

2018 Wisconsin Legal Updates

October 9, 2018

Pupil Nondiscrimination and Pupil Services Updates

Annual Pupil Nondiscrimination Report is Due December 21, 2018

Sexual Harassment and Younger Pupils

Davis v. Monroe County Board of Education (1999)

<https://supreme.justia.com/cases/federal/us/526/629/#tab-opinion-1960493>

Gabrielle M. v Park Forest-Chicago Heights (7th Circuit, 2003)

<https://law.justia.com/cases/federal/appellate-courts/F3/315/817/632956/>

Doe v. Galster (7th Circuit, 2014) <https://law.justia.com/cases/federal/appellate-courts/ca7/13-2551/13-2551-2014-09-19.html>

Gender Identity Update

Whitaker v. Kenosha Unified School District (7th Circuit, 2017)

<http://transgenderlawcenter.org/wp-content/uploads/2017/05/Whitaker-PI-Decision-002.pdf>

U.S. Department of Education Office for Civil Rights Updates

Dear Colleague Letter, July 3, 2018

The Departments of Education and Justice announced the withdrawal of seven guidance documents originally issued between 2011 and 2016. The withdrawn guidance generally pertained to the use of race by elementary, secondary and postsecondary schools (affirmative action).

Resolution Agreements

No new resolution agreements have been made publically accessible on OCRs web page since October, 2017.

Revised Title IX Regulations in the Works???

Medical Marijuana and CDB Oil

Can school staff administer, or can students self-administer CDB Oil on school grounds?

DPI has not issues any formal guidance on these issues. The following resources may be of assistance.

DPI School Nurse Updates

#15 3.20.28, <https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/snupdate15-2017-18.pdf>

#2 9.11.18, <https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/snupdate2-2018-19.pdf>

The NCSNB Nursing Guidelines for Medical Marijuana

https://www.ncsbn.org/The_NCSBN_National_Nursing_Guidelines_for_Medical_Marijuana_JN_R_July_2018.pdf

When in doubt, contact your legal counsel!

School Employee Examinations under Wis. Stat. § 118.25

On December 2, 2017, revisions to [Wis. Stat. § 118.25](#) Health Examinations became effective. This is commonly referred as school employee physical examinations or tuberculosis screening. A summary of these revisions can be found in the [Wisconsin Legislative Council Act Memo 2017 Wisconsin Act 107](#).

Mandatory Reporting-Threats of School Violence

2017 Act 143

<http://docs.legis.wisconsin.gov/2017/related/acts/143/4>

SSPW Training Module

https://media.dpi.wi.gov/sspw/av/school-violence/story_html5.html

Changes to Definition of Immoral Conduct

2017 Act 170

<http://docs.legis.wisconsin.gov/2017/related/acts/130>

Notice of out of Home Placements and Transfer of Records Timeline

2017 Act 251

<https://docs.legis.wisconsin.gov/2017/related/acts/251>

Special Education Updates

Due Process Decisions:

- [DPI Case No. LEA-17-0015](#): Dismissed claims related to whether records were falsified and whether a request to speak to school staff was denied for lack of jurisdiction, and granted summary judgement on issue pertaining to homebound instruction because the undisputed facts established that the services were properly provided.
- [DPI Case No. LEA-18-0002](#): Dismissed complaint because it was not filed within the one year statute of limitations.
- [DPI Case No. LEA-18-0004](#): Because the student could not be educated satisfactorily to meet his individual needs in some regular education classes, increasing specially designed instruction in the special education classroom was appropriate and did not violate the least restrictive environment (LRE) requirements.
- [DPI Case No. LEA-18-0009](#): The parent failed to provide sufficient evidence to show that the student's individualized education program (IEP) was not implemented, the IEP team properly found that the behavior was a manifestation of the student's disability, and the student's transfer to a new school was not a disciplinary change of the placement because it was agreed upon by the parent.
- [DPI Case No. LEA-18-0011](#): The IEP team properly determined that the student was not a student with a disability in the area of autism. A medical diagnosis of autism does not equate to eligibility for an educational disability in the area of autism.

IDEA Complaint Decisions:

Pupil Records

- [Case No. 18-025, 18-036](#): A school district must comply with a parent's request for access to education records without unnecessary delay and before any IEP team meeting. In all cases, the school district must comply with the parent's request within 45 days.
- [Case No 17-051](#): Education records are records that are directly related to the student and that are maintained by the educational agency. Only e-mails maintained as part of the student's file are considered education records.

Placement

- [Case No. 17-079](#): The phrase "as much time as appropriately possible" did not adequately describe the student's extent of removal from the regular education environment.
- [Case No. 17-086](#): In determining the student's placement, the IEP team did not sufficiently consider options to allow the student participation with and access to the student's same age peers with and without disabilities in school.
- [Case No. 18-027](#): The IEP team does not need to receive verification from a medical professional before changing the student's placement to homebound instruction and medical professionals cannot prescribe district homebound instruction for students.
- [Case No. 18-029](#): Decisions about placement must be made through an IEP team meeting, and cannot be predetermined.

