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# **WELCOME TO THE 2018 MTBF&M FIRM WORKSHOP SCHOOL LAW UPDATE**

2018

*March 7, 2018 at the Pear Tree Estate, Champaign, IL*



MILLER, TRACY, BRAUN, FUNK & MILLER, LTD.

# REDUCTIONS IN STAFF IN THE WAKE OF ELLIOTT V. MADISON COUNTY

2018

David J. Braun

# Elliott v. Bd. of School Trustees Madison Cons. Schools

2018

- 7<sup>th</sup> Circuit Federal Case
- Evaluated whether an Indiana law requiring reductions in force to be conducted, in part, on the basis of evaluation ratings
  - Long-term tenured staff member (and former union president) was reduced in force

# Elliott v. Bd. of School Trustees Madison Cons. Schools

2018

- In order to determine whether the law disrupted tenure rights, the court evaluated:
  - (1) whether there is a contractual relationship;
    - YES
  - (2) whether a change in law impairs that contract; and
    - YES
  - (3) whether the impairment is substantial.
    - YES

# Elliott v. Bd. of School Trustees Madison Cons. Schools

2018

- The law, very much like SB7, was held Unconstitutional
- The 7<sup>th</sup> Circuit hears cases in Illinois, and binds Illinois school districts
- Thus, schools conducting reductions in force in compliance with 24-12 (SB7) are therefore risking a lawsuit challenging the Constitutionality of the resultant reductions.

# SB7 – Review

2018

- **Grouping 1 – CHANGED BY 98-513**
  - Must consist of each teacher **who is not tenured and** who (i) has not received a performance evaluation rating, (ii) is employed for one school term or less to replace a teacher on leave, **or (iii) is employed on a part-time basis.** "Part-time basis" for the purposes of this subsection (b) means a teacher who is employed to teach **less than a full-day, teacher workload or less than 5 days of the normal student attendance week, unless otherwise provided for in a collective bargaining agreement** between the district and the exclusive representative of the district's teachers.
    - **Board retains discretion** for dismissal
    - The trap – you must still evaluate EVERY teacher not in contractual service annually – no matter when they were hired and no matter what you plan to do with them.

# SB7 – Review

2018

- Grouping 2
  - NI and U in 1 of last 2 evaluations
    - Reduced in **performance order** (lesser performing dismissed first)
- Grouping 3
  - S or P teachers
    - Dismissed in reverse **seniority order**
- Grouping 4
  - 2/3 of last ratings are E
    - Dismissed in reverse **seniority order**

# So... What to do?

2018

- 1. Patience.
- 2. Don't couch a dismissal in a RIF or vice-versa.
- 3. Be honest with staff members – be direct, don't mince words.
- 4. Don't be “nice” in evaluation summative ratings – make sure that ratings are clear about results.
- 5. Understand that any reduction in force that does not happen in seniority order potentially puts a school district at risk of challenge pursuant to *Elliott*



# Evaluation Components

2018

- Every evaluation should have the following in every component:
  - **Facts** – What did you see?
  - **Rule** – What would a good teacher do?
  - **Directive** – What must the teacher do to succeed?
  - **How** – How does the teacher comply with your directive? In other words, how will you know whether or not the teacher complied?

# Evaluation Components

2018

- Use directive language
  - “You are *directed* to...”
  - “You *shall*...”
  - “You *must*...”
  - “I *expect* that you will....”
- Do not use suggestive language
  - “You might *consider*...”
  - “You *should*...”
  - “You *ought* to...”
  - “I might *suggest*...”
- *You are the boss – act like it!*

# Seniority

2018

- Seniority is not the same as tenure acquisition
- *Don't forget that a less senior employee within the classification of Grouping 3 or Grouping 4 has limited claim availability if everyone is in that grouping.*
- Don't agree with unions to "performance ordered" grouping assignments for 3 and 4.
  - The union is not your only plaintiff!



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# ***ENDREW F. – ONE YEAR LATER***

2018

Christine G. Christensen

# Andrew F.- Special Education Update

- *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (U.S. March 22, 2017). The U.S. Supreme Court ruled (in a unanimous decision) that an IEP must be reasonably calculated to enable a child to make progress that is appropriate in light of his circumstances.
- The Court's ruling arose out of a dispute over the IEPs developed for an elementary school student with autism. In holding that the student received FAPE despite his escalating behavioral problems, the 10th Circuit observed that the IEP team's modifications to the student's short-term objectives for second, third, and fourth grade showed he had received “some educational benefit.”
- The Supreme Court disagreed. The Court recognized that while its prior decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982), had used the phrase “some educational benefit”, it pointed out that the Rowley court had expressly declined to adopt a test for determining the substantive adequacy of the educational benefits provided under a given IEP.

# Andrew F.

- Justice Roberts wrote:
  - Rowley had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. That case concerned a young girl who was progressing smoothly through the regular curriculum. If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.
  - Of course this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the "merely more than de minimis" test applied by the Tenth Circuit. It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than de minimis progress for those who cannot. .

# Andrew F.

- Justice Roberts continued-
  - We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." Rowley, 458 U.S., at 206.
  - At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decisions of critical importance to the life of a disabled child. The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. See §§ 1414, 1415; *id.*, at 208-209. By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

# Andrew F. – Making an “Estimate” of Present Levels

- CHIEF JUSTICE ROBERTS: So how does that actually work in -- in practice? I mean, I understand in the Rowley standard, you're dealing with someone who has a disability that is readily addressed so that they can keep track with grade progress. But if you're out of that realm where that is not a realistic goal in light of the child's potential, how do you decide what it is? You're sitting -- you're sitting down at the meeting, and how do you decide –
- MR. GORNSTEIN: All right. So you -- what the -- the IEP provisions tell you where to start. You look at the -- where the child currently is in terms of academic performance, what are their present levels of achievement. Then you examine the disability and you ask to what extent has this impeding progress in the general curriculum. And then what you do is you basically make an estimate –
- CHIEF JUSTICE ROBERTS: Is there somebody at that meeting? I mean, you have the parents –
- MR. GORNSTEIN: You have expert -- you have educational experts who will say, make an estimate of how much progress towards grade level standards that child can make in light of where they are now and the -- the nature of the disability. Andrew F., Oral Argument (January 11, 2017), at 24-25 [Emphasis added].



# Andrew F- Making an “Estimate” of Present Levels

- Each IEP must contain a statement of the child’s “present levels of academic achievement and functional performance,” including—
  - (i) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - (ii) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities. 34 C.F.R. §300.320 (a)(1)

# Andrew F. – Making an “Estimate” of Present Levels

- *Lathrop R-II School District v. Gray*, 611 F.3d 419, 54 IDELR 276 (8th Cir. 2010). The Eighth Circuit affirmed a decision by the lower court in favor of the school district, after the parents claimed that the school district denied the middle schooler with autism FAPE by failing to address his behavioral issues.
- The student exhibited problematic behaviors, including finger biting, hand flapping, loud outbursts, and sexual behaviors.
- The court’s ruling had overturned a hearing officer's finding in favor of the parents, and the IHO’s finding was based on the fact that the IEPs were deficient because they lacked “baseline or starting point data” - and therefore there was no way to measure progress. The federal court (as upheld by the Eighth Circuit) held that the evidence showed the “present levels of educational performance” were sufficiently detailed as to make the goals measurable and meaningful.

