed to prevent further incidents.
- **DO NOT** offer solutions without considering possible implications – having the victim eat lunch separately may be considered punishing the victim instead of addressing the problem.
- **DO** inform the victim's parents about the results of the investigation.
- **DO NOT** inform the victim's parents about specific discipline given to another child without first consulting with your attorney.
- **DO NOT** assume minor infractions are not bullying – a student on an IEP being called "stupid" may constitute bullying based on disability.
- **DO** determine whether additional steps to address the bullying are needed, either for the specific incident or for the school as a whole.
- **DO NOT** forget to follow up on the results of any student or parent survey results that indicate a child is being bullied.
- **DO NOT** shred forms or discard e-mails on a yearly basis, unless required by your district's records retention policy, and certainly not if litigation or an administrative charge is pending or threatened.

Continued from p. 1

III. SPECIAL EDUCATION & BULLYING

Bullying incidents can indicate the need for special education services, such as an evaluation if the bully is not on an IEP or a reevaluation if the bully is suspected to be misidentified, or an evaluation or reevaluation for the victim to address emotional difficulties or social skill deficiencies.

Additionally, Intervention Assistance Teams ("IAT") and IEP teams should pay particular attention to victims already receiving special education services, because complainants may allege IDEA and Section 504 violations by claiming the victim has been deprived of educational benefits as a result of the bullying.

Bullying incidents can trigger additional requirements with specific deadlines:

- **Child Find:** Districts are required to identify, locate, and evaluate students who are suspected of having a disability that may require specialized instruction. If your district does not consider evaluating bullies or victims, it may be violating Child Find.
- **Evaluations:** Once a district determines that a bully or victim should be evaluated, the district has 60 days from the date of the parent's written consent to complete an ETR and hold the ETR meeting. Any assistance the IAT implements related to social skills (e.g., RTI) should be undertaken contemporaneously with the evaluation process, and should not be used to delay an evaluation.
- **FBA and BIP:** If a student exhibits ongoing or extensive behavioral concerns, his or her evaluation may need to include a Functional Behavior Assessment ("FBA") leading to a Behavior Intervention Plan ("BIP"). If a student has a behavior goal on his or her IEP, the IEP team may examine whether that goal is appropriate given the ongoing bullying behavior.

- **Manifestation Determinations:** When a child with a disability violates the student code of conduct and the team decides to change the student's programming or change his or her placement through certain disciplinary removals from school, the IEP team must conduct a manifestation determination hearing within 10 days.

- If the team determines the behavior was, in fact, a manifestation of the student's disability, the district may not change the student's placement without parental consent, unless a 45-day emergency removal exception applies.

- **Section 504/IDEA:** When bullying affects a child's ability to learn or function in the classroom, parents may file lawsuits or Due Process complaints alleging the District violated their child's right to a free appropriate public education ("FAPE"). Likewise, the Office of Civil Rights investigates complaints alleging a child was bullied based on disability or another protected factor and that the District's response was inadequate.

As always, documenting IEP team suggestions and decisions under these circumstances is critical. IEP teams should send Prior Written Notices (PR-01) to parents whenever any decision is made, regardless of whether the parents are in agreement with the outcome. Teams should also document attempts to reach parents, parent refusals to sign consent to evaluations or services, and any relevant parent conversations.

Bullying lawsuits and agency complaints are on the rise, especially as related to protected status bullying and harassment. To protect students and limit liability, districts need to develop comprehensive policies; implement preventive programs; document all reports, investigations, and outcomes; and address all special education issues.

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Upcoming Webinars & Events:

- 09.19.13: Special Education Case Law Update Webinar
- 10.15.13: Ohio School Council Hotline Seminar
- 12.12.13: ESY Webinar