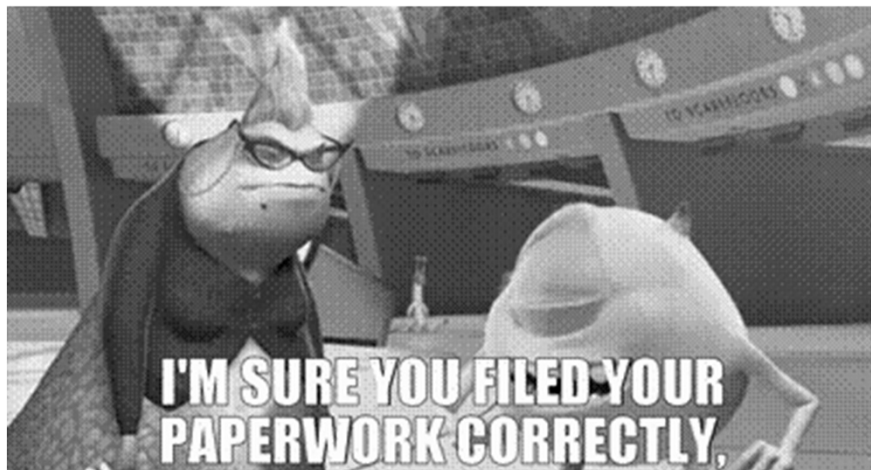


**"Please Provide the Following Information":
Creating, Collecting and
Maintaining Appropriate
Documentation**

BY CYNTHIA BUECHLER
BUECHLER & ASSOCIATES
ATTORNEYS@BUECHLERLAW.COM
NELI FALL CONFERENCE 2024



Retaining Records:

The Texas State Library and Archives Commission provides a retention schedule for how long records have to be maintained.






Record Number	Record Title	Record Description	Retention Period	Remarks
SD3250-01	Enrollment Lists and Rosters		5 years	See retention note (b) on page 6.
*SD3250-02	Student Records	Records of each student referred to or receiving special education services, including referral, assessment, and reevaluation reports; enrollment and eligibility forms; admission, review, and dismissal (ARD) and transitional planning committee documentation; individual educational plans (IEP) and individual transitional plans (ITP); parental consent forms for testing and placement; and other records of services required under federal and state regulation. Includes records of students receiving School Health and Related Services (SHARS), see Texas Medicaid Provider Procedures Manual.	Cessation of services + 5 years, but see retention note (a).	Retention Notes: a) It is an exception to the retention period given for this record group, that the following information must be retained PERMANENTLY in some form on each student in grades 9-12 participating in a special education program: name, last known address, student ID or Social Security number, grades, classes attended, and grade level and year completed.

Record Number	Record Title	Record Description	Retention Period	Remarks
				<p>If an academic achievement record [see item number SD3200-01(a)] is created for the student and maintained among those for students in the regular population, it is not necessary for special education records custodians to maintain the prescribed information beyond 5 years after the cessation of services, provided that it is contained in the Academic Achievement Record.</p> <p>b) Prior to the destruction of any records in this record group, the eligible student or the parents of the student, as applicable, must be notified in accordance with federal regulation.</p> <p>c) See retention note (b) on page 6.</p>
SD3250-03	Video surveillance, special education settings	Any video and audio recorded from a camera placed in a classroom or other special education setting.	3 months	

Chart Source: [Texas State Library and Archives Commission](#)

<h2 data-bbox="248 1234 545 1346">1. Goals and Objectives</h2>	<p data-bbox="818 1234 1349 1430">The parent wants the underlying proposal data that was collected to support the PLAAFPs. Is she entitled to this information?</p>
--	---

	<p>PLAAFPs are the foundation of the student's proposed goals and objectives and should be based upon current performance which is determined by obtaining baseline data. Baseline data is crucial for setting effective goals and objectives because it provides a clear starting point and allow for to accurate measurement of progress by comparing current performance to the baseline.</p>
--	--

<p>Define clear goals and objectives:</p>	<p>Ensure your goals are SMART to guide data collection and analysis.</p> <ul style="list-style-type: none"> Specific Measurable Achievable Relevant Time-bound
--	--

<p>Define clear goals and objectives:</p>	<p>Select appropriate data collection methods:</p> <p>Choose methods that best suit your goals, such as criterion referenced assessments, work samples, observations, benchmarks, or other forms of testing.</p> <p>Establish a data collection schedule:</p> <p>Set regular intervals for data collection to monitor progress over time and identify trends. Tracking data on a weekly basis usually provides sufficient trials to determine progress.</p>
--	---

<p>Train Data Collectors</p>	<p>Make sure data collectors are using the same standards for data collection procedures to maintain consistency and accuracy.</p>
-------------------------------------	--

Progress Reports

The student's progress reports describes the progress made by the legend, "C" for continue, "W" for work in progress and "M" for master. Is this sufficient?

Progress Reports must be provided as often as regular report cards are. When documenting progress on the progress reports use the data collected. The measurement needs to be consistent with the way the goal or objective indicates it will be measured. For example, if it indicated that it will be 4 out of 5 trials during a six-week period, then the progress report should indicate the level the student is currently performing, i.e., 2 of 5 trials. Be sure to keep the data that supports the level of progress reported.

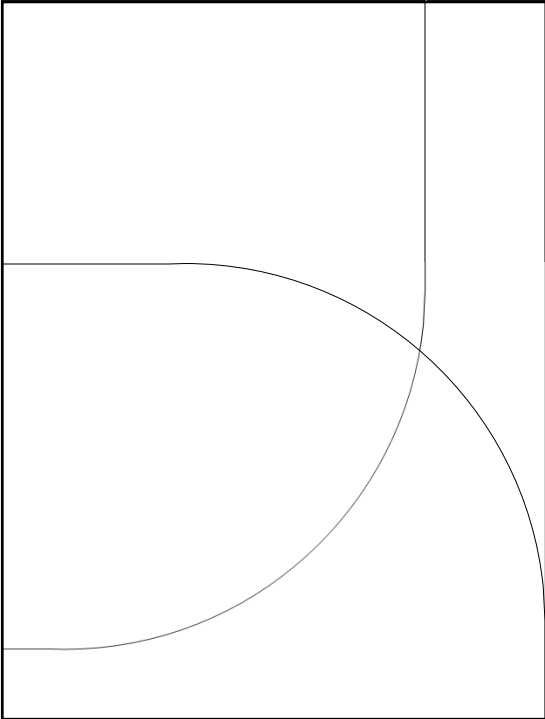
What does the goal say as to how it will be measured? What data has been collected to support progress reports?