# Andrew F. – Making an “Estimate” of Present Levels

- PRACTICAL TIPS FOR WRITING DEFENSIBLE PRESENT LEVELS:
  - Write the present levels, and then write the goals.
  - The present levels must be current, and should also make reference to the most recent evaluation.
  - Present levels should be written with specificity, including both qualitative and quantitative measures of the student’s performance, such that a “stranger” could write an appropriate goal for the student based on the present level statements.
  - There should be a clear and objective link between the present levels and the goals, benchmarks, and objectives.
- Questions and Answers on Andrew F. 71 IDELR 68 (OSEP, December 7, 2017): [Question 10 Page 4] “In determining whether an IEP is reasonably calculated to enable the child to make progress, the IEP Team should consider the child’s previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child’s progress, and additional information and input provided by the child’s parents.”

# Endrew F- “Appropriately Ambitious”

- “But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” – Endrew F. at 1000.

# Andrew F. – “Appropriately Ambitious”

- ***Tamalpais Union High School District v. D.W.***, 70 IDELR 230 (N.D. Cal., September 21, 2017). The court held that the school district denied FAPE to a high schooler with disabilities when it developed an IEP that failed to specify how much of his speech and language therapy would be provided in a group setting. However, the court upheld the school district’s decision related to the provision of counseling services to the student.
- The ALJ determined that D.W. “did not establish that in June 2014 he required counseling as a related service in order to benefit from his education.” The Court accords that finding deference if the ALJ was “thorough and careful,” *Antelope Valley*, 858 F.3d at 1194 (quoting *Union Sch. Dist.*, 15 F.3d at 1524), and if the record “supports the ALJ’s opinion,” *id.* at 1194 n.1. That standard is met here. **As the ALJ noted, D.W. failed to prove—or indeed, offer any evidence—that he “needed a regularly occurring therapeutic counseling service in order to benefit from special education.”** D.W. offered evidence of, *inter alia*, an episode of hair-pulling, see AR 000263 (teacher’s report that D.W. “developed the bad habit of pulling his hair out,” resulting in “a circular bald spot that had a diameter of two inches”); the testimony of his father, who stated his belief that a “counselor at Stanbridge was necessary for D.W. to benefit at that school site,” and the testimony of his seventh-grade teacher, who described D.W.’s defiance as a student and recalled that she “[o]ften...would have to clear the classroom,” so counselors could come in to “support him and to try to get him back on track,” AR 000775. The ALJ gave this evidence less weight compared to the testimony of Meredith Hanrahan, who assessed D.W. for his IEP in 2014 and who has a degree in school psychology and credentials in school psychology and special education. **Ms. Hanrahan testified that, at the time of the assessment, she had received no information from D.W.’s private school that indicated he was undergoing counseling as a related service or that such counseling was necessary.** Thus, the Court concludes, based on the record, that the individualized IEP without counseling as a related service satisfied the requirements of the IDEA in light of D.W.’s circumstances. See *Andrew F.*, 137 S.Ct. at 1001.

# Endrew F- “Appropriately Ambitious”

- *Saucon Valley School District*, 117 LRP 44535 (Pa. SEA, September 10, 2017). Among other issues in this case, the hearing officer addressed the educational programming regarding the student’s needs in reading and written expression, as the Parent emphasized the District’s alleged failure to “close the gap” between the student’s performance in those areas of disability and that of grade-level peers.
- However, relying on Endrew F., the hearing officer held that the IDEA demands a program that is “appropriately ambitious in light of [the child’s] circumstances..., not one that is optimal.” The hearing officer went on to say that while the Parent’s desire for such an outcome is certainly understandable, an LEA “is not required to maximize a handicapped child’s potential ‘commensurate with the opportunity provided to other children.’” (quoting Rowley, 458 U.S. at 186). The hearing officer state that: “Goals must aim to be Legal Update - 2018 Page 27 challenging, but need not be (and indeed should not appear to be) insurmountable. The District could not be expected to eliminate Student's disability or to guarantee that Student would attain any particular level of proficiency in Student's areas of weakness, including basic reading skills and written expression.” Accordingly, the fact that a gap remained between the student’s abilities and those of peers in reading and written expression skills did not amount to a denial of FAPE: Moreover, the District did address those specific academic needs. The initial IEP included goals for reading comprehension, reading fluency, and written expression. The goals were revised over time as Student's needs changed and Student made progress with respect to those skills, with high school level reading materials used during the senior year.

# Andrew F.- “Appropriately Ambitious”

- PRACTICAL TIPS FOR WRITING MEASURABLE GOALS:
  - A goal should be written for what the team expects the student to achieve within a year, so that the same goal is not repeated year to year. It must be attainable, but ambitious.
  - A student’s failure to make measurable progress towards goals, and the team’s repeating IEP goals that the student has still not mastered, can be evidence that the district’s IEP is flawed.
  - Goals should be expressed in objective terms so that the team can make an analysis of whether the child was making progress.
  - An IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student’s progress, and determine the student’s progress was satisfactory. See In re: City of Chicago School District 299, 110 LRP 70455 (IL SEA 2010).

# Andrew F. Compliance

- Substantive Compliance?
  - Was the evaluation preceding the IEP's development thorough and used appropriate instruments?
  - Are the present levels statements based on current data and data reflected in the evaluation information gathered to create the IEP?
  - Do the statements reflect the extent to which the child's disability affects the child's ability to be involved and participate in the general education curriculum?
  - Are there goals in state content standard areas? If so, are the goals aligned with the state content standards?
  - Can the IEP Team explain the basis for the projected progress?
  - Are the IEP services sufficient to allow the child to progress toward those goals?
  - Is the least restrictive environment determination based on considerations like service minutes and progress toward IEP goals?



# Andrew F.- Compliance

- Educational Benefit/Evidence of Progress?
  - Did the student meet each of his or her IEP goals? If not, was there progress?
  - What is the evidence supplied for progress on each IEP goal? Data collected?
  - Do we have “apples-to-apples” data to compare from year to year?
  - Did the student make progress in the general curriculum? Pass classes? Advance to the next grade? Standardized tests? • How about social performance? Behavior? Functional skills?
  - If no progress on a goal, what accounts for it?
    - Methodology issues?
    - Attendance?
    - Wrong goal?
  - If we aren't seeing evidence of progress, what are we doing in response?

# Andrew F- A Spectrum of Expectations

- As we observed in Rowley, the IDEA “requires participating States to educate a wide spectrum of [children with disabilities],” and “the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between.” - Andrew F. at 999.

