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# Restraint and Seclusion of Students with Disabilities: U.S. Department of Education Releases Guidance

The U.S. Department of Education Office for Civil Rights (“OCR”) issued *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* on December 28, 2016. In this Guidance, OCR states that its Civil Rights Data Collection indicates that schools restrain and seclude students with disabilities at higher rates than students without disabilities and that this raises a question regarding whether schools are imposing restraint and seclusion in discriminatory ways. OCR defines “mechanical restraint” as the use of any device or equipment to restrict a student’s freedom of movement, but this does not include adaptive devices used to achieve proper body position, balance or alignment, vehicle safety restraints, orthopedically prescribed devices or restraints for medical immobilization. According to OCR, “physical restraint” refers

to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs or head freely. Finally, OCR defines “seclusion” as involuntary confinement of a student alone in an area from which the student is physically prevented from leaving, but does not include timeout in an unlocked setting used for the purpose of calming.

The Dear Colleague Letter describes the legal standards OCR uses to determine whether the use of restraint or seclusion has violated Section 504. OCR cautions that a student’s behavioral challenges that lead to restraint could be a sign that the student has a disability and needs special education and related services. If the student exhibits behavior that would reasonably cause school personnel to believe the student has a disability, the school district must evaluate the student to determine if the student has a disability. If a student is already identified as having a disability, the use of restraint or seclusion could be evidence that the student’s current services are not addressing the student’s needs. According to OCR, pervasive indicators that a student’s needs are not being met include new or more frequent outbursts, an increase in the frequency or intensity of behavior, a sudden change in behavior,



or a significant rise in missed classes or services.

OCR explains that Section 504 of the Rehabilitation Act prohibits restraint and seclusion, only when its use constitutes disability discrimination. This occurs when a school restrains or secludes a student with a disability for behavior that would not result in the restraint or seclusion of peers without disabilities or if a school restrains or secludes a student on the basis of assumptions or stereotypes about disability. Discrimination also occurs when policies, practices or procedures that are neutral in language nonetheless have the effect of discriminating against students with disabilities.

The use of restraint or seclusion can deny a student a Free Appropriate Public Education ("FAPE") if it has a traumatic impact on the student that affects his or her educational services or if a student misses instruction or services due to being restrained or secluded for extended periods of time. If the student has been denied FAPE, the appropriate remedy is to determine if the student's current services are meeting his or her needs, determine what changes in services are necessary and to provide compensatory services. Another appropriate remedy may be training staff on implementation of policies in a

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neutral, nondiscriminatory manner. Finally, OCR lists a variety of resources concerning the use of restraint and seclusion to assist school districts.

If you have additional questions about the Dear Colleague Letter or your district's policies and procedures, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).