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Nebraska State Department of Education  
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# TRI-STATE REGIONAL SPECIAL EDUCATION LAW CONFERENCE

NOVEMBER 7 & 8, 2013

Embassy Suites—Downtown  
Omaha, Nebraska





# Tri-State Regional Special Education Law Conference

November 7 & 8, 2013 • Embassy Suites—Downtown • Omaha, Nebraska

*No federal funds were used to purchase food or beverage items for this conference.*

## Thursday, November 7

**7:00 – 8:00 Registration and Continental Breakfast**

**8:00 – 8:15 Opening Remarks**

*Elkhorn, Platte, Missouri, and Big Blue Rooms*

**8:30 – 10:00 Keynote**

**What the Courts (and Agencies) are Saying in 2013**

*Julie Weatherly*

*Elkhorn, Platte, Missouri, and Big Blue Rooms*

*So far, 2013 has been another active year in the area of special education law! Although the IDEA has not changed since the 2004 Amendments, there is an enormous amount of litigation going on, as courts and agencies attempt to interpret and apply the law's provisions. In this session, Julie will update the audience on nationally significant special education decisions rendered thus far in 2013, including court decisions and U.S. agency interpretations.*

**10:00 – 10:30 Break**

*Atrium*

**10:30 – 11:45 Breakout Session Block A**

**A1 Comparison of Section 504 and the IDEA**

*Perry Zirkel*

*Missouri Room*

*This session will address the systematic identification of differences in the respective regulations and sampling of recent court decisions illustrating major issues for (a) double-covered and (b) § 504-only students.*

**A2 The Student with a Disability and the Non-Traditional School**

*Dave Richards*

*Big Blue Room*

*Brick and mortar public schools are no longer the only places where services can be provided to the special education student. This session will look at other options (analyzing both the benefits and complications) of virtual schools, charter schools, GED programs, and home instruction.*

**A3 Student and Teacher Safety: Is the Law Helping or Hurting?**

*Jim Walsh*

*Platte Room*

*Learn the current state of the law, emerging trends, and best practices for appropriately responding to students who exhibit behaviors that can impact their safety, that of the general student population, and overall school community. Jim Walsh offers his unique insight into recent judicial decisions on key issues, including removals under*

*the IDEA's 45-day IAES provision, interpretations of the legal definition of "weapons" and "serious bodily injury," determining when to involve law enforcement officials, and balancing a student's constitutional right to attend school with protecting the safety of others.*

**A4 Avoiding Special Education Litigation**

*Julie Weatherly*

*Elkhorn Room*

*Unfortunately, mistakes can occur in the process of developing and implementing IEPs and special education programs that can lead to parent distrust and anxiety and, worst of all, litigation. This presentation will examine common procedural and substantive mistakes that are made by school personnel that can lead to litigation in the area of special education, and will include practical "do's and don'ts" for all educators to keep in mind as they struggle to avoid special education legal disputes.*

**A5 Non-Traditional Families—Who Are They and What Rights Do They Have Under the IDEA?**

*Chris Borreca*

*Council Bluffs AB Room*

*This presentation will highlight the rights of parents in the many forms they appear: traditional, divorced, single foster, etc. A review of judicial orders will be discussed and guidance will be provided.*

**11:45 – 12:45 Box Lunches**

*Atrium*

**12:45 – 2:00 Breakout Session Block B**

**B1 ED Eligibility under the IDEA and ADHD Eligibility under the IDEA and Section 504**

*Perry Zirkel*

*Missouri Room*

*The session will provide checklists that show the regulations and court decisions for each of the essential elements of eligibility, respectively, for (a) students with ADHD under the IDEA and § 504 and (b) the IDEA classification of emotional disturbance.*

**B2 Administrators and the IEP Process**

*Dave Hodgins*

*Big Blue Room*

*This session, presented by experienced attorney David Hodgins, will focus on the key legal requirements and legal issues related to the IEP process as mandated by the IDEA, with special emphasis on the role of the administrator. Along with practical advice and illustrations, this session will review and discuss the key role and responsibilities of the administrator in the IEP staffing for IEP team meetings, notice requirements, IEP team members, and dealing with disagreement.*

**B3 How the Lawyers Took Over Special Education**

*Jim Walsh*

*Platte Room*

*Jim Walsh will help you navigate complex legal issues while maintaining your sanity and soul. This session will peek into the history placing IDEA in the midst of the civil rights revolution, while calling attention to how the system has become overly complex, adversarial, legalistic, and frustrating.*

