

Jones Cork Presents

Personnel Problems: The Sequel



Canon B. Hill
Sydney S. Solomon



Guiding Principles

Federal Law

State Laws

Board Policy

Georgia Code of Ethics
for Educators

TKES and LKES
Evaluation Process





How many due process cases or situations where the parent hired an advocate or attorney began with a Human Resources situation?

Let's look at some personnel drama...



School Administration

Principal has called parent to pick up student found eligible for services under EBD on four separate occasions. The student leaves around 1:00 each time.

Student has a BIP and his Infinite Campus Report shows he has no OSS days.

A review of other students' records shows that this is not the first time this has occurred.

What concerns do you see?



Answer

We have two days of OSS.

What HR issues are there?

- Ethical Reporting of Data
- Standard 4 / Code of Ethics Honesty – information regarding the evaluation of students.





How can HR concerns be addressed?

LKES Standard 2: School Climate

- One of the sample indicators references develops/implements best practices in school wide behavior management. If the student's BIP is being disregarded and no write ups are documented for OSS days, this would not be best practice.
- Standard 2 also references the leader communicating behavior management expectations regarding behavior to students, teachers, and parents. Was this standard met?

LKES Standard 7: Professionalism

- While not explicitly referenced in the sample indicators for Standard 7, the expectation is for all leaders to abide by the Code of Ethics is stated.
- Standard 4 is Honesty. Do the Principal's actions run contrary to the expectations in the Code?



What special education concerns are there?

- Portions of a school day that a student has been suspended may be considered as a removal for purposes of the 10-day rule.

71 Fed. Reg. 46,715 (2006).



What special education concerns are there?

In the discipline context, administratively shortened school days occur when a child's school day is reduced solely by school personnel, rather than the child's IEP Team or placement team, in response to the child's behavior.

Generally, the use of informal removals to address a child's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement.

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's

Discipline Provisions, Office of Special Education and Rehabilitative Services

July 19, 2022



What special education concerns are there?

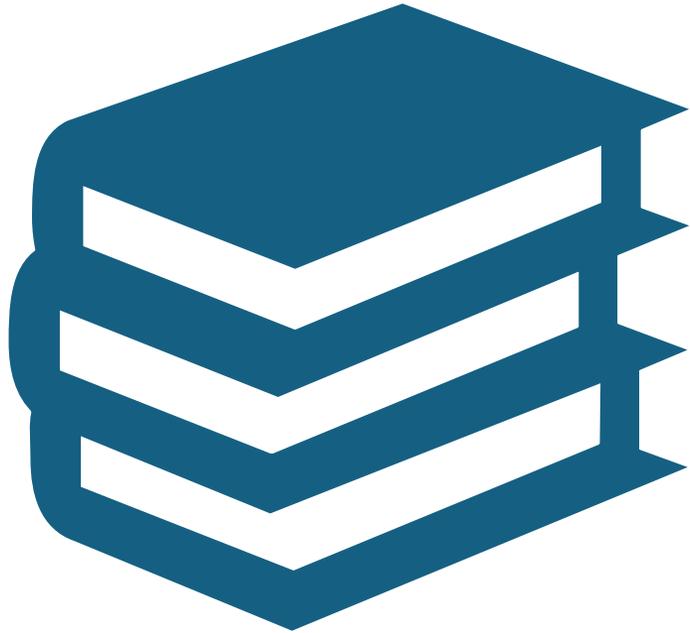
Therefore, the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536 would generally apply to an administratively shortened school day unless all three of the following factors are met:

1. The child is afforded the opportunity to continue to appropriately participate in the general curriculum;
2. The child continues to receive the services specified on the child's IEP; *and*
3. The child continues to participate with nondisabled children to the extent they would have in their current placement.

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's

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- Alternative school administration does not allow a student to attend school until the parent reports to the school for a meeting with staff to discuss the rules and expectations for the alternative school.
- You learn that two of the special education students in your zone have not attended school for a total of five days each because the parent has not responded to requests to come to school for the meeting.
- A review of other students' files shows that this is not the first time this has occurred.

What do you do?



How can HR concerns be addressed?

LKES Standard 4: Organizational Management

- School leader fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.
- Some of the sample indicators are:
 - Demonstrates and communicates a working knowledge and understanding of Georgia public education rules, regulations, and laws, and school district policies and procedures
 - Follows federal, state, and local policies regarding finances and school accountability and reporting.
- Letter of Concern/Direction tied to Evaluation Process



What special education concerns are there?

- Alternative options to review expectations should be provided (phone conference, Teams meeting, etc.)
- Compensatory services
- Convene an IEP meeting to discuss compensatory education and to make sure no changes are needed to IEP.