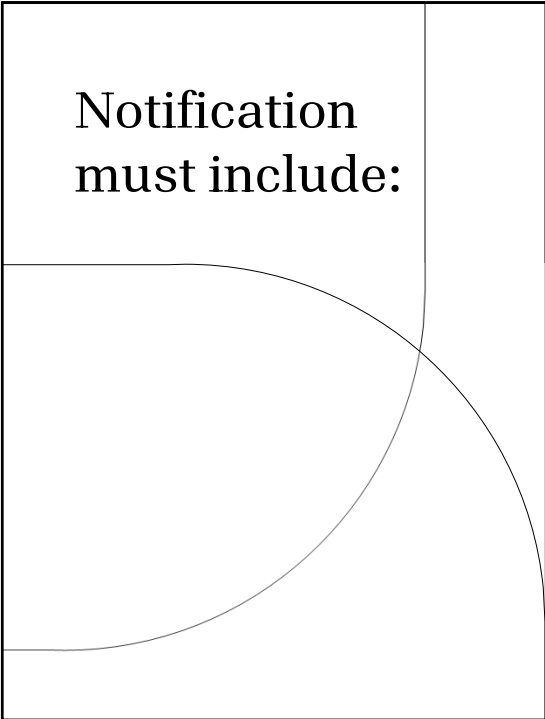
Behavior

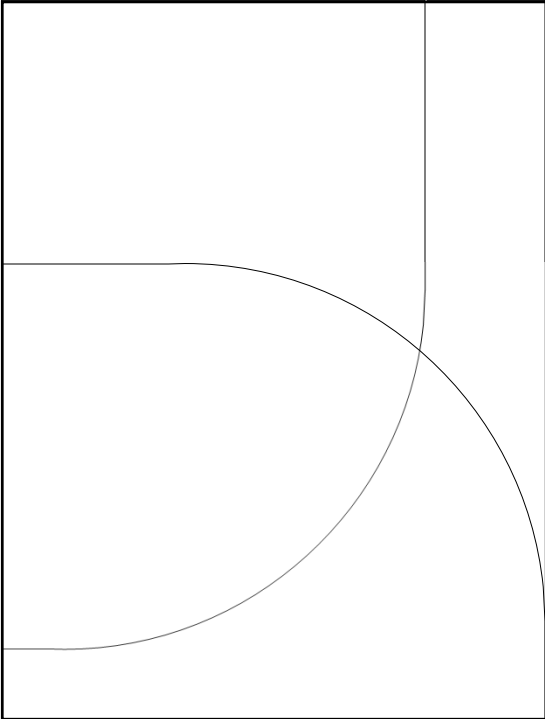
To effectively implement a Behavior Intervention Plan (BIP), essential data that needs to be collected includes the target behaviors frequency, duration, intensity, the triggering antecedents, the behavior and the consequence to that behavior (ABC data) as well as frequency of the replacement behaviors. The data also needs to include what strategies from the BIP were used when a behavior occurs.

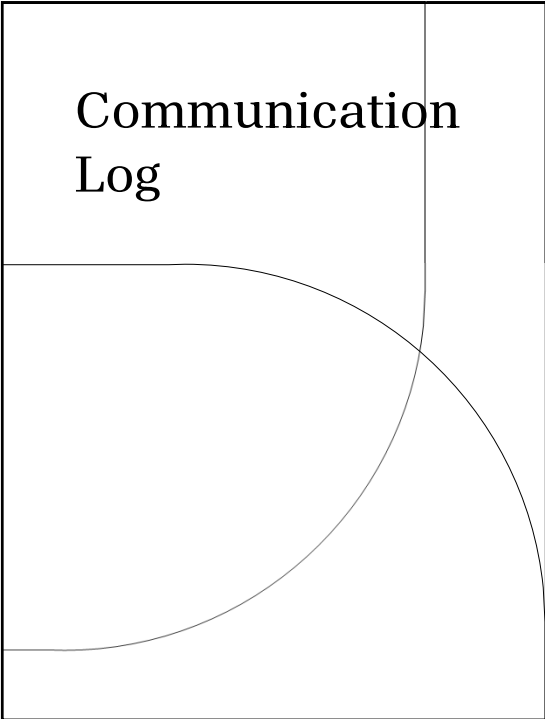
Restraint

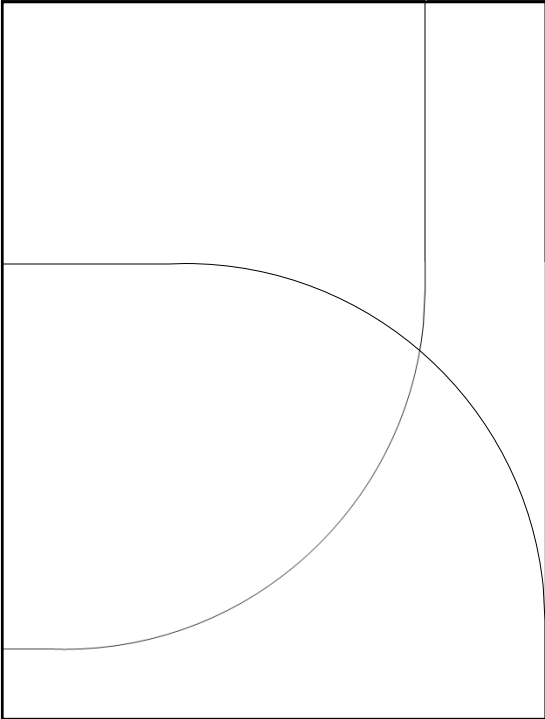
Johnny's behavior has escalated to the point that he has to be restrained by three staff members. What documentation has to be provided?

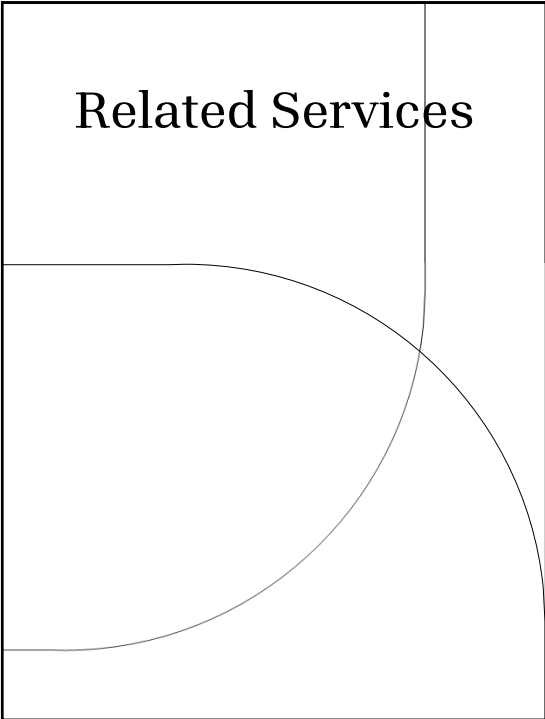
	<p>When restraint is used, school employees, volunteers, or independent contractors must:</p> <ol style="list-style-type: none">(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
---	---

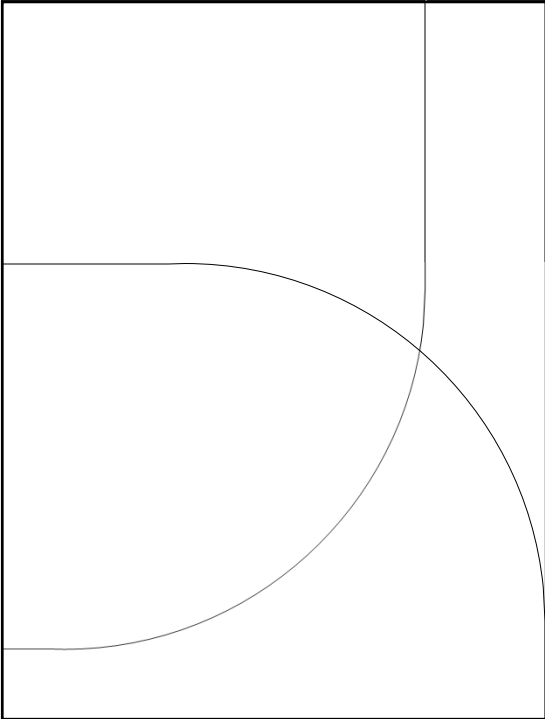
<p>Notification must include:</p> 	<ul style="list-style-type: none">• the name of the staff member(s) administering the restraint;• date of the restraint and the time the restraint began and ended;• location of the restraint;• nature of the restraint;• a description of the activity in which the student was engaged immediately preceding the use of restraint;• the behavior that prompted the restraint;• the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and• information documenting parent contact and notification."
--	--