# Andrew F- A Spectrum of Expectations

- *Board of Education of Albuquerque Public Schools v. Maez*, 70 IDELR 157 (D. New Mexico, August 1, 2017). The Petitioners asserted that the IEP provided for a child diagnosed with autism and a global developmental delay was inappropriate because it did not provide research-based, autism-specific special education (specifically, ABA) and speech-language services.
- The district court first noted that a school district is not required to offer and implement the particular program and services preferred by a parent. The court concluded that the IEP incorporated numerous teaching techniques that were “in total appropriately ambitious and likely to provide M.M. with some educational benefit in light of his unique circumstances.” The court observed that the school district “employed acceptable methodologies that took into account M.M.’s needs as a student with autism as well as his other significant global learning disabilities, and properly designed an IEP around these complex needs.”
- It also concluded that the communication goals and strategies in place for the student were appropriately ambitious in light of his circumstances. **The court observed that “unlike a typical child with autism[,] ... he had no functional language system to begin with” so the district developed a picture exchange communication system that took into account his unique needs. The court found that “M.M. is not like a typical student with autism, and the record is brimming with evidence that he takes a tremendous amount of time to make progress toward even the smallest goals... Thus, in light of these unique circumstances, the Court finds M.M. was making some meaningful progress, even if it was not the exact type of progress that Parents would have wanted.** See *Andrew F.*, 137 S. Ct. at 998 (quoting *Rowley*, 458 U.S. at 192) (“[T]he IDEA cannot and does not promise ‘any particular [educational] outcome.’”).

# Andrew F- A Spectrum of Expectations

- *S.B. v. New York City Department of Education*, 70 IDELR 221 (E.D. NY, September 29, 2017). Given that **a second-grader with a speech and language impairment was unable to recognize many letters of the alphabet, a New York district erred in developing reading goals that called for her to identify main ideas, analyze the motivations of characters, and use “context clues” to improve her vocabulary.** The District Court held that the inappropriate goals resulted in a denial of FAPE.
- The Court noted that a classroom observation conducted one month before the IEP meeting revealed that the student was unable to write words. Instead, she was learning to write the sounds that she heard within words. For example, when describing a recent field trip, the student wrote “SPMKT” for “supermarket” and “I S IKM” for “I saw ice cream.” ***Nonetheless, the judge observed, the IEP did not include any goals related to learning the alphabet.*** The Court agreed with the parents that the proposed reading goals were far too advanced for the student. “There is no evidence ... that interpreting and critical thinking skills are goals particularized to [the student’s] individual needs and disability,” the judge wrote. The judge pointed out that the proposed IEP failed to identify many of the student’s deficits, an omission he attributed to the district’s failure to conduct a three-year reevaluation. Furthermore, the district representative was unable to explain how the annual goals related to the student’s unique disability-related needs.
- Holding that the IEP was not designed to enable to the student to make appropriate progress, the court ordered the district to reimburse the parents for any private school expenses it had not already paid under the IDEA's stay-put provision

# Andrew F

- And as the Chief Justice wrote in *Andrew F.* –
  - While Rowley declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: **To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.**
  - The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.*, at 207. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. *Id.*, at 208-209. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206-207.



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# INTRODUCTION TO SCHOOL SAFETY ISSUES

2018

Brandon K. Wright

# Awareness

2017

- ❖ According to the findings of the U.S. Department of Education's *Safe School Initiative*:
  - ❖ Incidents of targeted violence at school are rarely sudden, impulsive acts.
  - ❖ Prior to most incidents, other people knew about the attacker's idea and/or plan to attack.
  - ❖ Most attackers did not threaten their targets directly prior to advancing the attack.
  - ❖ There is no accurate or useful "profile" of students who engage in targeted school violence.
  - ❖ Most attackers engaged in some behavior, prior to the incident, that caused concern or indicated a need for help.
  - ❖ Most attackers were known to have difficulty coping with significant losses or personal failures. Many had considered or attempted suicide.
  - ❖ Many attackers felt bullied, persecuted, or injured by others prior to the attack.
  - ❖ Most attackers had access to and had used weapons prior to the attack.
  - ❖ In many cases, other students were involved in some capacity.

# Creating Connections between Adults and Students

2017

- ❖ In a climate of safety, students have a positive connection to at least one adult in authority. Each student feels that there is an adult to whom he or she can turn for support and advice if things get tough, and with whom that student can share his or her concerns openly and without fear of shame or reprisal.
- ❖ Schools in which students feel able to talk to teachers, deans, secretaries, coaches, custodians, counselors, nurses, school safety officers, bus drivers, principals, and other staff support communication between students and adults about concerns and problems.
- ❖ Schools that emphasize personal contact and connection between school officials and students will take steps to identify and work with students who have few perceptible connections to the school.



# Threat Assessment Model

2017

- ❖ **Notice of a Possible Threat:** Threat assessment commences with notice of a potential threat.
- ❖ **Timely Focus on Assessment:** When a potential threat is examined in hindsight, school district staff often raise the issue of workload as an excuse for delays or outright failure to message the possible threat up the chain of command or to engage in initial assessment. However, the importance of taking a threat seriously must be conveyed to all staff by school district leadership.

# Threat Assessment Model

2017

- ❖ **Gathering of Information** The process of gathering information is generally necessary to assess context for a possible threat.
  - ❖ For instance, a tweet to numerous persons enclosing a picture of a firearm and a desire to murder a certain group of student peers that, once confirmed to be from the student in question, resulted in emergency removal, modified school scheduling, and law enforcement intervention. Some concerns over particular students or conduct may grow steadily over time. Many possible threats will require further investigation, perhaps even to determine the very existence of a threat.
- ❖ **Determine Response to Alleged Threat and Student Outcomes**
  - ❖ Student discipline
  - ❖ Support and/or safety plan
  - ❖ Assess placement in light of continued concerns

# Threat Assessment Model

2017

## ❖ **Emergency Removal**

- ❖ Where there is a legitimate concern over safety, the student causing that concern should be removed from school as much as possible within the bounds of the law.
- ❖ Law enforcement should be contacted.
- ❖ Where a student or staff member is a specific target, any threat or safety concerns should be disclosed in an appropriate fashion and reviewed. Enlisting the support of parents for the removed student is recommended as this can avoid issues caused by time limits for removal by agreeing to alternative placement (online schooling, alternative learning, etc.) while full assessment is completed or support/supervision plans perfected.

# Threat Assessment Model

2017

## ❖ **Independent Evaluation of a Student**

- ❖ Whenever a student is removed from a school environment over concern related to a possible threat, confidence should be pursued that the threat has been reduced to an acceptably low level before re-entering school.
- ❖ Normally, an evaluation is associated with a process of rescinding or modifying a return to the school environment after an emergency removal. It often can be something provided as a part of the resolution of a criminal cause of action via plea.

# Threat Assessment Model

2017

- ❖ **Messaging to staff, student, parents, involved stakeholders.**
  - ❖ Initiating a process in a school district should involve some level of tiered reporting and assessment to the site and central administration, such as a Critical Response Team (CRT), Emergency Response Team (ERT) or Threat Assessment Team (TAT).
  - ❖ Normally this occurs via email, but may also occur via text, instant messaging, or conference call where infrastructure is developed.
  - ❖ Priority of notification is usually conducted on a case by case basis, where low level disclosures may not mandate a full initiation of process (i.e. threat of low level harm) and more pronounced merit full deployment (i.e. threats to kill).

# Final Comments and Reminders

2017

- ❖ Review and revise, as appropriate, school district plan(s) and training related to suicide prevention and crisis intervention.
- ❖ Consider special education identification, services, and non-discriminatory practices and policies.
- ❖ Educate school administrators and counselors on the duty to warn.
- ❖ Collaborate with mental health professionals and develop best practices for sharing data responsibly.



