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# Updates from the Hill

*(and a few other places)*

**Dr. Kevin Rubenstein**

CASE Policy & Legislative Chair

President, Illinois Alliance of Administrators of Special Education

Director of Student Services, Lake Bluff ESD 65, IL

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What's Happening Now?  
Stop Everything & Act  
Questions



## Agenda

# CASE Policy & Legislative Team

**Gary Myrah**

CASE

Past President



**Erin Maguire**

CASE

President - Elect



**Phyllis Wolfram**

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President



**Luann Purcell**

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# CASE Policy & Legislative Team

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# CASE Policy & Legislative Team

**Don Christman**  
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**Valerie Johnson**  
CORE  
Cooperative, SD



**Robin Corder**  
Grace Joint School  
District, ID



**Tanya Rapert**  
Springfield Public  
Schools, MO



**Kathy Gabrielson**  
Shelton Public  
Schools, CT



**Greta Stanfield**  
Mason County Schools, KY



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# What We Do

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## The CASE Policy and Legislative Team

Draft letters to Members of Congress and their staff on current issues

Post comments on behalf of special education administrators in the Federal Register

Develop policies and issue briefs:

- Restraint & Seclusion
- Educator Shortages
- Public Funds in Public Education (Revisions)



# The CASE Policy and Legislative Team

## We are beginning to work on:

- Policies for:
  - Mental Health
  - Early Childhood
  - Dispute Resolution
  - IDEA Funding



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# What's Happening Now?

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# Espinoza vs. Montana

**Issue:** Whether it violates the **religion clauses** or the **equal protection clause** of the **United States Constitution** to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the **choice** of attending religious **schools**.

*“In Montana, for example, several students participating in the scholarship program are disabled and have been using scholarships to attend Cottonwood Day School, a secular school specializing in treating students with special needs.” - From Petition for Espinoza*



## Espinoza vs. Montana


- **FACT:** Approximately 0.3% of all religious schools are focused on educating students with disabilities.
- This case is widely expected to be the seminal case in determining whether public funds may be used in private education.
- Amicus briefs filed by close to 50 individuals and organizations who are pro-school choice (including current senators, governors, and others with interests)



## Espinoza vs. Montana

- CASE signed on to an Amicus Brief with the National School Boards Association and several other organizations.
- Oral arguments are scheduled for January 22, 2020 and decision will come before end of term in June.
- Our message is the same as before:

**“Keep public funds  
in public education.”**



# Turn & Talk

Your superintendent talks  
with you about the  
Espinoza case. How do you  
respond?



# Restraint & Seclusion

- This is garnering lots of attention across the country and has been helped along by the press.
- Current lawsuit in Fairfax County Public Schools filed by COPAA and two other related groups.
- CASE leadership participated in interviews leading to a report published by the General Accountability Office.
- 70 percent of the more than 17,000 school districts in the U.S. reported zero incidents of restraint and zero incidents of seclusion.



# Restraint & Seclusion

- 113 open investigations by OCR as of today with oldest dating to 2015 (4 in Ohio)
- 88 resolved investigations with outcomes required
- OCR and OSEP partnership in this area.



# Restraint & Seclusion

- GAO Recommendations

“The Assistant Secretary for the Office for Civil Rights should immediately **remind and clarify** for all school districts that they are to **only report zero incidents of restraint and seclusion when there are none** and that they are to leave cells blank to indicate when data are not collected or incomplete.







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## Restraint & Seclusion

“As part of the 2017-18 CRDC quality assurance process... **follow up with school districts** that have **already submitted reports of zero incidents of restraint or seclusion to obtain assurances** that zero incidents means no incidents or ask the districts to submit corrected data.”

“**Monitor compliance** with its action plan requirement, and ensure plans are submitted and address all missing data.”