Evaluations

- [Case No 17-066](#): The IEP team did not predetermine eligibility under the impairment area of Autism even though portions of the checklist had been prefilled, when during the IEP team meeting, each item on the checklist was discussed and all input was considered.

Individualized Education Program (IEP)

- [Case No. 18-058](#): Each annual goal includes a goal statement, baseline information and a level of attainment. The level of attainment is the level of proficiency expected at the end of the IEP period.

Absences

- [Case No. 17-088](#): An IEP team meeting should have been conducted to address extended absences from school.

Bullying

- [Case No. 18-002](#): Districts have an obligation to ensure that a student with a disability who is the target of bullying continues to receive a free appropriate public education (FAPE). Consequently, the district should conduct an IEP team meeting to determine whether, as a result of the bullying, the student's needs have changed such that the IEP is no longer designed to provide FAPE, and if so, revise accordingly.

Manifestation Determination

- [Case No. 18-004](#): Once the student's conduct was determined to be a manifestation of his disability, the student should have been returned to his original placement unless the parent agreed with the change of placement.
- [Case No. 18-010](#): A manifestation determination is not required when the student is not

a student with a disability or the deemed to know provisions don't apply.

Seclusion and Restraint

- [Case No 18-022](#): Seclusion and restraint may only be used when there is a clear, present, and imminent physical safety risk to the student and/or others, and it is the least restrictive intervention necessary, and it may only be used as long as is necessary to resolve the imminent safety risk. The room or area used for seclusion must be free of objects or fixtures that may injure the student, and it cannot have a door capable of being locked. If incidents continue, the IEP should meet to analyze the data and review and revise the IEP accordingly.

DPI Bulletins and other Guidance Documents:

- [18.01 Transportation Questions and Answers](#) (January 2018): The updated bulletin addresses questions regarding transportation as a related service, route considerations and other transportation logistics, behavior and discipline as it relates to transportation, and considerations when a student is placed in foster care, is homeless, or participating in programs such as open enrollment or the special needs scholarship program. This new bulletin replaces bulletin 03.06.
- [18.02 Free Appropriate Public Education \(FAPE\)](#) (June 2018): This new bulletin discusses the *Rowley* and *Endrew F* standards, answers commonly asked questions, and highlights particular circumstances that could impede the provision of FAPE. Links to the 5-Step Process for developing College and Career Ready (CCR) IEPs are included to help ensure an IEP is developed to meet the student's individualized disability-related needs.
- [Joint Guidance on Providing Behavioral Treatment for School-Age Youth](#) (Sept. 2018): In conjunction with the Department of Health Services, the Department of Public Instruction (department) has developed joint guidance on providing behavioral treatment for school-age children, covering such issues as school absences and treatment in the school setting. This guidance document clarifies the responsibilities under both the Individuals with Disabilities Education Act (IDEA) and federal Medicaid law, and highlights important considerations for both school districts and behavioral treatment providers.
- [Guidance for DPI Licensed Educational Interpreters](#) (March 2018): Section 440.032 of the Wisconsin Statutes requires interpreters to have a Department of Safety and Professional Services (DSPS) sign language interpreter license, except for "school or school-sponsored events." To assist in determining when an event should be considered "school or school-sponsored," the department has developed this guidance document, which reflects the current understanding between DPI and DSPS.

7th Circuit Court of Appeals

- *B.G. ex rel. J.A.G. v. Bd. Of Educ., No. 17-1806, 2018 WL 4057761 (7th Cir. Aug. 27, 2018)*: The 7th Circuit Court of Appeals affirmed the district court's decision that the parent was not entitled to an independent educational evaluation (IEE) at public expense because the district met its burden of proof in a due process hearing that its evaluation was appropriate.

OSEP Guidance:

- [Letter to Radziwell](#), September 8, 2017: Clarifies what constitutes a meaningful consultation with private school representatives and representatives of parents of parentally-placed private school students.
- [Questions and Answers on Andrew F.](#), December 7, 2017: Provides information on the issues addressed in Andrew F. and the impact of the Supreme Court's decision on the implementation of the IDEA.
- [Letter to Kane](#), April 18, 2018: Clarifies that generally districts do not have to make up services missed due to participation in required scheduled assessments or when a student is absent due to parent's opting out of the assessment.
- [Letter to Carroll](#), April 19, 2018: Emphasizes that as is true for all students with IEPs, a local education agency cannot unilaterally change the amount of services included in a preschool child's IEP.
- [Letter to Mason](#), July 27, 2018: Short-term disciplinary measures, if implemented repeatedly, could constitute a disciplinary change of placement.
- [Letter to McDowell](#), August 2, 2018: Clarifies that the list of related services in the federal regulations is not exhaustive, and that intervener services may be an appropriate related service as determined by the IEP team.
- [Letter to Anonymous](#), August 2, 2018: Clarifies transfer requirements when a student transfers from an out-of-state school district.
- [Letter to Anonymous](#), August 23, 2018: Clarifies independent educational evaluation (IEE) requirements pertaining to student observations conducted in the educational setting.

Dispute Resolution Information (January 1, 2018-September 27, 2018):

- Mediation Requests: 86
- IDEA Complaints: 71
- Due Process Hearing Requests: 21