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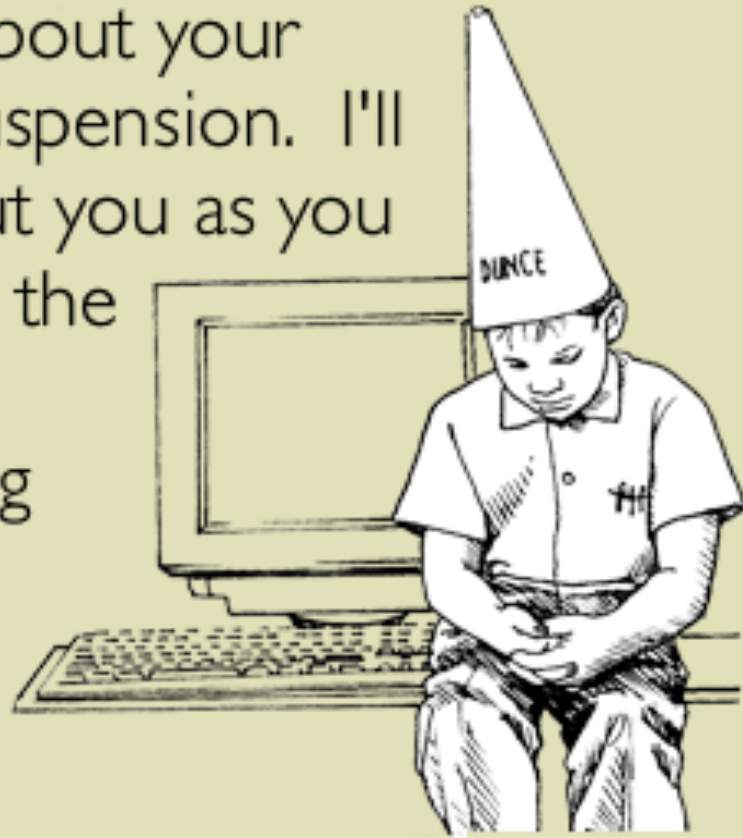
# SB100 – UPDATES IN PRACTICE

2018

Luke M. Feeney

# SB100 and Student Discipline

I sorry to hear about your out-of-school suspension. I'll be thinking about you as you spend all day on the couch in your underwear eating Doritos.



your  cards  
someecards.com



# SB 100 (P.A. 99-0456)

- Changes to Student Discipline
- Effective September 15, 2016
  
- SB 100 restricts the authority of school districts to suspend and expel students and imposes new requirements in those cases where school removal will still be allowed.
  
- Policy:
  - The number and duration of suspensions and expulsions shall be limited to the greatest extent practicable.
  - It is recommended that suspensions and expulsions be used only for legitimate educational purposes and that school officials consider forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions.

# SB 100 (P.A. 99-0456)

- Once a disciplinary event is over, how can a district prove the student's "continuing presence" is a substantial disruption?
- Can districts meet the "continuing presence" standard for a student with no history of prior misconduct?

# Zero Tolerance

2016

Schools must consider, in disciplining a student:

- The **egregiousness** of conduct;
- The **history** or record of the student's past conduct
- The likelihood that such conduct will affect the delivery; of educational services to **other children**;
- The **severity** of the punishment; and
- The **interest** of the child.
  - *Robinson v. Oak Park and River Forest High School*, 213 Ill. App. 3d 77 (1st Dist. 1991) (emphasis added).

# What Does the Early Data Say?

	<b>15-16 (Pre SB100)</b>	<b>16-17 (Post SB100)</b>
Out-of-School Suspensions	<b>124,361</b>	<b>98,043</b>
White	31,762	22,212
Students of Color	92,599	75,831
Expulsions	<b>677</b>	<b>535</b>
White	205	132
Students of Color	472	403

# SB100 in Practice

- How is it working?
- What is working? Success stories?
- Major hurdles?
- Ideas for improvement?



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# THE INTERSECTION OF STUDENT THREATS AND SPECIAL EDUCATION

2018

Brandon K. Wright

# Emerging Trends

2016

- Recent NPR Report suggests that **1 in 5** public school students have a mental health disorder.



# Emerging Trends

2016

☐ PTSD

☐ Anxiety

☐ OCD

☐ Bipolar

☐ ADHD

☐ Autism

Spectrum

Disorder

☐ Depression

☐ Mood

Disorder



# Emerging Trends

2016

□ *The same NPR Report suggests that over **80%** of public school students with mental health disorders receive **no treatment, no counseling/therapy, no medication.***

# The Role of the School

2016

□ ***So what is our role?***



# Child Find

2016

- ❖ Search out and find.
- ❖ Educate staff on signs that student might have a disability.
- ❖ Playground supervisors, teachers, principals, parents, etc.
- ❖ Be **alert** but not **paranoid**.

# Child Find

2014

- *Jana K. v. Annville Cleona School District* (M.D. Pa. 2014).
- A parent's failure to notify a Pennsylvania district that a physician had diagnosed his teenage daughter with depression did not let the district off the hook for failing to conduct an IDEA evaluation. The District Court held that the district's knowledge of the student's declining grades, frequent visits to the school nurse, and acts of self-harm were sufficient to trigger the district's child find duty.

# Eligibility

2016

- ❖ Consider both Section 504 and IDEA.
- ❖ Remember the broad definition of disability under Section 504 post-ADAAA.
- ❖ Consider Special Education when the mental health issues require resources beyond general education.
  - ✓ **OHI**
  - ✓ **ED**
  - ✓ **Autism**

# Legal Update

2016

- ***M.P. v. Aransas Pass Independent School District* (S.D. Tex. 2016).** Evidence that a student with an impairment has made non-trivial educational progress after receiving general education interventions is a strong indicator that he does not require IDEA services. Although the student here had some behavioral issues, including disruptive and threatening conduct and two instances of attempted elopement, and diagnoses of ADHD and mood disorder, district employees managed those behaviors using interventions available to all students. Their success helped convince the court that the student did not have an educational need for IDEA services.

# Programming for Mental Health

2016

- ❖ Are we focusing too much on “behavior” and not enough on a therapeutic focus?
- ❖ Does an “ED program” make sense for all students with emotional disabilities?
- ❖ Are we limiting the approach when a student’s mental health leads to a 504 Plan only?

# Programming for Mental Health

2016

- ❖ How are we successfully integrating into the Least Restrictive Environment?
- ❖ Tiered Support?
  - ✓ ***RtI for Therapeutic Approaches***
- ❖ Training of school personnel?



# LRE

2016

- *Troy School District v. K.M.*, (E.D. Mich. 2015). **The fact that a 13-year-old boy with Asperger syndrome, ADHD, and ODD had a tendency to become violent without warning did not justify a Michigan district's decision to place the student in a center-based program for children with emotional disturbances. Relying on testimony from psychologists and autism experts, the District Court held that the student could have made educational progress in a general education setting with the provision of a one-to-one clinical psychologist or psychiatrist.**

# Lack of Resources

2016

- ❖ There is a vacuum of effective or appropriate supports in Illinois outside of the school setting.
- ❖ Parents often may not know what to look for or where to turn.
- ❖ State agencies are over-burdened, under-funded, and limited in focus.

