

## Service Associate Q&A

### School attorney Alana Leffler covers RDA implementation and cash-in-lieu-of-benefits



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**Q.** *What are two current school law issues that every school district should have on its radar?*

**A.** Two important school law issues impacting public school districts are Results Driven Accountability (RDA) and cash-in-lieu-of-benefits (or “opt-out” program).

**Q.** *What do school districts need to be aware of in regards to RDA?*

**A.** On June 24, 2014, the U.S. Department of Education announced a major shift in the way it will evaluate the effectiveness of state special education programs. Until then, the focus had been primarily on procedural compliance. But, the achievement gap between students with disabilities and students without disabilities continued to increase. Accordingly, the U.S. Department of Education developed a new accountability framework designed to close the achievement gap — RDA.

**Q.** *What should schools districts do to prepare for RDA?*

**A.** Each state is developing a State Systematic Improvement Plan that identifies gaps in student performance and proposes a way to address those gaps. The Wisconsin Department of Public Instruction (DPI) is focusing on improving literacy for students with disabilities. Beginning with the 2015-16 school year, school districts will be required to implement RDA and will be evaluated on the results. Therefore, it is crucial that school districts prepare to implement RDA today by:

- Becoming familiar with DPI guidance on RDA, including the Procedural Compliance Self-Assessment Checklist.
- Examining educational programming to maximize student

achievement, including the achievement of students with disabilities.

- Training staff members on the impact RDA will have on “IEP basics.” This includes:
  - An analysis of grade level proficiency as an appropriate goal for each student with a disability and how that goal would effect the intensity and selection of services;
  - A reassessment of the relationship between the educational environment (LRE) and the effectiveness of educational services so as to achieve grade level proficiency; and
  - The criteria used to determine when grade level proficiency is an inappropriate goal for a student with a disability.

**Q.** *In regards to cash-in-lieu-of-benefits, can school districts still offer cash to employees who decline the district’s health insurance benefits?*

**A.** There is no express prohibition on cash-in-lieu-of-benefit (“opt-out”) programs, but there are many legal and financial risks associated with them. Opt-out programs became popular when public school districts paid most, if not all, of an employee’s health insurance premiums and were required to bargain any changes to that arrangement. Offering cash to employees who would drop the district’s health coverage saved money, and it was easier to negotiate than an increase in employee contributions. Because most school districts now require meaningful employee contributions toward health insurance premiums, employees already have an incentive to drop the district’s coverage if they do not need it. Therefore, opt-out programs may no longer make financial sense.

**Q.** *How does the Affordable Care Act affect this issue?*

**A.** The Affordable Care Act (ACA) raises another concern. School districts must offer “affordable” coverage to their full-time employees. Employers who fail to offer affordable coverage may be subject to a \$3,000 excise tax for each full-time employee who enrolls on a state-run health exchange. Generally, coverage will be “affordable” if the employee cost for the lowest level of single coverage is less than 9.5 percent of that employee’s total household income. Although the IRS has never addressed the issue directly, there is an argument that an opt-out payment is actually a cost to employees, because employees clearly give up additional cash compensation in order to receive district health benefits. This cost could potentially trigger the excise tax.

Even where an opt-out program makes financial sense and can be structured to comply with the ACA, school districts should be careful to comply with other tax requirements and the Medicare secondary payer rules. School districts should closely review their opt-out programs if they have not done so recently. ■

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