

# IDEA Legal Lessons Learned 2013-2014 School Year



AND PRACTICAL IMPLICATIONS FOR URBAN, RURAL,  
AND SUBURBAN DISTRICTS

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*The slides in this presentation are offered for informational purposes only and are not offered as legal advice.*

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# IDEA Dispute Resolution Mechanisms



- OAR 581-015-2335
- No cost to parties
- Parties determine how to resolve dispute
- High success rates

## Mediation

- OAR 581-015-2030
- Filed by an organization or individual
- Time period-one year of receipt
- Order issued within 60 days

## State Complaint Investigations

- OARs 581-015-2340 to 581-015-2385
- Filed by parent or district
- Resolution sessions
- School District must pay for most costs related to the hearing

## Due Process Hearings

# Implications for Districts

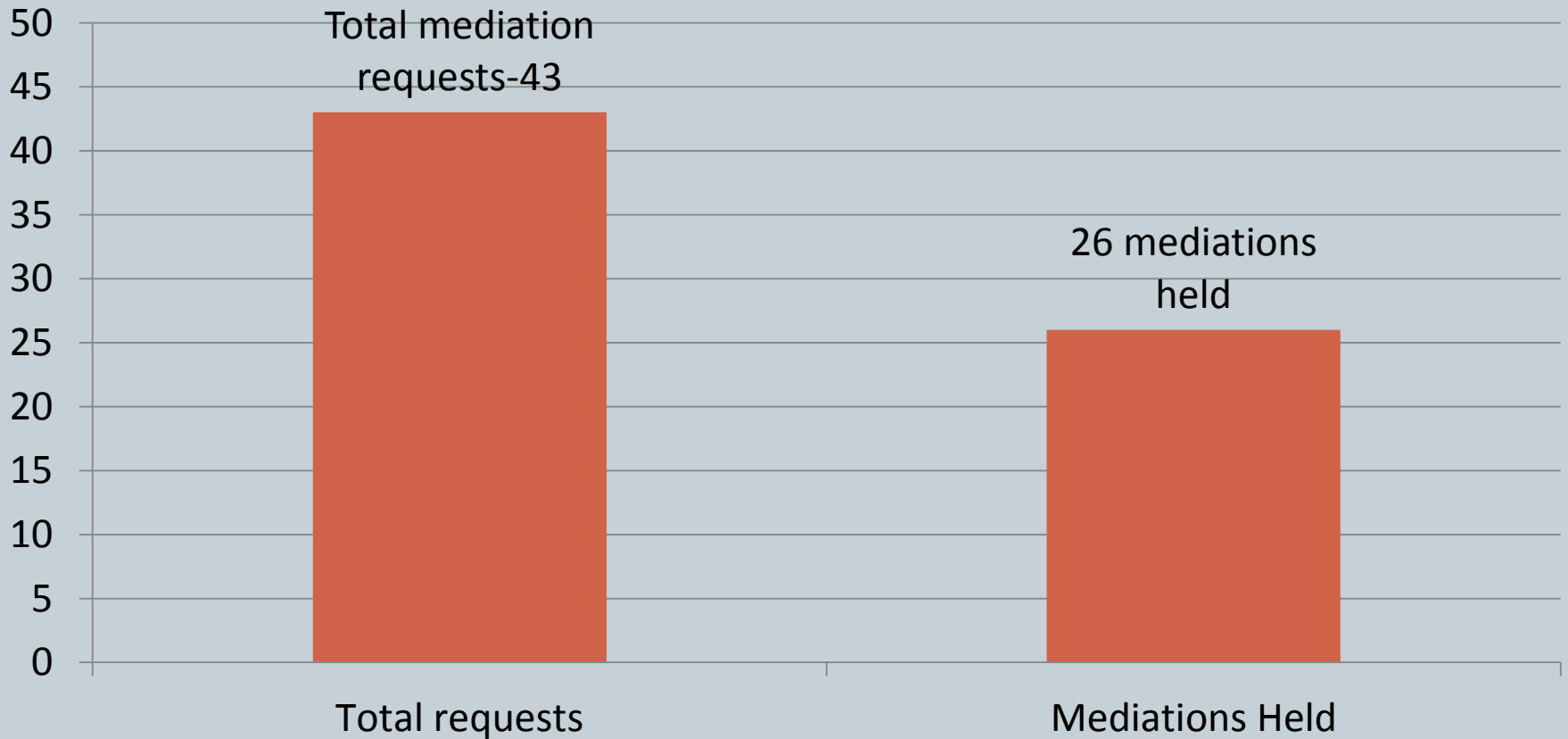


- What should districts expect during the IDEA complaint investigation process?
- How does one most effectively manage a state complaint, due process hearing, or mediation along with other special education obligations?
- What is your experience dealing with each process?
- What are the pros and cons of participating in each means of IDEA Dispute Resolution?

