Legal Updates
October 18, 2016

Pupil Nondiscrimination

Federal

Guidance on Rights of Transgender Students

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf

South Carolina Resolution Agreement:
http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11151348-a.pdf

Guidance on Gender Equity in Career and Technical Education

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201606-title-ix-gender-equity-cte.pdf

Guidance on Combatting Discrimination against Asian American, Native Hawaiian, and Pacific Islander (AANHPI) and Muslim, Arab, Sikh, and South Asian (MASSA) students

http://www2.ed.gov/about/offices/list/ocr/docs/aanhpi-massa-factsheet-201606.pdf

Guidance on ADA and 504

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf

Resolution Agreement Regarding Retaliation

http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11141321-a.pdf

Wisconsin

Annual Pupil Nondiscrimination Report (PI 9.07)

The 2015-16 school year report is due **December 23, 2016.**

NUMBER OF DISCRIMINATION COMPLAINTS RECEIVED BY SCHOOL DISTRICTS

Protected Class/Basis of Complaint	2013-2014 School Year	2014-2015 School Year
Ancestry	23	23
Disability	227	246
Pregnancy, Marital or Marital Status	17	16
National Origin	44	25
Race	591	524
Religion	39	41
Sex	956	1229
Sexual Orientation	229	286
Creed	5	4
TOTAL	**2,186**	**2,394**

* In 2015, 272 districts reported receiving zero complaints

School District Self-Evaluation of the Status of Pupil Nondiscrimination and Equality of Educational Opportunities (PI 9.06)

The assurance is due **April 1, 2017.**

Instructions available at: http://dpi.wi.gov/sped/pupil-nondiscrimination/self-evaluation

American Indian Students

Washington State Superintendent "Dear Colleague Letter"

http://www.k12.wa.us/IndianEd/pubdocs/EagleFeatherLetterfromSuptRandyDorn.pdf

Pupil Services

Wisconsin

Act 52 – Method for notifying parent of habitually truant student

http://docs.legis.wisconsin.gov/2015/related/acts/52.pdf

School district may use 1st class mail to notify parents of a child who is habitually truant. In the past, registered or certified mail were the only two allowable methods of notification.

Act 161 – Disclosure of pupil records to child welfare officials

http://docs.legis.wisconsin.gov/2015/related/acts/161.pdf
School districts may share pertinent pupil records of a student in the child welfare system without consent with the student's child welfare caseworker. School districts may enter into a memorandum of understanding to permit disclosure of pertinent pupil records with a county or tribal child welfare agency, but the MOU is not necessary to authorize the disclosure.

Act 228 – Student safety incident tracking pilot program

http://docs.legis.wisconsin.gov/2015/related/acts/228.pdf
DPI is required to develop a one-year pilot program for the 2016-17 school year in which three school districts will track crimes on school grounds or school-sanctioned events.

WI Act 294 – Community mental health services in schools

http://docs.legis.wisconsin.gov/2015/related/acts/294.pdf
The Department of Health Services is now prohibited from requiring certified behavioral health clinics and clinically licensed mental health professionals who provide mental health services in a school to designate the school as a branch office. DHS had been requiring each school setting to be registered as a separate, branch office of the behavioral health clinic and pay the associated registration fee.

WI Act 367 – Inclusion of child sex trafficking in the definition of child abuse

http://docs.legis.wisconsin.gov/2015/related/acts/367.pdf
Sex trafficking of minors is now part of the state definition of child abuse and must be reported under Ch. 48. DPI is updating the training that is mandatory for all school district employees to include this new information.

Federal

Every Student Succeeds Act (ESSA) – Students in child welfare system

http://www.acf.hhs.gov/sites/default/files/cb/ed_hhs_foster_care_guidance.pdf

- ✓ Similar to homeless students, students in foster homes must be maintained in their school of origin, if it is in their best interest, and transportation must be provided (effective December 10, 2016). School districts must collaborate with local and tribal child welfare agencies to implement educational stability provisions in ESSA.
- ✓ If a local or tribal child welfare agency designates a liaison to the school, the school must reciprocate and designate a liaison to the child welfare agency.
- ✓ State education agencies must designate a point of contact for state, tribal, and local child welfare agencies.

