

CAUTION!!!

We speak in general terms today. The specific facts of each situation can make a difference in the legal principles that apply.

This presentation must not be treated as legal advice about any specific situation.

Due to the rapidly changing nature of the law, information in this presentation may become outdated.



FACTORS TO CONSIDER WHEN ADDRESSING SPECIAL ED PERSONNEL ISSUES

Documentation through TKES

Teacher Keys Effectiveness System Fair Dismissal Act

Equal Employment
Opportunity
Commission
(EEOC) Complaints

U.S. Dept. of Ed Office for Civil Rights (OCR) Complaints

District Liability

- Due Process Complaint
- Federal Litigation

Performance Concerns with Ms. Smith, Special Ed Teacher



Ms. Smith's Three Issues...

- 1. Ms. Smith has not collected data on two of her students in a manner that can be used to show the students' progress.
- 2. During her formal observation, she was not seen using the de-escalation techniques outlined in a student's behavior plan.
- 3. She has been untimely on several occasions with providing progress reports to parents.
 - Ms. Smith is tenured.
 - Special ed discusses these concerns with the principal.

How should Special Ed help address Ms. Smith's performance issues?

Collaborate with the Building Principal to document through TKES

Individual performance evaluations are not subject to public disclosure. O.C.G.A. § 20-2-210(e)(1).

Special Ed lead or coordinator communicate concerns to principal

Ms. Smith's Issue #1: Data Collection

****TKES Standard 6: Assessment Uses**

*The teacher systematically gathers, analyzes, and uses relevant data to measure student progress, to inform instructional content and delivery methods, and to provide timely and constructive feedback to both students and parents.



****What Level under Standard 6?**

- *Level II: Teacher inconsistently gathers, analyzes, or uses relevant data to measure student progress, inconsistently uses data to inform instructional content and delivery methods, or inconsistently provides timely or constructive feedback
- *Level I: Teacher does not gather, analyze, or use relevant data to measure student progress, to inform instructional content and delivery methods, or to provide feedback in a constructive or timely manner

Ms. Smith's Issue #2: Failure to Implement IEP/BIP

<u>Performance Standard 7: Positive Learning</u> <u>Environment</u>

*The teacher provides a well-managed, safe, and orderly environment that is conducive to learning and encourages respect for all.

Ms. Smith's Issue #2: Failure to Implement IEP/BIP

- **** What Level under Standard 7?**
 - ** Level II: Teacher <u>inconsistently</u> provides a well-managed, safe, and orderly environment that is conducive to learning and encourages respect for all.
 - ** Level I: Teacher <u>inadequately</u> addresses student behavior, displays a negative attitude toward students, ignores safety standards, or does not otherwise provide an orderly environment that is conducive to learning or encourages respect for all.

Ms. Smith's Issue #3: Progress Reports

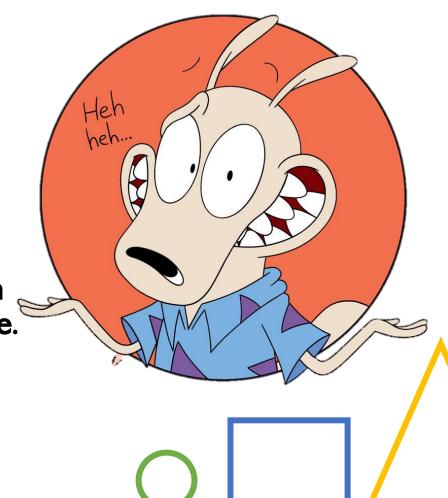
- Standard 6: Assessment Uses, is an option "provides timely or constructive feedback."
- Standard 10: Communication
- ** Teacher communicates effectively with students, parents or guardians, district and school personnel, and other stakeholders in ways that enhance student learning.

Ms. Smith's Issue #3: Progress Reports

- What Level under Standard 10?
 - * Level II: Teacher inconsistently communicates with students, parents or guardians, district and school personnel or other stakeholders or communicates in ways that only partially enhance student learning.
 - Level I: Teacher <u>inadequately</u> communicates with students, parents or guardians, district and school personnel, or other stakeholders by poorly acknowledging concerns, responding to inquiries, or encouraging involvement.

