

What Your General Education Teacher Wants You to Know:


Accommodations, Data Collection, Implementation, and LRE


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**What Your General Education Teacher
 Wants You to Know:**
 A Legal and Practical Discussion About
 Accommodations, Behavior, and LRE

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Topics for Today's Discussion:

- Do you know how to have a crucial conversation*?
- Some Common Scenarios: What Do I Say When . . . ?
 1. Documentation of Accommodations
 2. Implementation of IEP
 3. Least Restrictive Environment
 4. Discipline & Behavior
 5. General Education Teacher's Role at the ARD Meeting

*Patterson, K., Grenny, J., McMillan, R. and Switzler, A. Crucial Conversations. (©2002 McGraw Hill).





Topics for Today's Discussion

continued –


6. Student Privacy
7. FAPE
8. Twice Exceptional Students (2e)
9. Restraints

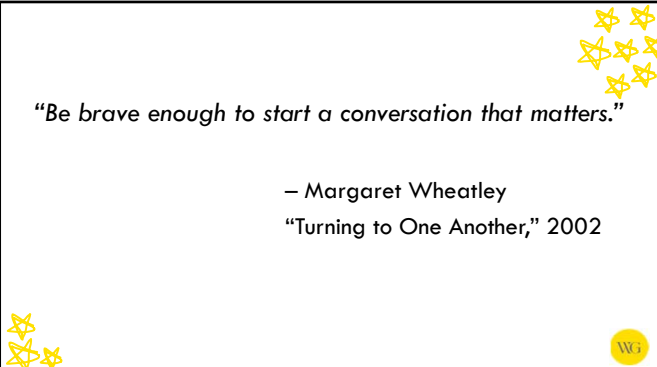
- Putting It All Together
- Questions






How to Have a Candid, Crucial Conversation with General Education Teachers

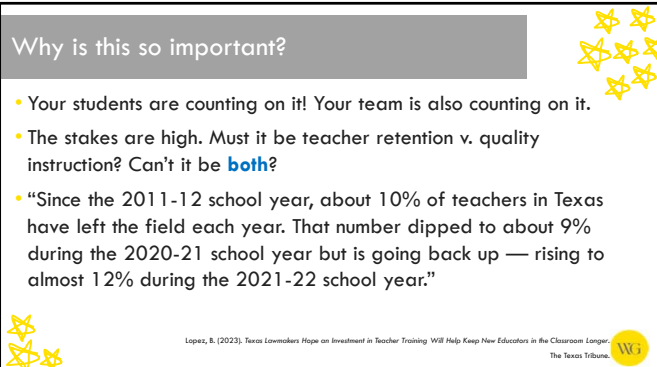




“Be brave enough to start a conversation that matters.”

– Margaret Wheatley
“Turning to One Another,” 2002






Why is this so important?

- Your students are counting on it! Your team is also counting on it.
- The stakes are high. Must it be teacher retention v. quality instruction? Can't it be **both**?
- “Since the 2011-12 school year, about 10% of teachers in Texas have left the field each year. That number dipped to about 9% during the 2020-21 school year but is going back up — rising to almost 12% during the 2021-22 school year.”

Lopez, B. (2023). Texas Lawmakers Hope an Investment in Teacher Training Will Help Keep New Educators in the Classroom Longer. The Texas Tribune. <https://www.texastribune.org/2023/04/20/tx-lawmakers-teacher-training-will-help-keep-new-educators-in-the-classroom-longer/>



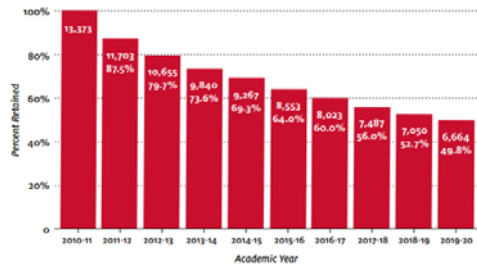
Teacher Retention

- A study by the University of Houston Education Research Center shows out of 16,517 people who started teaching in the 2011-12 school year, 43% found other careers after five years. After 10 years, 59% of those teachers had left the profession.

Hart, C., Burnett, C., Lowery, S., and White, C. (2021). Texas Teacher Workforce Report. The University of Houston. <https://www.uh.edu/education/research/teacher-workforce-reports-publications/tytwr-report-2021.pdf>

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Ten-Year Retention Rate Among First-Year Teachers (2011 Cohort)



Source: Center for Research, Evaluation & Advancement of Teacher Education

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Reasons teachers have considered leaving the profession



PDK poll, 2019


2019 PDK Poll of the Public's Attitude Toward the Public Schools <https://pdkpoll.org/wp-content/uploads/2020/01/pdkpoll01-2019.pdf>

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- Lack of adequate compensation
- Stress / Pressure / Burnout
- Lack of Respect or Feeling Valued

Holding Teachers Accountable, while Providing Support, Accomplishes:

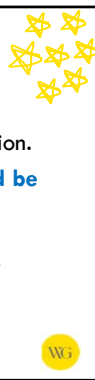
- Legally defensible student programs in special education (FAPE)
- Reduction of stress, pressure, and burnout felt by teachers
- Promoting respect so that Teachers feel valued



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Effective Communication


- Multiple efforts, on multiple fronts, will be needed to combat the reasons teachers are leaving the profession.
- **What can you do? One tool in your toolbox should be the knowledge of how to engage in effective and open communication.**
- "Trust that meaningful conversations can change your world." – Margaret Wheatley




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Emotional Intelligence

The ability to recognize your emotions, understand what they're telling you, and realize how your emotions affect people around you. It also involves your perception of others: when you understand how they feel, this allows you to manage relationship more effectively.



