

# Rules, Regulations, and Reality



## THE 2017 LEGAL ROUND-UP

Illinois Alliance of Administrators of Special Education  
July 20, 2017

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# Rules, Regulations & Reality

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## Agenda

1. Federal Updates
2. Local Updates – Bills Awaiting Governor's Signature
3. Bills in Effect
4. What to Expect
5. Noteworthy Cases – Local
6. Questions and Discussions

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## Federal Updates

### **Recently Issued Guidance from the U.S. Department of Education**

- [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)
- [Dear Colleague Letter](#) and [Question & Answer Guide](#)
- [Dear Colleague Letter](#) and [Know Your Rights](#)
- [Dear Colleague Letter Preschool Least Restrictive Environment](#)

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## Federal Updates: Section 504 Guidance

### **Gray Areas:**

1. When and When Not to Refer for Evaluation
2. What Informed Consent looks like for a 504 Student
3. Timelines for Evaluation
4. Reevaluation & FAPE
5. General Best Practices

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## Federal Updates: Section 504 Guidance

### **To Refer, or Not to Refer?**

*Rosita is a fourth grade student at her local public elementary school. Her teacher notices that Rosita has trouble concentrating during class lessons and that it takes Rosita significantly longer than most students to complete in-class assignments. While the teacher acknowledges that it is very difficult for Rosita to stay seated and on-task, she does not think Rosita needs special education services because she is earning B's and C's.*

***What should the teacher do?***

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## Federal Updates: Section 504 Guidance

### **To Refer, or Not to Refer?**

*Juan is a student in the third grade. His teacher tests reading comprehension with written in class quizzes. Juan has trouble finishing the quizzes on time, and his answers are short and incomplete. Because of the poor responses on the quizzes, Juan's teacher believes he may have a disability related to his ability to understand what he reads (reading comprehension skills). The school conducts an evaluation that requires Juan to read a passage and to write responses to a series of questions about the passage.*

***Was this testing appropriate to evaluate Juan's suspected disability?***

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## Federal Updates: Section 504 Guidance

### **What Informed Consent Looks Like:**

1. Does Section 504 require informed parental consent?
2. What does OCR suggest?
3. What if a parent refuses to provide consent?
4. What is good practice, and why?

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## Federal Updates: Section 504 Guidance

### **Timelines for Evaluation:**

*Mr. Williams is very concerned. In September, two weeks after the new school year began, his 16 year-old son told him that he was having a hard time hearing his teacher and, as a result, he is unable to take detailed notes during class lectures. The school promised to evaluate the student, and Mr. Williams consented to the evaluation before the end of September. However, it is now December and, to date, his son has not been evaluated.*

***Should the school have completed the evaluation before December?***



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## Federal Updates: Section 504 Guidance

### **Reevaluation & FAPE:**

*Salim is a student with a disability and he has a Section 504 plan. At the start of the spring semester, he received an out-of-school suspension for 12 consecutive school days.*

***Is the school required to reevaluate Salim?***

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## Federal Updates: Physical Restraint and Seclusion Guidance

Students with disabilities served by IDEA represented **12%** of students enrolled in public schools nationally, but **67%** of the students who were subjected to restraint or seclusion in school. Based on data reported to OCR, approximately **100,000** students were placed in seclusion or involuntary confinement or were physically restrained at school to immobilize them or reduce their ability to move freely, including more than **69,000** students with disabilities served by the IDEA.

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## Federal Updates: Physical Restraint and Seclusion Guidance

### Federal Guidance:

- **Restraint** of a student means restricting the student's ability to move his or her torso, arms, legs or head freely.
  - **Mechanical Restraint** is the use of any device/equipment to restrict a student's freedom of movement.
- **Seclusion** of a student is confining a student alone in a room or area that he or she is not permitted to leave.

Takeaway:

*Unless and until child's behavior poses imminent danger of serious physical harm to self or others.*

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## Federal Updates: Physical Restraint and Seclusion Guidance

**Mechanical Restraint** is the use of any device/equipment to restrict a student's freedom of movement.

- **DOES NOT INCLUDE:**
  - Devices implemented by trained school personnel; OR
  - Devices utilized by students as prescribed by appropriate medical or related service professionals as designed to –
    - Adaptive devices or mechanical supports for body position, balance, or alignment;
    - Vehicle safety restraints for transporting a student;
    - Restraints for medical immobilization; or
    - Orthopedically prescribed devices allowing students to participate in activities without risk of harm.