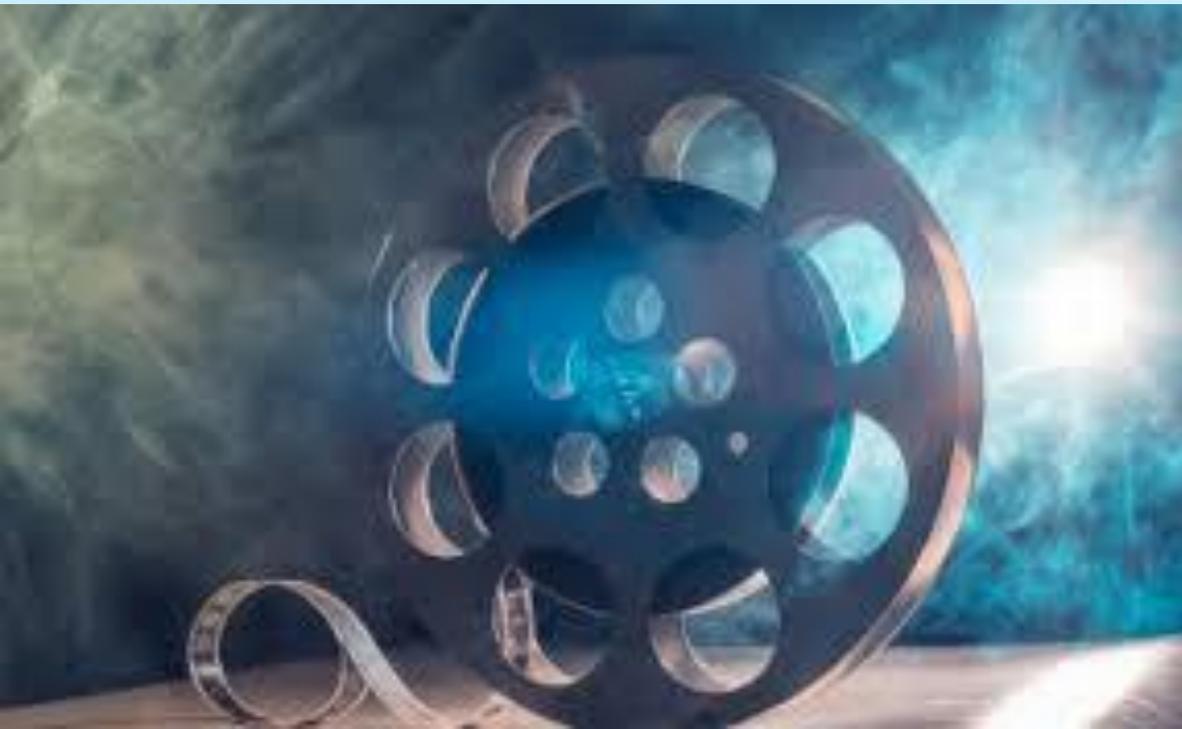


Teacher Concerns

- **Special education student walks in late to Miss Trunchbull's classroom. Miss Trunchbull told the student that he was late, but to get into his assigned seat.**
- **Instead of sitting in his assigned seat, the Student went to the back of the classroom and laid across the desks of two other students.**
- **Miss Trunchbull went to the back of the room and told the Student to get to his assigned seat, take out his computer, and begin the assignment.**
- **Miss Trunchbull returned to the front of the class, the Student began to sing a derogatory song about Miss Trunchbull and created a disturbance in the classroom.**

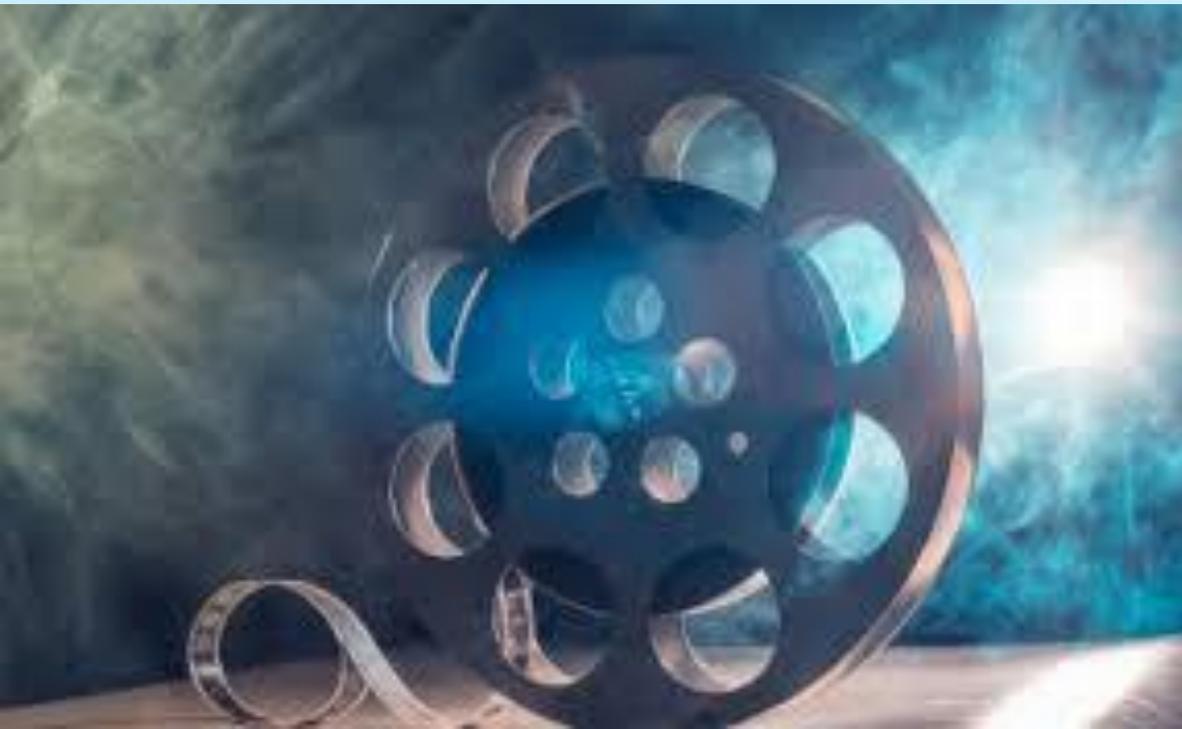
- **Miss Trunchbull asked the student to leave the room and report to the principal's office.**
- **Student refused to leave.**
- **Miss Trunchbull grabbed the student by his arm to remove him from the class.**
- **As the Student neared the doorway, he started saying, "Don't touch me." He also started swinging his forearms and hit Miss Trunchbull. The Student was yelling profanities.**
- **She then grabbed the Student's wrists, forced him into the hallway, and held him against a wall to calm him down.**