Daniel Goldman- Emotional Intelligence Theory- 5 Components
<https://www.tsw.co.uk/blog/leadership-and-management/daniel-goleman-emotional-intelligence/#:~:text=Daniel%20Goleman%20emotional%20intelligence%20theory,motivation%2C%20empathy%2C%20and%20social%20skills>



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Emotional Intelligence

Emotional Intelligence is comprised of:

- Self-awareness
- Self-regulation
- Motivation
- Empathy
- Social Skills



Daniel Goldman- Emotional Intelligence Theory- 5 Components

<https://www.tow.co.uk/blog/leadership-and-management/daniel-goldman-emotional-intelligence/#~:text=Daniel%20Coleman's%20emotional%20theory,motivation%2C%20empathy%2C%20and%20social%20skills>

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OTFD: A Communication Strategy Often Used as a Teaching Strategy in the Classroom



1. **Observations:** Only facts
2. **Thoughts:** Beliefs, Expectations, Assumptions
3. **Feelings:** sad, mad, glad, scared
4. **Desires:** What outcome do you seek?

The Experience Cube from Clear Leadership by Gervase Bushe

<https://www.uvic.ca/hr/assets/docs/pdc/Effective%20Feedback%20and%20experience%20cube.pdf>
Open the Front Door, SuperCamp

<https://www.supercamp.com/pdf/RS-2018-19-6-Open-the-Front-Door-to-Positive-Communication.pdf>

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OTFD: Examples

Observations: Only facts – observed by the senses

• **Example:** "I noticed you did not take data regarding the accommodations you implemented with Student in the classroom"

⊘ Non-Example: "You never take data appropriately."

Thoughts: Beliefs, Expectations, Assumptions

• **Example:** "I thought you didn't care if the data was recorded well."

⊘ Non-Example: "You clearly don't care about students with disabilities."

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Communication Strategy: OTFD



Feelings: You own the feeling – state the feeling, not the blame. (Sad, mad, glad, scared)

• **Example:** “I’m feeling confused about why this isn’t being done in your classroom.”

⚠ Non-Example: “I’m tired of you not complying with our strategies learned during professional development.”

Desires: What outcome do you seek?

• **Example:** “I expect all teachers to take data per the protocol we have put into place.”

⚠ Non-Example: “I would appreciate some respect around here as your director . . .”



Support Teachers in Channeling the Frustration!



• Fight, flight, or **invent**? The power of frustration.

• “Frustration is the feeling of being blocked from a goal. Although it sounds like a destructive emotion, it can actually be a source of creative fuel. When we’re frustrated, we reject the status quo, question the way things have always been done, and search for new and improved methods. But there’s evidence that **dissatisfaction only promotes creativity when people feel committed to their team and have the support they need to pursue their ideas**” (emphasis added).

Grant, Adam. “Frustrated at Work? That Might Just Lead to Your Next Breakthrough, Don’t Discount the Misfits on Your Team.” The New York Times, March 8, 2019. <https://www.nytimes.com/2019/03/08/smarter-better/frustrated-at-work-that-might-just-lead-to-your-next-breakthrough.html>



Legal Strategy: Documenting OTFD



Effective documentation serves numerous functions. Ultimately, the purpose of good documentation is to support decisions made at all levels by all employees and to ensure those decisions are legally defensible. Good documentation will show that you are legally, ethically, and fairly treating employees. For example, documentation will play a critical role in the following situations:



Legal Strategy: Documenting OTFD



- Personnel decisions
- Student, parent, or employee complaints against you, your teachers and staff, or against each other
- School Board review of administrator actions
- Requests from the media and other individuals under the Public Information Act
- Showing compliance with state and federal law and Board policies

And of course, **litigation!**



Why Document Your Crucial Conversation?



• **Increases Your Credibility.** Good documentation increases the credibility of administrators and school districts at grievance proceedings, hearings before administrative agencies, with the public, the School Board, and in the courts. After all, people tend to believe what they read.



Legal Reasons to Document, Continued



• **Establishes a Record of Any Actions or Events.** Documentation can be used to support decisions and becomes especially important if any complaint eventually lands in the courthouse. A good paper trail can make or break your case.



Legal Reasons to Document, Continued



• **Evidence to Support Proposed Contract Nonrenewal or Termination Action.** Action against an employee's contract typically requires the production of supporting evidence before the action is taken.