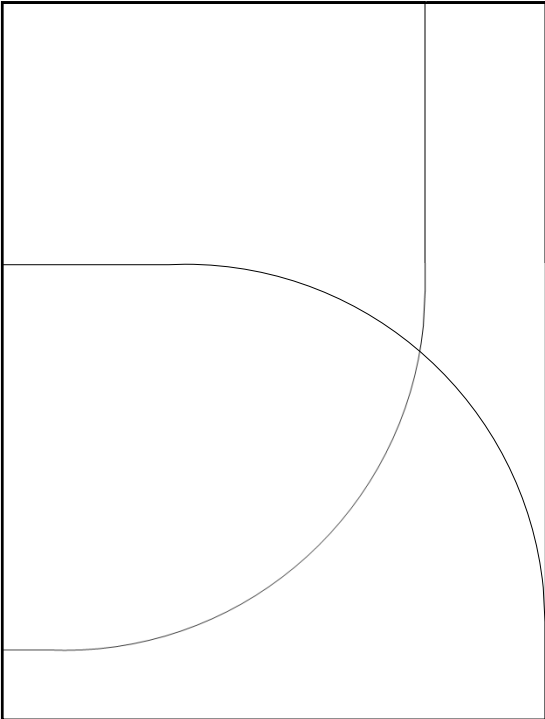
	<p>Additionally, written documentation must be placed in the student's special education eligibility folder in a timely manner, so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).</p> <p>Not legally required, but it's helpful having the nurse see the student to ensure that there are no injuries.</p>
---	--

<p>Communication Log</p> 	<p>The parent asserts that the school never contacted her regarding her child even though you have tried to contact the parent several times. What should you do?</p>
---	---

	<p>It is important for you to memorialize the efforts that were made to contact the parent. Document every time that you called the parent and if they did not answer. If they did answer, document the substance of the conversation. You may also follow up the telephone call with an email. Always use apps to call a parent and your school email when emailing a parent. Your personal cell and email should not be used when conducting school business. Many of the apps will keep track of the time and date of your call.</p>
---	---

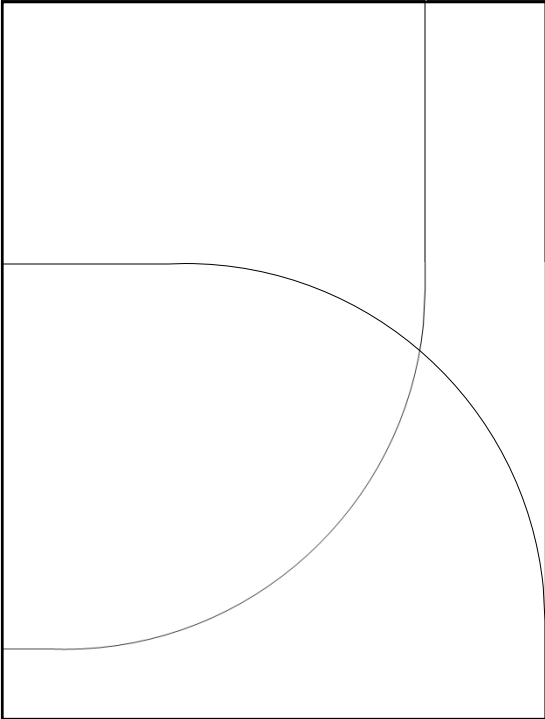
<p>Related Services</p> 	<p>The occupational therapist meets with the student for five, 30-minute sessions per six weeks. How should this be documented?</p>
--	---

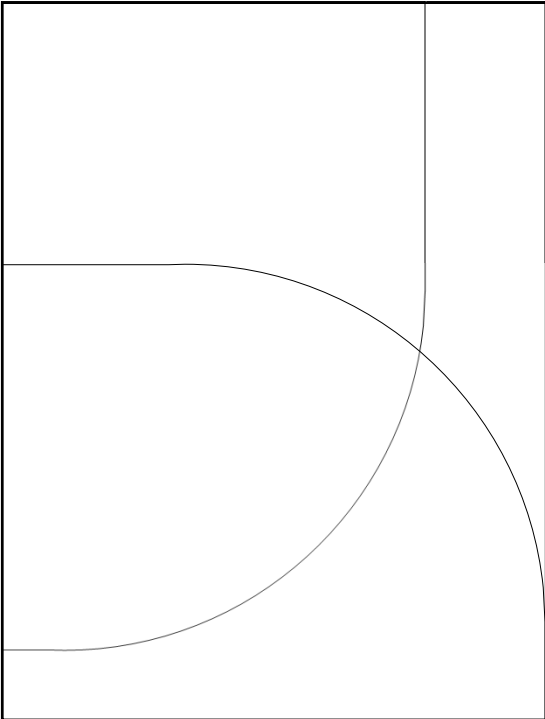
	<p>Many schools access School Health and Related Services (SHARS) for reimbursement for related services provided to a student with disabilities. Whether the school is submitting paperwork for SHARS reimbursement or not, the documentation needed for reimbursement is a template for documenting related services provided. This includes:</p>
---	---

	<ul style="list-style-type: none">• Service Logs<ul style="list-style-type: none">• Include the student's name, date of birth, date of service, start and stop time, total minutes, student observation, and activity performed.• Session Notes<ul style="list-style-type: none">• Include the start and stop time, total minutes, and activity performed.
---	---

<p>Prior Written Notice</p>	<p>When must a PWN be provided and what must it contain?</p>
------------------------------------	--

	<p>A school must provide parents with a written document (PWN) explaining any proposed changes to their child's special education program, including evaluation, placement, or services, before implementing those changes, allowing parents time to review and potentially object to the decision; this notice should be given in the parent's native language and clearly outline the reasons behind the proposed action, the evaluation data used, and any alternative options considered.</p>
--	---

	<p>When required:</p> <p>PWN must be provided whenever a school district intends to initiate or change a student's identification, evaluation, educational placement, or provision of FAPE.</p> <p>Content of the notice:</p> <ul style="list-style-type: none">• Clear explanation of the proposed action (change or refusal)• Rationale behind the decision, including relevant evaluation data• Description of other options considered and why they were rejected• Implementation date for the proposed change• Information considered
---	--

	<p>Language accessibility:</p> <ul style="list-style-type: none">• The notice must be provided in the parent's native language or other mode of communication they understand. <p>Timeframe:</p> <ul style="list-style-type: none">• Parents should receive the notice a reasonable time before the proposed action is to take place, typically a few school days.
---	--

Emails

The parent is requesting all communications, including emails that reference their child. Are they entitled to them?

Yes, the parents can obtain any communications that reference their child except for attorney/client communication. Emails are helpful as documentation. Emails are effective ways to document that the parent has received items sent to them, including ARD notices, draft IEPs, procedural safeguards and other data that the school chooses to share.