Special Education

OSEP Guidance

- *February 17, 2016 Letter to Andel:* School districts must inform parents in advance of the IEP team meeting who will be in attendance. Although there is no similar requirement for parents to notify school districts if they plan on bringing someone else to the meeting, OSEP strongly encourages parents to provide this advance notice if it is an attorney.
- *April 26, 2016 Dear Colleague Letter*: Clarifies that children with disabilities residing in nursing homes and their parents have the same rights under IDEA that apply to all other children receiving special education. The letter highlights some of the IDEA requirements that are especially relevant.
- *August 5, 2016 Dear Colleague Letter*: Clarifies that IDEA requirements apply to virtual schools.
- *August 1, 2016 Dear Colleague Letter:* Clarifies that the behavioral needs of student with disabilities must be addressed as part of providing FAPE and ensuring education in the least restrictive environment. The letter focuses attention on the need to consider and include evidence-based positive behavioral supports in IEPs to increase participation in instruction, reduce disciplinary removals, and prevent the need for more restrictive placements

Due Process Decisions

- LEA 16-0008: The hearing officer found that the district did not comply with the procedural requirements of ensuring the parent was provided an opportunity to participate in the IEP team meeting, and providing the parent with prior written notice when refusing her request, but the failure to do so did not result in a denial of FAPE.

IDEA Complaint Decisions

- Case No. 15-055: In determining whether ESY services are required, the IEP team should consider multiple factors, including the likelihood of regression and recovery time from the regression.
- Case No. 15-059: When a student transfers to Wisconsin from another state or district, the receiving district, in consultation with the parent, must provide FAPE without delay. This includes providing special education and related services comparable to the services described in the student's IEP from the previous district.
- Case No. 15-064: At the beginning of each school year, the school district must have an IEP in effect for each student with a disability within its jurisdiction, including students attending a virtual school within the district.
- Case No. 15-067: IEP teams are required to consider whether a student's behavior impedes the student's learning or that of others, and if so, consider the use of positive behavioral interventions and supports and other strategies to address that behavior. The consideration must be based on the student's unique disability-related needs, and not the

student's identified impairment area.

- Case No. 16-007: Given the student's expelled status, the team was required to expedite the evaluation.
- Case No. 16-017: If physical restraint or seclusion is used on a student at school, the principal or designee must, within one business day after the incident, notify the student's parent of the use of physical restraint and/or seclusion and the availability of a written report.
- Case No. 16-029: The district has the discretion and responsibility to appoint staff members to an IEP team, and a parent does not have the ability to exclude members appointed by the district.
- Case No. 16-033: While the district provided information to the parent about making a referral, district staff members who reasonably believed the student may have a disability did not timely refer the student for a special education evaluation.
- Case No. 16-035: A school district may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier in order to accommodate a transportation schedule.
- Case No. 16-039: School districts must take steps to ensure the student's parents are afforded the opportunity to participate at each IEP team meeting, including notifying parents of the meeting early enough to ensure they will have an opportunity to attend, and scheduling the meeting at a mutually agreeable time and place. When the parents of a student with a disability are separated, parental rights under the special education law generally apply to both parents unless a court order states otherwise.
- Case No. 16-049: While use of a calming room was not considered seclusion because the student was not physically prevented from leaving, the use resulted in a significant loss of instructional time.

ESSA

- Under ESSA, the number of students who may take the alternate assessment is limited to no more than 1.0 percent of the total of all students in the state who are assessed in a given subject. This 1% cap is as the state level. Only students with the most significant cognitive disabilities should be participating in the alternate assessment, and no student should take the alternate assessment unless they are also participating in the alternate academic achievement standards.