

SPECIAL EDUCATION UPDATE

Illinois Council of School Attorneys
29th Annual Seminar on School Law

November 20, 2015

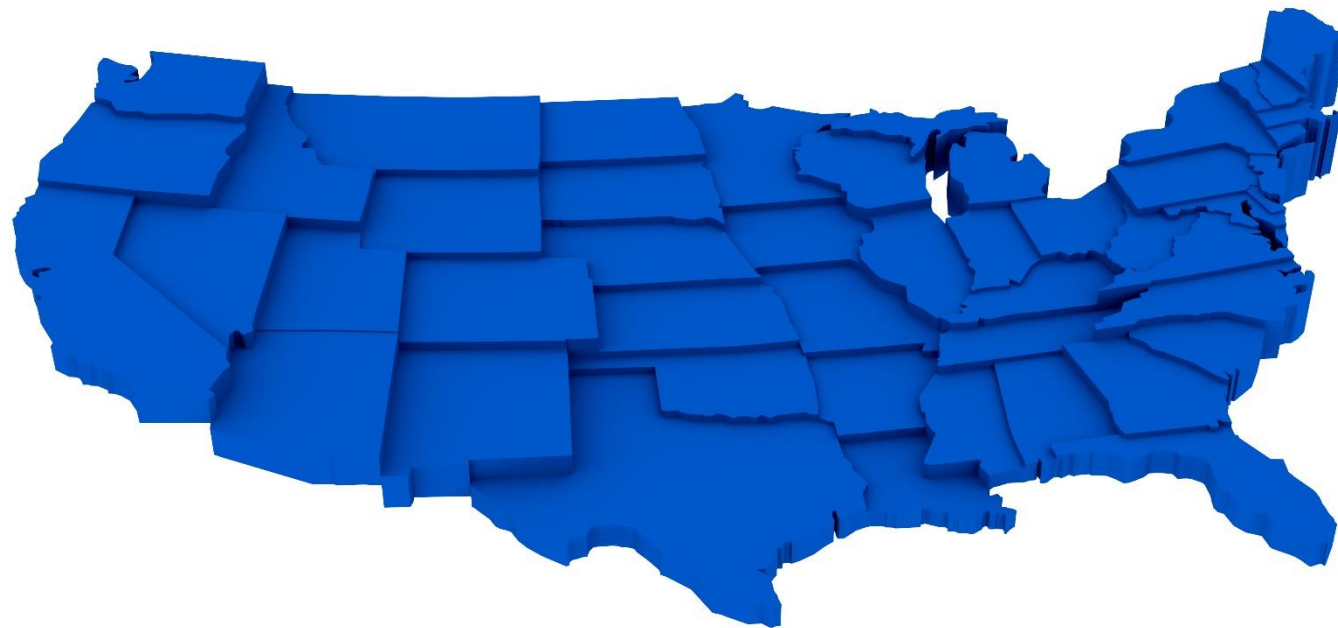
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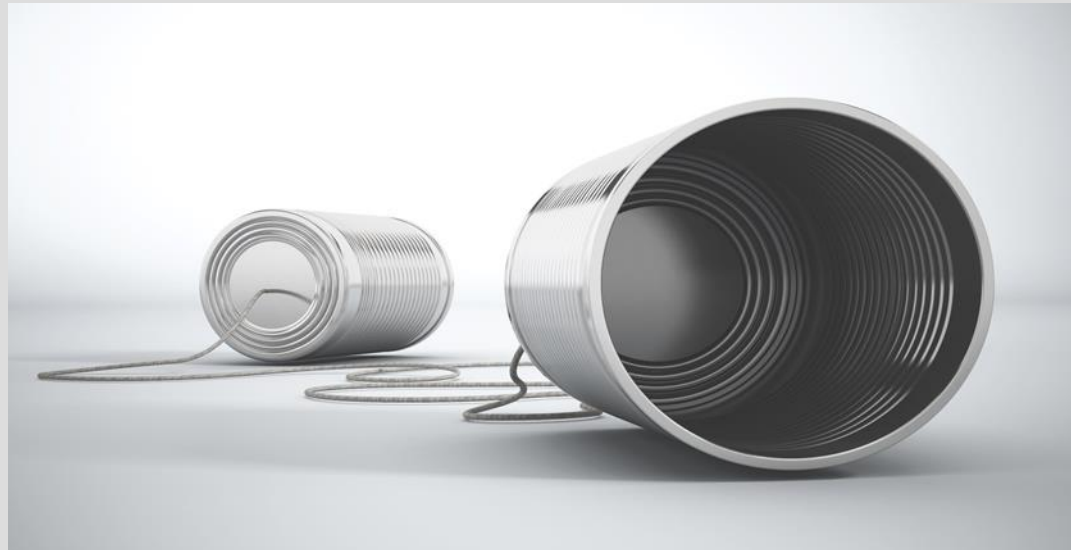
PART I:

FEDERAL GUIDANCE



I. FEDERAL GUIDANCE

A. FAQ On Effective Communication For Students With Hearing, Vision, or Speech Disabilities In Public Elementary And Secondary Schools (DOJ/DOE 11/12/14)



I. FEDERAL GUIDANCE

FAQ On Effective Communication:

This FAQ provides that school districts must apply the requirements of both IDEA and Title II of the ADA to determine how to meet the communication needs of IDEA-eligible students with hearing, vision, or speech disabilities.