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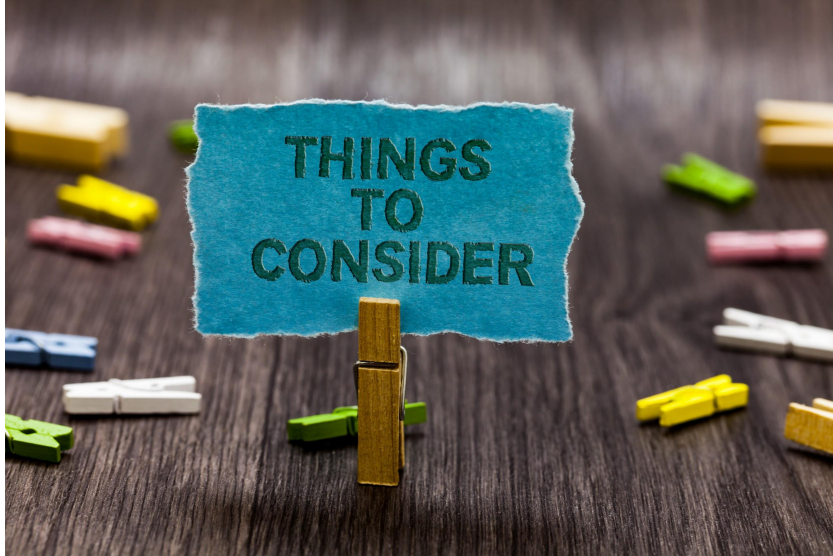
# Restraint & Seclusion

“Prominently disclose for past collections the **potential problems** with using restraint and seclusion data given the known misreporting issues.”

## CASE Resources

[Policy on Restraint and Seclusion](#)





Prone Restraint

Supine Restraint

Time Out

Isolated Time Out

Seclusion



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# Public Charge

**The Issue:** Instead of limiting the definition of off-limits government benefits to welfare payments and subsidized long-term institutionalization, the new policy would expand the definition to include a wider range of common government benefits:

- All of the status quo benefits listed above (SSI, TANF, general assistance, and long-term institutional care)
- Supplemental Nutrition Assistance Program (SNAP), commonly known as “Food Stamps”
- Section 8 housing and rental assistance
- Federal housing subsidies
- Non-emergency Medicaid benefits (with exceptions for children under 21, people with disabilities, pregnant women, and mothers within 60 days after giving birth)



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# Public Charge

## The Impact on Schools

- Students who no longer apply for TANF or other government benefits for fear of deportation or losing immigration status means more students coming to school hungry.
- Families who don't apply for Section 8 Housing for fear of deportation or losing immigration status means more students may be homeless or unsheltered.
- Families who are confused about the rule might not apply for any government benefits for fear of deportation or losing immigration status and therefore we could have fewer Medicaid dollars flowing into schools.



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# Public Charge

## CASE Action

- We submitted comments in the Federal Register and encouraged all of you to do the same.

## Administration Action

- They implemented the rule anyways.

## How The Courts Responded

- The Courts have issued a temporary injunction blocking the rule from going into effect. (And Section 504 is right at the heart of the argument).



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# Public Charge

## From the Temporary Injunction

“Plaintiffs further argue that **the Rule discriminates against individuals with disabilities**, in contravention of Section 504 of the Rehabilitation Act, Pub. L. No. 93-112, 7 Stat. 394 (1973) (codified at 29 U.S.C. § 794). Section 504 provides that *no individual with a disability "shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination ... under any program or activity conducted by any Executive agency."* 29 U.S.C. § 794(a). DHS, in particular, is prohibited from denying access to benefits and services on the basis of disability, 6 C.F.R. § 15.30(b)(l) , and from using discriminatory criteria or methods of administration, id. § 15.30(b)(4). See also id. § 15.49. Exclusion or discrimination [under Section 504] may take the form of **disparate treatment, disparate impact, or failure to make reasonable accommodation.**" B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 158 (2d Cir. 2016).