Restraint Concerns



- **State Board of Education Rule 160-5-1-.35, Seclusion and Restraint for All Students**
- **Local Policy JGF(2)**

Restraint Concerns



Restraint is defined as:

- Direct physical contact from an adult that prevents or significantly restricts a student's movement
- Includes prone restraint, mechanical restraint, or chemical restraint.

Restraint does not include:

- Providing limited physical contact and/or redirection to promote student safety, providing physical guidance or prompting when teaching a skill (e.g., hand-overhand modeling), redirecting attention, providing guidance to a location, or providing comfort.

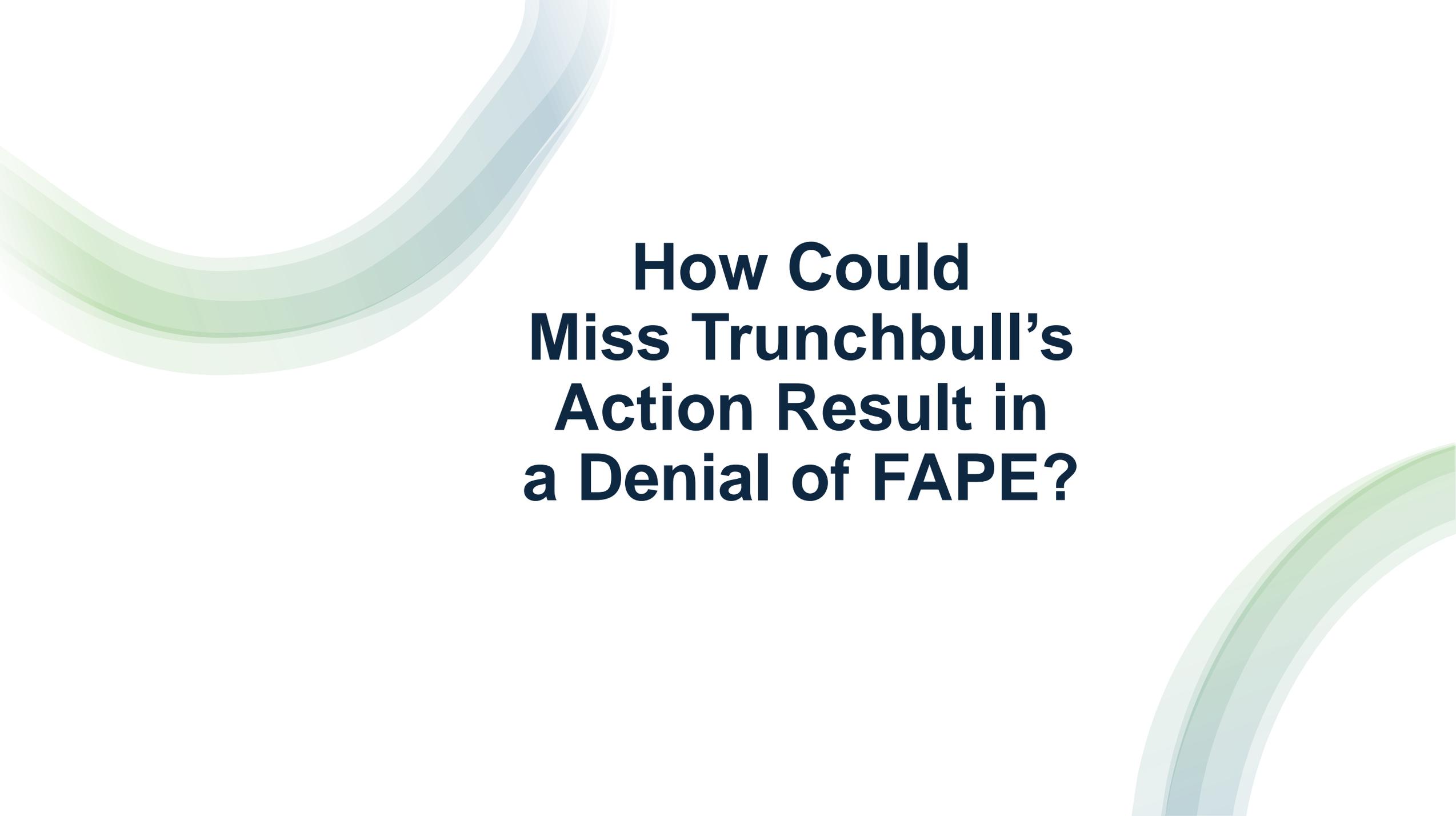
