

# **SPECIAL EDUCATION HOT SPOTS FOR CHARTER SCHOOLS**



**The Power of Partnerships**

**Governor John Engler Center for Charter Schools**

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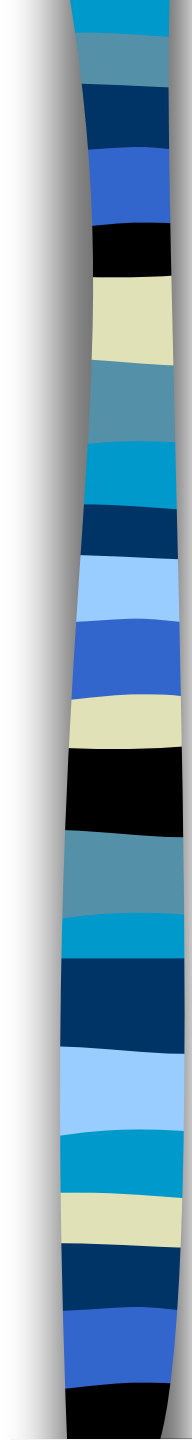
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# PART ONE



## COMPLIANCE REVIEW

# STATE COMPLAINTS

- 
- MDE State Complaints still common forum for Parents to raise concerns.
  - Most Common Issues:
    - IEP Implementation;
    - IEP goals and objectives;
    - Discrete eligibility issues:EI vs Social Maladjustment; OHI; SLD;
    - Extended School Year;
    - Least restrictive environment;
    - Discipline
  - Unpredictable MDE causing litigation and hearings.



# DUE PROCESS COMPLAINTS

- More Due Process Hearings this year than last time we met;
- Hearings still not a good way to resolve problems and cost time / money;
- Hearings are mostly related to placement, LRE, eligibility and discipline issues;
- Most hearings get resolved at mediation or through the resolution meeting process;
- Be sure that issues are addressed and discussed at the IEP Table;
- All about the data and documentation.



# OCR COMPLAINTS

- New Case Processing emphasizes early resolution;
- OCR trying to clear cases;
- IDEA compliance and implementation;
- Section 504 compliance and implementation;
- Restraint and Seclusion;
  - OCR conducting compliance reviews;
- Title IX

# PART TWO



**BACK TO BASICS**

**FAPE AND LRE**



# DEFINING FAPE

- US Supreme Court defined it in *Rowley*;
- Two-prong approach:
  - Procedurally appropriate (on time, right team, based on evaluations and data; with proper notice and participation for the parent);
  - Reasonably calculated to deliver educational benefit to the student;
- Michigan state law requirement as well;
- US Supreme Court just revisited.



# SUPREME COURT AND FAPE

- *Rowley* standard was under scrutiny by the US Supreme Court;
- Question is how much benefit is actually required to show FAPE was offered;
- Parents and Government arguing that *de minimis* standard is too low;
- “*reasonably calculated to make progress that is appropriate to the child in light of the child’s circumstances*”?
- *Endrew F v. Douglas County School District, 116 LRP 22954 (US SCT 2017)*.





# BUILDING FAPE

- Both the IDEA and 504 have a process;
- Both require a plan to define it;
- Based on “present level” of “academic achievement” and “functional performance”;
- Built with general education, special education, related services and supplementary aids and services;
- Must be procedurally and substantively appropriate.



# UNIQUE FAPE ISSUES FOR PSAS

- Don't always have full continuum available as traditional public schools;
- Does not excuse obligation to provide FAPE;
- May have to contract with another entity through partnership to provide it;
- As constituents of ISDs, schools have access to ISD programs and resources;
- Section 51a of the State School Aid Act continues to be a challenge.



# LEAST RESTRICTIVE ENVIRONMENT

- Both IDEA and Section 504 have a least restrictive environment component;
- LRE requires that:
  - To the maximum extent appropriate
  - Educate students with disabilities with non-disabled students
- Ok to compromise LRE for FAPE, but not ok to compromise FAPE for LRE.



# LEAST RESTRICTIVE ENVIRONMENT

- No separate classes/schooling or other removal unless
  - Education in regular classes with supplementary aids and services cannot be achieved satisfactorily, considering:
    - Impact on student with disability
    - Impact on other students in classroom



# THE STATE AND LRE

- Michigan Department of Education has LRE targets of where most students with disabilities are to be educated;
- Most of special education students must be in general education environment 80% of the school day;
- MDE monitors for LRE in response to complaint or as part of ongoing monitoring;
- Noncompliance will result in consequences to the District;
- End result is the vast majority of special education students and 504 students are in general education settings.



# LRE CONTINUUM

- General Education;
- General classroom + supplementary aids and services and / or related services;
- Special education instruction in regular school setting + general education supported by supplemental aids/services
- Self-contained classroom in a general education facility
- Self-contained classroom in a separate facility; day treatment program
- Residential – Home – Hospital



# US COURT OF APPEALS

- Presumption to educate in neighborhood school;
- To overcome presumption must show:
  - Student won't benefit from integration
  - Marginal benefit of integration outweighed by benefits of more restrictive setting, or
  - Disabled student disruptive force in integrated setting
- Roncker v. Walter, 700 F.2D 1058 (6th Cir. 1983).



# Applying IDEA and Roncker

- LRE is not a fixed location, but is on a continuum;
- Must be determined child by child, IEP by IEP;
- The general education classroom as LRE is a rebuttable presumption;
- The only way to move to more restrictive placement is to demonstrate educate in the less restrictive setting unsuccessful;
- Requires data collection in all settings;
- If it didn't get documented, it didn't happen.





# THE USDOE AND LRE

- Schools must implement behavioral and educational supports in general education and document those supports as part of LRE;
- Research proves that system-wide positive behavioral supports address most student issues, without the need to remove students;
- Systemic interventions through Rtl, MTTS and other general education interventions and supports are critical component of LRE
- A failure to provide, document and monitor interventions is an LRE violation.
- Dear Colleague Letter, USDOE 08-01-16.

# PART THREE



## MISCELLANEOUS HOT SPOTS



# CONTINUING ISSUES WITH DISCIPLINE

- Continuing emphasis on behavior planning, FBAs and implementation and documentation with fidelity;
- Providing services after 10<sup>th</sup> cumulative day of removal;
- Counting the days of removal and monitoring the pattern of exclusion and change in placement;
- Timeliness of manifestation determination reviews;
- Appropriateness of interim alternative educational settings.



# EXTRACURRICULAR ACTIVITIES

- Extracurricular activities not typically part of FAPE unless IEP says so;
- Access to extracurricular activities may need to be addressed in the IEP;
- If not necessary for FAPE, does student need services and supports to obtain access;
- Careful with field trips and other non-academic activities;
- Litigation in Michigan pending now.



# RESTRAINT AND SECLUSION

- The data is in and it isn't pretty;
- Many schools did not collect or submit data;
- Many schools submitted data that just doesn't match up;
- Still issues related to "seclusion" and evacuation of classrooms;
- Still issues related to use of restraint devices on transportation vehicles;
- MDE, OCR and others are watching.



QUESTIONS  
AND  
ANSWERS!