

## ***OCR to Conduct Compliance Reviews on the Use of Seclusion and Restraint***

In January 2019, the U.S. Department of Education (“DOE”) announced an initiative to address the inappropriate use of seclusion and restraint in school districts. The initiative will involve the DOE’s Office for Civil Rights (“OCR”) and Office of Special Education and Rehabilitative Services (“OSERS”), and will include three components: compliance reviews, data collection, and support for districts.

### **THE INITIATIVE**

1. **Compliance Reviews.** OCR’s 12 regional offices will conduct compliance reviews of school districts’ inappropriate use of restraint and seclusion, and the effect of such practices on districts’ obligations to provide a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”) to students with disabilities. A compliance review is an OCR-initiated case that targets compliance problems that are particularly acute, national in scope, or newly emerging. Upon conducting reviews, OCR will correct noncompliance through resolution agreements with districts. OCR has not provided any information about which districts will be reviewed.
2. **Civil Rights Data Collection.** OCR will conduct data quality reviews and work with districts to review and improve restraint and seclusion data submitted as part of the Civil Rights Data Collection. OCR will provide technical assistance to districts on data quality to ensure districts are collecting and reporting accurate data on restraint and seclusion.
3. **Support for Districts.** OCR and OSERS will partner to provide support to districts in a number of ways including:
  - Providing technical assistance on the legal requirements of Section 504 of the Rehabilitation Act relating to the use of restraint and seclusion;
  - Providing technical assistance in helping districts understand how Section 504, Title II of the Americans with Disabilities Act, and IDEA informs the development and implementation of policies governing the use of restraint and seclusion;
  - Ensuring districts have access to technical assistance and resources as they work to establish and enhance environments with increased interventions and supports, and less restraint and seclusion;
  - Planning and conducting webinars related to the use of appropriate interventions for all students.

## WHAT TO DO

As part of this compliance process, districts may receive a letter of notification from OCR initiating a compliance review of district practices. Upon receipt and prior to responding, districts should contact both their insurer and legal counsel. Districts should also review their seclusion and restraint policies and their reporting procedures to ensure compliance with Wis. Stat. § 118.305, Wisconsin’s seclusion and restraint law. Finally, districts should be aware that even if a district complies with the requirements in §118.305, the repeated use of seclusion and restraint on a student with a disability can result in a violation of the district’s obligation to provide the student FAPE. (For additional guidance on this issue, see “[Update on Seclusion and Physical Restraint](#)” authored by Boardman & Clark which appeared in WASB’s December 2015 Wisconsin School News). Accordingly, districts should immediately review their practices and procedures in addressing students with behavioral challenges and ensure that such students are provided positive behavioral supports and interventions targeted at minimizing the need for seclusion and restraint.

## CONCLUSION

Four Boardman & Clark School Law Group attorneys were named to the 2019 Best Lawyers in America. Inclusion in “Best Lawyers” is based on a peer review process. Mike Julka, Jim Ruhly, Eileen Brownlee and JoAnn Hart were all recognized in the category of Education Law and Mike Julka was recognized as a 2019 “Lawyer of the Year” in the practice area of Education Law.

In addition, Mike Julka was named a 2018 Wisconsin Super Lawyer and was the only Wisconsin attorney recognized in the practice area of School Law in 2018.

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