# Duty to Warn and Crisis Intervention

2017

- ❖ **Establishing Authority to Conduct an Inquiry or Investigation**
  - ❖ A formal policy authorizing school officials to conduct a threat assessment should cover the following topics:
    - ❖ the purpose and scope of the policy;
    - ❖ the role of educators and the threat assessment team in relation to the role of law enforcement;
    - ❖ the identity of, and delegation of authority to, school officials concerning determination that a threat assessment inquiry or investigation should be pursued;
    - ❖ the definition of the threshold of concern for initiating a threat assessment inquiry or investigation, i.e., a description of the nature and extent of behavior or communication that would trigger a threat assessment inquiry or investigation;

# Duty to Warn and Crisis Intervention

2017

- ❖ **Establishing Authority to Conduct an Inquiry or Investigation**
  - ❖ A formal policy authorizing school officials to conduct a threat assessment should cover the following topics (cont.):
    - ❖ the description of the types of information that may be gathered during the assessment;
    - ❖ the designation of the individuals or group of individuals who would be responsible for gathering and analyzing information; and
    - ❖ the steps and procedures to be followed from initiation to conclusion of the threat assessment inquiry or investigation.

# Information Sharing- School Threat Assessment Process

2017

- ❖ It is the responsibility of the threat assessment team to gather information from what may be multiple sources—teachers, parents, friends, guidance counselors, after-school program staff, part-time employers, and others.
- ❖ Once information is gathered from the various sources contacted during a threat assessment inquiry, the threat assessment team may wish to explore options for storing this information in an accessible format.
- ❖ The team likewise may wish to consider keeping the information in a central location.

# Legal Considerations re: Information Sharing

2017

- ❖ **Federal Law (FERPA):** FERPA does allow for various exceptions to privacy protections covering access to student records, specifying situations and conditions under which a school may disclose information from a student's education records without consent.
- ❖ **Health and Safety Emergencies:** FERPA provides that schools may disclose information from a student's education records in situations where there is an immediate need to share that information in order to protect the health or safety of the student or others. Under this exception, schools must define the term "health or safety emergency" narrowly and are permitted to disclose information from education records only to those individuals who need the information in order to protect the student and others.

# Legal Considerations re: Information Sharing

2017

- ❖ **State Law (ISSRA):** ISSRA also allows for various exceptions to privacy protections covering access to student records, specifying situations and conditions under which a school may disclose information from a student's education records without consent.
- ❖ **Emergency Release of Information** (23 Ill Admin. Code 375.60): Information may be released without parental consent, in connection with an articulable and significant threat to the health or safety of a student or other individuals, to appropriate persons if the knowledge of the requested information is necessary to protect the health or safety of the student or other individuals, provided that the parents are notified, no later than the next school day after the date that the information is released, of the date of the release; the person, agency, or organization receiving the information; and the purpose of the release.

# Threat Assessment and Duty to Warn

2017

- ❖ *What should happen when a student comes to attention for saying something or behaving in a manner that causes concern, as in the following instances?*
  - ❖ *"The kids are saying that Johnny told his friends not to go to the cafeteria at noon on Tuesday because something big and bad is going to happen."*
  - ❖ *Marty, who has appeared withdrawn and irritable the past few weeks, handed in a story about a student putting a bomb in an empty school.*
  - ❖ *Sandy brought bullets to school to show friends.*
  - ❖ *Rafael, who got pushed around again after gym class, stormed out in tears, shouting "You're all going to pay!"*



# Threat Assessment Model

2017

## ❖ **Independent Evaluation of a Student**

- ❖ Whenever a student is removed from a school environment over concern related to a possible threat, confidence should be pursued that the threat has been reduced to an acceptably low level before re-entering school.
- ❖ Normally, an evaluation is associated with a process of rescinding or modifying a return to the school environment after an emergency removal. It often can be something provided as a part of the resolution of a criminal cause of action via plea.

# Threat Assessment Model

2017

- ❖ **Messaging to staff, student, parents, involved stakeholders.**
  - ❖ Initiating a process in a school district should involve some level of tiered reporting and assessment to the site and central administration, such as a Critical Response Team (CRT), Emergency Response Team (ERT) or Threat Assessment Team (TAT).
  - ❖ Normally this occurs via email, but may also occur via text, instant messaging, or conference call where infrastructure is developed.
  - ❖ Priority of notification is usually conducted on a case by case basis, where low level disclosures may not mandate a full initiation of process (i.e. threat of low level harm) and more pronounced merit full deployment (i.e. threats to kill).

# Threat Assessment- Legal Update

2017

- ❖ **M.C. and R.C. ex rel. v. Arlington Cent. Sch. Dist., No. 11-CV-1835, 2012 WL 3020087 (S.D.N.Y. 2012)**: School district did not discriminate against IEP student whom they believed to be suicidal when the district sent the student to the hospital for evaluation in ambulance over the parent's objection.

# Threat Assessment- Legal Update

2017

- ❖ **Boston (MA) Public Schools, 53 IDELR 199 (OCR 2009)**: School told parent to pick up son who expressed suicidal ideation and to have him psychologically evaluated before he could return to school. District had a policy that students returning from “emergency treatment for suicide intervention must bring a letter from an appropriate medical/mental health provider.” Student was denied re-entry to school until he could provide such a letter and missed a total of 17 school days without any educational services.
- ❖ OCR Concluded: Student was excluded from school based on his failure to obtain a medical clearance with regard to a suicide risk that reasonably could have been related to his disability. Student’s exclusion from school for 17 days constituted a significant change in placement. When a school takes action with respect to a significant change in placement, the district must conduct an evaluation of the student. 34 CFR 104.35. OCR mandated that for students with disabilities who will be absent for more than 10 days, the team will consider whether the student can return to school and if not, whether any services or accommodations are necessary to provide FAPE while student is out.

# Threat Assessment – Legal Update

2017

- ❖ ***Boston (MA) Public Schools, 53 IDELR 199 (OCR 2009) (cont.)***: OCR also stated that students who are not already determined eligible under Section 504 will be referred to the student support team for consideration of whether as a consequence of the suicide threat, the student is believed to need additional support, accommodations or services.
- ❖ District agreed to remove the policy that required a note from a mental health expert before a student could return to school.
- ❖ Per OCR, District should have convened team to consider data relating to student's needs. Information considered by the team could include:
  - ❖ whether further evaluations were necessary
  - ❖ whether any modifications to the student's program and placement were required
- ❖ if the student was determined unable to return to school, whether any services or accommodations were necessary to provide FAPE while the student remained out of school



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# MANAGING STUDENT PROTESTS

2018

Luke M. Feeney

# Managing Student Protests

2018

**Students plan to protest on campus by wearing armbands, pins, t-shirts or other expressive clothing on a specific day or series of days. There is no planned activity to congregate or group together.**

**Law:** Unless the clothing or pins are disruptive to the school setting or order, the schools cannot regulate the political expression.

**Consider:** Reminding schools and teachers about the right of students to protest in ways that are not disruptive to the school setting. Authorize teachers to encourage appropriate conversation about dissent, civics, and the right to petition government in democratic societies.

# Managing Student Protests

2018

**Students plan to leave class at a specific time, and congregate on school property for a portion of the day. Some refer to this as a walk-in.**

**Law:** Generally, students leaving class is considered disruptive to the educational environment. The schools may regulate this activity.

**Consider:** Deciding in advance whether the activity will be permitted by the school. If so, ensure the appropriate staff is assigned to monitor the activity so it happens in an orderly fashion. Remind teachers and staff that they should remain neutral about the viewpoints expressed by students. Communicate to parents in advance, if possible, or shortly after an event occurs.

