

## TOP 4 Downloads

- #1 **Avoiding FLSA Pay Violations Self-Audit for Substitute Teachers**
- #2 **FLSA Self Audit Checklist**
- #3 **Bullying: A Real Threat to Your School District and All of Your Students!**
- #4 **Model Wellness Policy Checklist**

## Special Reports

**Penalties for violating Title IX in management of your school's athletics programs.**

Public K-12, School districts violating Title IX can be subject to regulatory enforcement action and possibly costly private civil suits for damages. To help your school, SLRMA is pleased to offer the Self-Audit Checklist for School Compliance with Title IX for Athletics Programs to help your school make the right call. **Download it today!**

Sample Checklist Inside



**Don't be put in the Corner by Failing to Use Best Practices in Disciplining Students with Disabilities.**

**Can this happen at your school?**

**In September 2012, a special needs student electrically shocked 31 times for misbehaving.** ABCnews.com

**In November 2012, an autistic child dies after being restrained.** ABCnews.com

Schools use various methods to discipline or protect special needs students in response to behaviors. However, improper, and sometimes dangerous methods of discipline or restraint may lead to tragic results and liability. The U.S. Government Accounting office estimated that over 200 students have died as a result of school based seclusion and restraints between 1999 and 2009.

In the first of its kind, a survey conducted by the Office of Civil Rights of the Department of Education ("OCR") of 72,000 schools taken during the 2009-2010 year (representing approximately 85% of the nation's student body) contained startling results. Although only 12% of the students in the sample were students with disabilities, students with disabilities constituted 70% of the restraint and seclusion cases found by the OCR.

*continued on the next page*

# Disciplining Students with Disabilities Checklist

## Restraint and Seclusion: Best Practices

Yes No

**Does the policy define “manifestation determination” as a means to determine whether a student’s misconduct is a manifestation of his disability?**

**Examples of behavior that may be manifestations of a disability:**

*A student with Tourette’s Syndrome who yells obscenities, in violation of the code of conduct;*

*A student with Autism who bangs her hand on her desk, disrupting the class;*

*A student with Attention Deficit Disorder who does not complete in-class assignments on time.*

**Does the policy address when a functional behavioral assessment is required?**

When a school initiates change of placement of a student with a disability; or

When it is determined that a student’s misconduct is a manifestation of his disability.

**Does the policy require that the functional behavioral assessment include four steps:**

Problem specification based on classroom observation and interview;

Identification of strengths and resources for an intervention plan;

Formulation of hypotheses and identification of replacement behaviors; and

Teaching replacement behaviors through an instructional plan.

**Does the policy prohibit the use of restraint or seclusion as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation or as a convenience?**

**Does the policy prohibit the use of restraint or seclusion in any situation except where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective?**

The goal is to educate all children in safe, respectful, and non-restrictive environments. Restraint and seclusion should not be used as discipline to correct inappropriate behavior (for example, disrespect or insubordination). Rather, restraint and seclusion should be used only as a last resort to prevent imminent danger of serious physical harm to the student or to others. The key here is “imminent danger,” because the use of restraint and seclusion in response to anything less may appear unnecessary and may create or increase liability risks. Schools should seek to structure the school environment to avoid the need for restraint and seclusion.

**Does the use of restraint or seclusion trigger a review, and if appropriate, a revision of strategies currently in place to address dangerous behavior that addresses the underlying cause or purpose of the dangerous behavior?**

As all teachers and administrators know, behavior does not occur in a vacuum but is typically associated with conditions, events, requirements and characteristics of a given situation or setting. Careful documentation can reveal patterns or triggers to inappropriate or dangerous behavior that then can subsequently be minimized in the hope of preventing future inappropriate or dangerous behavior. This type of review, coupled with reviews and implementation of functional behavioral assessments and behavioral intervention plans, can minimize the use of restraint and seclusion while simultaneously helping the student succeed.

**Does the policy require training on appropriate use of effective alternatives to restraint and seclusion, and, only for cases involving imminent danger of serious physical harm, on the safe use of restraint and seclusion?**

**This is a small sample of the Self Audit Checklist for Disciplining Students with Disabilities.**

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The U.S. Federal Government is beginning to take notice and in September 2012, more than 200 disability organizations converged on Congress to reignite efforts to regulate the use of restraint and seclusion in schools.

To help schools assess their own vulnerability to potential liability, SLRMA is pleased to present an update to our 2009 *Disciplining Students with Disabilities: Self-Audit Checklist* by the inclusion of a Best Practices on the Use of Restraint and Seclusion. Based on the U.S. Department of Education’s May 2012 Resource Document on Restraint and Seclusion, this new checklist will give your school the ability to quickly and efficiently review your school’s practices.

Log in at SLRMA.org today to download the checklist and avoid being punished by a lawsuit.

# Recent Dispatches in the Newsroom



**Log In and Download the Recent Case Summaries That Impact Your School District and Find Out What You May Be Missing**

## December 2012

### **Slade v. Board of School Directors of Milwaukee**

Parents expect that schools will be safe places for their children, and the teachers and administrators will keep the pupils in their charge safe. However, tragedies do happen which can subject your school to liability. In the case from the U.S. Appeals Court governing Wisconsin (and Illinois), the Court addresses when a teacher and school can be held liable for the death of children in their charge. The Court concludes that only the reckless behavior of the school and the teacher will render them liable and goes on to discuss what is meant by "recklessness."

## January 2013

### **Connelly v. Steel Valley School District**

Is a school required to treat all teachers the same when it comes to compensation? In this recent case from the Third Circuit Court of Appeals in Pennsylvania, the Court held that a school may value in-state teaching experience greater than the experience gained by a teacher in another state without violating the fundamental right to travel.

## February 2013

### **Office for Civil Rights' Guidance Requires School Districts to Provide Students with Disabilities Equal Opportunity to Participate in Athletics**

What extracurricular athletic opportunities does your school owe to students with disabilities? In this memorandum written by the Hogan Lovells' school law team, the authors discuss the recently released Dear Colleague Letter from U.S. Department of Education Office for Civil Rights which addressed the issue. Read it now to learn the highlights of these important guidelines.

### **McCoy v. Board of Education, Columbus City Schools**

What does it mean for a school to exercise "deliberate indifference" such that liability will be imposed upon the school based on the conduct of its employees? In this recent case from the 6th Circuit Court of Appeals for Ohio, the Appellate Court discussed the elements necessary to impose liability on a school for the intentional conduct of its employees. In addition, the Court also discussed the applicability of "qualified immunity" to a school official charged with misconduct.

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# FLIC

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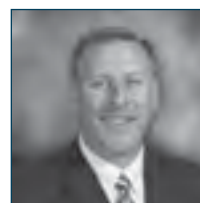
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