Restraint Follow-Up

Human Resources Concerns

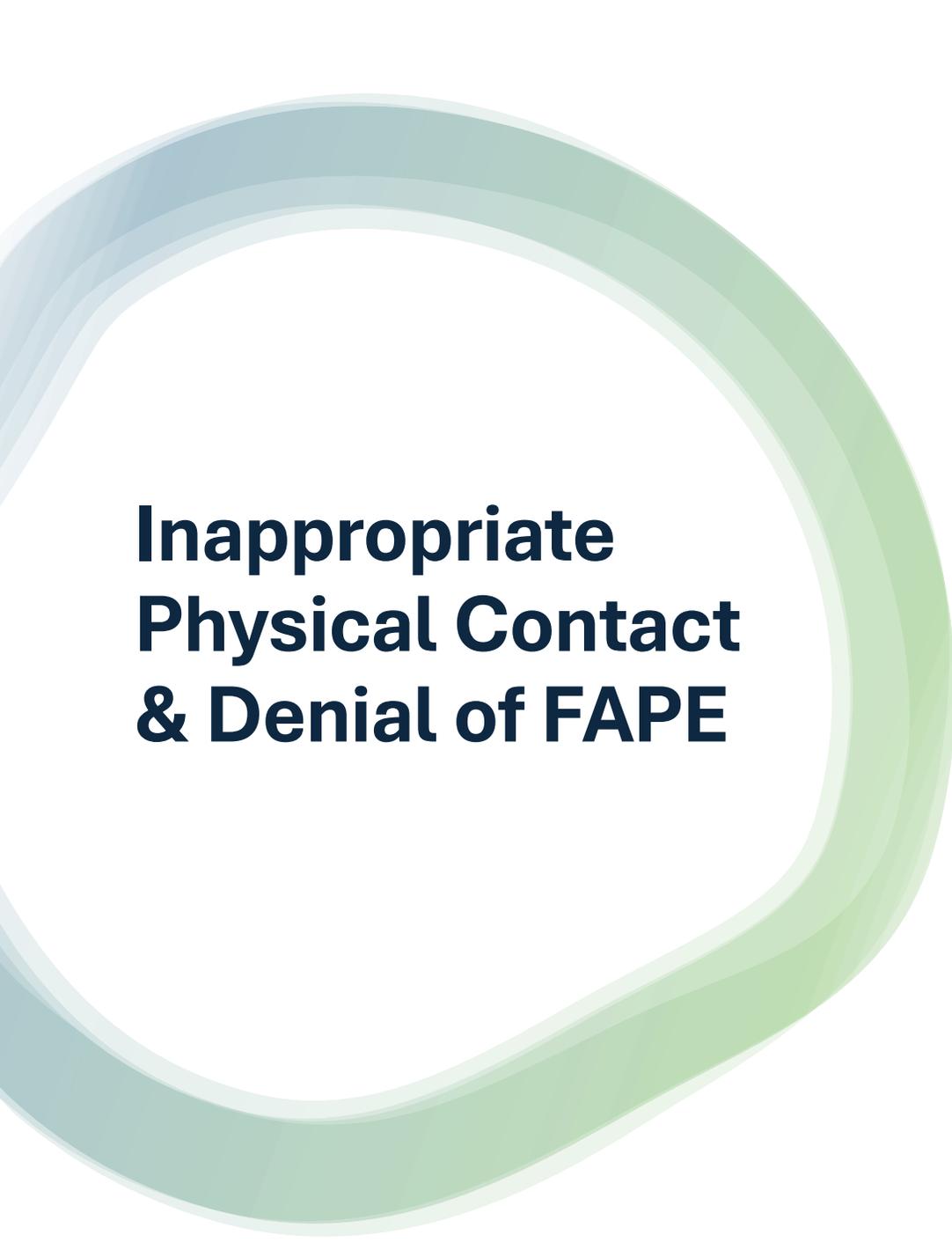
- Reviewing video – assisting in HR investigation
- Possibly reporting to law enforcement or DFACS
- Is this the first time this teacher has engaged in this behavior?
- Possible Discipline

Special Ed Concerns

- Communicating with family
- Convening an IEP meeting
- Additional Supports
- Provide Coaching
- Training, cross-training



**How Could
Miss Trunchbull's
Action Result in
a Denial of FAPE?**



Inappropriate Physical Contact & Denial of FAPE

***Fry v. Napoleon Community Schools*, 69 IDELR 116 (2017)**

The U.S. Supreme Court first addresses whether a claim involving abuse could result in a denial of FAPE.