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## Federal Updates: Physical Restraint and Seclusion Guidance

Do's	Don't's
<b>Document</b> in writing <ul style="list-style-type: none"><li>• 23 Ill. Admin Code 1.285(f)</li></ul>	Use mechanical restraint
<b>Notify</b> parent/guardian of policies on this <ul style="list-style-type: none"><li>• 23 Ill. Admin Code 1.285(g)(1)</li></ul>	Use chemical restraint
<b>Notify</b> parent/guardian as soon as it happens <ul style="list-style-type: none"><li>• 23 Ill. Admin Code 1.285(g)(2)</li></ul>	Use <i>unless</i> , imminent danger of serious physical harm to self or others
<b>Training</b> looks different for use of isolated time outs and physical restraints. <ul style="list-style-type: none"><li>• 23 Ill. Admin Code 1.285(h)(1)-(2)</li></ul>	Use as a form of punishment/discipline

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## Federal Updates: Charter Schools Compliance with IDEA and Section 504

### **Students with Disabilities in Charter Schools**

- 504 and IEP Students in charter schools have the same rights as 504 and IEP students at public elementary and secondary schools.
- All federal requirements for disability discrimination apply to charters.
- States retain authority over educational programming for students with disabilities, whether they are in charter schools or public schools.

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## Federal Updates: Charter Schools Compliance with IDEA and Section 504

### **Students with Disabilities in Charter Schools**

- Charter Schools CANNOT:
  - Ask a prospective student if he or she has a disability. (Limited exception applies.)
  - Counsel Out.
  - Unilaterally limit services for a student with a disability.

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## Federal Updates: Preschool Least Restrictive Environment

*All young children with disabilities should have access to inclusive high quality early childhood programs where they receive individualized and appropriate supports to enable them to meet high expectations.*

### **Takeaways:**

- *IDEA LRE requirement applies to all*
- *Public agency to offer a full continuum of alternative placements*
- *Always provide and ensure provision of FAPE*
- *LEAs to explore options*



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## Federal Updates: Preschool Least Restrictive Environment

### ***Data Reporting Requirements:***

States to report on educational environments for preschool children with disabilities.

1. The number of preschool children with a disability attending regular early childhood program.
2. Whether majority of hours of SPED and related services are received there or elsewhere.

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## Federal Updates: Transgender Students

### **Federal Timeline Concerning Transgender Students**

- May 2016:
  - Obama Administration issues guidance interpreting Title IX in favor of clarifying protections for transgender students.
- February 2017:
  - DOE and DOJ rescind May 2016 guidance on transgender students' rights under Title IX.
- March 2017:
  - Supreme Court sends G.G. v. Gloucester matter back to the Fourth Circuit Court of Appeals to be reconsidered in light of the DOJ and DOE's rescinding of a Title IX guidance clarifying protections for transgender students.

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## Federal/Local: Transgender Update

### **Whitaker v. Kenosha Unified School District No. 1 Board of Education et al.**

#### Facts:

- Transgender male student asked to use boys' restroom while in school.
- School District denied the request – citing privacy rights of other male students.

#### Allegations:

- District violated 14<sup>th</sup> Amendment and Title IX.

#### Procedural History:

- Student filed suit.
- District court granted preliminary injunction request.
- District appealed the 7<sup>th</sup> Circuit.

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## Federal/Local: Transgender Update

### **Whitaker v. Kenosha Unified School District No. 1 Board of Education et al.**

#### **Ruling:**

- Found in favor of the student –
  - There was notable harm to the student *if* injunction was not allowed; and
  - Offering a gender-neutral bathroom would not be an appropriate solution.

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## Federal Updates: Rosa's Law

### **Pub. L. No. 111-256:**

- Final regulations implementing *Rosa's Law* go into effect August 10, 2017.
- Changes references to “mental retardation” in federal law to “intellectual disability.”
- Other Laws Amended:
  - IDEA
  - Rehabilitation Act
  - ESEA
  - Higher Education Act

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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 2663 – Early Childhood Program Expel

- ECE programs receiving ISBE funding cannot expel students.
- Must document steps taken to ensure child can participate safely.
- Provisions for a transition plan *if* documented evidence that efforts have been exhausted.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 2950 – Anti-Bullying Resources

- Requires schools to provide information on what to do if the student is being bullied and what resources are available.
- Requires each school to designate school personnel who are available for help with a bully or to make a report about bullying.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 3903 – Booking Stations

- No more place to detain or criminally process students on school grounds.





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## Local Updates: Bills Awaiting Governor's Signature

Senate Bill 1532 – School Report Card Attendance

- School District Report Card to include ADA of IEP and 504 students.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 2618 – Special Education Mediation Option

- If not using mediation, parents now have 10 days *after a party declines* to use mediation to file a request for a due process hearing to allow the student to remain in his or her present educational placement.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 2369 – Breastfeeding

- Reasonable accommodations to be provided to a lactating pupil on a campus to express breastmilk, breastfeed an infant child, or address other needs related to breastfeeding.
  - Defines what a “reasonable accommodation” is.