I. FEDERAL GUIDANCE

FAQ On Effective Communication:

- Auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the student.
- Best practice is for districts to proactively notify parents and students about the right to effective communication under Title II and identify the designated school official who accepts requests for auxiliary aids and services.

I. FEDERAL GUIDANCE

FAQ On Effective Communication:

- See National School Board Association's March 5, 2015 Letter to U.S. DOE/DOJ Regarding the FAQ.
- See the Departments' June 15, 2015 Reply Letter to the NSBA.

I. FEDERAL GUIDANCE

B. Dear Colleague Letter on Ensuring Equal Educational Access for EL Students and LEP Parents (DOJ/DOE 01/07/15)



I. FEDERAL GUIDANCE

DCL on Access for EL Students/LEP Parents: Areas of common compliance issues of concern include (but are not limited to) ~

- evaluating EL students for special education and providing special education and English language services;
- meeting the needs of EL students who opt out of EL programs or particular EL services; and
- ensuring meaningful communication with LEP parents.

I. FEDERAL GUIDANCE

C. Letter to Anonymous, 115 LRP 18661 (FPCO 2/19/15):

Where a parent sought to have the conclusions of a medical report removed from the student's records because the parent did not agree with the findings, the request to amend the records under *FERPA* was denied as the medical report was found to be accurate.

I. FEDERAL GUIDANCE

D. Letter to Baus, 115 LRP 8855 (OSEP 2/23/15):

When a district conducts an evaluation and a parent disagrees with it because the child was not assessed in a particular area, the parent may request an IEE in that area.

I. FEDERAL GUIDANCE

E. Dear Colleague Letter on Students with Autism, 115 LRP 33911 (OSEP 7/6/15):

OSEP addressed “concerns in the field” that many students with autism are not receiving needed speech and language services. The DCL cautions against only including ABA therapists as part of *IDEA* services for students with autism without considering the need for SLP involvement.

I. FEDERAL GUIDANCE

F. FAQ on Service Animals and the ADA (DOJ 8/14/15):

- Animal must be trained to do a specific task to assist the person with a disability.
- Emotional support, therapy, comfort, or companion animals are not service animals. Distinction is made between psychiatric service vs. emotional support animals.

I. FEDERAL GUIDANCE

FAQ on Service Animals:

- Professional training of service animals is not required.
- Staff may only ask (1) if animal is a service animal required because of the individual's disability, and (2) what work or task(s) the animal is trained to perform.
- Animal is not required to wear a vest, ID tag, or specific harness.
- Handler is required to care for and supervise the animal, and animal must be under the control of the handler.

I. FEDERAL GUIDANCE

FAQ on Service Animals:

Compare this guidance with recent cases on service animals and district responsibilities for handling ~

- *Alboniga v. School Board of Broward County Florida*, 115 LRP 5982 (S.D. Fla. 2/10/15).
- *Gates-Chili Central School District*, 65 IDELR 152 (DOJ 4/13/15).

I. FEDERAL GUIDANCE

G. ADA Requirements In Testing Accommodations (DOJ 9/8/15):

Students with disabilities are eligible for testing accommodations ~

- A history of academic success does not mean that a student is ineligible for a testing accommodation.
- Students with disabilities' tests scores should reflect their aptitude, not their impairment.
- If documentation is required to obtain testing accommodations, the request must be narrowly tailored to the information needed to determine the need for the accommodation.

I. FEDERAL GUIDANCE

H. Policy Statement On Inclusion Of Children With Disabilities In Early Childhood Programs (DHS/DOE 9/14/15):

- Encourages districts to promote participation of young children with disabilities in programs with their non-disabled peers by including individualized accommodations.
- Districts must make sure that a FAPE is offered to every child with a disability within their jurisdiction, even if a district does not operate a public early childhood program.

I. FEDERAL GUIDANCE

I. Dear Colleague Letter on Dyslexia, Dyscalculia, and Dysgraphia (OSERS 10/23/15):

This DCL was written in response to “stakeholders” who believe that districts are reluctant to use or refer to dyslexia, dyscalculia, and dysgraphia in evaluation, eligibility determination, and IEPs.

I. FEDERAL GUIDANCE

DCL on Dyslexia:

- There could be situations where the IEP team would determine:
 - It is helpful to include information about dyslexia, dyscalculia, or dysgraphia in documenting how that condition relates to the SLD eligibility determination.
 - Personnel responsible for IEP implementation would need to know about a student's underlying condition.

I. FEDERAL GUIDANCE

DCL on Dyslexia:

- Encourages districts to consider situations where it would be appropriate to use the terms dyslexia, dyscalculia, or dysgraphia to describe and address a child's unique identified needs through evaluation, eligibility, and IEP documents.