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# Public Charge

## From the Temporary Injunction

“The Rule clearly considers disability as a negative factor in the public charge assessment. Defendants acknowledge that disability is "one factor ... that may be considered" and that it is "relevant ... to the extent that an alien's particular disability tends to show that he is 'more likely than not to become a public charge' at any time." (Defs.' Opp'n at 30 (quoting 84 Fed. Reg. at 41,368).) Defendants do not explain how disability alone is itself a negative actor indicative of being more likely to become a public charge. In fact, **it is inconsistent with the reality that many individuals with disabilities live independent and productive lives.** As such, Plaintiffs have raised at least a colorable argument that the Rule as to be applied may violate the Rehabilitation Act, and further discovery and development of the record is warranted prior to its implementation.”





# Turn & Talk

You overhear some people discussing the fact that fewer people have applied for free lunch this year and they are wondering why.

You think it could be because of the Public Charge issue. Have that conversation.



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# Significant Disproportionality

**The Issue:** There have been widespread disparities in the treatment of students of color with disabilities. In 2016, the Obama Administration issued regulations to address a number of issues related to significant disproportionality in the identification, placement, and discipline of students with disabilities based on race or ethnicity.



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# Significant Disproportionality

## The Issue:

In Ohio Black students are:

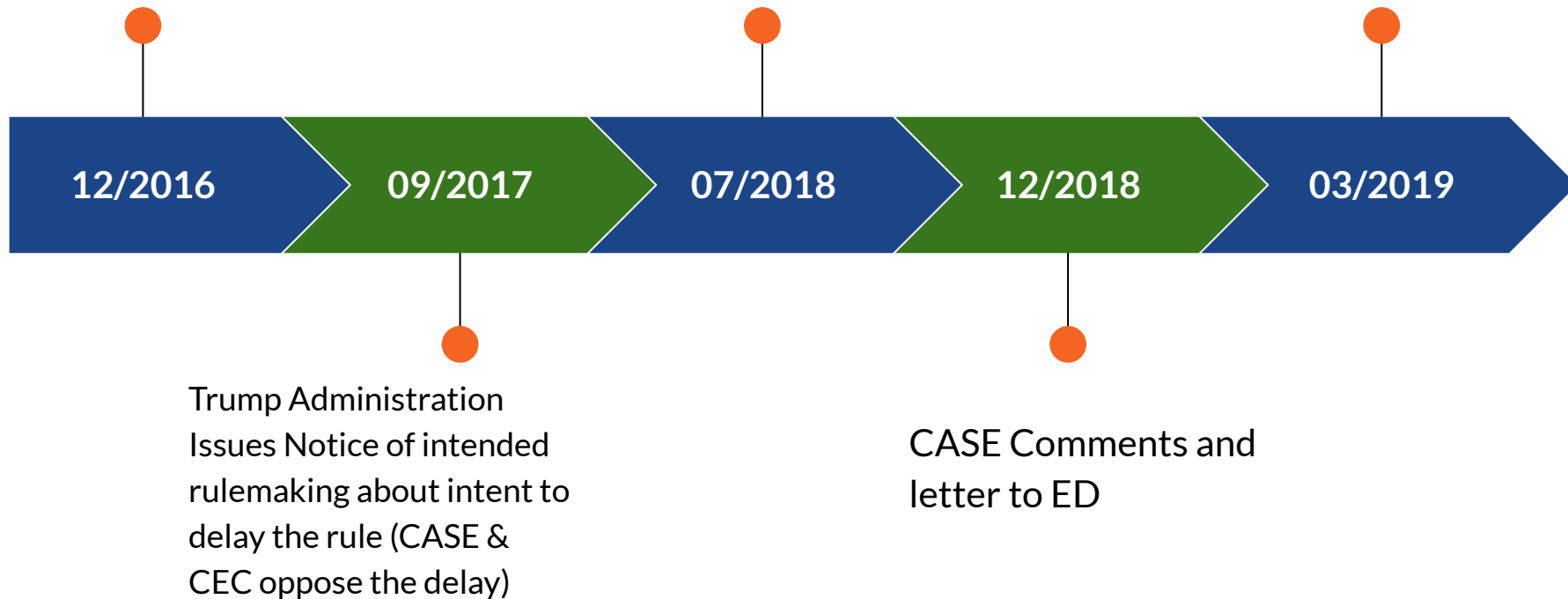
- More than twice as likely to be identified with intellectual disabilities, placed in restrictive settings or removed from educational settings for discipline; and
- More than three times as likely to be identified as having an emotional disturbance.