**B4 Determining the LRE without Engaging in Predetermination of Placement**

*Elkhorn Room*

*Kathy Mehfoud*

*Which tests do courts use to decide the least restrictive environment for an individual student? Is there any difference in this determination based on individual disability categories or ages of the student? How can staff investigate various placement options and have appropriate staff at the IEP meetings without appearing to predetermine the placement? Some courts are finding that when predetermination occurs, the resulting IEP denies FAPE. Avoid this problem and obtain other useful LRE tips in this informative presentation of LRE and predetermination.*

**B5 Know How to Respond to a Dangerous Student**

*Council Bluffs AB Room*

*Lenore Knudtson*

*How do schools know when to propose more a restrictive placement for a student displaying aggressive behavior? When should law enforcement be called? Is this student safe? In a climate of increasing concern for school safety, the needs and rights of a special education student must be balanced against genuine safety risks. If the school believes that maintaining the current placement of a dangerous student is substantially likely to result in injury to that student or others, request a hearing! A seldom-used provision in the regulations permits a hearing on the issue of dangerousness, granting a hearing officer the authority to remove the student to another setting for 45 school days. Understand when and how to exercise this option when student safety is at risk. Schools have a big job, and this session will help guide a discussion of some of the most difficult decisions facing special education teams.*

**2:00 – 2:30 Break**

*Atrium*

**2:30 – 3:45 Breakout Session Block C**

**C1 Mental Health and the Manifestation Determination**

*Missouri Room*

*Julie Weatherly*

*Perhaps the most difficult challenge for educators in the area of special education is understanding and correctly implementing compliant procedures in the area of discipline. One particular piece of the discipline puzzle is that of making the manifestation determination. This presentation will examine the provisions of the law related to the manifestation determination requirement and will examine judicial/ administrative decisions regarding the validity of manifestation determinations, particularly with respect to students who have been diagnosed with mental health conditions.*

**C2 Medical/Health Care Services under the IDEA: Legal Issues to Know and Understand**

*Big Blue Room*

*Dave Hodgins*

*This session focuses on the key legal requirements and legal issues surrounding the provision of medical/health care services to special education students in order for the students to receive FAPE under the IDEA.*

**C3 IDEA FAQ: Extracurricular Athletics, Accelerated Classes & After-School Programs**

*Dave Richards*

*Platte Room*

*In addition to their rights under IDEA, special education students also receive the nondiscrimination protections of Section 504. In this session, we'll discuss the impact of these protections with respect to three challenging areas of compliance: extracurricular athletics (with discussion of the January 2013 U.S. Department of Education guidance), accommodations and services in accelerated classes (gifted, honors, etc.), and the right to equal participation in after-school programs.*

**C4 Efficient and Legal IEP Development**

*Kathy Mehfoud*

*Elkhorn Room*

*Tired of spending hours in contentious IEP meetings? Confused about who needs to be present for the meeting? Worried about things said by staff that reflect negatively on the school district? Still trying to convince the parents to provide dates for the IEP meeting? This presentation will provide you relief in these areas by discussing legal rules and strategies to employ in IEP meetings so the meetings are effective, efficient, and not endless.*

**C5 Is Bad Behavior a Disability under IDEA and 504?**

*Lenore Knudtson*

*Council Bluffs AB Room*

*Distinguishing between the uncooperative student and a learner with a disability can be a difficult task. Behavior and discipline issues continue to be some of the most hotly litigated cases across the nation and serve as grounds for frequent disputes in every state. Add the complications of an ADHD diagnosis. Educators may have additional responsibilities for students with complex and challenging behaviors. Learn when to rule out bad behavior as a disability.*



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## Friday, November 8

**7:00 – 8:00 Registration and Continental Breakfast**

**8:00 – 8:15 Opening Remarks**

*Elkhorn, Platte, Missouri, and Big Blue Rooms*

**8:15 – 9:45 Keynote**

**Providing Social, Emotional, and Behavioral Services on a Budget**

*Diana Browning Wright*

*Elkhorn, Platte, Missouri, and Big Blue Rooms*

*Participants will review the sequence of evidence based components that can be provided sequentially by teachers, behavioral specialists and therapeutic credentialed staff. They will learn how to match degree of need and student characteristics with interventions and review the difference between socially mediated behaviors and behavioral supports vs. emotionally driven behaviors that respond to social/emotional supports.*