- Typically, a party is required to exhaust the administrative remedies outlined under the IDEA before suing in federal court.
- However, in *Fry* the U.S.S.C. held that “exhaustion is not necessary when the gravamen of the plaintiff’s suit is something other than the denial of the IDEA’s core guarantee” i.e. FAPE.
- To assess whether a claim involves the denial of FAPE, the court looked to two questions:
 1. Could the student assert the same claim against a public entity other than a school?
 2. Could an adult at the school assert the same claim against the district? If the answer to these two questions is yes, then the claim likely does not involve a denial of FAPE.
- In a footnote, the court explained that a claim involving abuse of a student with a disability was “unlikely to involve the adequacy of special education.”



Inappropriate Physical Contact & Denial of FAPE

***T.B. v. Northwest Indep. Sch. Dist.*, 122 LRP 3696 (N.D. Tex. 2022)**

- An 11-year-old student with autism and ADHD sued the district under Section 504 and the ADA after his teacher physically abused him.
- Utilizing the two-factor test set out in *Fry*, the Court held that the administrative remedies outlined under the IDEA did not need to be followed by Plaintiff because the facts were unrelated to the student's IEP or their right to FAPE and the gravamen of the complaint was disability discrimination.
- Therefore, Plaintiff could proceed directly to court with their claims for disability discrimination.



What did the District do to Miss Trunchbull?

- Superintendent recommended that the teacher's contract be terminated pursuant to the Georgia Fair Dismissal Act for willful neglect of duties, immorality, and other good and sufficient cause as provided by O.C.G.A. § 20-2-940(a)(3), (4), and (8).
- There was a three-day hearing pursuant to the Georgia Fair Dismissal Act.
- The tribunal decided that there was other good and sufficient cause to conclude Miss Trunchbull used undue and excessive force when escorting the student out of the classroom and trying to calm him down by using physical restraint.
- The tribunal recommended that the teacher be suspended without pay for 20 working days.

What Happened with Miss Trunchbull?

- The teacher appealed the decision of the tribunal to the Local Board.
- The Local Board affirmed the tribunal's decision.
- The teacher appealed the 20-day suspension to the State Board of Education
- The State Board of Education affirmed the Local Board's decision.

State Board of Education, Case No.: 2018-38



Implementation Issues

- It is September, and you are noticing that Mr. Snape, a middle school special education teacher, is having issues properly and timely submitting IEP documentation.
- There are concerns Mr. Snape is ignoring requests from the leads at his school to complete IEPs for his students.



Implementation Issues

- Mr. Snape has received four contracts from the District. He is tenured under the Georgia Fair Dismissal Act.
- Mr. Snape recognizes he is having problems and asks for help.
- He is placed on a PDP.
- Mr. Snape struggles with completing the PDP
- Help is provided throughout the year to make sure IDEA requirements are met, but Mr. Snape cannot meet these requirements on his own.

Support of Special Education Administration

- Training and guidance for Mr. Snape
- Monitoring his files for compliance
- Documenting directives on IEP implementation and meeting deadlines
- Documenting support provided and issues that persist
- Assist principal with preparing and implementing PDP
- Side-by-side observations with principal
- Assist principal with documenting these issues on TKES mid-year and summative evaluations