# Mediation Data 2013-2014



## Mediation Requests



# Mediation Rates for Due Process

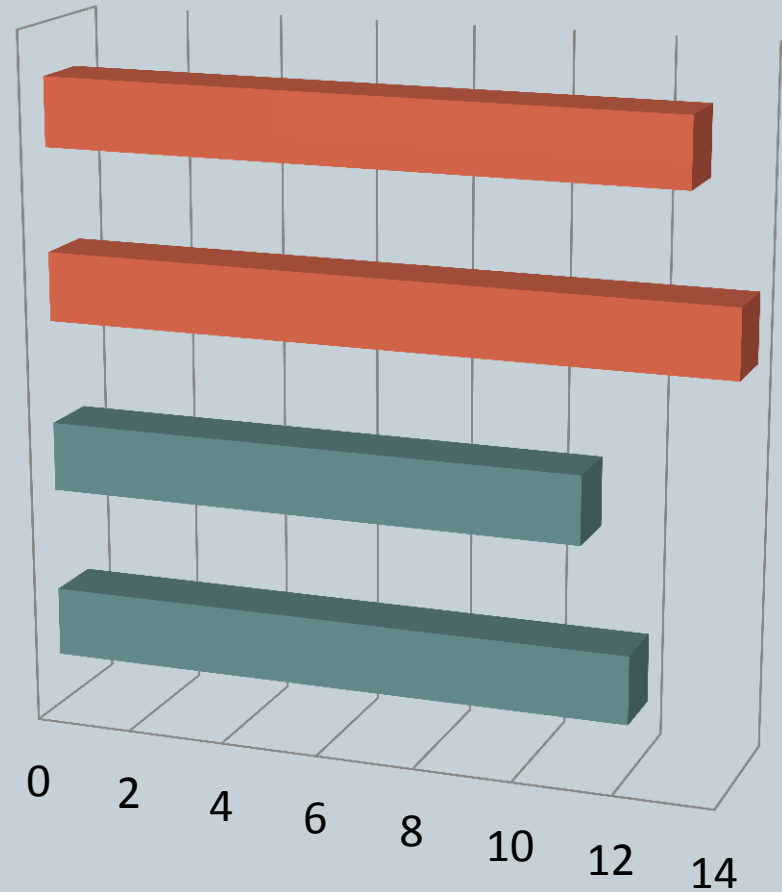


Mediation agreements NOT related to due process requests

Mediation held NOT related to hearing requests

Mediation agreements related to due process complaints

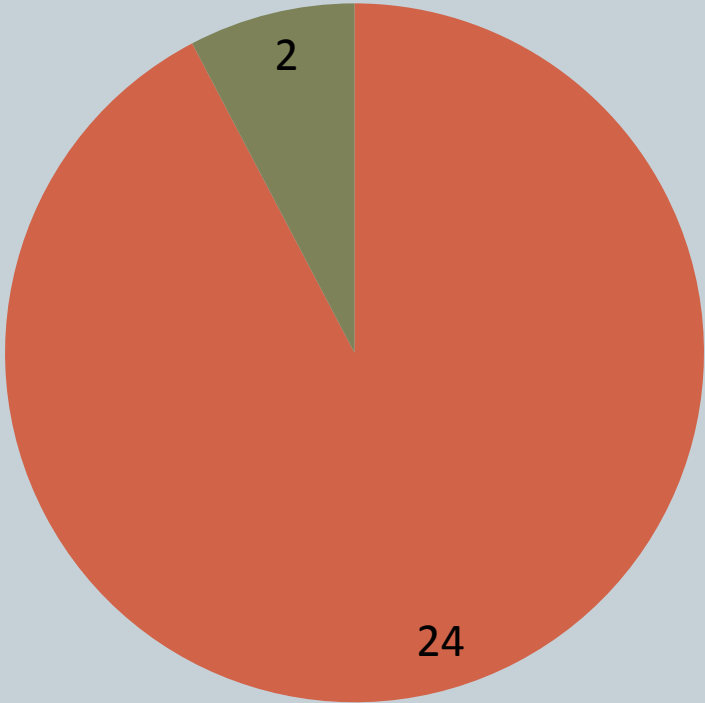
Mediations related to due process complaints