What else should the District do for Ms. Smith?

- Special Ed help with training and other support measures.
- Professional Learning Plan through TKES
 - ***** Have teacher initiate components of PDP
- Have a special education administrator (who ideally is certified in TKES) observe the classroom and provide feedback on Ms. Smith's performance.





- Mr. Brown, who is also a football coach, was trained in your District's restraint method – 2 years ago.
- X You were recently asked to review video footage of a restraint.
- Student has a bipolar diagnosis from a private psychologist. He receives services based on an EBD eligibility.
- The restraint lasts 15 minutes. You see techniques that may be inconsistent with your District's restraint program.
- What do you do?

More fun with restraint...

- Mr. Hugh completes the draft incident report. It is very detailed and contains lots of information regarding the student's behavior.
- The principal disagrees with the draft of the report.
- Your district's restraint policy says "school administration" will provide written notification.
 - # How do you resolve this issue?



And still more fun with restraint...



A student was restrained on Thursday morning.



You get an email from the principal at 4:00 p.m. at Friday afternoon asking you to review the draft report.



District policy states the notice will be provided "<u>within a</u> <u>reasonable time not to exceed one school day from the use of restraint."</u>

What do you do?



- Ms. White is well known in the community and has been a special ed paraprofessional for years.
- Ms. White has been assigned to work in a special ed classroom with a student diagnosed with autism that is exhibiting aggressive behaviors.
- Ms. White also goes to church with this student's family.



Staff & & Boundary Concerns

- Mom is very involved and is constantly reaching out to staff asking about the student's day.
- Staff have been directed to communicate with parents through Remind or District emails.
- The Student also has a daily behavior log created by the District's Behavior Specialist that tracks her behavior every day.

Staff & Boundary Concerns

- *During the student's latest IEP meeting, mom shared detailed information about what was going on in the classroom.
- *She appeared to have knowledge that someone only in the classroom would know.
- *Mom alleges that the behavior sheets do not accurately reflect what is going on in the classroom.

What Do You Do?

- ***Investigate**
 - *Talk to mom to see what her concerns are.
 - *Talk to teacher. Are we implementing BIP and properly collecting data?
 - **Talk to Ms. White (para)





Possible Responses

- Letter of Direction or Concern
- * Reassignment (at appropriate time, careful of retaliation claims)
- Address any implementation or data collection issues with the teacher

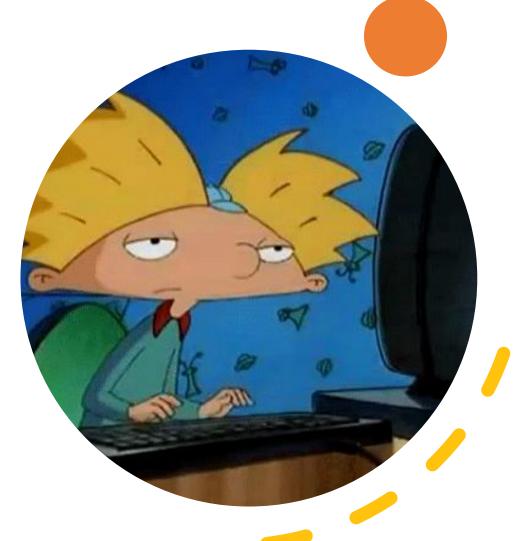
Preparing Letter of Direction/Concern

***Address the issue:**

It was recently brought to the District's attention you were texting a student's parent regarding the student's daily classroom behavior.

Set forth what the investigation found:

*We met with you on this matter, and you admitted to texting mom daily on the student's behavior.



Preparing Letter of Direction/Concern

- Explain why the employee's actions are an issue:
 - * FERPA requires the District to keep student information confidential. This is why the District has established that Remind and emails are to be used when communicating with parents.
 - * This student's IEP also requires the District communicate with the parent via a behavior log by the teacher.