Be careful about creating a limited public forum, which limits a district's ability to regulate speech, and opens the possibility of a viewpoint discrimination claim.



# Managing Student Protests

2018

**Students plan to leave class at a specific time, and depart campus, but may congregate on adjoining public sidewalks or other public, non-school property.**

**Law:** Generally, students leaving class is considered disruptive. Schools may regulate this activity.

**Consider:** Working closely with local officials, including law enforcement and community leaders, about safety concerns associated with students congregating on nearby property. Also consider communicating with the school community about district policy for this and other “walk out/in” activity.

**Note:** Remember that schools stand in *loco parentis* during school hours. Keeping in mind the ages, grade levels, and special needs of students, determine whether parent releases are needed for students planning to walk out. Consult your school attorney member of COSA to determine appropriate steps.

# Managing Student Protests

2018

**Students do not show up for class on a specific preplanned day as a protest.**

**Law:** Generally, truancy is addressed through state law and district policy, and mass preplanned absence would be considered disruptive. It is likely schools will treat these absences as unexcused.

**Consider:** Clearly notifying the school community about how absences will be treated under these circumstances, and apply the same rules to similar activities. If exceptions are granted on a temporary basis, be clear about the reasons and be careful about establishing a precedent.

# Managing Student Protests

2018

**Students walk out of class, and walk in to the administrative office to voice a concern. The district is unaware of this plan ahead of time.**

**Law:** Again, students interrupting class time is considered disruptive, as is interruption of office operations. The schools may regulate this activity.

**Consider:** Addressing mass walk out/in activity by students in permanent board policy and clearly communicating that policy to staff.

# Managing Student Protests

2018

**Students advocate political positions and encourage school walk-outs or other school-based demonstrations on social media.**

**Law:** A school's ability to address online speech will be dependent on disruption or a reasonable forecast of disruption.

**Consider:** Whether the social media speech by students has caused actual or reasonably foreseen disruption, and whether district policy clearly addresses speech via social media.

# EFFECT OF TRAUMA ON STUDENT MANAGEMENT ISSUES

2018

Christine G. Christensen

# Trauma

- **Trauma** is the emotional, psychological, and physiological damage caused by heightened stress during a threatening, violent, or life-changing experience. Bradshaw, C. P., Mitchell, M. M. & Leaf, P. J. Examining the effects of schoolwide positive behavioral interventions and supports on student outcomes results from a randomized controlled effectiveness trial in elementary schools. *J. Posit. Behav. Interv.* 12, 133–148 (2010).
- **Trauma** might be caused by physical abuse, but it could also come from an over-extended caregiver, food insecurity, unemployment, prejudice, crowded living, evictions, unsafe neighborhoods, witnessing violence, or other stressors — many of which are common experiences of children living in poverty. Bradshaw, C. P., Koth, C. W., Bevans, K. B., Ialongo, N. & Leaf, P. J. The impact of School-Wide Positive Behavioral Interventions and Supports (PBIS) on the organizational health of elementary schools. *Sch. Psychol. Q.* 23, 462 (2008).

# Trauma

- Much of the foundational research in the area of trauma has been referred to as Adverse Childhood Experiences (ACEs). The CDC-Kaiser Permanent Adverse Childhood Experiences (ACE) Study defined ACEs as:
  - Abuse:
    - Emotional Abuse: A parent, stepparent, or adult living in your home swore at you, insulted you, put you down, or acted in a way that made you afraid that you might be physically hurt.
    - Physical abuse: A parent, stepparent, or adult living in your home pushed, grabbed, slapped, threw something at you, or hit you so hard that you had marks or were injured.
    - Sexual abuse: An adult, relative, family friend, or stranger who was at least 5 years older than you ever touched or fondled your body in a sexual way, made you touch his/her body in a sexual way, attempted to have any type of sexual intercourse with you.
  - Household Challenges:
    - Mother treated violently: Your mother or stepmother was pushed, grabbed, slapped, had something thrown at her, kicked, bitten, hit with a fist, hit with something hard, repeatedly hit for over at least a few minutes, or ever threatened or hurt by a knife or gun by your father (or stepfather) or mother's boyfriend.

# Trauma

- Household Challenges:
  - Household substance abuse: A household member was a problem drinker or alcoholic or a household member used street drugs.
  - Mental illness in household: A household member was depressed or mentally ill or a household member attempted suicide.
  - Parental separation or divorce: Your parents were ever separated or divorced.
  - Criminal household member: A household member went to prison.
- Neglect:
  - Emotional neglect: Someone in your family helped you feel important or special, you felt loved, people in your family looked out for each other and felt close to each other, and your family was a source of strength and support. (items were reverse-scored to reflect the framing of the question).
  - Physical neglect: There was someone to take care of you, protect you, and take you to the doctor if you needed it (items were reverse-scored to reflect the framing of the question)., you didn't have enough to eat, your parents were too drunk or too high to take care of you, and you had to wear dirty clothes.



# Trauma

- According to the 2016 National Survey of Children's Health ([http://www.cahmi.org/wpcontent/uploads/2017/10/aces\\_brief\\_final.pdf](http://www.cahmi.org/wpcontent/uploads/2017/10/aces_brief_final.pdf))-
  - The rate of children across the U.S. with one or more ACEs varies from 38.1% to 55.9%.
  - The rate of those children with two or more ACES varies from 15% to 30.6%.
  - Most children with any one ACE had at least one other, ranging from 54.4% to 95.4%.
  - 58% of children with one or more ACES live in homes with incomes less than 200% of the federal poverty level.

# Impact of Trauma

- Traumatic events are external, but they quickly become incorporated into the mind (Terr, 1990) and the body (Van Der Kolk, 1991)

# Trauma

- **School Age Group Behavior School Performance**
  - **Preschool**
    - Behaviors: Bed-wetting, thumb sucking, regressing to simpler speech,
    - School Performance: Lack of developmental progress, decreased attention, unexplained clingy behavior, separation anxiety, temper tantrums, becoming withdrawn or subdued, difficulty falling or staying asleep, nightmares, angry outburst, fears, distress absences.
  - **Elementary**
    - Behaviors: Stomach aches, headaches, pain, irritability, aggression, anger, inconsistency, whining, moodiness, increased activity level, withdrawal, statements and questions about death and dying, difficulty with authority or criticism, anxiety, fear, worry, avoidance behavior, emotional numbing
    - School Performance: Reduced academic performance, impaired attention and concentration, more school absences
  - **Middle/High**
    - Behaviors: Feelings of Shame and guilt, fantasies about revenge and retribution, self-destructive or accident-prone behaviors, recklessness, shifts in interpersonal relationships, irritability, withdrawal, avoidance behavior, emotional numbing
    - School Performance: Changes in academic performance, attendance, and behavior
- **Source: “Addressing Children’s Trauma: A Toolkit for Ohio Schools” Children’s Defense Fund of Ohio, July 2015.**

# Trauma

- Seven Key Elements of Trauma-Informed Systems (National Child Traumatic Stress Network)
  - Screen routinely for trauma exposure and symptoms.
  - Implement culturally appropriate, evidence-based assessments and treatments for traumatic stress and symptoms.
  - Provide resources to children, families, and providers on trauma, its impact, and treatment options.
  - Build on the strengths of children and families impacted by trauma.
  - Address parent and caregiver trauma.
  - Collaborate across child-serving systems to coordinate care.
  - Support staff by minimizing and treating secondary traumatic stress, which can lead to burnout