# 2013-2014 Success Rates for Mediations Held

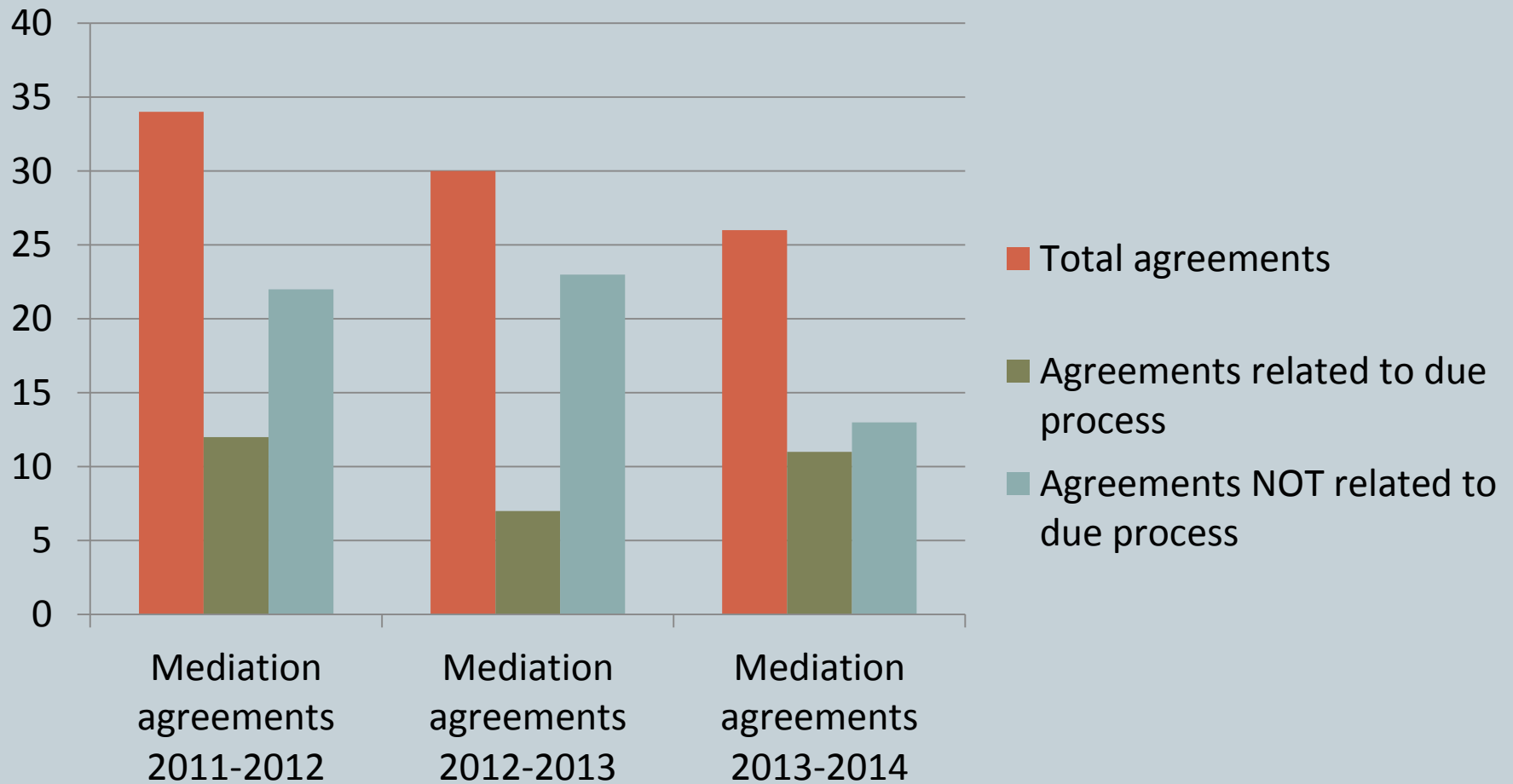


**Overall Mediation Resolution rate 92%**



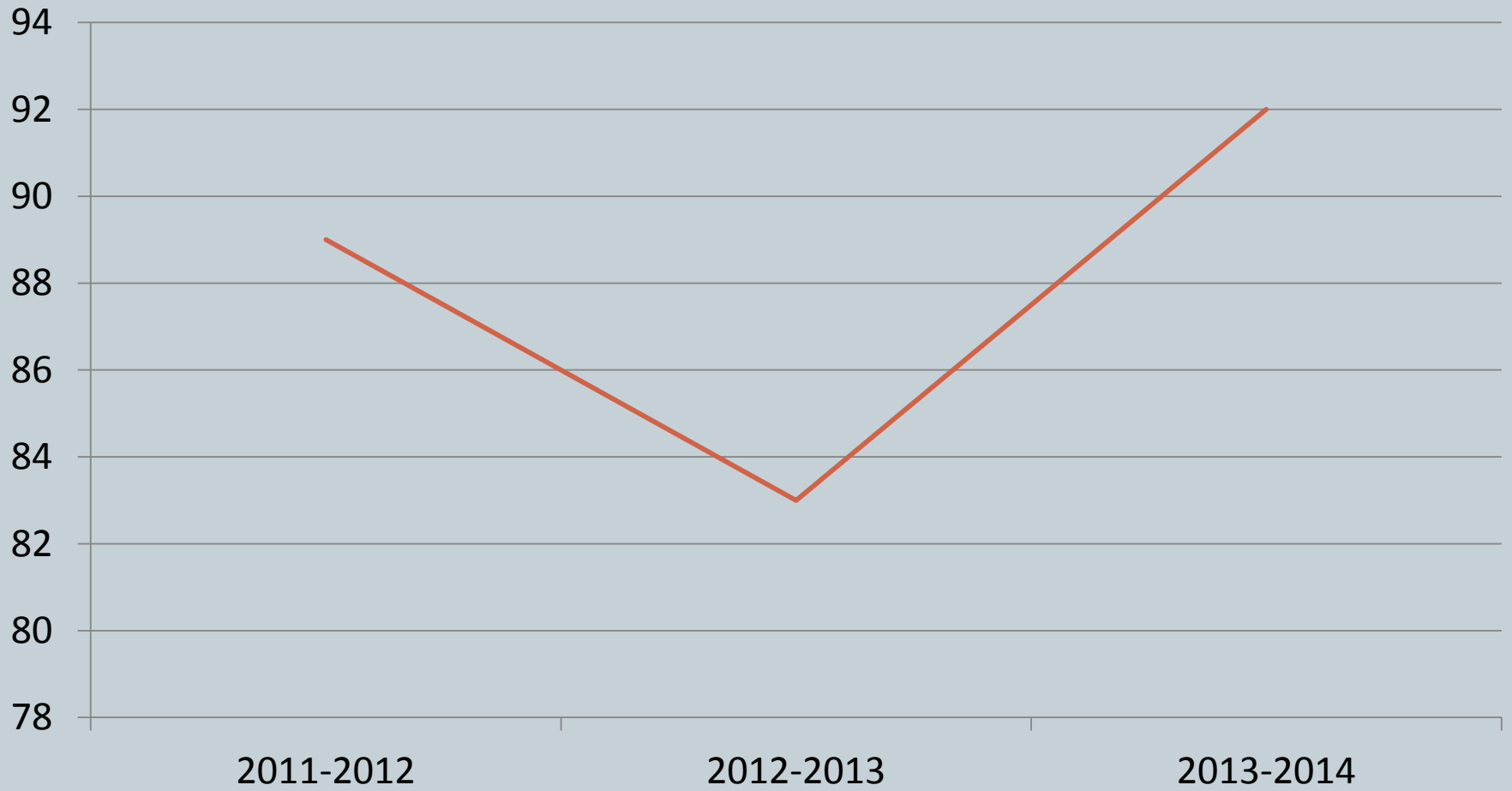
- Mediations with agreement
- Mediations without agreement

# Recent Trends – IDEA mediation





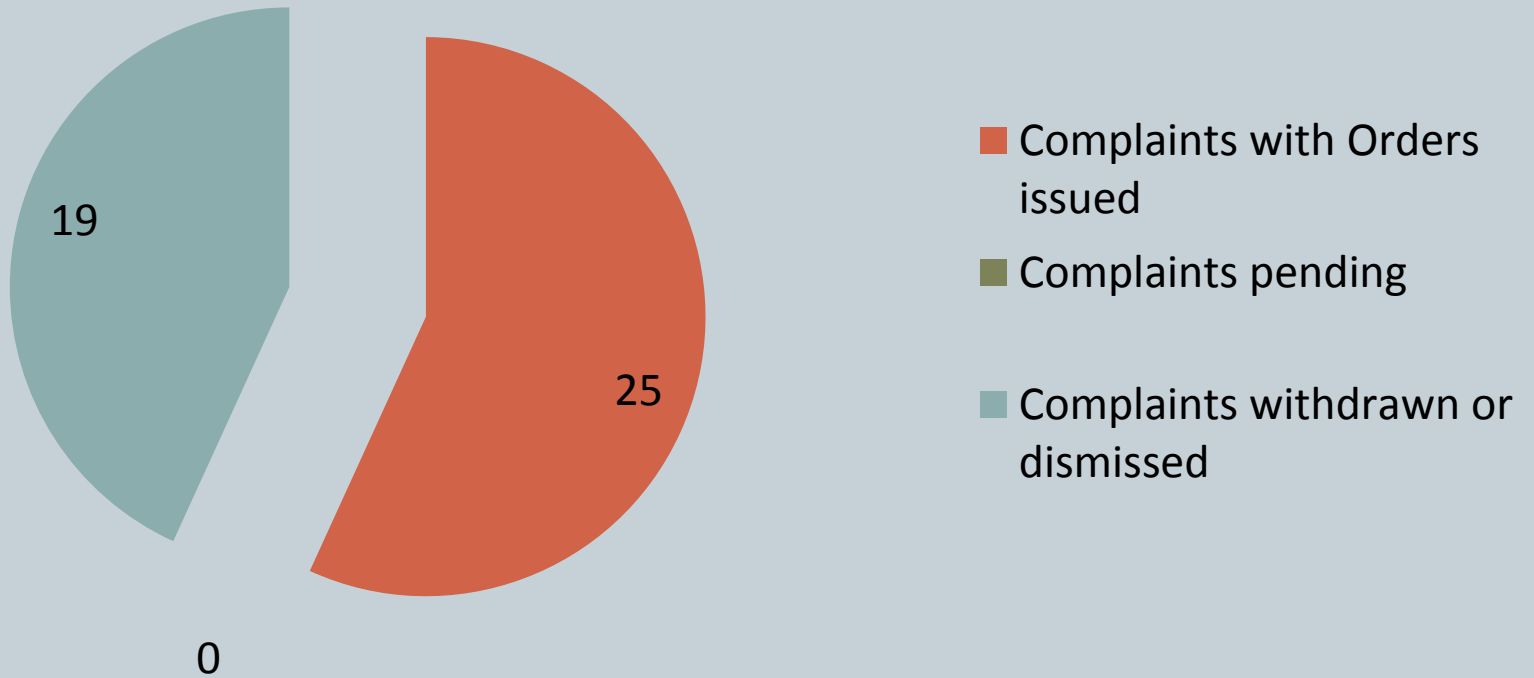
# Percent of Mediations Resulting in Agreement