• **Evidence of Fair Treatment.** Employee's claiming unfair, discriminatory or retaliatory treatment will be hard pressed to rebut evidence that other employees were treated the same under similar circumstances.

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Scenario 1: Teacher Documentation of Accommodations

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Scenario 1: Documentation of Accommodations

You Say:

- Data collection on the implementation of accommodations is required in all classrooms, including by general education teachers.
- Utilize the District's forms to document implementation of accommodations and/or student refusal to accept accommodations.
- If you find that you are not implementing IEP accommodations regularly, you will need to contact your special education case manager to request an ARD committee meeting to review the appropriateness of the accommodations developed for the Student in your classroom.

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Scenario 1: Documentation of Accommodations



Your General Education Teacher Wants You to Know:

- I don't understand why you are requiring me to do this; I am not a special education teacher, and I am not the case manager. Why do I have to document which accommodations are being implemented?
- Isn't there an easier way? Why can't I just stamp "accommodated" on written assignments? I feel like this is just more paperwork and red tape.



Scenario 1: Documentation of Accommodations



Don't say:

- Because I said so and I am your supervisor.
- Because the parent won't believe that you worked with her child if you don't do this. We are on our 3rd TEA Complaint.
- Our school attorney is outrageously stubborn on this issue.
- You are going to get us sued!



Scenario 1: Documentation of Accommodations



The Reason for the Concern:

- Texas Administrative Code Chapter 247: Rules of Ethics for Educators Section 247.1 (3)(d) Standard 3.4 states that an "educator shall not exclude a student from participation of a program deny benefits to a student or grant an advantage to a student on the basis of race, color, gender, disability, national origin, family status or sexual orientation.



Scenario 1: Documentation of Accommodations



- A one size fits all stamp does not inform which accommodations have been utilized, nor does it identify how they were implemented. The suggested stamp won't work for assignments completed and turned in electronically through software systems.
- The success of the accommodations is the benchmark for determining whether the student requires the such accommodation and/or more restrictive instructional environment.



Scenario 1: Documentation of Accommodations



Putting it all together:

OTFD - I noticed today that you were not documenting the implementation of a required accommodation for Student; I am concerned because you may not be implementing all required accommodations for all students per their IEP. I am also concerned because . . . (legal requirement . . .). I expect all teachers including you to maintain the required documentation, and I am going to provide additional support in your classroom by asking our instructional coach to work with you to see where you are having difficulty and to provide suggestions.



Scenario 1: Documentation of Accommodations




Putting it all together, continued:

- **Channel the Frustration** – When working with the Instructional Coach, please feel free to make suggestions that you think will make this easier for you and for all teachers. While a “stamp” won't work for the reasons we discussed, we will take seriously and consider teacher input on how we can prove up our efforts for compliance purposes while easing your load. We are developing those systems now for the coming year; would you like to help with feedback?

- **Document the Conference** – I will follow this up with an email to you today to confirm we talked.






Scenario 2: Implementation of IEP



Scenario 2: Implementation of the IEP

You Say:




- Implementation of the IEP is one of the most important roles a general education teacher provides. It is vitally important to implement the IEP with fidelity.
- It is your responsibility to know the IEP and ensure that it is implemented as developed.



Scenario 2: Implementation of the IEP

Your General Education Teacher Wants You to Know:

- Duh. I know the importance of implementing the IEP, but I don't have time to implement all aspects of it. I have 20 other students I also have to educate in that class.
- I don't even know if I know what all these accommodations are.
- I need examples of how to effectively use these accommodations or ideas of how to implement them in my content area.



Scenario 2: Implementation of the IEP



Don't Say:

- Just Do It!
- Do the best you can and implement the parts that you feel are most important for the student.
- There are only so many hours in a day, do what you can and don't tell the parent you can't get it all in.
- Would you like to testify to that?



Scenario 2: Implementation of the IEP



The Reason for the Concern:

- Each teacher and provider described in paragraph (d)(1) of this section is informed of—
- (i) His or her specific responsibilities related to implementing the child's IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 C.F.R. 300.323(d)



Scenario 2: Implementation of the IEP



34 CFR § 300.323 states that implementation of the IEP does not need to be perfect, but **a material failure to implement an IEP will be a denial of FAPE.**

- Small periods of time when the IEP is not being implemented will not be considered a failure to implement and thus will not be a denial of FAPE. *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014).



Scenario 2: Implementation of the IEP

- On the other hand, in *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013) the Court held that a district that failed to implement an IEP for 5 months after a student transferred into the District did deny the student a FAPE.
- In *Reynolds School District*, 116 LRP 40139 (SEA OR 2016), the general education teacher claimed that they were never trained on the student's IEP and did not have access to the student's behavior intervention plan (BIP). The Court found that the District violated the IDEA and denied the student FAPE, by failing to fully implement the IEP.