**9:45 – 10:15 Break with Refreshments** *Atrium*

**10:15 – 11:30 Breakout Session Block D**

**D1 Rights and Responsibilities of Parents**

*Art Cernosia*

*Missouri Room*

*One of IDEA's stated purposes is to ensure that parents have a meaningful opportunity to participate in the decision making process of their child's education. This session will provide a review of the legal rights, roles, and responsibilities of parents of students with disabilities in fulfilling that purpose.*

**D2 Access to the General Curriculum**

*Jose Martin*

*Big Blue Room*

*While much attention was devoted in the early era of special education to the Least Restrictive Environment (LRE) mandate of the Act, the second era of the DEA sought to address the segregation of students with disabilities with respect to exposure and participation in curriculum. To that end, successive IDEA reauthorizations strengthened the requirement for IDEA students to participate in the general curriculum. This session will review the key provisions of the law and its regulations with respect to accessing to the general curriculum, with case examples to guide the way.*

**D3 Effective Responses to Students who Threaten Harm to Others**

*Platte Room*

*Diana Browning Wright*

*Participants will review the Virginia Model of Threat Assessment, recently identified as evidence-based at the National Registry of Evidence-Based Practices (NREPP). They will identify steps for administrators, school psychologist/social workers, counselors, and law enforcement to follow that provide legal protections and effectively reduce risk.*

**D4 General Education Teachers and Special Education**

*Elkhorn Room*

*Jim Walsh*

*Providing appropriate services to students with disabilities requires the efforts of ALL teachers, whether they be classified as “special ed” or “general ed.” In the era of inclusion, this is particularly important. This session will focus on the role and responsibility of the general education teachers in connection with classroom adjustments, behavioral issues, extracurricular activities, IEP Team meetings, and other issues.*

**D5 Washington Update**

*Council Bluffs AB Room*

*Nancy Reder*

*This presentation will provide an update on current federal legislative initiatives (including ESEA reauthorization, budget and appropriations, Sequestration, seclusion and restraint, and vocational rehabilitation reauthorization); administrative policies (SPP/APR update); ESEA waivers; and status of Washington gridlock.*

**11:30 – 11:45 Break (No refreshments will be served)**

**11:45 – 1:00 Breakout Session Block E**

**E1 Special Education Services Beyond the School Day**

*Missouri Room*

*Art Cernosia*

*The IDEA, at times, requires the provision of special education services to the student beyond the regular school day and school year. This session will review the status of the law and judicial decisions addressing extended services in the school, home, and community.*

**E2 The Legal Aspects of Rtl**

*Big Blue Room*

*Jose Martin*

*Response-to-intervention (Rtl) initiatives are primarily rooted in general education programs, but nevertheless impact several key pieces of the legal framework for special education under the IDEA. This session explores the ways in which Rtl intersects with legal requirements under the IDEA, including new challenges with respect to complying with child-find, communicating with parents regarding Rtl while protecting against failure-to-identify claims, the role of Rtl in LD evaluations, and the related reform of assessment practices in identifying LDs.*

**E3 Effective Responses to Students Who Threaten Harm to Others (Repeat)**

*Platte Room*

*Diana Browning Wright*

**E4 Making the Transition: Preparing for Life after Special Education**

*Elkhorn Room*

*Jim Walsh*

*Special education law puts emphasis on the transition from high school to whatever comes next. Like everything else in special education, decisions about transition must be individualized, based on sound evaluation data, and educationally appropriate. Parent and student input is particularly important. This session will focus on the legal requirements for transition, with an emphasis on practical application.*

**E5 Legal Ethics and Special Education Disputes (Part 1)**

*Council Bluffs AB Room*

*Thomas Mayes*

*These sessions will focus on recent professional responsibility and attorney discipline decisions from the Iowa, Kansas, and Nebraska supreme courts. Participants will apply these decisions to recurring problems in special education negotiation and litigation.*

**1:00 Conference Ends**

**1:00 – 2:00 Legal Ethics and Special Education Disputes (Part 2)**

*Council Bluffs AB Room*

*Thomas Mayes*

*The hotel is pleased to offer Internet at a reduced price of \$3.95 per 24-hour period. Current pricing is \$10.95 per 24-hour period.*

**To access the conference materials scan QR code below!**