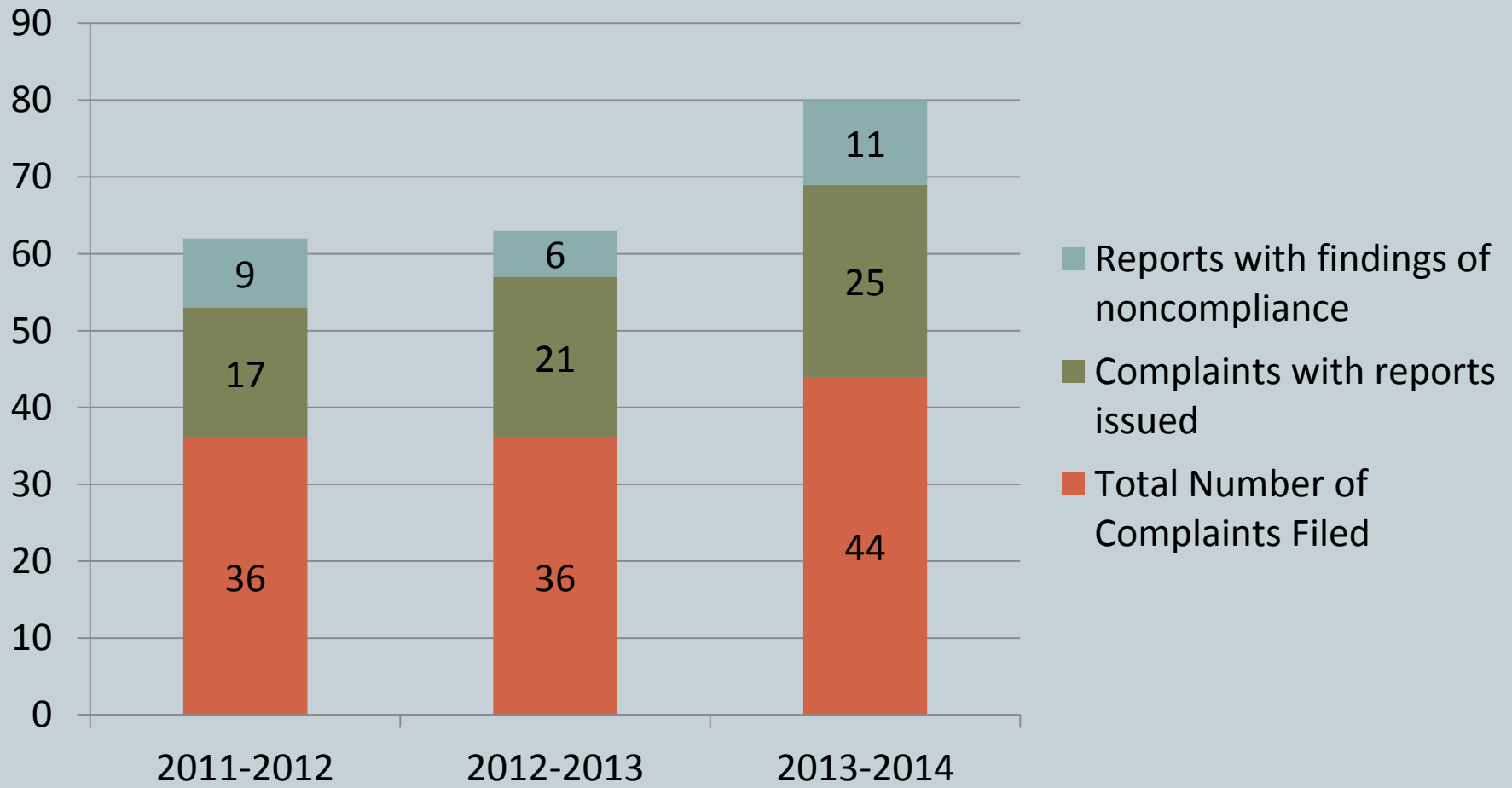
# Total Written, Signed Complaints 2013-2014



**44 Total filed complaints**



# State Complaint Frequency by Year



# Substantiated Complaint Issues 2013



## IDEA State Complaints



# IEP Implementation



## ORAR 581-015-2220 When IEPs Must Be In Effect

- (1) General:
  - (a) At the **beginning of each school year**, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.
  - (b) School districts **must provide special education and related services** to a child with a disability **in accordance with an IEP**.
- (2) Initial IEPs:
  - (a) A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.
  - (b) As soon as possible following development of the IEP, ***special education and related services*** must be made available to the child in accordance with the child's IEP.
- (3) Accessibility of IEPs. Each school district must:
  - (a) Ensure that the IEP is **accessible** to each regular education teacher, special education teacher, related service provider and other service provider ***who is responsible for its implementation***; and
  - (b) **Inform each teacher** and provider described in (3)(a) of his or her **specific responsibilities for implementing** the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.

# Prior Written Notice



## OAR 581-015-2310 Prior Written Notice

(2) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district:

(a) Proposes to *initiate* or *change*, the **identification**, **evaluation**, or **educational placement** of the child, or the provision of a **free appropriate public education** to the child; or

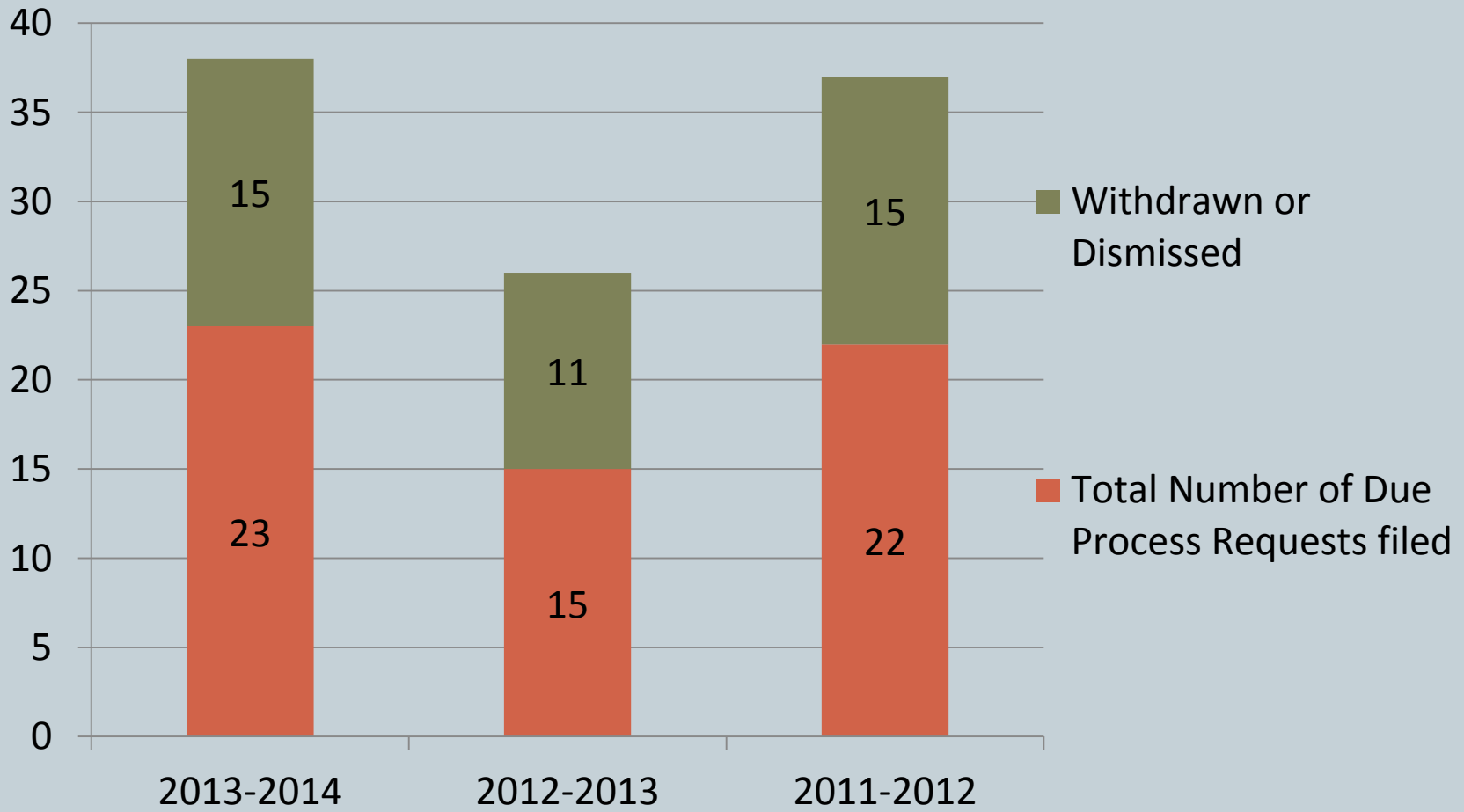
(b) Refuses to *initiate* or *change* the **identification**, **evaluation**, or **educational placement** of the child or the **provision of FAPE** to the child.