# Trauma: Specific Strategies

- School Culture and Infrastructure-School administration should support and promote trauma-sensitive approaches school-wide through:
  - ▣ Strategic planning
  - ▣ Assess staff training needs
  - ▣ Confidentially review and plan for individual cases
  - ▣ Review policies (e.g., school discipline policies) to ensure they reflect an understanding of the role of trauma in student behaviors
  - ▣ Develop community partnerships
  - ▣ Evaluate these efforts on an ongoing basis
- Staff Training- Incorporate staff training on trauma that addresses how to:
  - ▣ Strengthen the relationships between staff, children who have experienced trauma, and their caregivers
  - ▣ Identify and access outside supports
  - ▣ Help traumatized children regulate their emotions to ensure academic and social success
- ▣ Source: Helping Traumatized Children Learn

# Trauma: Specific Strategies

## □ Links to Mental Health Professionals:

- Schools should create links to mental health consultation and services for staff, students, and families.
- For staff, clinical supports include the opportunity to participate in sessions with their peers and a clinician to confidentially discuss specific cases, reflect on experiences of secondary trauma, and learn and practice strategies for working with children and families.
- For students and families, school staff should refer families to appropriate mental health resources and following up on referrals. Trusting relationships between parents/caregivers, school staff, and mental health providers can help to ensure success. Be sure to secure the necessary authorization for release of information between parties to facilitate communication and collaboration

## □ Academic Instruction for Students who have Experienced Trauma:

- Specific strategies can be used to support the learning needs of students who have experienced trauma, including discovering and building on the student's individual interests and competencies; maintaining predictable routines and expectations; maintaining expectations for the student that are consistent with those of his/her peers; and providing positive behavioral supports.
- Language-based teaching approaches can help students process information and alleviate their fears. Students who have experienced trauma often pay more attention to nonverbal cues than verbal communication, so using multiple forms of communicating information and helping students identify and verbally express their feelings are important strategies to support learning.
- School evaluations, including psychological, speech and language, functional behavioral, and occupational therapy evaluations, should assess the role of trauma and identify needed supports.

- Source: Helping Traumatized Children Learn

# Trauma: Specific Strategies

- Nonacademic Strategies:
  - ▣ Build nonacademic relationships with students.
  - ▣ Support and facilitate participation in extracurricular activities.
- School Policies, Procedures, and Protocols- School discipline policies are trauma-informed when they:
  - ▣ Balance accountability with an understanding of traumatic behavior;
  - ▣ Teach students the school and classroom rules while reinforcing that school is not a violent place and abusive discipline (which students who have experienced trauma may be accustomed to) is not allowed at school;
  - ▣ Minimize disruptions to education with an emphasis on positive behavioral supports and behavioral intervention plans;
  - ▣ Create consistent rules and consequences;
  - ▣ Model respectful, nonviolent relationships.
- Communication procedures and protocols are trauma-informed when they:
  - ▣ Respect confidentiality;
  - ▣ Involve open communication and relationship-building with families;
  - ▣ Ensure ongoing monitoring of new policies, practices and training
  
- ▣ Source: Helping Traumatized Children Learn

# Trauma-Informed Investigations

## □ Best Practice Suggestions:

- Interviewers should set the tone for the interview and attempt to build trust within an environment where the individual feels safe.
  - Use the beginning of the interview to go over the procedures and process that will be followed during the interview.
  - Encourage younger children to practice providing a narrative statement by asking them to describe something about which they are very familiar, i.e. “What do you like to do on the weekends?”
  - This will allow the interviewer to guide the child through the description of a non-traumatic event.
- Steps should be taken to allow the individual to feel in control of the situation.
  - The interviewer can ask the individual what they prefer to do if they reach an emotional breaking point, such as: take a break, take a walk, call a friend, etc.
- Start with broader, open-ended questions that ask them to recall what they are able to articulate about their experience. Avoid asking them to “start at the beginning” since their recollection may not have a chronologically-ordered sequence.
- The interviewer’s tone and demeanor should remain constant. Avoid changes in volume, tone of voice, or mood. Avoid reacting with too much or too little empathy or emotion.



# Trauma-Informed Investigations

- Best Practice Suggestions:
  - Approach the interview as a means of gathering information that can be shared, not an interrogation.
  - Develop general interview questions or an outline in advance.
  - When concluding an interview, be sure to ask if there is anything else the individual would like to share. Also, give a detailed description of what may happen next and when/how the individual will be contacted again.

# Trauma-Informed Discipline

- Avoid exclusionary school discipline practices that push away the child already impacted by trauma and clearly communicate messages of rejection which are likely to re-traumatize the child. Consider developing school discipline policies that offer alternatives to out-of-school suspensions.
  - ▣ Remember the dictates of SB100, which requires exhausting all appropriate and available disciplinary and behavioral interventions!
- Implement school-wide positive behavioral supports.
- Approach discipline with the assumption that children are always doing the best that they can, working from where they are emotionally, intellectually, and developmentally right now. Their behavior is a product of their past experiences, good and bad.
- Consistent with current training for many educators, de-escalation and redirection should be the first line response any time discipline is needed.
- Form relationships with parents/caregivers and families. They can be valuable allies and almost always have the child's best interest at heart.
- Promote consistency and safety when enforcing school discipline policies.
- Work to prevent future behavioral problems. Follow a plan of learning, reassessing, and reintegrating. When a child has a behavioral issue, take him/her aside in private and ask "what can we learn from this?" By doing this, incidents become learning opportunities that can improve how the child relates to others and views his/her time in the classroom. Next, reassess how the child sees himself/herself and what has changed as a result of this incident. Finally, the reintegration of the child into the classroom can occur.
- Source: Unlocking the Door to Learning: Trauma-formed Classrooms and Transformational Schools, McInerney and McKlindon

# Trauma and Special Education

- Students who have been affected by traumatic events may have a higher identification for special education and eligibility under Section 504 of the Rehabilitation Act.
- Under the IDEA and Section 504, school districts have an affirmative obligation to determine whether a student may be eligible for special education and related services. 34 CFR 300.301(b); 34 CFR 104.32.

# Trauma and Special Education

- *P.P., et. al v. Compton Unified Sch. Dist., et al.*, 66 IDELR 121 (C.D. Cal. 2015). Five students and three teachers filed a lawsuit against the Compton Unified School District, alleging that the District violated the ADA and Section 504 of the Rehabilitation Act. The Plaintiffs claimed that the District did not properly accommodate the needs of the students who had been affected by traumatic events (shootings, stabbings, and sexual assault), failed to train staff to understand complex trauma, and failed to implement practices necessary to address violence and conflict.
- The District filed a motion to dismiss, which was denied by the Court.
- The court reasoned that “that exposure to traumatic events might cause physical or mental impairments that could be cognizable as disabilities under the two Acts.”
- In June 2016, the parties agreed to develop a long-term plan – assisted by professionals and subject matter experts – to address educational barriers for students who are affected by traumatic events attending the district. A stay of the case has been granted until April 2, 2018.