I. FEDERAL GUIDANCE

J. Every Student, Every Day: A Community Toolkit to Address and Eliminate Chronic Absenteeism (DOE/DOJ/HHS/HUD 10/2015)



PART II:
STATE LAW AND
ISBE GUIDANCE



II. STATE LAW AND ISBE GUIDANCE

A. ISBE Guidance: Dynamic Learning Maps Alternate Assessment Waiver (March 2015): 1% cap on the student population who may take the alternate assessment except if ~

- District's population of students with the most significant cognitive disabilities exceeds 1%;
- Compelling reason why the incidence of these students exceeds 1%;
- Evidence showing that the district has drawn a large number of students with significant cognitive disabilities; and
- Data showing that the district has very small overall student population.

II. STATE LAW AND ISBE GUIDANCE

B. ISBE Guidance: Self-Administration and Self-Carry of Medications for Asthma and Allergy (April 2015):

- Summarizes current requirements; and
- Provides “Quick Reference Tools” on self-administration and self-carry requirements for educators.

II. STATE LAW AND ISBE GUIDANCE

C. New ISBE Form 34-58: Medical Certification for Home/Hospital Instruction (July 2015):

- Must be completed by an M.D. or D.O.
- Must certify that the student needs to be out of school for “a minimum of two or more consecutive weeks” or for “ongoing absences totaling 10 or more school days.
- Must indicate the student’s “Disease/Injury/Surgery (Primary Diagnosis)” and estimate the length of time the student will need home or hospital instruction if possible.

II. STATE LAW AND ISBE GUIDANCE

D. Public Act 99-0276 (effective 8/5/15):

Section 10-22.24b of the *School Code* on school counseling services is amended to state that school counseling for students may include assisting special education students with academic supports, social-emotional support, and college/career development counseling services or interventions as outlined in a student's IEP or Section 504 plan.

II. STATE LAW AND ISBE GUIDANCE

E. Public Act 99-0456 on Student Discipline (effective 9/15/16):

How will Public Act 99-0456 impact behavioral interventions and discipline for students with disabilities?

II. STATE LAW AND ISBE GUIDANCE

F. Public Act 99-0245 Amendments to the *Youth Sports Concussion Safety Act:*

How does the required return-to-learn protocol correlate and/or overlap with a school district's child-find obligations under the IDEA and Section 504?

PART III:

CASE LAW UPDATES



III. CASE LAW UPDATES

In re: Student with a Disability, 115 LRP 24735 (SEA IL 5/15/15):

The failure of a district to provide prior written notice to parents of a MDR, and the fact that a determination that the conduct was not a manifestation of the student's disability could result in a change in placement, made the MDR invalid. Phone call to the student's mother notifying her of the MDR was not sufficient PWN.

III. CASE LAW UPDATES

Stanek v. St. Charles Community Unit School District, 115 LRP 15369 (7th Cir. 4/9/15):

Generally, when a student reaches the age of majority, all *IDEA* rights held by the parents are transferred to the SWD. However, if a student who has reached the age of majority signs a Delegation Of Rights form giving the parents the right to continue to make educational decisions for the student, then the parents maintain the right to all procedural safeguards (such as initiating due process hearings) as well.

III. CASE LAW UPDATES

M.O. v. New York City Department of Education, 793 F.3d 236 (2nd Cir. 7/15/15):

Parents did not believe that the district's assigned public school would follow the student's IEP, so they unilaterally placed the student in a private school and sought reimbursement from the district. The 2nd Circuit rejected the claim because it was speculative for the parents to assume that the public school would not adhere to the IEP. The court did state that if the proposed placement did not have the appropriate supports or services available to carry out the child's IEP, then the decision would be different.

III. CASE LAW UPDATES

Sneitzer v. Iowa Department of Education, 115 LRP 36295 (8th Cir. 8/7/15):

Student with Asperger syndrome who made some progress towards her goals, despite behavioral challenges, was not denied a FAPE. The goals in this student's IEP were not academic in nature; however, evidence that she was making significant academic progress was probative of the fact that she was receiving some educational benefit from the IEP that was in place.

III. CASE LAW UPDATES

Andrew F. v. Douglas County School District Re-1, 115 LRP 39422 (10th Cir. 8/25/15):

Because a 4th grade student with autism was receiving “some educational benefit” and was making some progress under his IEP, the IEP was appropriate. The 10th Circuit noted that changes that were made to the student’s objectives over the last couple of school years to make the goals more difficult to achieve and the student still made some educational progress. The court also recognized that some U.S. Circuit Courts apply the “meaningful educational benefit” test instead, but declined to do so here.

III. CASE LAW UPDATES

G.L., et al. v. Ligonier Valley School District Authority, 66 IDELR 91 (3rd Cir. 9/22/15):

The 3rd Circuit held that parents have two years from the date they “knew or should have known” of an alleged *IDEA* violation to file for due process. However, parents may seek relief for FAPE violations that pre-date their due process request by more than two years.

QUESTIONS

The logo for Engler Callaway Baasten & Sraga, LLC. It features the letters "ECB&S" in a large, bold, serif font. The letters are enclosed within a decorative border made of small dots, forming a rectangular shape with a small gap at the bottom left.

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