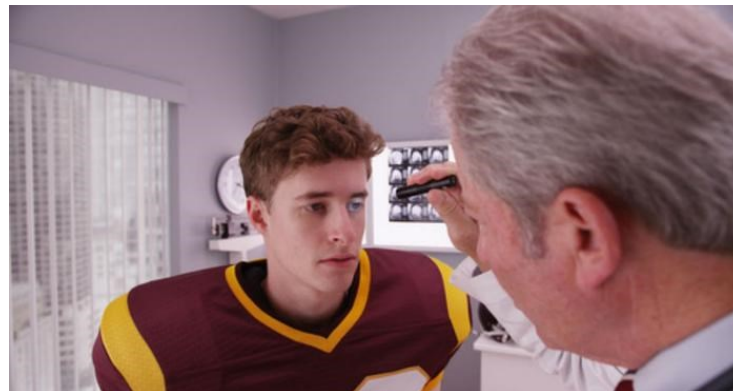
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## Local Updates: Bills Awaiting Governor's Signature

### Senate Bill 1692 –Athlete Concussions

- School may appoint physician assistant to serve on its concussion oversight team.
- A student removed from practice or competition may be evaluated by an APN under the supervision of a physician or by a PA working under the supervision of a physician.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 261 – Assistance to Homeless Child

- If child loses permanent housing and becomes “homeless,” school district of origin is required to pay transportation costs of the child to hand from school of origin.



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## Local Updates: Bills Awaiting Governor's Signature

### Senate Bill 757 – Assessment Transcript

- Test scores (e.g. state assessments that include college and career readiness determinations) must be removed *if* student's parent/legal guardian requests such removal.



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## Local Updates: Bills Awaiting Governor's Signature

### House Bill 3139 – Chronic Absent Pupil

- Schools receiving public funds are to collect and review its chronic absence data and determine what systems of support and resources are needed to engage chronically absent students and their families.



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## Local Updates: Bills Awaiting Governor's Signature

### Senate Bill 1483 – Student Records Timeline

- Amends the Illinois School Student Records Act.
  - Parent/student request to inspect/copy records must be granted no later than 5 business days (rather than 15 school days).





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## Local Updates: Bills In Effect

### House Bill 3869 / Public Act 100-014 – Implicit Bias Training

- Requires in-service training for school personnel to include training on civil rights and in cultural diversity, including racial and ethnic sensitivity and implicit racial bias.
  - Effective July 1, 2017.

*“One in 10 school resource officers stationed within Chicago Public Schools have received 10 or more misconduct complaints, operating in a system with little oversight and no specialized training.”*

*~ Sargent Shriver  
National Center on Poverty Law.  
(February 2017)*



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## Local Updates: Bills in Effect

### **Public Act 98-1102** – Student discipline report; school improvement plan

- Every school district to collect data on –
  - Out of school suspensions issued, expulsions and removals to alternative settings.
  - Use of arrests or criminal citations.
  - Student retention during and between academic years.
- State Board to analyze data on annual basis and determine top quartile of schools districts for specified metrics.
- Districts identified by State Board to submit a *school discipline improvement plan*.

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## Local Updates: Amendment to Law

**Public Act 98-1102** – Student discipline report; school improvement plan

- Senate Bill 453 – Amendment (safe School / Healthy Learning)
  - Changes How the State Board –
    - Determines the top quartile of districts.
    - When notification if given that a plan must be submitted.
    - Which districts are required to submit a plan.
    - Timeframe for school board approval of a plan.
    - Submission to the State Board.

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## Things to Expect: Part 401 Rules

### **Part 401 – Special Education Facilities Under Section 14-7.02 of the School Code**

Date of Initial Board Review:

- March 15, 2017

Public Comment Period:

- March 31, 2017 – May 15, 2017

Big Picture:

- Creating greater clarity and specificity to providers on their responsibility to Illinois public school district students.
- Providing greater technical assistance to providers from the State Board of Education.
- Ensuring student safety, social emotional well-being, and academic success at the forefront.