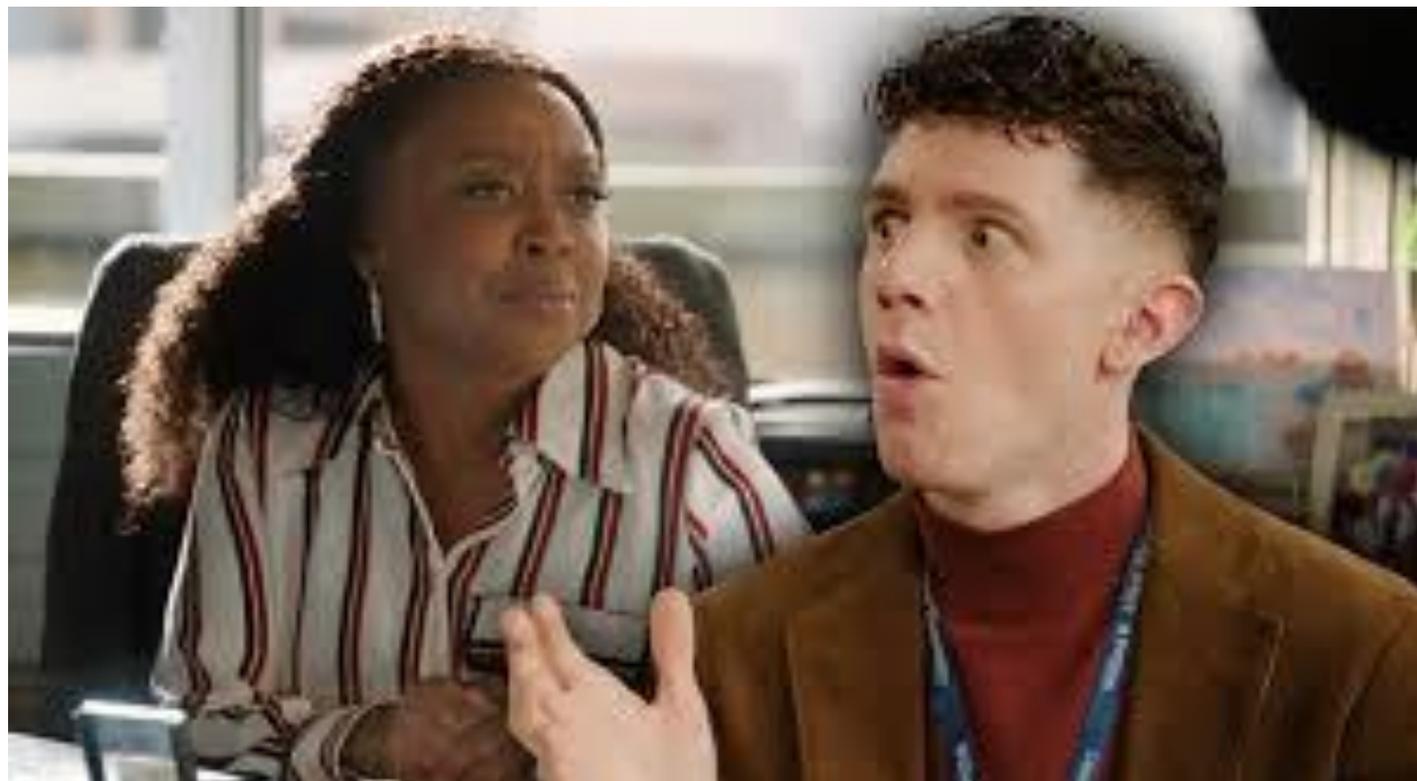


What does the District do with Mr. Snape?

- Non-renews him based on willful neglect of duty and other good and sufficient cause under O.C.G.A. § 20-2-940(a)
- At the Fair Dismissal Act Hearing Mr. Snape is officially non-renewed
 - Special Education Administration testifies to support provided, documented concerns, and negative impact a violation of the IDEA would have on the District
- Mr. Snape appeals the decision to the State Board of Education, and the Local Board is affirmed

State Board of Education Case No. 2012-27

State Board of Education Case No. 2013-17



Staffing Shortages

Staffing Shortages

- You have 1:1 para that has decided to take another job opportunity.
- You are down 6 special ed teachers for the 2024-2025 school year.

What do you do?



Staffing Shortage



- Staffing shortages do not excuse a district's obligation under the IDEA to implement all the services prescribed in a student's IEP.
- A Minnesota district that could not fill a speech language pathologist vacancy violated the IDEA by failing to implement all the speech-language services required by students' IEPs.

*Lakeville Area Sch. 0194-01,
SEA MN 06/12/23*

Staffing Shortages

- Mitigating the problem - Districts can sometimes mitigate implementation failures arising from staff shortages by taking steps to ensure a student receives additional support.
 - D.C. Public Schools was unable to replace the student's dedicated aide for about four months.
 - However, during that time, it provided the student a teacher and behavioral technician on a one-to-one basis in a behavioral and emotional support classroom for 15 hours per week.
 - The district was able to show that a material implementation failure occurred only during the 12 hours a week that the student spent in a general education classroom without one-to-one attention.

District of Columbia Public Schools, SEA 03/18/23

- Remedies - The typical remedy for an implementation failure arising from a staff shortage is compensatory education.

Transportation and Personnel Concerns

- There is a bus suspension, but the student's IEP requires transportation services.
- No one tells the special education department.
- What should you do?



Communication with the Transportation Department is Key!

Transportation and Personnel Concerns

- A wheelchair bound PEC student who receives transportation services has a damaged wheelchair.
- Transportation refuses to transport the student due to the condition of his wheelchair.
- The wheelchair is the personal property of the student and was not provided by the school.
- What should you do?



*Lenawee Intermediate School District, 63 IDELR 300
(SEA MI 2014)*



Employees and Medical Concerns

Medical Leave for Special Ed Staff

- Mr. Smith, your SLP, initially told HR and your office that he needed to be out for 2 weeks following a medical procedure.
- You arranged a schedule where students would get “caught up” on their speech services with Mr. Smith following his return to work.
- Prior to the end of the 2 weeks, Mr. Smith informs HR and you that he will need an additional 4 weeks to recover from his procedure.

What should you do?