# Implications and Best Practices



- How do you relay IEP information to all relevant staff members expediently?
- How do you ensure that IEPs are implemented with fidelity ?
- How do you document that IEPs are accessible to relevant staff and implemented as necessary?
- How do you ensure parent participation or document attempts to gain parent participation?
- What issues do you have with PWN and how do you ensure PWN is delivered and retained in your district when needed?
- Which IDEA legal issues do you find the most difficult to ensure or document compliance with in practice? Why?

# Due Process Complaints





# LRE/ Placement: Due Process 13-113



## Summary of the Facts:

- Student was born with Down syndrome
- Student transferred to Oregon from out of State
- Was eligible for IDEA services in the former state for early childhood development delays
- Student qualified for speech/communication services due to delays in receptive and expressive communication
- The first Oregon IEP team determined that student would be removed from non-disabled peers for the majority of the day to meet IEP goals.
- Student started 2011-2012 school year in a basic skills class.
- Student made some IEP goal progress that year, but had some social problems and did not like to work on writing and would occasionally act out and lie on the floor.

# Evaluation Process for ID Begins



- In January 2012, District sought parent consent to evaluate student in the areas of Intellectual Disability and Autism.
- Parents elected not to consent to Autism testing.
- Parent requested adult sign support in the classroom and parent wanted to teach signing to the other students.
- Parent came to eat lunch with student and was dismayed to see basic skills class had its own table in the lunchroom.

# Integration or Home Schooling



- Parents requested that student be integrated with general education students at lunch, District responded to the email but expressed the opinion that student still needed direct adult supervision at lunch.
- In February 2012, parents elected to pull student out of the basic skills classroom in favor of home schooling.
- In mid-March 2012 parents received notice that the District's Charter Montessori school had an opening for Student. Parent requesting meeting with District to review IEP and determine if student could attend the Charter Montessori school.

# IEP Team Discussed the Charter School



- Team met on March 20, 2012 to discuss the charter Montessori school.
- Team did not complete a new IEP or placement determination but determined to allow student to attend the CRS on a ***trial basis*** for a few weeks to see if the Montessori approach would be appropriate.
- Team agreed to meet again at the end of April after Student had some experience at CRS and underwent additional evaluations.
- Student began attending Montessori in the 1<sup>st</sup> and 3<sup>rd</sup> grade classroom around April 3, 2012.

# Testing for Intellectual Disability



- District Psychologist determined the student's cognitive results indicated that student's intellectual disabilities were significantly below what would be expected for a typical 8 year old.
- The parents elected not to go forward with further testing.
- April 24, 2012 District issued a Psychological/ Educational Evaluation report that indicated student had an Intellectual Disability, low adaptive skills, and that student would benefit from a classroom that incorporates daily living skills with academic instruction.

# Increased SDI time and “pull out”



- In September 2012 student returned to CRS
- Student began each day with 45 minutes SDI in reading, math, and fine motor under “pull out”.
- Student was often reluctant to leave the gen ed classroom for SDI in Learning Resource Center.
- October 4, 2012 District notified parent that Student was not meeting IEP goals.
- Student became defiant with the Assistant at times and uncooperative during SDI pull out time.
- Transitions were difficult.
- Parent indicated that Student was isolated and ostracized at recess.
- Student made slow, inconsistent progress on IEP goals and STOs.
- Student was not retaining material learned from previous lessons.
- Teachers made many notes and recorded progress to share with parent and IEP team at meetings.

# 2012-2013 - Cut Back on Montessori time



- 2012-2013 IEP called for a Special Education placement at local school with support provided in the context of functional skills class and speech group 25 hours per week.
- Special Education placement at CRS with support in the learning resource room up to 4 hours per week.
- Homeschooling with parents providing core academic instruction in the areas of math, reading, and written language and District providing SDI in communication once or twice a week at a District school.
- The team agreed on goals in reading, math, writing/ fine motor skills, phonology and articulation, social communication, and receptive and expressive language.

# Placement Conflict



- At the December 11, 2012 IEP meeting District staff expressed opinion that Student's placement at CRS was not meeting Student's academic needs, because the core instruction at CRS was designed for students with first, second, and third grade level standards.
- Student's skill level was three to four years behind peers.
- District recommended that Student return to functional skills class in a local school for either full or half day.
- Parent disagreed with this change of placement.
- District cited a reason why placement was inappropriate was that Student was unable to meet CC standards for 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> grade and that even with modifications Student's instructional needs cannot be met at CRS.
- District then tried "push in" with more evaluations, sign language support, a special needs assistant for SDI, and FBA and an IEE to access Student's cognitive ability and cognitive achievement.



# Updates on Student Progress



- February 25, 2013 to the end of the school year, Student's progress was monitored and a one-to-one assistant delivered instruction in general education classroom
- Student's behavior adversely impacted the learning environment of other students
- FBA was completed April of 2013 and it stated that Student had difficulty transitioning, cooperating, and working independently.
- April 2013 Augmentative Communication Assessment revealed that student's vocabulary was greater in spoken English than ASL.

# Other Efforts



- Facilitated IEP meeting (FIEP)- June 12, 2013
- FIEP continued June 17, 2013 to discuss the service summary, SDI, and placement for 2013-2014 school year.
- At the June 17<sup>th</sup> meeting District proposed 45 minutes of SDI for each goal per day.
- Parent objected and wanted less time on goals and more time in general education classroom.
- Despite parent protests, District offered FAPE of SDI in Special Education (basic skills classroom) at resident school for 48% of the week. Student was allowed to go to CRS in the afternoons to interact with general education peers, which would comprise 52% of the week.