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## Things to Expect: Part 401 Rules

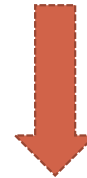
### **Part 401 – Special Education Facilities Under Section 14-7.02 of the School Code**

#### **Next Steps:**

ISBE responds to Public Comment



To Board for Approval



ISBE to present approved rules to Joint  
Commission on Administrative Rules



Second Public Comment

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## Things to Expect: Guidance on Suicide Prevention & Awareness

### **Public Act 99-0443, 105 ILCS 5/2-3.163(new) – Ann Marie’s Law**

- *State Board shall –*
  - *Consult with **stakeholders** to develop a model youth suicide awareness policy.*
  - *Compile, develop, and post these materials:*
    - *Guidelines and Educational Materials for Training and Professional Development; and*
    - *Recommended Resources and Age-Appropriate Educational Materials on Youth Suicide Awareness and Prevention.*

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## Noteworthy Cases (Local)

### **Jackson v. Chicago Public Schools**

#### Facts:

- District makes numerous attempts to engage parent in IEP process, and as a result, IEP is not finalized within state-mandated time frame.

#### Procedure:

- Hearing Officer says parent was not entitled to relief for the delay; and
- District Court upholds Hearing Officer's decision.

#### Ruling:

- District did not violate IDEA or state law, by taking more than 60 school days to finalize the IEP.

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## Noteworthy Cases (Local)

### *Jackson v. Chicago Public Schools*

#### *Takeaway:*

**Parent participation takes precedence over Illinois' 60 day timeline for IEPs.**

*“It would be inconsistent with [Winkelman] to penalize [the district] because it was unable to complete the IEP within the 60-day deadline because it went out of its way to include [the parent] in the development of her child’s IEP.”*

*~ Judge Leinenweber*



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## Noteworthy Cases (Local)

### ***In re Student with a Disability***

#### Facts:

- An Illinois district was unable to provide sufficient evidence to a Hearing Officer that justified placing an Autistic student in a therapeutic day school for 45 days, despite showing that the student was substantially likely to injure himself or others, if he remained in his current placement.

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## Noteworthy Cases (Local)

### *In re Student with a Disability*

What Illinois Law Requires:

Consideration of (4) four factors when reviewing a request to place a student in an IAES:

- 1) whether the district has demonstrated a substantial likelihood of injury to the student or others;
- 2) whether the current placement is appropriate;
- 3) whether the district made reasonable efforts to minimize the risk of harm in the student's current placement; and
- ***4) whether the IAES can implement the student's IEP and provide the services needed to prevent the undesired behaviors from occurring.***

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## Noteworthy Cases (Local)

### ***In re Student with a Disability***

#### Ruling:

- Hearing Officer said what lacked here was the absence of evidence that the therapeutic school *could* implement the student's IEP.

#### ***Takeaways:***

- **Know YOUR State law! Threshold may be higher than IDEA.**
- **District must show that IAES can provide all services the student is entitled to.**

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## Noteworthy Cases (Local)

### ***B.G. v. City of Chicago School District 299 et. al***

#### Facts:

- 14 year-old student with ED and SLD, speaks both English and Spanish, but expressed preference in receiving evaluations in English > Spanish.
- Mom disagreed with outcome of evaluations and requested an IEE.
- District files for due process.
- IHO sides with District
- Parent appeals to court.

#### Allegations:

- IHO did not conduct the hearing properly.
- IHO did not make appropriate determinations with respect to the testimony presented.
- IHO narrowed the issues to pre-hearing concerns.

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## Noteworthy Cases (Local)

### ***B.G. v. City of Chicago School District 299 et. al***

#### Ruling:

- Court had major deference to IHO and that the hearing was conducted appropriately in all aspects.

#### ***Takeaways:***

- ***Courts are likely to give deference to Hearing Officer who controls the Process!***

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## Resources and References

- Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools, <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf> (December 2016)
- Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>, (December 28, 2016)
- Fact Sheet: Restraint and Seclusion of Students with Disabilities, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>, (December 2016)
- Dear Colleague Letter on the Rights of Children with Disabilities in Public Charter Schools, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>, (December 28, 2016)
- Know Your Rights: Students with Disabilities in Charter Schools, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf>, (January 2017)
- Dear Colleague Letter Preschool Least Restrictive Environment, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf>, (January 9, 2017)
- 105 ILCS 5/2-3.160
- 23 Ill. Admin Code Part 401
- 105 ILCS 5/2-3.163
- B.G. By His Next of Friend, J.A.G. et al v. Claypool et al., City of Chicago School District 299, Illinois State Board of Education, and Tony Smith, 15 C 6372, N.D.Ill., (March 20, 2017)
- *Student with a Disability, In re*, [117 LRP 20582](#) (SEA IL 04/20/17).
- *Jackson v. Chicago Pub. Schs.*, [117 LRP 23731](#) (N.D. Ill. 06/13/17).

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## Questions?

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