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Office for Civil Rights Issues Dear Colleague Letter: Restraint and Seclusion of Students With Disabilities

On December 28, 2016, the Department of Education, Office for Civil Rights (OCR), issued four guidance documents concerning students with disabilities. Along with two documents concerning students with disabilities in public charter schools (FAQs about Charter Schools and IDEA [<http://www.shipmangoodwin.com/webfiles/OCR%20DCL%20FAQ%20about%20Charter%20Schools%20and%20IDEA.PDF>] and DCL Rights of Children With Disabilities in Charter Schools [<http://www.shipmangoodwin.com/webfiles/OCR%20DCL%20Rights%20of%20Children%20with%20Disabilities%20in%20Charter%20Schools.PDF>]), and “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools” [<http://www.shipmangoodwin.com/webfiles/OCR%20Parent%20and%20Educator%20Resource%20GuideSection%20504.PDF>], OCR issued “Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities” (DCL) [<http://www.shipmangoodwin.com/webfiles/OCR%20Restraint%20and%20Seclusion%20Dec%202016.PDF>] and a related Fact Sheet [<http://www.shipmangoodwin.com/webfiles/Fact%20Sheet%20Restraint%20and%20Seclusion%20of%20Students%20With%20Disabilities.pdf>]. The DCL, which includes a series of questions and answers and examples, addresses OCR’s interpretation of the intersection between the use of restraint and seclusion in the public schools and disability discrimination under Section 504 of the Rehabilitation Act (Section 504).¹ This DCL, in addition to the statutes and regulations under Connecticut law, provide an important framework for the legally permissible use of restraint and seclusion in schools in Connecticut.

The DCL proceeds by explaining OCR’s jurisdiction to enforce Section 504, which protects students (and others) with disabilities from discrimination, and then goes on to specifically address the use of restraint and seclusion in public schools. According to OCR, Section 504 may be implicated by the use of restraint and seclusion within the schools in a variety of circumstances, including but not limited to when: less restrictive alternatives were available but not used prior to the use of restraint or seclusion; restraint or seclusion was used for a student with a disability under circumstances when restraint or seclusion would not have been used for a student without a disability; and when continued use of restraint or seclusion results in a denial of a free appropriate public education (FAPE).

Importantly, OCR reminds schools that student behavioral issues that require the use of restraint or seclusion may be a sign that a student has a disability, or that a disabling condition

¹ While OCR specifically discusses disability discrimination under Section 504 in this DCL, school districts should be aware that most, if not all, students who are eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) are also eligible as students with disabilities under Section 504, and are thereby protected against disability discrimination. The provision of a free appropriate public education (FAPE) under the IDEA is a safe harbor under Section 504; thus, if the school district is providing FAPE under the IDEA, which includes appropriate evaluation and placement of students, then it has likely provided FAPE under Section 504.

has changed. In such circumstances, an evaluation or reevaluation of the student may be warranted under Section 504. OCR further emphasizes that the continued use of restraint and seclusion may cause or lead to a denial of FAPE. Specifically, the use of restraint or seclusion may cause trauma or have academic, behavioral, or social repercussions that warrant reevaluation and/or revision of the student's Section 504 Plan. Further, a student's continued removal from the educational environment due to restraint or seclusion may result in a gap in service delivery, which may have to be addressed through compensatory services. OCR clarifies that restraint and seclusion does not, in all cases, constitute disability discrimination. This DCL, however, is an important reminder that in circumstances of continued use of restraint and seclusion of students without meaningful review and revision of programs and reevaluation when appropriate, OCR may find disability discrimination.

School districts in Connecticut have been following a similar framework relating to restraint and seclusion since 2007, when our state legislature initially made restraint and seclusion laws applicable in the school setting. The Connecticut General Assembly then revised Connecticut's restraint and seclusion statutes in 2015 through its passage of Public Act 15-141, An Act Concerning Seclusion and Restraint in Schools [<https://www.cga.ct.gov/2015/act/pa/2015PA-00141-R00SB-00927-PA.htm>]. While the Connecticut State Department of Education is in the process of revising existing regulations in this area, school districts are required to follow the statutory changes that became effective on July 1, 2015. Indeed, districts' compliance with various aspects of Connecticut's law should be helpful to school districts in preventing OCR from finding disability discrimination in this area, as Connecticut law requires districts to hold a Planning and Placement Team (PPT) meeting after every four restraints or seclusions that occur within a twenty school-day period. These meetings should be a meaningful opportunity to review a student's Individualized Education Program, request or review a Functional Behavioral Assessment and/or Behavior Intervention Plan, and make a referral to a PPT, where appropriate.

This DCL may also serve as a reminder to school districts that, under Connecticut law, each district must implement, by July 1, 2017, training and professional development plans regarding the prevention of incidents requiring physical restraint or seclusion of students, and the proper means of physically restraining or secluding a student. These plans must account for the training of all school professionals, paraprofessional staff and administrators by July 1, 2019.

Based on our review of the DCL and Connecticut law, we provide below a variety of best practice recommendations relating to restraint and seclusion of students. Specifically, school districts should:

- Comply with Connecticut law concerning the use of restraint and seclusion in schools, which likely provides greater protection for students with respect to restraint and seclusion than the requirements of the newly released DCL.
- Ensure that 20-day meetings are substantive and meaningful; use this opportunity to review programming, evaluation and placement.
- Review whether the use of restraint and seclusion for a particular student has resulted in a denial of FAPE, either from the impact of the restraint or seclusion on the student, or the



student's continued removal from the educational environment.

- Be aware of child find obligations under both the IDEA and Section 504, with respect to the physical restraint and seclusion of students who may not yet be identified.
- Audit restraint and seclusion practices within the school district regularly to ensure compliance with Connecticut law, the IDEA and Section 504.
- Ensure implementation of training and professional development plans for physical restraint and seclusion by July 1, 2017, with all staff training completed by July 1, 2019.

Questions or Assistance:

For further information on the DCL or to discuss how these issues may impact your school district, please contact Ben FrazziniKendrick (860-251-5182 or bfrazzinikendrick@goodwin.com); or Gwen J. Zittoun (860-251-5523 or gzittoun@goodwin.com).

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