



## Students with Disabilities: Can Your School District Avoid Legal Missteps?

Imagine your school district has a student who must be hospitalized for a significant length of time during the school year. The student's parents were offered the use of a robot that allows the student to see, hear, participate and move around the classroom by remote control. Can your district legally block the use of the robot in the classroom, citing excessive expense and disruption of the learning environment?

This scenario is not science fiction – it is exactly what a gravely ill student and his parents presented to a Boston-area school district in 2017.<sup>1</sup> After the U.S. Attorney's office in Boston became involved, a

voluntary compliance agreement between the school district and the parents was reached to allow the use of the robot. Despite the resolution, purportedly the parents are still weighing the pursuit of a civil action for damages.<sup>2</sup>

The situation involving this Boston-area school district demonstrates that disability discrimination charges are distinctly alive in U.S. public schools.

School districts that do not appropriately provide for individuals with disabilities like the scenario above face costly consequences from three sources: the

<sup>1</sup> "Massachusetts Student Fights For Use of VGo Robot In Classroom," NBC 10 Boston, May 23, 2017, available at <https://www.nbcboston.com/news/local/Massachusetts-Student-Fights-For-Use-of-VGo-Robot-In-Classroom-423976003.html>.

<sup>2</sup> "U.S. Attorney: Robot can help student with disability attend class," Fox 25 Boston, May 7, 2018, available at <https://www.fox25boston.com/news/massachusetts/us-attorney-robot-can-help-student-with-disability-attend-class/745374228>.

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U.S. Department of Education's Office for Civil Rights ("OCR"), the U.S. Department of Justice ("DOJ"), and parents filing private civil actions for money damages.

***"You can't shun or banish kids with disabilities from public education. It's so detrimental to our society as a whole ..."***

***— Daniel Losen, J.D., M.Ed., Director of the Center for Civil Rights Remedies at UCLA's Civil Rights Project***

Source: "Why Schools Over-Discipline Children With Disabilities," *The Atlantic*, July 24, 2015, available at <https://www.theatlantic.com/education/archive/2015/07/school-discipline-children-disabilities/399563/>

What's more, the potential for facing disability discrimination charges is significant. In December 2016, the OCR reported to the President of the United States and Secretary of Education that it received more than 5,000 complaints alleging violations of laws protecting students with disabilities.<sup>3</sup> The top issues in the complaints included denial of a free appropriate public education ("FAPE"), differential treatment/exclusion/denial of benefits, and retaliation.<sup>4</sup> Just this year, the OCR published for the first time ever a searchable list of public schools across the country under investigation for disability discrimination, as well as for other types of discrimination.<sup>5</sup>

The OCR can refer violations to the DOJ for enforcement. In the past year, the DOJ has reached agreements in public education settings for HIV-related discrimination,<sup>6</sup> exclusionary discipline,

<sup>3</sup> OCR, "Securing Equal Educational Opportunity: Report to the President and Secretary of Education" (December 2016) 7, available at <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>.

<sup>4</sup> Id. at 32.

<sup>5</sup> Cases under OCR investigation can be searched and viewed on the OCR's website, available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/index.html>.

<sup>6</sup> "Justice Department Settles with Public School District to Resolve HIV-Related Discrimination Findings," DOJ Press Release, March 21, 2017, available at <https://www.justice.gov/opa/pr/justice-department-settles-public-school-district-resolve-hiv-related-discrimination-findin-0>.

## Fast Facts:

- 5,936** Disability-related complaints filed with OCR in FY 2016
- 5,232** Title II/Section 504 complaints resolved by OCR in FY 2016
- 2,434** Open disability-related cases pending with OCR (as of 4/27/2018)
- 13%** Students receiving special education services nationally in FY 2016

Sources: OCR website, "Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools," available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/index.html>, and OCR publication, "Securing Equal Educational Opportunity: Report to the President and Secretary of Education" (December 2016), available at <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>

restraint and seclusion policies,<sup>7</sup> and lack of reasonable modifications for autism spectrum disorder.<sup>8</sup>

The landscape concerning students with disabilities is complicated and federal laws protecting students can be implicated in many different circumstances. To help school districts navigate through potential legal landmines, SLRMA is pleased to present the Students with Disabilities Compliance Self-Audit Checklist for 2018. This comprehensive checklist is designed to help school districts assess their current policies and procedures and to help avoid OCR and DOJ investigations and penalties, DOJ lawsuits, and private litigation.

Now is the time to make sure your school district is compliant with disability-related laws. Go to SLRMA.org to get the full checklist today.

<sup>7</sup> "Settlement Agreement between the United States of America and Covington Independent Public Schools," January 18, 2018, available at <https://www.justice.gov/crt/case-document/file/928961/download>.

<sup>8</sup> "Justice Department Settles with Montgomery County, Maryland, After School Program to Ensure Compliance with the ADA," DOJ Press Release, October 10, 2017, available at <https://www.justice.gov/opa/pr/justice-department-settles-montgomery-county-maryland-after-school-program-ensure-compliance>.