Ready Willing and Able

A parent whose child has qualified for special education chooses to homeschool the student because she disagrees with the placement that was determined appropriate. What should the school do?

In any circumstance where the parent is choosing not to access services, send a ready, willing and able letter which explains that the program or evaluation is available for them to access if they choose.

Efforts to Contact the Parent

The diagnostician has sent many emails as well as tried calling the parent but has not received a response for the parent to attend an ARD meeting. How should this be addressed?

In addition to keeping a record of the efforts made to contact the parent, memorialize the attempts in the deliberations of the ARD meeting.

Performance Measurements

The school uses the same assessment instruments with students that have disabilities as they do for student without disabilities to determine progress. Is there a problem with this?

The concern is whether these instruments accurately assess the student with disabilities progress. If the student is easily distracted or always answers multiple choice by picking A, the results will appear to show that the student is not making any progress, when in reality, the student has made good gains. The most important thing to focus on when choosing an assessment for performance is whether the results that will be obtained accurately reflect the student's level. If not, do not use the assessment. Find one that will provide helpful and correct information.

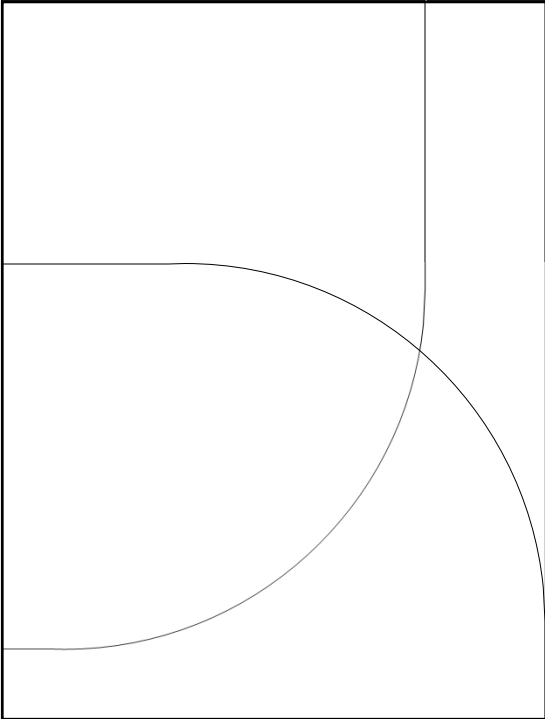
ESY

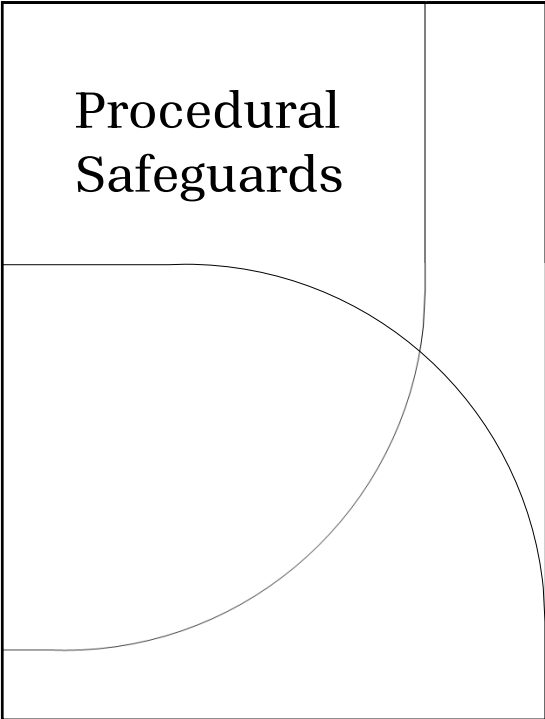
At the ARD meeting, the parent states that she wants Johnny to participate in ESY because he hasn't made enough progress. The teacher states that Johnny hasn't regressed during breaks. The parent asks for the data to support the teacher's statement. The teacher states that it is based upon her direct observation. Do we have a problem?

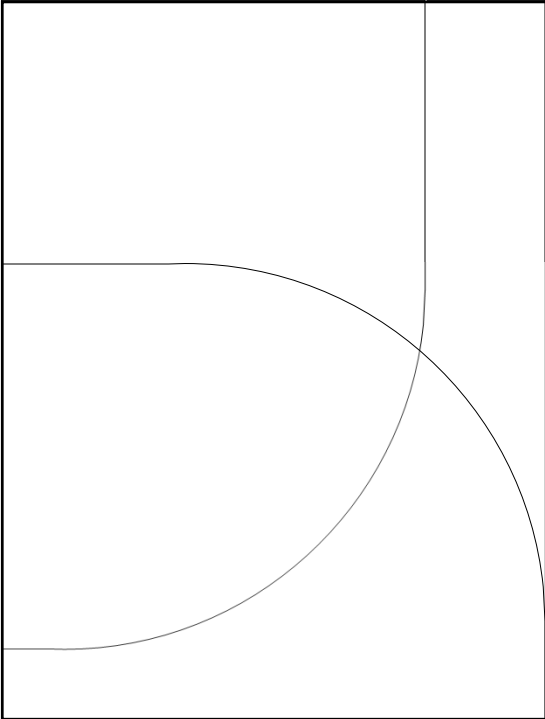
First, the purpose of ESY is maintain critical skills that would be negatively impacted if services were not provided during the break. To qualify for Extended School Year (ESY) services, data collection must demonstrate that a student experiences significant regression in critical skills that cannot be recouped within a reasonable time frame.

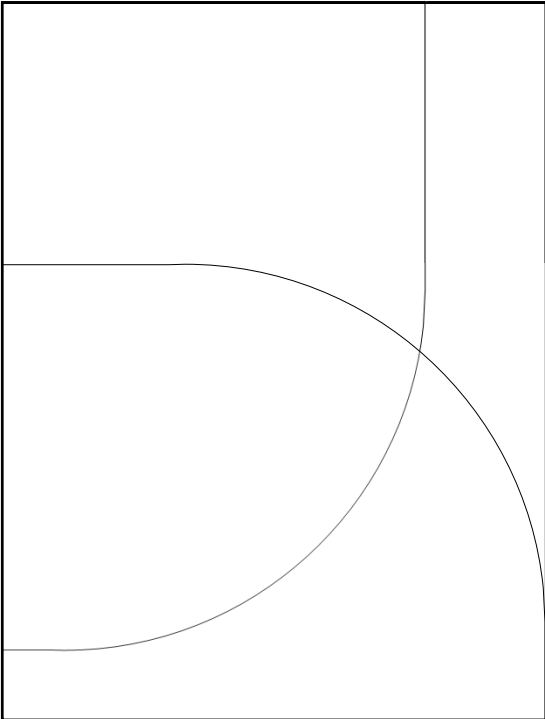
Focus on critical skills:	Data should specifically target the most important skills identified in the student's IEP that are most likely to regress during a break.
Pre- and post-break data collection:	Collect data on targeted skills before and immediately following a break to compare progress and identify if regression has occurred.
Multiple data sources:	Utilize a variety of assessment methods including formal tests, informal observations, teacher anecdotal notes, and parent input to build a comprehensive picture.
Documentation of severity:	Data should clearly demonstrate the extent of regression, including how quickly the student loses skills and how long it takes to regain them.