# Conclusions of Law



- The District did not deny the parent an opportunity to participate in the Student's education in 2011-2012 by failing to inform of relevant behaviors nor by failing to provide progress reports.
- The District developed legally sufficient IEPs for the Student for all three school years.
- The District provided an appropriate placement during the 2011-2012 and 2012-2013 school years.
- The offer of placement for the 2013-2014 school year provide FAPE in the LRE.
- The District fully implemented the “stay put” provisions of IDEA.

# Implications



- Montessori/ Charter vs. other Gen. Ed program?
- When has mainstreaming not been appropriate for your students and how do you convey this to parents while avoiding disputes?
- What did this District do correctly?
- What to do with “stay put”?



# Restraint and Behavior- 13-054-025



- The complaint alleged the District failed to implement the Behavior Intervention Plan (BIP) during an incident on May 14, 2013.
- The Student was 11 years old with an Emotional Disturbance (ED) and Communications Disorder (CD).
- The current IEP provided a placement of Special Education room for academics and behavior support and Student was on a shortened day schedule.
- The IEP also included a BIP which was in effect at this time.

# The Behavior Protocol for Student



- First, the Student needs to **eat regularly**
- Work and social behavior are **awarded on a daily basis** on the Student's *daily schedule*
- Student **earns choice time** at school for completion of work
- The *parent* **rewards Student at home** based on daily report
- Use **calm strong voice and counting** if Student escalates into loud resistive behavior
- Signal that Student needs to **think about what is happening**
- Give Student **choice of calm area, sensory activities, or calm box** if Student does not deescalate with the signal
- Offer Student the **choice to call mother**
- Allow Student to go on Student's own and **have decision making about when to return**
- Student can **make noise** to let off frustration

## Restraint info on the BIP



“If the student needs to be restrained (hurting self or others) only staff members with current CPI status will be allowed to perform at this level of intervention.”

# The May 14<sup>th</sup> Behavior Incident



- Only the education assistant (EA) and Student were in the classroom.
- Student became angry when EA told Student to finish classwork.
- Student sat in the teacher's chair and rolled around the classroom.
- When asked to get out of the chair, Student left the classroom and returned twice, and then began pinching and kicking the EA.
- Student also cursed at EA in a loud voice.



# De-escalation Pursued According to BIP



- SPED teacher asked Student to sit in calm space or sit in big chair.
- Student then ran at SPED teacher and EA with a raised fist.
- Student stood in front of sensory chair, and SPED teacher took Student by the arm and put in chair.
- Student got up and kicked and struck at both adults.
- SPED teacher told Student three times to “leave them alone” and reminded Student they had the rest of the room.
- Student responded by cursing and saying Student would “Kill you...” to the teacher.
- SPED teacher offered Student bubbles or clay or a ball.
- Student responded by more cursing.
- SPED teacher told Student if Student did not stop hitting and hurting them they would have to restrain the Student.
- Teacher and EA retreated to a table and Student advanced with raised hands.
- Student again hit EA on arm/ a second EA comes into the room

# The Actual Restraint



- Teacher asks the 2<sup>nd</sup> EA to time the restraint
- SPED teacher and EA used a two person restraint on Student.
- They each stood on one side of Student, in the same direction as Student, and held Student's arm down and slightly back while bending the Student forward.
- This restraint lasted 45 seconds.
- Student tried to bite EA's hand, pinch EA, spit on both educators' shoes, and propelled snot onto the floor while being restrained.
- SPED asked Student during restraint if Student would calm down three or four times- Student finally said "yes" and the restraint ended.
- There were no further behavior problems that day.

# Legal Conclusions



Generally speaking:

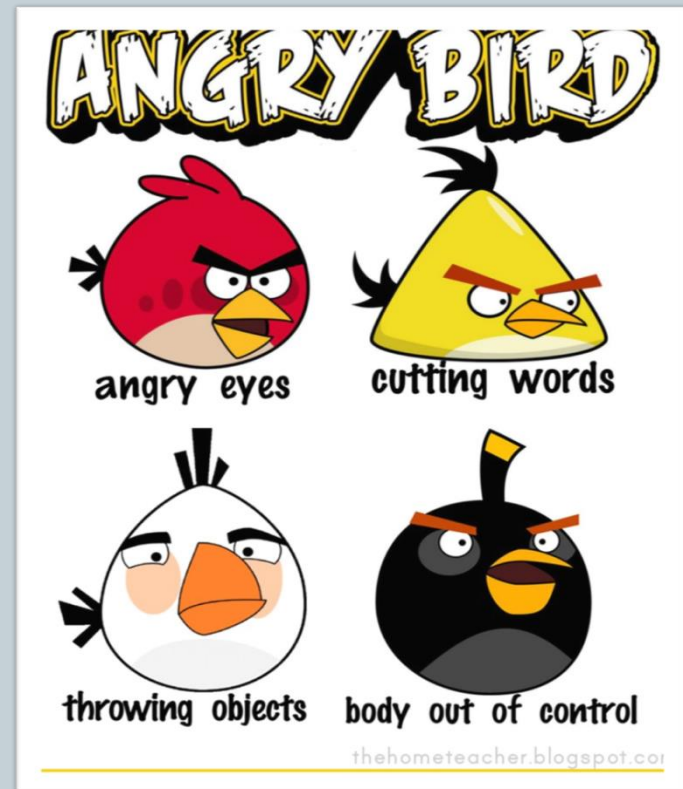
- OSEP has said that IEP teams should consider the use of positive behavior interventions tailored to a child's unique needs.
- A District's use of excessive or poorly documented aversive interventions such as restraint or seclusion can be an IDEA violation, even if required in a BIP.
- Separate state complaints can be filed for violations of state restraint or seclusion laws under Division 21 rules.

In this case:

- The District interviews and documentation show that staff followed protocol set forth in the BIP to the extent possible.
- Staff tried to redirect Student verbally and offered calm space and alternatives to Student many times.
- The BIP stated restraint could be used when Student was hurting others.
- District was justified to restraint based on BIP and staff was appropriately trained to do so.

# Implications? Best Practices?

- When and how do your staff restrain students?
- What training programs have you employed?
- What other de-escalation techniques work well for you?



# Child Find and Evaluations 13-054-035



- Parent alleged District failed to identify and evaluate Student for Special Education after parent's request for evaluation.
- Parent alleged District failed to evaluate and determine whether the Student was eligible for Special Education services.
- Parent alleged District failed to provide Special Education and services to the Student and that the District failed to initiate an IEP meeting resulting in a denial of FAPE.