Scenario 2: Implementation of IEP

Putting it all together:

OTFD – You stated that it is too difficult to implement the IEP in your class and serve other students. I feel that you may need assistance with that balance, and strategies you can utilize moving forward. I am concerned because . . . (legal requirement). Moving forward, you must implement the IEPs fully for students with disabilities in your class. I am going to provide additional support in your classroom by asking our special education coordinator to work with you to see where you are having difficulty and to provide suggestions.



Scenario 3: Least Restrictive Environment (LRE)



Scenario 3: Least Restrictive Environment



You Say:

- Before a student can be placed in a self-contained classroom, we need data to establish that the student cannot successfully be educated with supplementary aids and supports in a lesser restrictive setting.
- What data/documentation exists to help explain why the student is not being successful in a general education class?
- Only data will establish objectively the student's rate of progress or the need for additional special education support.



Scenario 3: Least Restrictive Environment



Your General Education Teacher Wants You to Know:

- What I know is that in my classroom the student is not making progress and my job as a teacher is to help students grow.
- The behavior is such that it's the Student's Show – all day every day; other students are missing needed attention from me.



What do you mean by data?



Scenario 3: Least Restrictive Environment



Don't Say:

- Suck it up, Buttercup.
- You just don't know how to handle the situation.
- Your classroom management obviously needs improvement.



Scenario 3: Least Restrictive Environment



The Reason for Concern:

- 34 CFR 300.114
 - Students should be educated “to the maximum extent appropriate” with nondisabled peers.
 - Removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.



Scenario 3: Least Restrictive Environment



- *Daniel R.R. v. State Bd. Of Educ.*, 874 F.2d 1036(5th Cir. 1989)

Two Part Test:

- First, can education in the regular classroom, with the use of supplemental aids and services, be achieved satisfactorily for a given child?
- Second, if it cannot and the school intends to provide special education or to remove the child from regular education, has the school mainstreamed the child to the maximum extent appropriate?



Scenario 3: Least Restrictive Environment



Key Quotes:

- “[A]t the outset of step one, we must examine whether the state has taken steps to accommodate the handicapped child in regular education. . . . If the state has made no effort to take such accommodating steps, our inquiry ends, for the state is in violation of the Act’s express mandate to supplement and modify regular education.”



Scenario 3: Least Restrictive Environment



• “By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the IDEA,” the requirement that a school district provide a FAPE on the one hand, and the requirement that, on the other hand, it does so within the least restrictive environment.”



Scenario 3: Least Restrictive Environment



- “Even when school officials can mainstream [a] child,” however, “they need not provide for an exclusively mainstreamed environment.” Rather, “the IDEA requires school officials to mainstream each child only to the maximum extent appropriate. In short, the IDEA’s mandate for FAPE qualifies and limits its mandate for education in the regular classroom”
- The IDEA does not contemplate an all-or-nothing educational system in which children with disabilities attend either regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services.



Scenario 3: Least Restrictive Environment



- Considerations:
 - Benefits to Student in general education class
 - Have supplementary aids and services been provided?
 - Were they appropriate, or merely “token gestures”?
 - Impact on teacher time for instruction
 - Impact of Student on classmates
- Overall benefit to Student



Scenario 3: Least Restrictive Environment



Putting it all together:

OTFD – I observed that you struggled with classroom management due to interruptions from the Student. I also observed that you appear to raise your voice out of frustration when redirecting the Student. You have asked to have the child removed from your class to a more restrictive environment. I am concerned because . . . (legal requirement). Let's seek an FBA. I also am going to provide additional support in your classroom by asking our behavior specialist to work with you to reinforce the use of positive behavioral interventions and strategies. We will take data and then reassess the placement discussion.



Scenario 4: Discipline & Behavior



Scenario 4: Discipline & Behavior



You Say:

- Schools have a duty to provide an appropriate education to every student, regardless of the student's behavior. Schools also have a duty to maintain a safe and orderly campus.
- A disciplinary change in placement for more than 10 days cannot occur without an MDR.
 - If the ARD committee determines that the behavior was caused by or substantially related to the student's disability, then the student's placement cannot change unless there are special circumstances.



Scenario 4: Discipline & Behavior



Your General Education Teacher Wants You to Know:

- I don't understand what it means for a special education student to be "out of days." Don't they start over at some point? I am supposed to treat my students with a disability like my students who are nondisabled, and my nondisabled students would go to ISS for this behavior. This just sounds like a "get out of jail free" card.
- This was a MANDATORY DAEP placement! Why is an ARD required?
- Isn't there a provision in the law that allows me to request removal of this student from my class?



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Scenario 4: Discipline & Behavior



Don't Say:

- We can't just send the kid to ISS again, we don't have Smart ISS, our ISS is a dumb ISS. No additional removal possible.
- I will not send a kid to DAEP because you don't like them. They'll be in your class again tomorrow.
- This kid is untouchable because they are out of days.
- Call your association representative if you don't like it.



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Scenario 4: Discipline & Behavior



The reason for concern:

- Under the IDEA school officials can remove any child with a disability from his/her regular school placement for up to 10 days.
 - It is not a denial of FAPE to fail to serve a student for ten school days, cumulatively, through the school year.
 - No services are required, so long as non-disabled students would be treated the same for similar misconduct.
 - See 34 CFR 300.530(b) and (d)(3).