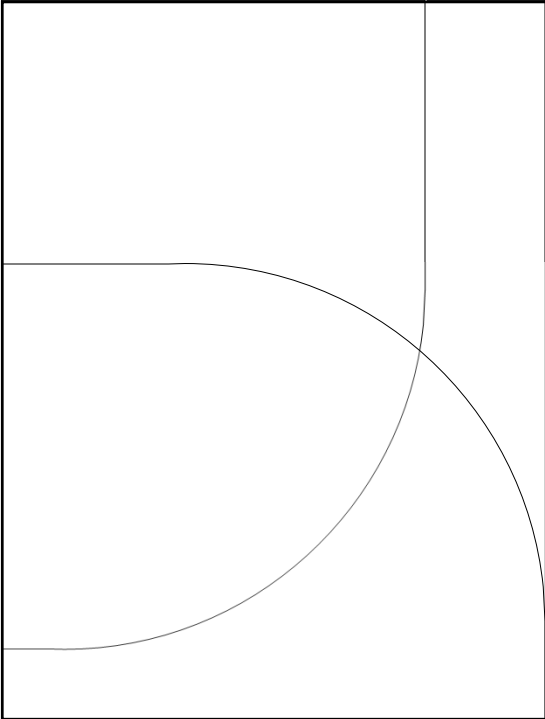
<h1>Protocols</h1>	<p>Johnny's Mom wants copies of the protocols from the recent evaluation. Can she get them?</p>
--------------------	---

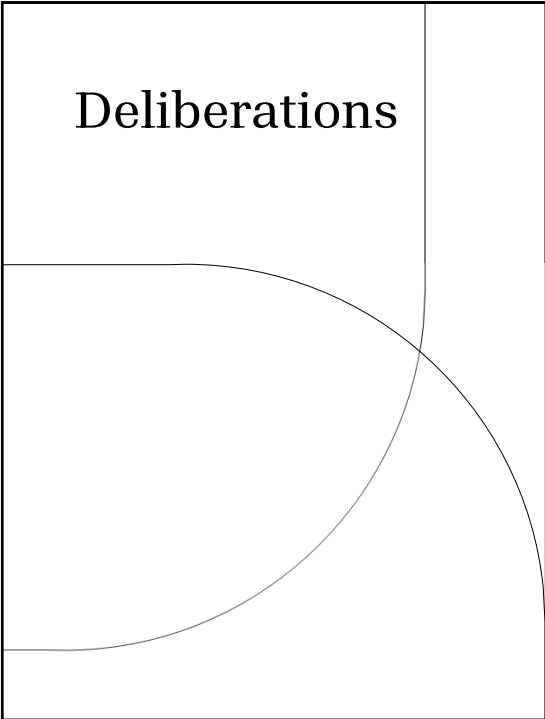
	<p>While parents have the right to review evaluation protocols for their child, they are not entitled to a copy of the protocols. Upon request, staff must explain and interpret the protocols for parents.</p>
---	---

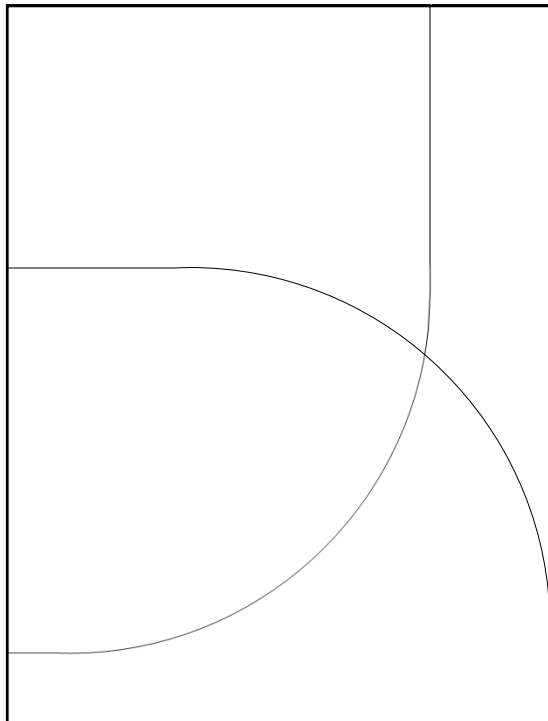
<p>Procedural Safeguards</p> 	<p>At hearing, the parent asserts she never received the procedural safeguards. What impact would that have if the parent had not received them?</p>
---	--

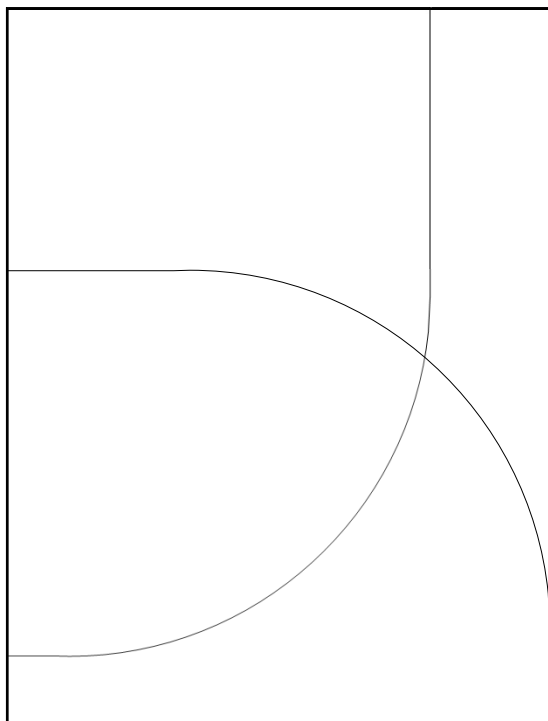
	<p>Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE within two years of the date the parent knew or should have known about the alleged action forming the basis of the complaint. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(1)-(2).</p>
---	---

	<p>There are two exceptions to the statute of limitations under the IDEA –The timeline does not apply if the parent was prevented from filing a due process complaint due to:</p> <ul style="list-style-type: none">(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or(2) the public education agency's withholding of information from the parent that was required by 34 C.F.R. § 300.1, et seq. to be provided to the parent. 19 Tex. Admin. Code § 89.1151(d).
---	---

	<p>When the school delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations begins. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act of providing the procedural safeguards suffices to give the parents constructive knowledge of their various rights under the IDEA.</p> <p>Getting a signature from the parent acknowledging receipt ensures that the parent can only challenge their child's program for the last two years.</p>
---	---

<p>Deliberations</p> 	<p>The parent wants a copy of the IEP, including the deliberations, given to them at the end of the meeting. Are they entitled to get them at that time and are deliberations required?</p>
---	---

	<p>The answers are no and no. The school has the right to ensure that the IEP paperwork is appropriately completed which means the staff need time to complete the document. The completed IEP needs to be provided to the parent within a reasonable time of the meeting.</p>
---	--

	<p>While deliberations are not required, they are recommended because they capture the discussion, questions, and answers that take place during the meeting. The deliberations should include:</p> <ul style="list-style-type: none">• Requests for changes to the IEP from the parents• Proposals for changes to the IEP from the school• Statements of denial or refusal from the parents or school• Relevant information or comments about the discussion• Whether a decision was made
---	--