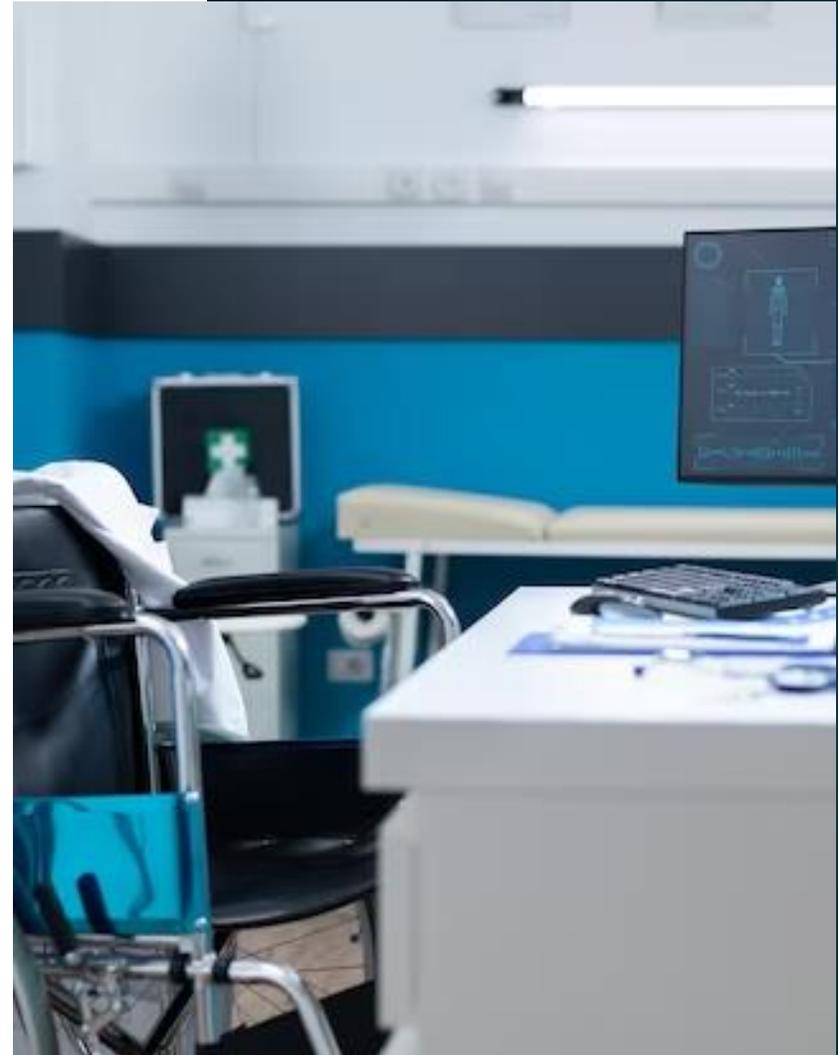


Family Leave and Medical Act **(FMLA)**

Eligible employees are entitled to:

- **12 weeks of unpaid leave**
- **Job reinstatement after 12 weeks is up**
- **Continue to receive health insurance coverage as if the employee were not on leave.**

***Policy and Regulation Codes for
FMLA: GBRIG, GBRIG-R(1)***



Reasons for FMLA Leave

- Birth of a child and to bond with the newborn child within one year of birth.
- Placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement.
- Serious health condition that makes employee unable to perform the essential functions of his or her job.
- Care for an employee's spouse, son, daughter or parent who has a serious health condition.

Reasons for FMLA

- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.
- To care for covered service member with a serious health injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (military caregiver leave).

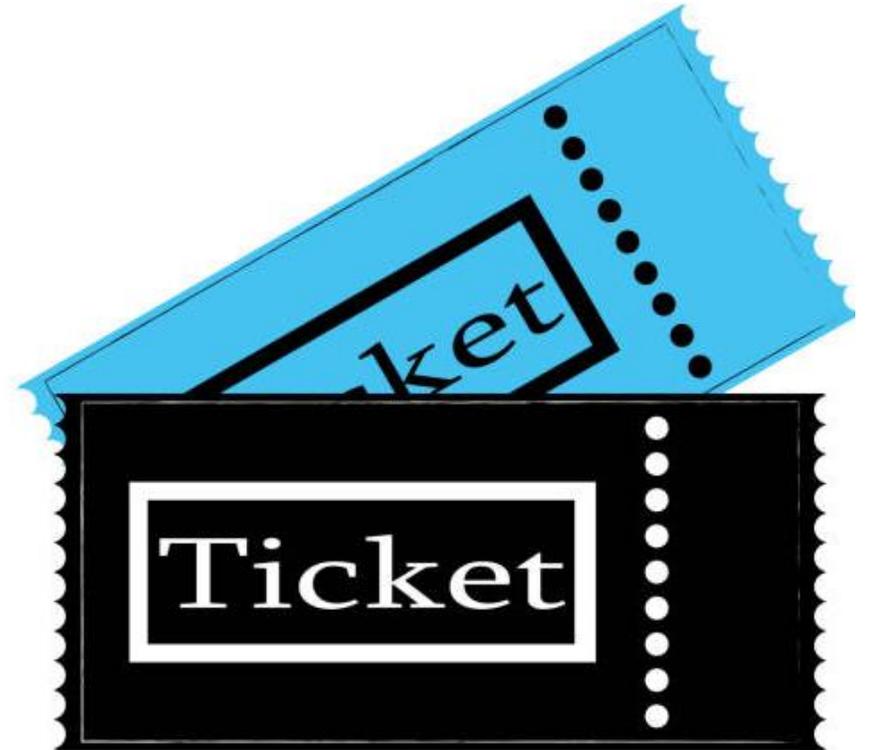
FMLA Eligibility

Employee must have worked:

- At least 12 months (doesn't need to be consecutive), and
- 1,250 actual hours worked during the 12-month period immediately preceding the leave that is taken.

Mr. Smith has been with the District for years – He qualifies for up to 12 weeks of FMLA. You should consider:

- Contracting with private SLP
- Providing remote speech services
- See if other SLPs are willing to be compensated for extra work.