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Scenario 4: Discipline & Behavior



The reason for concern:

- DOE frowns on references to the 10-days as “free days.”
- “This characterization may discourage school personnel from considering whether behavioral supports are needed to address or improve patterns of behavior that impede learning before, during, or after short-term disciplinary removals...”



Scenario 4: Discipline & Behavior



- Don't lose sight of the Big Picture. How is the student doing?
 - Research shows that suspensions don't work. They do not reduce or eliminate recurrence of the behavior. In fact, they produce “unintended and undesirable results.”
 - The campus has the authority to suspend (depending on the student's age); but use of this tool may indicate a need to consider behavioral interventions.
 - Suspensions don't work to change behavior. Use them for safety purposes only and only if necessary.



Scenario 4: Discipline & Behavior



- The Department's *Dear Colleague Letter* (DOE 8/1/2016) reminds us that Districts are required to consider PBIS when behavior impedes learning.



Scenario 4: Discipline & Behavior



- An MDR is The process is designed to make sure we are not discriminating on the basis of disability, not punishing the student, or depriving the student of educational services because of disability.
- Under IDEA “within 10 school days of any decision to **change the placement** of a child with a disability because of a violation of a code of student conduct.”
- Conducting the general education due process first gives the ARDC more information about the incident and allows the parent to have adequate time to prepare for the meeting.



Scenario 4: Discipline & Behavior



- The MDR Process is not intended to be a loophole but a process to ensure students are not be disciplined for behaviors which are manifestations of their disability.
- Dear Colleague Letter, 81 IDELR 110 (OSERS 2022): A reminder of DOE’s concerns over “disparities in the use of discipline for children with disabilities.” Some stats:
 - Preschool SWD (Students with Disabilities) are 22.7% of preschool students, but 56.9% of preschool students who are expelled from preschool. Data from 2017-18 school year.



Scenario 4: Discipline & Behavior



- K-12 SWD are 13.2% of all students. But they are 24.5% of students who are suspended for more than ten days. Data from 2017-18 school year.
- K-12 SWD are 13.2% of all students, but they are 80.2% of students who were physically restrained. Data from 2017-18 school year.
- K-12 Black SWD are 17.2% of SWD, but 43.5% of such students who are suspended for more than 10 school days. Data from 2019-20.



Scenario 4: Discipline & Behavior



- In *Gloria V. v. Wimberley ISD*, 80 IDLER181 (5th Cir. 2022), the 5th Circuit affirmed the hearing officer's decision in favor off the District. The ARD committee concluded that the theft of an ATV was not impulsive and therefore, was not a manifestation of the student's disability. Further, the court that the MDR was properly staffed with the required "relevant members" for federal law. State law, requires that the MDR be conducted by the ARD committee.



Scenario 4: Discipline & Behavior



- **Implement the BIP!** Must be reviewed annually by the ARDC or more frequently as appropriate. This review must consider changes in circumstances that may impact the student's behavior, as well as the safety of the student and others.



- These "circumstances" include a change of placement, an increase or persistence in disciplinary actions for similar behaviors, a pattern of unexcused absences, or an unauthorized departure from school.

Scenario 4: Discipline & Behavior



- Chapter 37 of the Texas Education Code gives teachers the authority to remove disruptive students from their classroom. The law allows teacher two types of removals

1. Discretionary Removal
2. Mandatory Removal.

- Mandatory Removal **REQUIRES** the removal of a student who exhibits serious types of behavior as identified in 37.006 and 37.007, these behaviors require removal from the campus to the district alternative education place program of expulsion. Discretionary Removal requires additional documentation and steps as they rely on the educator's discretion.



Scenario 4: Discipline & Behavior



Harris v. Autry, 80 IDELR 121 (11th Cir. 2022).

- **What Happened?** The teacher's aide hung a five-year old boy from the chalkboard, using the belt loops on his pants. This was done in front of the other students in the classroom. The aide later provided a written statement indicating that this was the normal procedure for when the student was out of control. The student and his grandmother sued numerous individuals and the district with claims under state and federal law.
- **What Did the Court Do?** All claims against all defendants were dismissed except for the claim of intentional infliction of emotional distress. The teacher's aide was found liable under that legal theory and the court entered a judgment of \$267,140.02.



Scenario 4: Discipline & Behavior



- **What Can We Learn?** This comes under the "don't try this at home" category. When the school investigated the matter, it concluded that the aide "failed to use proper de-escalation techniques." You think???
- The case obviously serves as a reminder of the importance of training of teachers and aides. As to the legalities, many of the claims were based on the U.S. Constitution, which is a tough case to make, even for outrageous fact situations like this one. State law generally provides a better avenue.
- Texas law allows for personal liability of educators who injure students through the use of force which is deemed excessive or negligent. The court noted that the injuries to the student in this case were psychological rather than physical—thus "intentional infliction of emotional distress" was the right legal theory.