# Trauma and Special Education

- East Side Union High Sch. Dist., 116 LRP 53312 (SEA CA 12/21/16): The Student in East Side had been diagnosed with attention deficit hyperactivity disorder, post-traumatic stress disorder, oppositional defiance disorder, psychosis not otherwise specified, and prodromal schizophrenia. In his earlier years he had been affected by poverty, violence, and gang activity. The student's father was frequently in and out of jails, and committed numerous acts of domestic violence involving the Student and his mother when he was at home.
- Upon enrollment, the District placed the student in general education classes, although the Student's records included a warning that the Student needed a more restrictive placement. Within weeks, the Student received multiple suspensions and began not appearing at school. When he did attend school, he was challenging and disruptive. After threatening students and staff, the Student was expelled without an IEP team meeting or MDR. After the expulsion, the IEP team convened and decided that the Student would be placed in a day school. The Student did not remain at the day school long, as he threatened to shoot staff during a behavioral incident less than two months after he was enrolled. The IEP team convened another IEP meeting and decided to place Student in a private day academy. The IEP team did not discuss whether a residential placement would be appropriate. During his brief time at the new day school, the Student repeatedly assaulted other students, threatened staff, and jumped on cars. The Student was then incarcerated after he was charged with robbery and arson (activities unrelated to his activities at school).
- The parent filed a due process complaint notice, alleging that the District failed to provide the Student with a FAPE. The hearing officer ordered the District to place the Student at the Provo Canyon School for a period of two academic years at the district's expense.

# Trauma and Special Education

- Vacaville Unified Sch. Dist. and Sacramento City Unified Sch. Dist., 117 LRP 5835 (SEA CA 2017): The Student had a history of physical aggression at home and at school. During his childhood, Student was exposed to domestic violence in the home. The Student was subsequently diagnosed with language disorder, mood disorder, depression, bipolar disorder, post-traumatic stress disorder, intermittent explosive disorder, attention deficit hyperactivity disorder, and possible psychosis.
- The hearing officer determined that the districts failed to provide an appropriate placement and failed to offer appropriate mental health services. More specifically, the hearing officer determined that “[t]he [District’s] offer of mental health services was not appropriate to address Student’s unique needs. Therefore... because the mental health services were an integrated and integral component of Student’s placement... the placement offer was also not appropriate for student.”
- The hearing officer ordered Vacaville to fund 80 hours of individual therapy sessions, including 16 hours of trauma-based therapy. The hearing officer also ordered Sacramento to fund 108 hours of individual therapy sessions, 1,250 minutes of S/L services, and to conduct an FBA. Both districts were required to conduct two hours of special education training for their special education administrators and program specialists.



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# NEW CASES 2018

2018

David J. Braun

# Janus v. AFSCME

2018

- 1 question: Is fair share legal?
  - Outcome – who knows?
  - Oral arguments were heard
    - Conservative wing indicated disfavor for fair share
      - New Justice Gorsuch was silent.
    - Liberal wing indicated favor for fair share



# Janus v. AFSCME

2018

- But the way the Court finds is critical – details matter:
  - What if the Court holds fair share is Unconstitutional?
    - How could a process which “locks” a person into the union for a period of time pass muster?
  - Isn't the union entitled to some “rational” procedure?
    - Can employees jump in and out?
  - Is it Constitutional to place restrictions on entry and exit, or to make entry a condition of acquiring certain benefits?

# Janus v. AFSCME

2018

- DO NOTHING.
- Agree to no changes.
- Stick with *status quo*.

# Medrow v. AZ

2018

- Arizona case challenging whether evaluating on the basis of usage of leave (sick leave) is Constitutional
- Illinois law is similar
- Advice:
  - Don't evaluate on the basis of usage of leave protected by right
  - Evaluate the *effect* on the classroom
  - The teacher remains responsible for the education of the students assigned.

# Elonis v. U.S.

2018

- Anthony Elonis posted a series of threats to the internet:
  - Did you know that it's illegal for me to say I want to kill my wife?  
It's illegal.  
It's indirect criminal contempt.  
It's one of the only sentences that I'm not allowed to say.  
Now it was okay for me to say it right then because I was just telling you that it's illegal for me to say I want to kill my wife...

# Elonis v. U.S.

2018

- Anthony Elonis posted a series of threats to the internet:
  - Art is about pushing limits. I'm willing to go to jail for my constitutional rights. Are you?
- A week later, Elonis posted:
  - Enough elementary schools in a ten mile radius to initiate the most heinous school shooting ever imagined  
And hell hath no fury like a crazy man in a kindergarten class  
The only question is . . . which one?

# Elonis v. U.S.

2018

And after an FBI investigator came to his home:

- “...Took all the strength I had not to turn the bitch ghost  
Pull my knife, flick my wrist, and slit her throat  
Leave her bleedin’ from her jugular in the arms of her  
partner...”
- “And if you really believe this s\*\*\*  
I'll have some bridge rubble to sell you tomorrow

# Elonis v. U.S.

2018

- He was convicted of making threats, including against the school
- He appealed his conviction, arguing a lack of intent in the jury instruction
- He lost and appealed to the Supreme Court, which reversed for re-hearing before the Appellate Court

# Elonis v. U.S.

2018

- “This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The familiar maxim “ignorance of the law is no excuse” typically holds true. Instead, our cases have explained that a defendant generally must **“know the facts that make his conduct fit the definition of the offense,”** *Staples v. United States*, 511 U. S. 600, 608, n. 3 (1994), even if he does not know that those facts give rise to a crime.”



# Elonis v. U.S.

2018

- But communicating something is not what makes the conduct “wrongful.” Here “the crucial element separating legal innocence from wrongful conduct” is the threatening nature of the communication.
- Elonis’s conviction, however, was premised solely on how his posts would be understood by a reasonable person.

# Elonis v. U.S.

2018

- But communicating something is not what makes the conduct “wrongful.” Here “the crucial element separating legal innocence from wrongful conduct” is the threatening nature of the communication.
- Elonis’s conviction, however, was premised solely on how his posts would be understood by a reasonable person (objective standard), without subjective intent.
- The court (subject to a concurrence and a dissent) explained in detail that “recklessness” of the statement, so long as the facts are created knowledgably, could sustain such a conviction.

# Elonis v. U.S.

2018

- 3<sup>rd</sup> Circuit on remand held:
  - "the record contains overwhelming evidence demonstrating beyond a reasonable doubt that Elonis knew the threatening nature of his communications, and therefore would be have been convicted absent the error"
- And on the school threat:
  - "Given the understandable sensitivity regarding school shootings in this country, of which Elonis was no doubt aware, no rational juror could conclude that Elonis did not have the purpose to threaten, or did not know that a reasonable person would feel threatened, when he said he would 'initiate the most heinous school shooting ever imagined.'"

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# Abuse of Child

2018

- U.S. Supreme Court denied cert. on a review of a 6<sup>th</sup> Circuit Appellate (MI) ruling in favor of a school district when it failed to dismiss a teacher who abused a boy.
- Not enough to “shock the conscience,” notwithstanding the child’s protected status under Americans with Disabilities Act
- Teacher was entitled to due process



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**THANK YOU!**

**QUESTION & ANSWER  
PANEL DISCUSSION  
TO FOLLOW LUNCH**

2018

Brandon K. Wright, Luke M. Feeney, David J. Braun, and  
Christine G. Christensen

Thank You for Joining Us! It is our pleasure  
to serve the school districts of Illinois.

2017

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