

MoASBO
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Hot Topics in Disabilities Law

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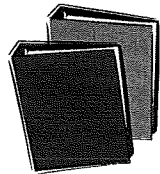
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HOT TOPICS IN DISABILITIES LAW

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POLICIES AND PROCEDURES



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Policies and Procedures

- ▶ Ensure that you are using the most current law- e.g., ADA, Kaitlyn's Law, Missouri State Plan, etc.
- ▶ Recommend Board approval of policy, but not procedure. Ex. Section 504, independent evaluation, homebound.
- ▶ Review recommended new policies before adoption.
- ▶ Do not adopt policies that you cannot follow or implement or that, after review, you believe may not be required or correct. Check with legal counsel.

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OCR AND SECTION 504



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OCR and Section 504

- ▶ 1. Continued increase in the number of OCR complaints.
- ▶ 2. Continued extensive OCR investigations, including on-site interviews.
- ▶ 3. Need for legal counsel?
- ▶ 4. Emphasis on notices of non-discrimination to be prominently displayed on websites and in handbooks, newspapers, brochures, etc.

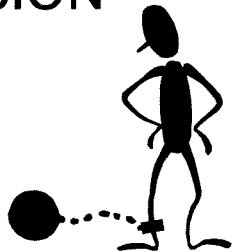
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OCR and Section 504

- ▶ 5. Critical need for written procedures, staff training and implementation.
- ▶ 6. Make sure policies and procedures are current - 2008 ADAAA.
- ▶ 7. Do not Board approve procedures.
- ▶ 8. Need to ensure that the procedures that you are using do not conflict with other Board policies and/or procedures.
- ▶ 9. Insurance coverage for 504 issues.
- ▶ 10. Regarded as issues.

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RESTRAINT AND SECLUSION



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Restraint/Seclusion

- ▶ Pending federal legislation to prevent and reduce the use of physical restraint and seclusion in schools.
- ▶ Directs the Secretary of Education to establish minimum standards and (1) prohibit elementary and secondary school personnel from managing any student by using any mechanical or chemical restraint, physical restraint or escort that restricts breathing, or aversive behavioral intervention that compromises student health and safety;

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Restraint/Seclusion

- ▶ (2) prohibit such personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others and certain precautions are taken; (3) require states and other LEAs to ensure that a sufficient number of school personnel receive state-approved training and certification in first aid and certain safe and effective student management techniques;

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Restraint/Seclusion

- ▶ (4) prohibit physical restraint or seclusion from being written into a student's education plan, individual safety plan, behavioral plan, or individual education plan as a planned intervention; and (5) require schools to establish procedures to notify parents in a timely manner if physical restraint or seclusion is imposed on their child.

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Restraint/Seclusion

- ▶ ***Gives Protection and Advocacy Systems the authority to investigate, monitor, and enforce those provisions.***

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Missouri Law

- May 2009: Legislature passed bill:
 - School districts in Missouri shall adopt a discipline policy that "prohibits confining a student in an unattended, locked space except for an emergency situation while awaiting the arrival of law enforcement personnel."
 - By July 1, 2011, school districts must adopt a written policy addressing the use of "restrictive behavioral intervention as a form of discipline or behavior management technique."
 - DESE to issue sample policy by July 1, 2010.

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Essential Components of Policy

- ▶ Definition of terms:
 - Seclusion
 - Where? How long?
 - Restraint
 - Physical, chemical, mechanical? How long?
 - What *doesn't* it include?
 - Time-out
 - Where? How long? At what point or under what circumstances does a time out become seclusion?

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OCR Definitions

- ▶ Seclusion is the "involuntary confinement of an individual alone in a room or area from which the individual is physically restrained from leaving.
- ▶ Restraint is "any manual method, physical or mechanical device, material or equipment that immobilizes the ability of an individual to move his/her arms, legs, body or head freely.

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KAITLYN'S LAW



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Missouri Revised Statute 162.1125

- Each school district that operates a high school shall establish a policy and adopt procedures that allow a student eligible under the IDEA who will have completed four years of high school at the end of a school year to participate in the graduation ceremony of the student's high school graduating class and all related activities if the student's IEP prescribes special education, transition planning, transition services, or related services beyond the student's four years of high school, and the student's IEP team determines the student is making satisfactory progress toward the completion of the IEP and participation in the graduation ceremony is deemed appropriate.

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Kaitlyn's Law

- The policy and procedures shall require timely and meaningful written notice to children with disabilities and their parents or guardians about the school district's policy and procedures adopted in accordance with this section.

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IDEA Due Process



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Due Process Issues and Concerns

- Two business day substitution rule.
- Naming the hearing officer.
- Knowing the Chairperson.
- Mediation/Resolution meetings.
- Length of hearings.
- Insurance Coverage.
- Paperwork and personnel.

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Final Cautions and Recommendations

- 1. Seeking legal advice vs. technical compliance advice.
- 2. Need for staff training on fundamental IDEA process.
- 3. Need to ensure compliance.
- 4. Legal standard of "appropriateness" rather than parent appeasement.
- 5. Prohibition on mandatory medication.
- 6. Risk assessments or psychological evaluations outside the process.

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