ARD Notices

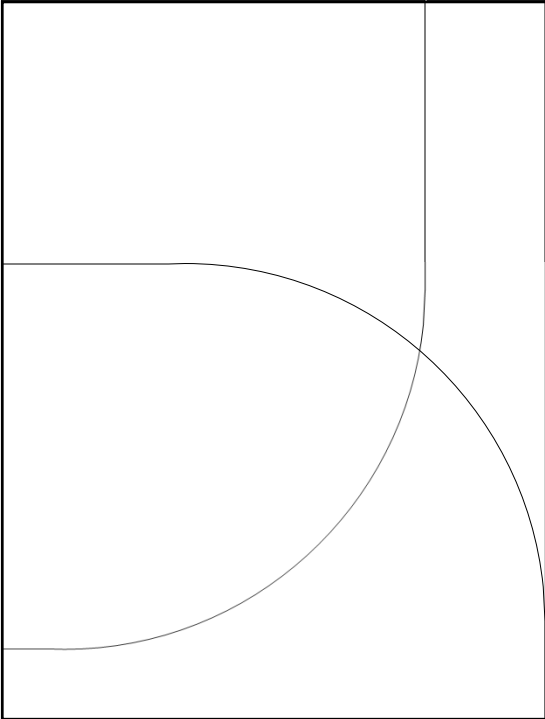
While you called the parent to inform her of the ARD meeting, when she arrives, she states that she did not receive notice. Is she correct?

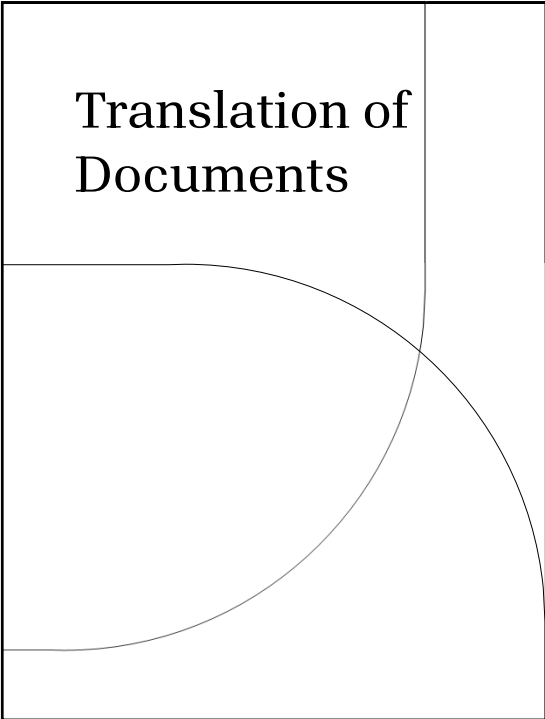
Written notice of the meeting must be given to the parent at least five school days before the meeting unless the parent agrees to a shorter timeframe. The written notice must include the purpose, time, location of the meeting, and a list of who will be attending the meeting.

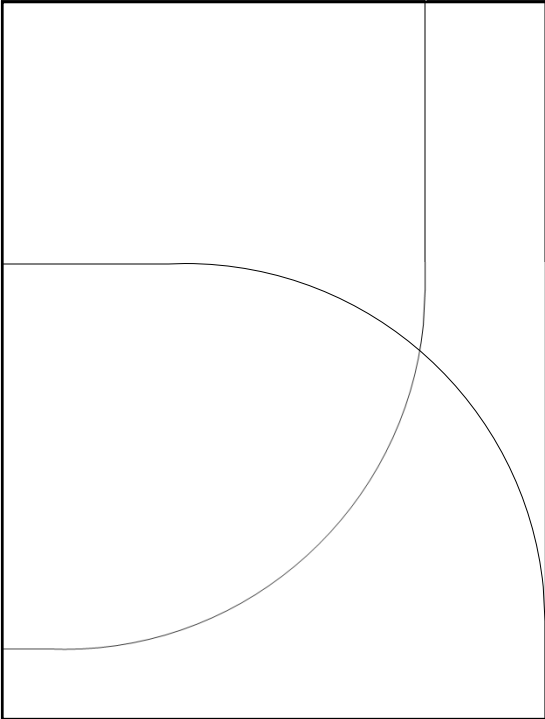
Transfer of Rights

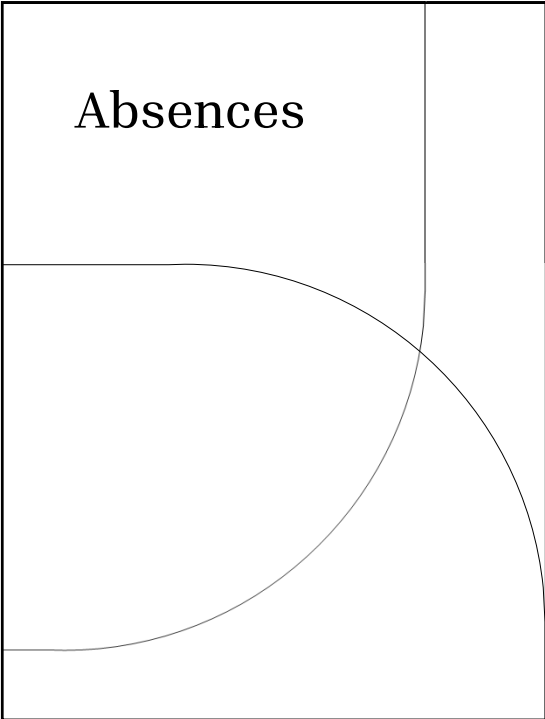
A student is about to turn 17. What documentation is necessary to inform the parent and student that the rights transfer at 18?

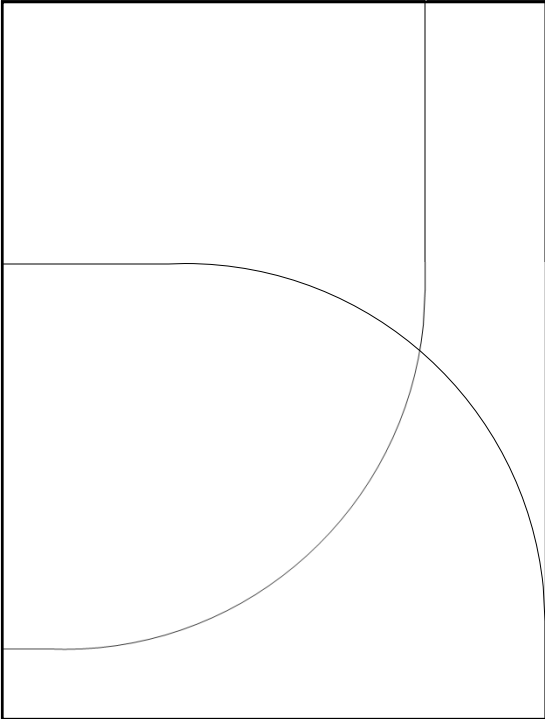
Under IDEA, the required documentation for a transfer of rights is a "written notice" provided to both the student with a disability and their parent, informing them that when the student reaches 18, all parental rights under IDEA will transfer to the student; this notice should also be included within the IEP.