Work Requests from a Special Ed Teacher

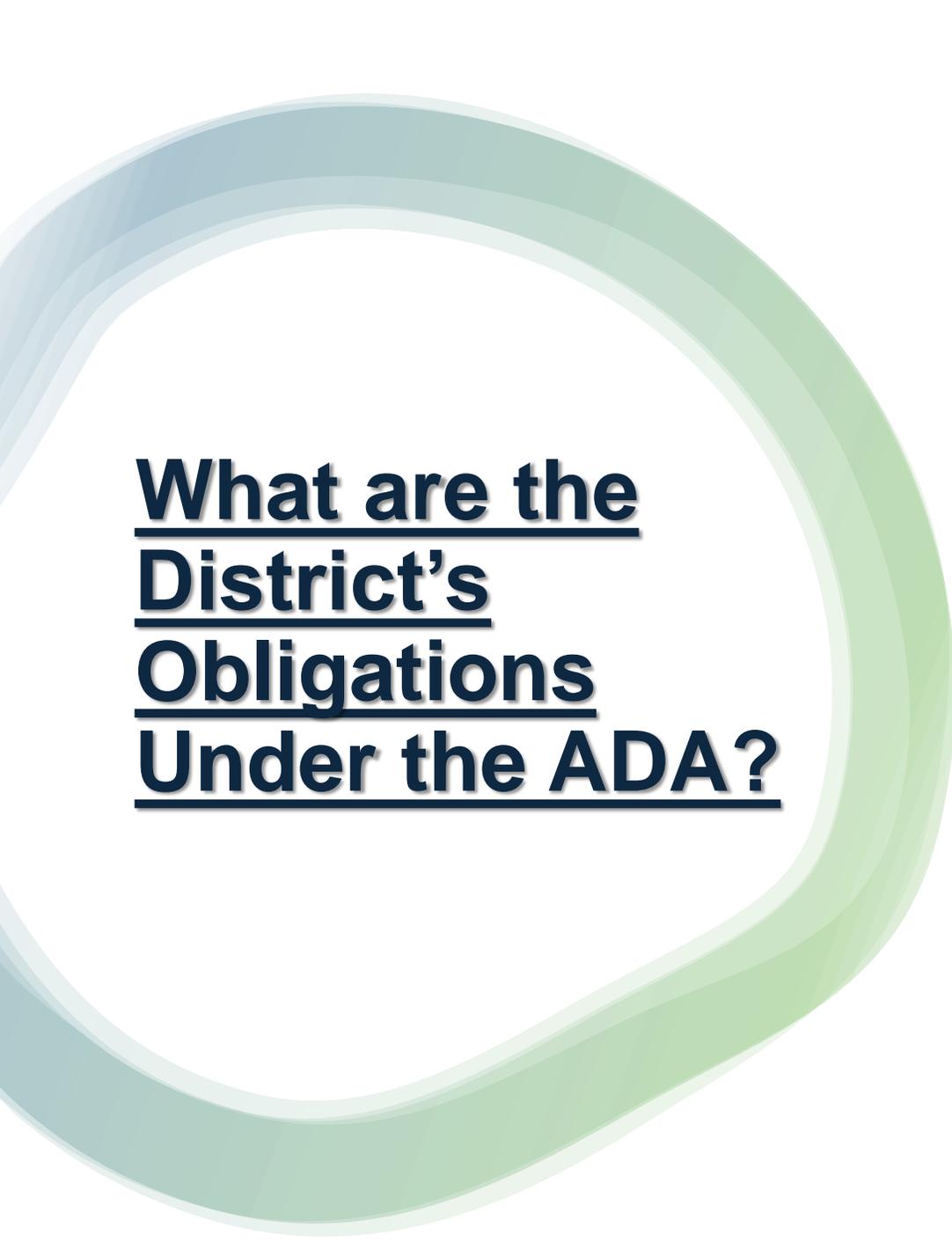
- **Ms. Foster teaches in a co-taught classroom. She shares with you that she's had a recent procedure and that her mobility has been impacted. She says she needs some help.**
- **She requests the following from you:**
 1. **Her schedule be rearranged to allow for her to work in one-part of the building.**
 2. **Her caseload be reduced for the remainder of the semester as she recovers from this procedure**
 3. **Internal deadlines established by the District be extended to allow for her to catch up on her caseload.**

OFFICE



Americans with Disability Act (ADA)

- Prohibits discriminating against an employee based on their disability (or perceived disability).
- Requires an employer to provide a reasonable accommodation to perform the essential functions of their job, unless doing so would cause the employer undue hardship.



What are the District's Obligations Under the ADA?

Determining what constitutes a reasonable accommodation:

- **Case-by-case basis**
- **Interactive Process – Involves discussion with HR Director, employee and possibly supervisor**
- **Does not mean employee gets every accommodation they asked for – cannot result in an undue hardship for the District**

ADA

- You may have to participate in an ADA's interactive process.
- As a special education administrator, you know the essential functions of an employee providing services to special education students.





Questions

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Drop-in for Drinks

with

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YEARS

JONES CORK

LLP

EST. 1872

Tuesday, March 5, 2024

5-7

South Kitchen + Bar

247 E. Washington Street, Suite 101