Preparing Letter of Direction/Concern

- Establish expectations moving forward:
 - XYou are directed not to share student behavior data through informal text messages with the parent.
 - *Any concerns you may have on the student's behavior are to be communicated to the teacher or the Behavior Specialist.
 - <u>Maybe include</u>...Any future issues of this nature may require the District to take disciplinary action against you.

General Education Teachers can also create

messy personnel issues



General Teachers Issues and IEP Implementation

- * 8th grade student with a learning disability is provided oral testing as an accommodation in his IEP.
- * Student moves to 9th grade.
 - * Student begins receiving low grades.
 - * Parent meeting parents stress need for oral testing.
 - * District assures parents they will comply.
- * All of student's teachers, but Mr. Winters the student's history teacher, complied with the oral testing accommodation.

General Education Teacher Issues

Mr. Winters continued to test 9th grade student in traditional manner.

Mr. Winters also made comments about student's need for help in class.

At the end of the first semester, student had failed Mr. Winters' class.

Parents requested an IEP meeting.

<u>Issues with the General Ed</u> <u>Teacher</u>

- Mr. Winters was absent the day of the IEP meeting and the District later learned he was deer hunting.
- Mr. Winters was removed from the classroom.
- *A sub was placed in the class and provided the oral testing accommodation.
- * The student's grades drastically improved.

What actions can the parent take against the District?

The parents filed a complaint alleging a violation of their son's civil rights under 42 U.S.C. § 1983.

Parents further alleged their son was denied a protected civil right to a FAPE as guaranteed by the 14th Amendment of the U.S. Constitution.

What other actions did the parents take in response to the General Ed Teacher's actions?

Also sued individually and in their professional capacity:

- *****Superintendent
- Special Education Director
 - School Principal
 - Special Ed Lead Teacher

What Remedies Did the Parents Seek?

Monetary Damages



General Education Teacher Issues

What helped the Superintendent, Special Education Director, and Special Ed Lead Teacher get dismissed from the lawsuit principal?

DOCUMENTATION!

- Multiple letters and emails addressing Mr. Winters' insubordination from each of these individuals.
- Mr. Winters was told numerous times to comply with testing accommodation.
- Removal of Mr. Winters from the classroom.
- **K** Efforts made by these individuals to help the student.



MDR and Staff Concerns

Your special ed lead is preparing for an MDR.

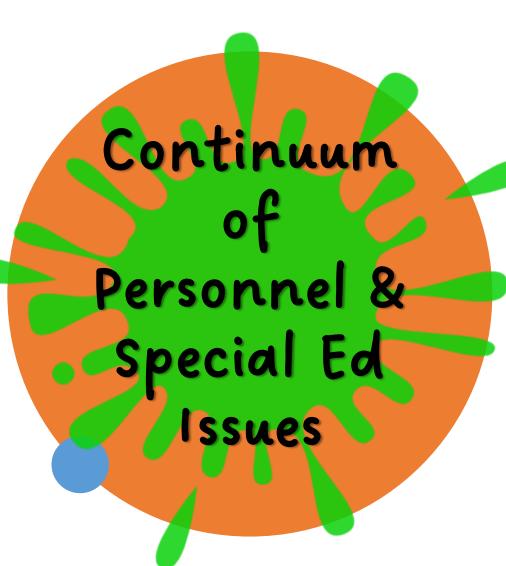
The student has a BIP with check-in and checkout and a token economy system.

No evidence can be found to support that these components of the BIP were provided to the student.

What do you do?

The Continuum of Personnel & Special Ed Issues

- Cutting it close (or missing deadlines)
- Messy Progress Monitoring
- * New/Waiver Special Ed Teachers
 - Name of the second of the s



- Child Find
 - Staff not moving through RTI
- *****Student Supervision
 - **★We have cameras now**
- High Level Behaviors
 - Documentation of concerns

How do we help with messy Personnel Special Ed Issues?

Training

*What 2 or 3 things do you see across your district that need to be addressed?

Provide Support

*On your difficult cases, bring in reinforcement.

Observations

**When you know about an issues, monitor it closely.