Obama Administration  
Issues Guidance on Sig  
Disproportionality

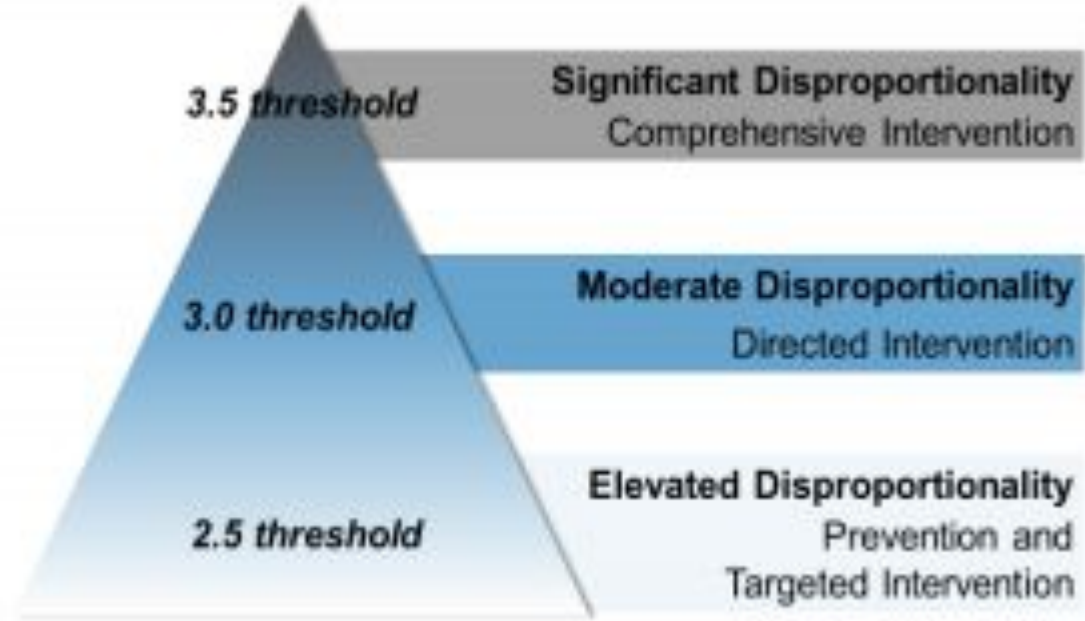
- Rule is delayed
- CASE meets with ED
- COPAA files suit

Judge orders ED to  
implement Rule





# Significant Disproportionality





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# FY 2020 Appropriations Outlook

- FY 2020 began 10/1/19!
- Continuing Resolution (CR) til 12/21/19.
- Proposed FY 2020 Education funding:
  - Funding at/below FY 2011 (inflation-adjusted), including IDEA.
  - Dept of Ed overall \$7 B. below FY 2011.





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# Status: FY 2020 Appropriations

- **Senate:**
  - Considered 10 of 12 bills in Committee, but not Labor-HHS-Education.
  - Proposed Labor-H: freeze at FY 2019.
  - Just begun floor consideration of 1st package of 4 bills.
  - Possible that next package is Defense & Labor-H.
    - Problems: Allocations & “Poison Pill Riders.”