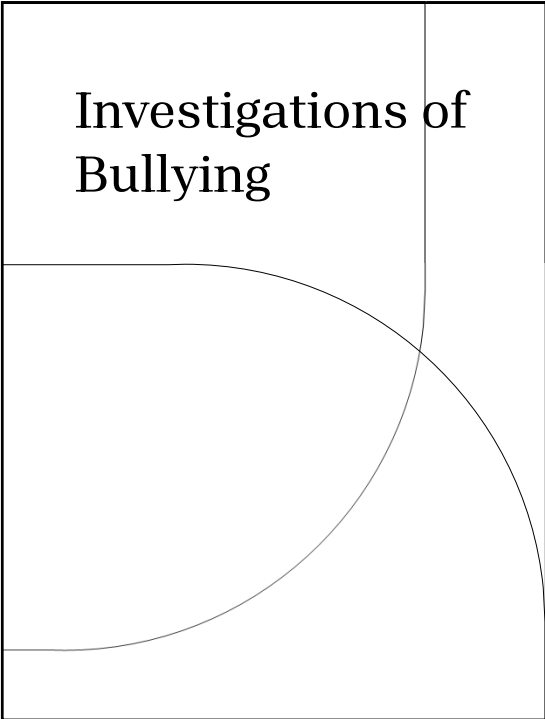
	<ul style="list-style-type: none">• Content: The notice should clearly outline all parental rights that will transfer to the student upon reaching the age of majority, including the ability to make educational decisions regarding their IEP.• Timing: This notice must be provided to the parent and student at least one year before the student turns 18 and again when they reach 18.• Inclusion in IEP: A statement within the student's IEP should confirm that the transfer of rights notice was provided.• Additional information: The notice may also include information about alternative options to guardianship, such as supported decision-making agreements, to assist the student in managing their educational rights as an adult.
---	---

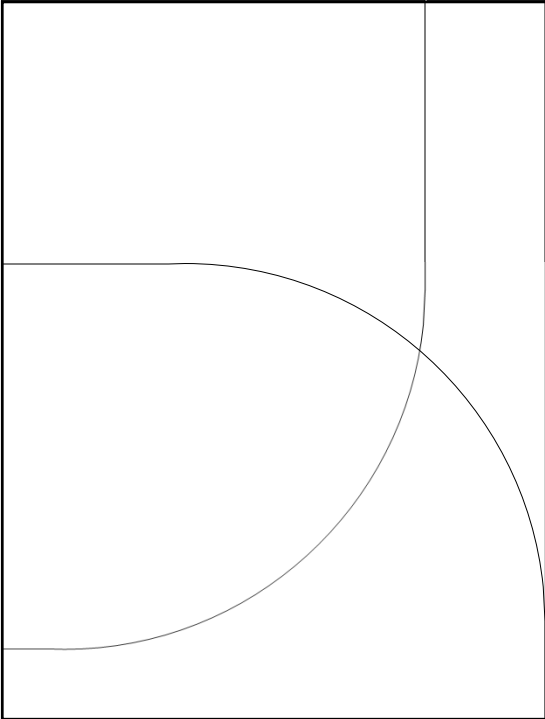
<p>Translation of Documents</p> 	<p>A parent does not speak English and can neither read or write in their native language. What does IDEA require?</p>
--	--

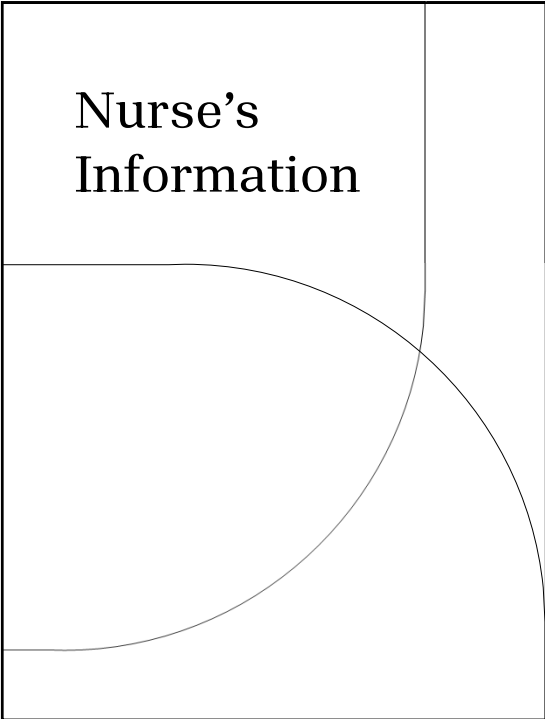
	<p>The Individuals with Disabilities Education Act (IDEA) requires that school districts in Texas translate or provide interpreters for the following under certain circumstances:</p> <ul style="list-style-type: none">• Individualized Education Program (IEP): School districts must provide a written or audiotaped copy of a child's IEP in the parent's native language. If the parent's native language is not written, the school must translate the IEP orally or by other means. This would also include ARD notices and PWNs.• Admission, Review, and Dismissal (ARD) meetings: School districts must provide an interpreter at ARD meetings.• Procedural Safeguards: School districts must provide Procedural Safeguards in the parent's native language or other mode of communication. If the parent's native language is not written, the school must translate the notice orally or by other means.
---	--

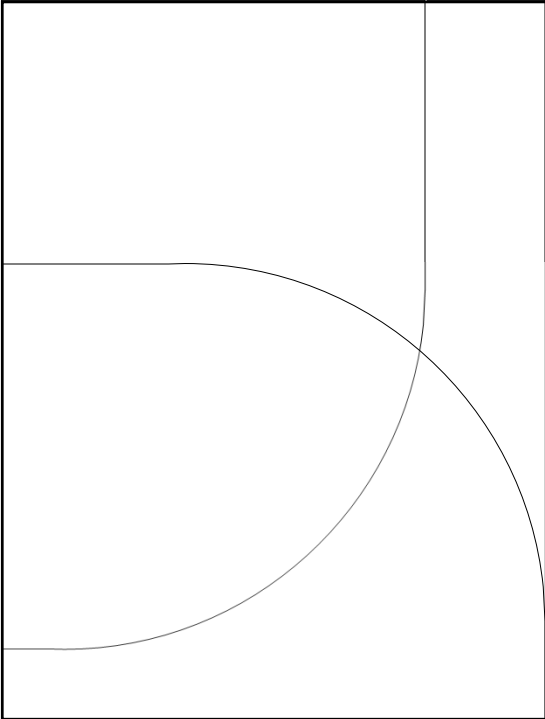
<p>Absences</p> 	<p>The student is not making progress because he is absent over 40 percent of the time. What should the school do?</p>
--	--

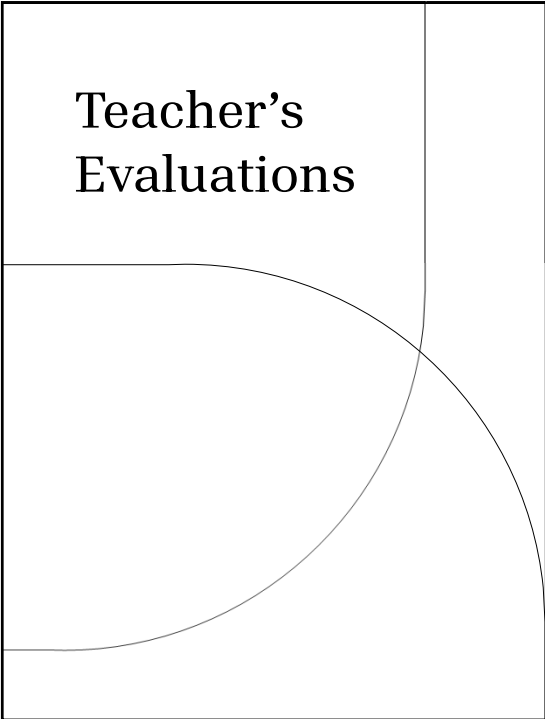
	<p>The ARD committee needs to determine if the absences are due to the disability. If they are, then interventions need to be put in place to address the issue. If not, compulsory attendance laws must be followed.</p>
---	---