# Child Find



## OAR 581-015-2080 Child Find

- (1) The requirements of this rule apply to all children unless they are no longer entitled to a free appropriate public education under OAR 581-015-2040 – 581-015-2050.
- (2) School districts must **identify, locate and evaluate** all **resident children** with disabilities, **regardless of the severity of the disability**, who are **in need of** early intervention, early childhood special education, or **special education services**, including:
  - (a) Highly mobile children with disabilities (such as migrant and homeless children);
  - (b) Children who are wards of the state;
  - (c) Indian preschool children who reside on reservations;
  - (d) Children who are suspected of having a disability even though they are advancing from grade to grade;
  - (e) Children enrolled in public charter schools;
  - (f) Children who are home schooled;
  - (g) Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and
  - (h) Children above the age of compulsory school attendance who have not graduated with a regular high school diploma

# Initial Evaluation OAR 581-015-2105(3)



(3) When initial evaluation must be conducted:

(a) An initial evaluation must be conducted to determine if a child is eligible for special education services when **a public agency suspects or has reason to suspect** that:

(A) The child has a disability that has an adverse impact on the child's educational performance; and

(B) The child may need special education services as a result of the disability.

(b) The public agency **must designate a team to determine whether an initial evaluation will be conducted**.

(A) *The team must include the **parent** and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.*

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.

# The Facts



- Student was 17 and in the 11<sup>th</sup> grade
- Student transferred to District as a sophomore in 2012 from an out-of-state school.
- Student did not receive Special Education at the previously attended school.
- Student was sexually assaulted on school property at the formerly attended school.
- Student reported suffering from anxiety, PTSD, and depression as a result of the sexual violence.
- Student was medically diagnosed with Autism (ASD) and Pre-Menstrual Dysphoric Disorder (PMDD).
- Student failed to attend many classes in the District and was subsequently dropped from three classes
- Student was in some honors classes but had a GPA of 0.864 during the time of the investigation.
- The Student would spend majority of in school time in the nurse's office, the counselor's office, or the bathroom or would just leave school.



# More of the Facts



- The Student was also absent from school many days due to mononucleosis the spring of sophomore year.
- During the Student's absence in 2013, the parent requested a 504 meeting for accommodations due to Student health concerns.
- A 504 meeting was held at this time but not developed, as District said if Student were not on campus no accommodations would be applicable.
- When Student first registered with District, parent disclosed to counselor Student had attempted suicide in 2012.
- The District's counselor for Student said Student was a "fragile kid" and all of the Student's peers used the prefix "Weird" anytime they addressed the Student or used Student's name.
- During Sophomore year, Student told counselor about an elaborate suicide plan.
- Parent disclose to counselor that Student was taking anti-depressants.

# Parent Actions for Special Education



- At the end of the 2012-2013 school year parents obtained health insurance and got a mental health diagnosis for Student.
- May 10, 2013 Student's father contacted the District via phone and requested an IEP meeting and sent a follow up email.
- Father disclosed to school staff that Student had a diagnosis of Autism Spectrum Disorder (ASD).
- District responded by sending an email message stating that Student was not eligible for Special Education and that to "...move forward for an evaluation, District would need to begin a process of looking at progress for the Student. The team would begin here and let parent know of the next steps..."

# After the Parent's Request for an IEP



- From May 10, 2013 through May 15, 2013 the District staff at the high school emailed one another regarding what course of action should be taken for the parent's request for IDEA services.
- The Assistant Principal stated the problem was that Student did not attend school and parents seemed very comfortable with that.
- Student concerns would normally be discussed at a weekly multidisciplinary Support Services Team (SST) meeting. However, staff stated no SST meeting or discussion was held for this Student, although the Student was noted for discussion on one SST agenda.

# Student's Problems Continue



- November 4, 2013 the Student's mother emailed the District requesting an update on their request for an IEP meeting.
- November 12, 2013 Student went to counselor reporting feeling suicidal again and needing mental health help.
- Counselor spoke with a suicide hotline and gave Student a list of mental health resources in the community.
- Student told administrators Student had PTSD at school during this time.
- School did not schedule an SST meeting for Student during November or December or reply to the November email from parent.
- On December 5, 2013 Student was withdrawn by District registrar for missing more than 10 consecutive school days.
- To the date of the investigation, District had not convened an IEP or evaluation planning meeting for Student nor responded to parent's request for an IEP.

# Child Find



A District has the obligation to identify, locate, and evaluate resident children for Special Education services if the District ***knows*** or ***should have reason to suspect*** the ***resident child has a disability***, regardless of the severity of the disability, if the child is in need of Special Education or Special Education Services.

Child Find duties include children who are suspected of having a disability and in need of Special Education, even if advancing from grade to grade.

See OAR 581-015-2080 and 34 CFR 300.111

# Initial Evaluation Requirements



- A *parent may initiate a request* for an initial evaluation to determine if the child is a child with a disability. OAR 581-015-2105(2).
- If after a request for an initial evaluation is received, if a District does not feel the evaluation is warranted, the District **must provide a Prior Written Notice (PWN)** regarding the refusal to evaluate the child.
- This PWN must inform parents of their procedural rights.
- If an **initial evaluation is appropriate**, it must be conducted within **60 school days** from receiving **written parent consent** to the date of the meeting to consider eligibility. OAR 581-015-2110
- A child should be ***screened in all areas of disability***, which may include their emotional status.
- Evaluation planning as part of an initial evaluation for Special Education should include the child's IEP team, including a parent, and other qualified professionals as appropriate.

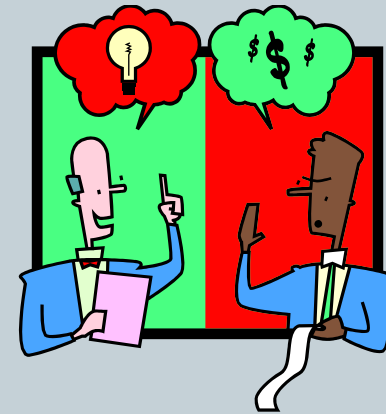
# Free Appropriate Public Education (FAPE)



- FAPE is defined as Special Education and related services that are: provided at public expense, under public supervision, and without charge; that meets the requirements of the State education agency, and that are provided in conformity with an IEP that meets all content requirements. 34 CFR 300.17.
- To be eligible for IDEA services, a student must have both eligibility in an IDEA disability category AND the actual need for Special Education services.

# Implications? Best Practices?

- How do/should District level administrators relay child find information to building level administration?
- How should building level administration relay child find information to the District level?
- Sexual violence or PTSD and Child Find or Evaluation challenges?





# Charter School Enrollment: 13-054030



- The Complaint alleges the District violated IDEA by failing to provide appropriate evaluation and assessment of Student's Special Education needs.
- The complaint alleges the District violated IDEA by failing to provide Special Education and accommodations despite the parent's documentation of issues, resulting in denial of FAPE, and requiring Student's enrollment in a public charter school to obtain FAPE.
- Parent also claimed Student was bullied in the District's school resulting in a denial of FAPE.