## Recent Updates from the Newsroom Available on SLRMA.org

### Active Shooter Response Programs for Schools

May 24, 2018

The school shooting incidents of 2018 in Santa Fe, Texas and Parkland, Florida underscore the importance of school preparedness for active shooters. FBI statistics show that over 21% of active shooter incidents in the U.S. between 2000 to 2016 have involved educational settings, so school districts may consider rethinking their approach to handling active shooter incidents. ASIS International has published a white paper that discusses the various types of active shooter programs, methods of identifying and preventing potential attacks, target hardening in classrooms, and the pros and cons of arming teachers.

### Data Highlights on School Climate and Safety in Our Nation's Public Schools

May 1, 2018

In April 2018, the U.S. Department of Education Office for Civil Rights (OCR) released the 2015-16 Civil Rights Data Collection (CRDC) report on School Climate and Safety. The data in the CRDC comes from surveys completed by 17,300 public school districts and 96,400 public schools and educational programs.

### Department of Education Free Appropriate Public Education Q&A

April 28, 2017

The U.S. Department of Education recently issued a Questions and Answers document concerning the U.S. Supreme Court's decision in *Endrew F. v. Douglas County School District*, which clarified the scope of the IDEA's FAPE requirements. The Q&A document discusses the decision and the ramifications for school districts in applying the standards set forth in the Court's decision.

### Indicators of School Crime and Safety 2017

April 10, 2017

In March 2018, the National Center for Education Statistics and the Bureau of Justice Statistics released their annual report that examines crime occurring in schools and colleges. This report presents data on crime at school from the perspectives of students, teachers, principals, and the general population. The report covers topics such as victimization, bullying, school conditions, fights, weapons, the presence of security staff at school, availability and student use of drugs and alcohol, student perceptions of personal safety at school, and criminal incidents at postsecondary institutions.

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## 2018 Top 4 Downloads

- 1) Due Process Requirements for Out of School Suspension Checklist
- 2) Employee Speech & First Amendment Checklist
- 4) Transgender and Non-Conforming Student Checklist
- 4) Hogan Lovells Memo on Change In The Scope of OCR Investigations

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The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

Checkout [slrma.org](http://slrma.org) to see all the benefits of membership.

## SCHOOL LEADERS RISK MANAGEMENT ASSOCIATION

### Students with Disabilities Compliance 2018 Update:

#### ADA & Rehabilitation Act Self-Audit Checklist &

#### Best Practices for School Districts

#### Part 1 Title II and Section 504: General Compliance

This part of the SLRMA's Self-Audit and Best Practices is intended to assist school districts in assessing the compliance of its general policies and procedures with Title II and Section 504.

Evaluation and Placement	Yes	No
<ul style="list-style-type: none"> <li>◆ The District's policy provides that the District will evaluate promptly and on an individual basis any student with a suspected disability (i.e., where it would be reasonable for a staff member to suspect a disability) to determine whether the student qualifies as a student with a disability as defined by Title II and Section 504.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The District's policy states that there are no categories of disabilities under Title II and Section 504, nor is there a requirement that an individual need special education and related services under Section 504 to be considered an individual with a disability.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The District's policy requires it to establish standards and procedures for the prompt individual evaluation of persons who, because of a disability need, or the District believes may need, special education and/or related aids and services. The District promptly delivers needed special education and/or related aids and services.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The District's policy requires the District to obtain written, informed parental/guardian consent for an evaluation and contemplates that that the District may use applicable procedural safeguards/due process procedures to seek to override a parent/guardian's refusal to grant consent.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The District's policy acknowledges that evidence-based interventions, such as Response to Intervention must not deny or delay the evaluation of a student suspected of having a disability.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>



<ul style="list-style-type: none"> <li>◆ The District’s policy provides that the required evaluation will be conducted at no-cost to the student or the student’s parents.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>Best Practices:</i> OCR requires prompt, individualized, team-based assessments. In October 2015, OCR entered into a settlement agreement with a district that did not evaluate a student in a timely manner or make an individualized determination when it developed the student’s Section 504 plan; rather, the district took the position that it offered only extended time on tests and time-and-a-half for homework. The district’s Section 504 team failed to evaluate the requested services, whether the student needed the services, or whether the services would have allowed the student to continue to participate in an accelerated program. Among other things, OCR required the district to revise its policies and to conduct reviews of all students who have or are suspected of having disability to ensure they are not being denied FAPE or an equal opportunity to participate in the school’s program. Securing Equal Educational Opportunity: Report to the President and Secretary of Education” (December 2016) 35-36.</p>		
<ul style="list-style-type: none"> <li>◆ The District’s policy discusses medical assessments, and acknowledges that nothing in Section 504 or Title II generally requires a medical assessment to make an eligibility determination and to the extent the District seeks a medical assessment in a particular case, it must offer to provide the assessment free of charge to the student’s family.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ The District’s policy provides that the required evaluations:</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ Consist of more than just IQ tests and consist of evaluation instruments that are selected and administered by qualified personnel in a manner that best ensures validity and reliability;</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ Consider more than just evaluation instruments (e.g., aptitude and achievement tests) and also include consideration of detailed and comprehensive information from various sources (e.g., teacher recommendations, physical condition, social or cultural background, and adaptive behavior);</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>◆ Measure all pertinent specific areas of educational need (e.g., speech processing, inability to concentrate, and behavioral concerns).</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>