Scenario 4: Discipline and Behavior






Putting it all together:

OTFD – I was notified today that you hung a student from the board by his beltloops. You have now asked to have the child removed from your class to a more restrictive environment. I am highly concerned because . . . (legal requirement). . . Effective immediately . . .

Seek legal counsel on what to do next in this scenario!






Scenario 5: General Education Teacher's Role in an ARD Committee Meeting



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting

You Say:




- We are required to have a general education teacher in the IEP (ARD) meeting. This is a federal requirement, failure to have a meeting without a general education teacher will mean we do not have a legally constituted ARD committee.
- We need a general education teacher, and you are the student's only general education teacher. So, you are required to be there.



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting

Your General Education Teacher Wants You to Know:

- I don't want to attend another meeting just to be a warm body in a chair. I don't see the point in attending the meeting if I am just sitting silently the whole time.
- I have 100 other things I could be doing during my off period.



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting



Don't Say:

- You have to be there because we need a general education teacher, you don't have to really know the kid.
- You don't have to say anything, we just need you present.
- You can always turn your camera off (in a zoom meeting) and work on other things.



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting



The Reason for the Concern:

- Under the IDEA 34 CFR 300.321(2) requires that at least 1 regular education teacher of the child be present in the IEP meeting.
- The IDEA requires that a team develop a student's IEP and requires that certain roles be filled by team members with specific qualifications. The reason for this, is that each person on the team brings their own individual expertise that is needed for developing certain parts of the student's IEP.



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting



- The parent objected to the composition of the IEP Team (ARDC in Texas) because the general education teacher was not present. The district court rejected this claim because 1) the parent had agreed to the teacher's excusal; 2) the district offered to find another teacher to attend, but the parent rejected that idea; and 3) the teacher had already given input and been questioned by the parent at a meeting just prior to this meeting. The 5th Circuit affirmed. *Gloria V. v. Wimberley ISD*, 80 IDELR 181 (5th Cir. 2022)



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting



- **What Happened?** The Student stole an ATV, an MDR was conducted AFTER and IEP meeting. The general education teacher was present for over an hour but was later dismissed with Parent's permission.
- **What did the court do?** The court held that "it is undisputed that a general education teacher...is a mandatory member of an IEP team." However, in this case there were two different but back-to-back meetings. The general education teacher was present at the student's IEP meeting. The general education teacher was dismissed with permission from the parent through the advocate. Therefore, there was not a violation.



Scenario 5: General Education Teacher's Role in the ARD Committee Meeting



Putting it all together:

OTFD – You were ten minutes late to the annual ARD committee meeting for Student. This resulted in a delay of the start of the meeting, and the parent and I both felt frustrated as a result. I believe that you care about Student, but your tardiness today did not reflect that Student's meeting was important to you. If you need help with class coverage in the future, please let me know directly and I will ensure that coverage is provided in time so that you are not pressured to race to the meeting.



Scenario 6: Student Privacy



Scenario 6: Student Privacy



You Say:

- FERPA requires us to protect student information.
- We need to maintain student's privacy.
- Don't shout out the student's disability or accommodations for everyone in the classroom to hear.
- Don't speak to other teachers about a student's IEP or BIP if they are not the student's teacher with a legitimate educational interest in the information.



Scenario 6: Student Privacy



Your General Education Teacher Wants You to Know:

- I have to remind the students to use their accommodations, and sometimes I just verbally remind them because I need to tend to other students in the classroom.
- Sometimes I don't understand an accommodation, I know other teachers who have to implement similar accommodations, and so we collaborate on how to best implement parts of the student's IEP.



Scenario 6: Student Privacy



Don't Say:

- You are not allowed to collaborate with other educators on how to implement the IEP.
- The student's IEP should not be discussed outside of an ARD meeting.
- You're in trouble – the FERPA police are coming!



Scenario 6: Student Privacy



The Reason for the Concern:

- The Family Educational Rights and Privacy Act (FERPA) gives Parents rights to their student's education records, FERPA also gives parents the rights to prevent school districts from disclosing their student's education records to third parties.



Scenario 6: Student Privacy



Educational records are defined as those that are:

1. Directly related to a student and are
2. Maintained by an education agency or institution or by a party acting for the agency or institution.
3. Under the IDEA 34 CFR 300.611 (b) Education records may be recorded in any manner, including but not limited to handwriting, print, computer media, video, or audio tape, film, microfilm, or microfiche.



Scenario 6: Student Privacy



- Students with disabilities have equal protections under FERPA and also privacy protection under the IDEA. We need to ensure that when communicating about the student's IEP we are doing so only to other individuals who have an educational interest in the student, generally those that serve the student.

- Collaborating and sharing ways to implement the student's IEP is encouraged and is best done with others who work with the student. Or consider asking for suggestions without revealing the specific student to your colleague.