# Student Enrolled in Online Charter School



- The Student is 13 and the District has not determined the Student eligible for Special Education.
- Student stopped attending school in the District during the school year, on December 14, 2012, when Student enrolled in an online Charter school located in another District.
- Parent reports Student is doing well in the Charter school
- During early 2012-2013 District had no concerns about Student's behavior or school performance that would have led to an evaluation.
- Parent did not request the District evaluate the Student, but instead filed a complaint with ODE and parent and District entered into a mediation agreement in November.
- The Charter school made Student eligible for services under ED based on the private evaluator's report that was received after its completion in May.
- District never received a copy of the private evaluator's report upon its completion in May 2013, but Student withdrew from District in February of 2013 to enroll in the Charter school that is associated with another District.

# THE IDEA Responsibilities



- School Districts must provide Special Education and related services to resident school-age children with disabilities.
- Residency for students of public charter schools is assigned to the District in which the public charter school is located. ORS 338.155(1)(a).
- Student was never identified as eligible for IDEA services while in the District.

# Implications? Best Practices?



- How does your District or school deal with bullying allegations for all students? For IDEA students ?
- How do you best work with Charter schools and Charter students in your District?



# Federal Law and Guidance



## **Bullying**

### *Dear Colleague Letter (OSERS/ OSEP 2013)*

- Any bullying of a student not receiving meaningful educational benefit constitutes a denial of FAPE.
- School should, as an appropriate response to bullying, convene an IEP team meeting to determine if as a result of the bullying the student's needs have changed such that the IEP is no longer providing educational benefit.
- If the student who is a bully has a disability, the district must review the IEP to see if other supports or services are needed to address the bullying behavior.

# Specific Labels and Eligibility types



- Several cases that stated the IDEA does not confer a specific right to be classified under a specific disability category.
- The fact that a Student believed he was mislabeled does not mean he was automatically denied FAPE. See R.C. v. Keller Indep. Sch. Dist., (N.D. Tex. 2013)
- District did not deny Student FAPE based on its failure to list auditory processing disorder as his secondary disability on the IEP. This is because the IEP addressed all of the Student's needs, regardless of the classification. See Torda v. Fairfax Co. Sch. Bd., (4<sup>th</sup> Cir. 2013).

# Classification in more than one Eligibility Category



*E.M. v. Pajaro Valley Unified Sch. Dist.*, 63 IDELR 211 (9<sup>th</sup> Cir. 2014).

- The fact that a student fails to meet the state's criteria for a child with an SLD will not necessarily make him ineligible for special education -- at least not in the eyes of the 9th Circuit.
- **In a case of first impression, the court held that a student may seek to classify a particular disorder or impairment under more than one IDEA category.**
- The court explained that it could not determine from the language of the IDEA whether Congress intended to limit the **OHI** classification to disabilities that did not fall within any other category, or to expand it to include disabilities that came under another classification.
- The three-judge panel agreed with the ED that **allowing a particular disability to be classified under more than one category would further the IDEA's goal of ensuring that all students with disabilities receive FAPE, regardless of their classification.**

# Assignments of Specific Staff



- The IDEA does not require school districts to assign the specific staff members the parents desire.
- The IEP can provide FAPE even though an aide who previously worked at home with the student was not assigned to be in their classroom.

See Gellerman v. Calaveras Unified School District, US Court of Appeal, 9<sup>th</sup> Circuit (2002)



# IEP Issues/ Stay Put



## Anchorage School District v. M.P ( 9<sup>th</sup> Circuit, 2012)

- Parents had many disputes for the IEP of their son with autism and four due process hearings filed against District.
- While a due process hearing was pending a new IEP was not developed based on the school's understanding that 'stay put' prevented them from changing the IEP.
- Court held the district denied the Student FAPE because it relied on an old annual IEP during that time frame.
- District can satisfy its statutory obligations to review and revise an IEP without changing a student's placement thus meeting both "stay put" and annual IEP review requirements.

# Communications and Title II of the ADA



K.M. v. Tustin Unified School District, U.S. Court of Appeals, 9<sup>th</sup> Circuit (2013).

- Two students with hearing impairment requested school to provide CART in the classroom.
- Compliance with IDEA does not necessarily establish compliance with “effective communication” requirements to the student under Title II of the ADA.
- These are two requirements: communications for people with disabilities must be as appropriate as communication with others and public entities must furnish appropriate auxiliary aides and services where necessary to provide equal opportunity to participate in and enjoy the benefits of a program, or activity conducted by the public entity.
- Title II of the ADA also notes that when determining what type of auxiliary aid or service to use, a public entity shall give primary consideration to the requests of the individual with a disability.

# Behavior and Reevaluation



## **114 LRP 33597 (D. Ore. 2014).**

- An Oregon district might have acted with good intentions when it limited a grade schooler's peer interaction based on student's increasingly threatening and violent behavior, but it should have reevaluated the child and convened an IEP meeting before changing student's educational placement.
- The court recognized that the child began punching, shoving, and using threatening gestures during the third-grade year.
- However, it noted that the **district did not reevaluate the child's behavioral needs. Instead, it discontinued the student's participation in a mainstream music class, stopped sending him to an inclusion PE class with the other children in the self-contained autism program, and began delivering one-to-one instruction in a room adjacent to the principal's office.**
- The court observed that the district had **clear notice of the need for a reevaluation** by April 6, 2011, **when the principal informed the director of student services that the special education teacher felt unsafe around the child.**
- The court explained that the district **erred in modifying the child's educational placement without holding an IEP meeting and giving the parents an opportunity to provide input.** "Although the district maintains that it was merely implementing short-term solutions to accommodate [the child] until the end of the year, its response essentially turned the reevaluation process on its head."
- The court ordered the district to reevaluate the student, convene an IEP meeting, and identify an appropriate placement for the upcoming school year.

# Anxiety and Self-Management Curriculum



## **63 IDELR 163 (D. Or. 2014)**

- An evaluation report released just days before an Oregon district put the finishing touches on an 11th-grader's IEP undercut the district's claim that the student no longer required services to address the student's severe anxiety.
- **Concluding that the discontinuation of the student's "self-management curriculum" amounted to a denial of FAPE, the District Court ordered the district to reevaluate the student's anxiety and develop an IEP that met her current needs.**
- The court acknowledged that the anxiety-related services the district provided the previous two years allowed the student to make progress.
- However, the court found insufficient evidence that the student had become independent enough to wholly eliminate the self-management curriculum from her IEP. To the contrary, an evaluation conducted by the district's own psychologist showed that the student continued to exhibit "clinically significant" levels of anxiety.
- U.S. Magistrate Judge John V. Acosta explained that the self-management plan was "essential" to the student's learning. "Given that [the student's] anxiety was a continuing problem ... , elimination of the self-management plan left [the student's] teachers with little to no guidance on how to properly interact with [her] in a way that bolstered [her] independence and reduced her anxiety..."
- However, the court rejected the ALJ's conclusion that the appropriate remedy was for the district to provide anxiety counseling until the student turned 21. Instead, the court directed the parties to consider all of the evaluative data and develop a plan that adequately addressed the student's anxiety.

# Any Questions?