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# Status: FY 2020 Appropriations

- **House:**
  - Completed 10 of 12 bills on floor, including Labor-H.
  - Labor-H: \$11.8 B above FY 2019...and above new budget caps!
- **What's Next - Options:**
  - Another short-term CR to complete all bills.
  - "CRomnibus" or several "minibuses."
  - Full-year CR, with "anomalies."





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# Let's Take Action

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## Social Media Basics

- Most Members of Congress are using social media
- CASE members need to be connected outside of just our weekly emails
- I have found Twitter (@kdruben) to be an invaluable source of professional networking and it has allowed me to express my voice as an advocate for public schools
- Other mediums to consider: Facebook & Instagram
- Hashtags (i.e. # ) make things searchable (#CASENASDSE2019 searches for all things tagged with this hashtag)
- Using someone's Twitter handle (i.e. @kdruben) in a Tweet is a way of calling their attention to the Tweet
- One final thing: Different perspectives

# IDEA Full Funding Bill Early Childhood Bill Appropriations



## Our Issues



# IDEA Full Funding Bill HR 1878 & S. 866



Authorizes a glidepath to  
full funding of IDEA by  
2029



DECEMBER 2, 1975

Office of the White House Press Secretary

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NOTICE TO THE PRESS

The President has signed S. 6 - Education for All Handicapped Children Act of 1975 -- which extends permanently, and establishes a new formula for Federal grants to States and localities for education of handicapped children; prescribes State eligibility requirements, including service to all handicapped children, individualized educational programs and grievance procedures; and makes various other significant changes in the Education of the Handicapped Act of 1970.

The bill will extend the Mathias formula through fiscal year 1977. Starting in fiscal year 1978, the amount of each State's grant would be computed by multiplying the number of handicapped children aged 3 to 21 receiving special education and related services by an increasing percentage of the average national per pupil expenditure--5% in fiscal year 1978, 10% in 1979, 20% in 1980, 30% in 1981, and 40% in 1982 and thereafter. Special allocation provisions are included for Indian children on reservations and for U.S. territories..

A State will have to have in effect a policy that assures all handicapped children the right to a free appropriate public education. Such an education would have to be available for all handicapped children aged 3 to 18 not later than September 1, 1978 and for all such children aged 3 to 21 by September 1, 1980 (unless such requirement as applied to children aged 3-5 and 18-21 is inconsistent with State law or court order).

# # #



“Before its enactment in 1975, federal statistics showed that, of the more than 8 million children from birth to age 21 with disabilities, only half were receiving an appropriate education. Another 2.5 million were receiving an inadequate or inappropriate education and 1.75 million, mostly those with the most significant disabilities were receiving no education at all.”

- Rethinking Special Education for a New Century (Fordham Institute, 2001)



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# Current Co-Sponsors of IDEA Full Funding Bill (HR 1878)

## Ohio

Joyce Beatty & Steve Stivers

# Funding Early Childhood is the Right IDEA HR 4107



A bill to restore  
full funding for  
young children  
with disabilities

# See your people on this list?

Send a Tweet or Post on Social Media & Tag Your Member of Congress

- Thanks to @repschneider for supporting HR 1878 #IDEAFullFunding @oapsa1
- @repschneider is a champion for #IDEAFullFunding! Thanks for supporting HR1878 @oapsa1

# Don't see your people on this list?

1. Head on over to the Legislative Action Center  
<http://bit.ly/SpedAction>
  2. Send a letter to your member of Congress on the issue.
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# Post on Social Media

- Join me in urging your Members of Congress to increase federal education investments in the government funding bills now being drafted. The public strongly supports more #edfunding @senrobportman @sensherrodbrown @oapsa1

#SpecialEducation Funding is important to me and it should be important to @senrobportman.  
Increase #edfunding

## Don't see your people on this list?

1. Head on over to the Legislative Action Center  
<http://bit.ly/SpedAction>
2. Send a letter to your member of Congress on the issue.



**Questions?**  
**krubenstein@LB65.org**

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