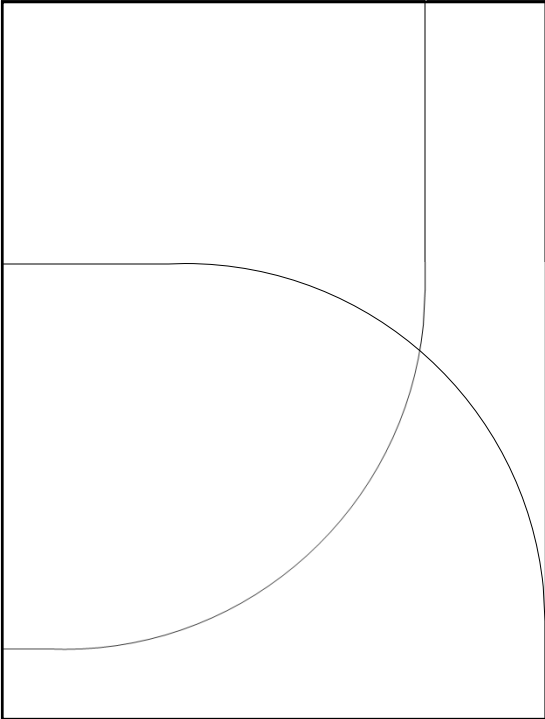
<p>Investigations of Bullying</p> 	<p>Parent has asserted for the hundredth time that Johnny has been bullied. Every time you've investigated, it's false. Do you have to investigate the latest allegation?</p>
--	---

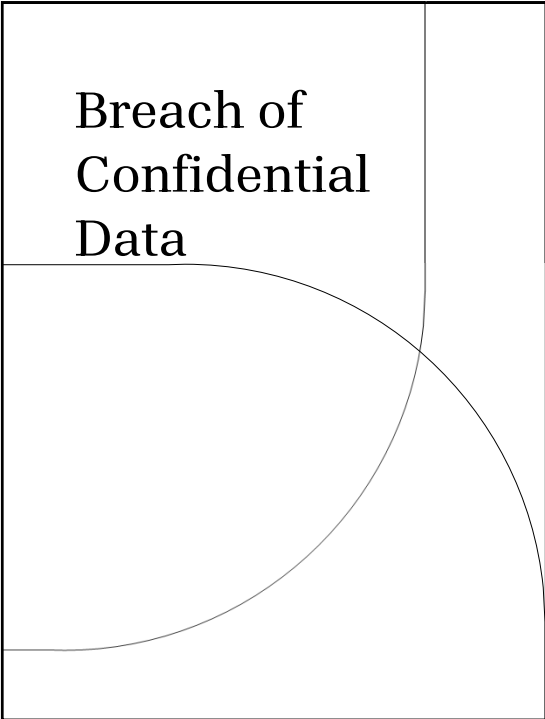
	<p>Yes. Every time a parent or student states that they have been bullied, there needs to be an investigation and a written finding of whether bullying did or did not occur.</p>
---	---

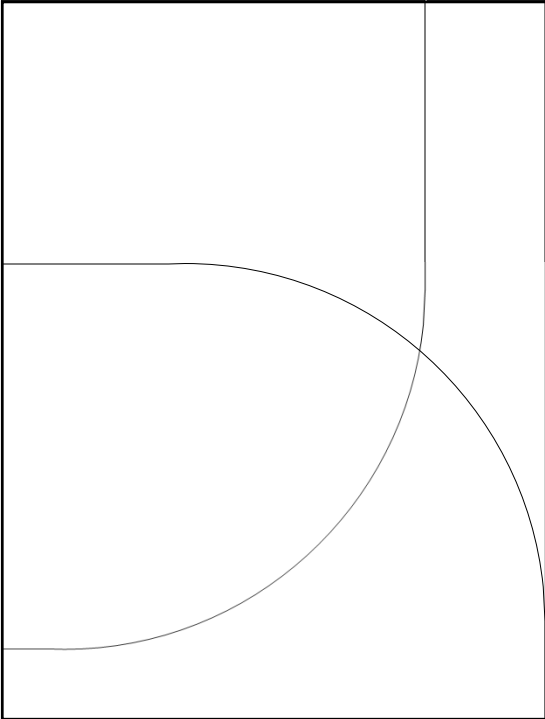
<p>Nurse's Information</p> 	<p>A parent states that her child returns home from school with bruises everyday. What should the school do?</p>
---	--

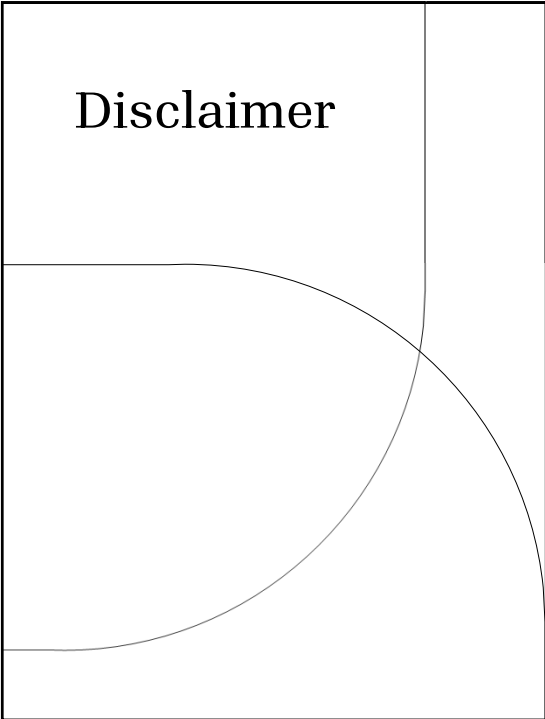
	<p>When this kind of situation arises, the student should be checked out by the school nurse before school starts and before the student leaves school to document whether the student had bruises when he arrived and to document that the student did not have bruises before they left the school.</p>
---	---

<p>Teacher's Evaluations</p> 	<p>The parent is seeking to obtain the teacher's evaluations and any reprimands. Can she get them?</p>
---	--

	<p>Under the Open Records Act, information about a teacher that is typically exempt from disclosure includes personal details like home address, phone number, Social Security number, as well as confidential performance evaluations, disciplinary records, medical information, and specific details about their personal life.</p>
---	--

<p>Breach of Confidential Data</p> 	<p>The diagnostician accidentally sent the lists of students eligible for SHARS to other all the districts in the co-op, rather than just the list of students in their school. What should the school district do?</p>
---	---

	<p>The Texas Education Code § 11.175 requires school districts and charter schools to report to TEA any cyber attack or other cybersecurity incident that constitutes a “Breach of system security” in which student information that is sensitive, protected, or confidential, as provided by state or federal law, is stolen or copied, transmitted, viewed, or used by a person unauthorized to engage in that action. Parents need to be informed if a breach has occurred.</p>
---	---

<p>Disclaimer</p> 	<p>The legal information provided during this presentation is for general purposes only. It is not intended as a substitute for individual legal advice or the provision of legal services. Accessing this information does not create an attorney/client relationship. Individual legal situations vary greatly and attendees should consult directly with an attorney.</p>
--	--