Scenario 6: Student Privacy



Putting it all together:

OTFD – I see that you have new photographs of students taped to your classroom door. Under the photos you have placed a caption, “Miss Roalson’s Special Students.” All of the students in the photos are students with significant disabilities. I am concerned that you are revealing personally identifiable information about your students to visitors to the campus and others who do not have a legitimate educational interest in knowing that the students have disabilities. I expect that you change your door decorations and review Board Policies FL on Student Privacy.



WG

Scenario 7: Free Appropriate Public Education (FAPE)



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Scenario 7: Free Appropriate Public Education



You Say:

- Every special education eligible student is entitled to a Free and Appropriate Public Education (“FAPE.” It is the District’s responsibility to provide FAPE to those students.
- The District must provide an education for students with disabilities that is appropriate. The “A” in FAPE is always the issue. Implementing the student’s IEP with fidelity in the LRE and affording the Student and Parent with all procedural safeguards is how we ensure we are providing FAPE.



WG

Scenario 7: Free Appropriate Public Education



Your General Education Teacher Wants You to Know:

- I have no idea what FAPE means. I largely do what I'm told by the special education case manager.
- I didn't get very much of this in my EPP.
- Shouldn't all students be receiving a FAPE – what makes special education students different?



WG

Scenario 7: Free Appropriate Public Education



Don't Say:

Seriously? Didn't you attend the day 2, during the third hour, specifically the first 15 minutes that was allocated to special education, during the District's professional development activities when teachers were back on contract?



WG

Scenario 7: Free Appropriate Public Education



The Reason for the Concern:

- Under the IDEA, the state must ensure that FAPE is made available to all children residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. 34 CFR 300.101 (a).
- ALL students are entitled to FAPE - An IEP is how we ensure that students that receive special education or related services receive FAPE.



WG

Scenario 7: Free Appropriate Public Education



- *Cypress- Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245(5th Cir.– 1997) states that there are 4 factors a school district must meet to ensure that they are providing the student with FAPE.
 1. Whether there is an individualized program based on the student’s assessment and performance;
 2. Whether the individualized program is administered in the LRE;
 3. Whether the services are provided in a coordinated and collaborative manner by the key stakeholders;
 4. Whether the positive benefits are demonstrated both academically and non-academically.



Scenario 7: Free Appropriate Public Education



• *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 US 386 (U.S. 2017): The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”




Scenario 7: Free Appropriate Public Education





Putting it all together:


OTFD – I hear you say that you didn't benefit from the inservice that we held at the beginning of the year. I appreciate you being candid with me and asking me questions about your role in instruction for students with disabilities. I want to support you and am going to send you to an upcoming workshop at the Education Service Center designed for general education teachers on implementation of IEPs. I expect you to attend the workshop in its entirety and then to schedule an appointment with me the following week to discuss what you gained.







Scenario 8: Twice Exceptional Students (2e)


 

Scenario 8: Twice Exceptional Students 

You Say:



- Students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations.
- It is important to identify these twice exceptional (2e) students. A student is twice exceptional if the student is intellectually gifted and also qualifies for special education and related services.

Scenario 8: Twice exceptional students 

Your General Education Teacher Wants You to Know:

- I can't teach this student – they keep correcting me in front of the class.
- If the student is eligible for the gifted and talented program, why do they need special education services, too? There isn't any academic need, right?
- I'm not implementing accommodations in my AP class. The student can keep up or not. It would not be fair to other students.

Scenario 8: Twice Exceptional Students



Don't Say:

- Just give them more work.
- You should be maximizing their potential.
- You need to sharpen your skills before Young Sheldon takes over your class.



Scenario 8: Twice Exceptional Students



The Reason for the Concern:

- Even if there is no academic need, there may still be an educational need for specially designed instruction. For example, a gifted student who takes longer than peers to complete her classwork and homework may have processing issues that amount to a specific learning disability.

• Students may be masking the disability until the work becomes more challenging or difficult for them. Then, behavioral issues may emerge.



Scenario 8: Twice Exceptional Students



- As always, individualize the student's program based on the PLAAFP and the evaluation data!

- A District has no obligation to maximize an IDEA-eligible student's potential, even when the student is academically gifted.



Scenario 8: Twice Exceptional Students



A.B. v. Smith, 123 LRP 15903 (4th Cir. May 18, 2023)

- Student first became 504 eligible during the 2017-2018 school year as a student with ADHD.
- April 2018 - Parents provided a private psychoeducational evaluation and upon the IEP teams consideration, based upon the evaluative data, including the classroom observation, the Student's academic performance and information shared by the Student's mother and teachers, the IEP team determined the Student qualified for special education as a student with OHI - ADHD and SLD.



Scenario 8: Twice Exceptional Students



- The Student received special education inclusion support in his English, Math, Social Studies, and Science classes for the 2018-2019 school year. The team noted, the Student "is able to make progress in the general education setting with special education supports."



Scenario 8: Twice Exceptional Students



- During the 2018-2019, Student met his IEP goals despite his failure to earn A's in any of his classes, two of which were advanced courses.
- On August 30, 2019, the Parents and their attorney notified MCPS, in writing, that the Student would not attend MS for the 2019-2020 school year.
- Parents were unilaterally enrolling the Student in a private school and they requested that MCPS fund the unilateral placement. MCPS declined to pay for the Student's placement and offered an IEP meeting.



Scenario 8: Twice Exceptional Students

- The Student did not return for the 2019-2020 school year but was enrolled by parents in a private school.
- Student made As, Bs, and Cs in the private school, no classes were advanced classes.
- Parents filed DPH seeking reimbursement for the 2019-2020 school year and payment for the 2020-2021 school year. Parents' claim that the student needed to attend a smaller special education day school to make appropriate progress.



Scenario 8: Twice Exceptional Students

- The Hearing Officer and District Court judge disagreed and sided with the District.
- The 4th U.S. Circuit Court of Appeals then upheld a District Court decision that the student's IEP was reasonably calculated to provide FAPE.






Scenario 8: Twice Exceptional Students

Putting it all together:

OTFD –You expressed concern that the Student was being referred for a special education evaluation, noting the Student's exceptional IQ. You indicated that there is no need for accommodations/support for the Student. I fear that we may be overlooking our **child find responsibility**, which could result in a denial of FAPE and a claim of discrimination. Given the Student's behaviors and difficulties with organization and time management, the Student is suspected of having a disability. These concerns would support an **educational need** for special education if the evaluation does confirm the presence of a disability.






Scenario 9: Restraint

Scenario 9: Restraint

You Say:




- When and how a restraint is implemented is stated in the law.
- It is important that you are trained so that you are prepared if you need to engage in the restraint of a student with a disability.
- Don't call the SRO for routine behavior or discipline issues as it is a violation of state law and not within the educational supports that we implement for students.

Scenario 9: Restraint

Your General Education Teacher Wants You to Know:

- I am **so scared** to restrain a student; what if I hurt the student? What if I get sued?
- I am **so scared** of getting beaten up by a student.
- I am **so scared** of the parent – who said we “better not lay a hand” on her child.
- I am **so scared** that I could hurt the child or myself in the process of restraining a child.

Scenario 9: Restraint



Don't Say:

- Quit being a scaredy cat.
- You're going to need to get CPI trained quickly, because that kid is going to have to be restrained a lot.
- Getting hit is part of the job.



Scenario 9: Restraint



The Reason for the Concern:

The Texas Education Code and Texas Administrative Code provide limitations on the use of restraint.

- (1) Restraint must be limited to the use of such **reasonable force as is necessary to address the emergency.**
- (2) Restraint must be **discontinued at the point at which the emergency no longer exists.**
- (3) Restraint must be implemented in such a way as to **protect the health and safety** of the student and others.
- (4) Restraint **must not deprive the student of basic human necessities.**



Scenario 9: Restraint



Following the restraint, documentation must be completed to notify the principal and the parent of the restraint. It must include:

- Name of student
- **Name of individual administering restraint**
- Location of restraint
- Nature of restraint



Scenario 9: Restraint

- A **description** of the activity in which the student was engaged immediately preceding the use of restraint
- The behavior of the student that prompted the restraint
- The **efforts made to de-escalate the situation** and any alternatives to restraint that were attempted
- Observation of the student at the end of the restraint
- Information documenting parent contact and notification.

WG

Scenario 9: Restraint

Spring Branch Independent School District v. O.W.,
76 IDELR 234 (5th Cir. 2020)

The issue for the Court's consideration was whether the District's restraint of the Student 8 times, even though restraints were not listed as an accommodation in the IEP, resulted in a denial of FAPE.

WG

Scenario 9: Restraint

The District Court held that the restraints did not violate the Student's right to FAPE.

Key quote:

"There is no question the use of physical restraints is neither positive reinforcement nor consistent with avoiding confrontations or power struggles. However, Texas law expressly authorizes a local education agency to use physical restraints in an 'emergency' situation."

The student in this case had listed on his IEP positive reinforcement and avoidance of power struggles as two of his accommodations to address behaviors interfering with instruction.

WG

Scenario 9: Restraint



Each of student's restraints occurred after violent behavior and after the District had attempted to utilize at least SOME [not all] of the strategies enumerated in the student's IEP. After attempting the IEP strategies, the District determined that an emergency existed, and the restraint was necessary.

The Fifth Circuit Court concluded the 8 instances of restraint did not violate the student's IEP. The Circuit Court reasoned that the use of the restraints were necessary and were appropriate under Texas Law. Further, restraint is not appropriately included in a Student's IEP/BIP.



Scenario 9: Restraint




Putting it all together:

OTFD – You were required to restrain a student with disabilities today, and you were not yet certified to do so through CPI. State law requires that you be trained within 30 school days following the restraint. You expressed that you were frightened by the use of restraint. I am disappointed and concerned that you were not trained in the use of CPI before the beginning of the school year. However, I am going to support you by providing you with the opportunity to receive the training next week by our behavior specialist, who is a certified CPI trainer. I expect you to produce to me evidence of the completed training, as well as your certification, within two school business days following its completion.



Scenario 10: Reserved for Your Questions






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