

# School Discipline Processes for Students with Disabilities

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# Disciplinary actions - what, if any, protections are students entitled to receive?

- Learning Objectives:
  - Understand and appropriately balance the CONFLICT between a student's right to positive behavior interventions and supports and school disciplinary processes.
    - What IDEA requires
    - What best practices suggest
  - Understand the legal consequences if you get it wrong.

# Start at the IEP before looking at IDEA discipline provisions:

## 34 CFR 300.324: Development, Review and Revision of IEP

- (a) Development of IEP—(1) General. In developing each child's IEP, the IEP Team must consider—
  - ...
  - (iv) The academic, developmental, and functional needs of the child.
- (2) Consideration of special factors. The IEP Team **must**—
- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the **use of positive behavioral interventions and supports, and other strategies, to address that behavior;**

# IDEA: School Discipline Provisions

- 34 CFR 300.530 – see Handout

# Removals - two types

- Short-term removals (not more than 10 days)
  - Must count multiple removals.
  - Must not constitute a “change of placement” under § 300-356.
- Long-term removals (exceed 10 days)
  - Includes a series of shorter removals where the total now exceeds 10 days in a school year.
  - Requires the Manifestation Determination (MD) in §300.530(e).
  - Must continue to provide education services, regardless of the MD outcome.

# Pattern of Removal

- § 300.536 Change of placement because of disciplinary removals.
- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—
  - (1) The removal is for more than 10 consecutive school days; or
  - (2) The child has been subjected to a series of removals that constitute a pattern—
    - (i) Because the series of removals total more than 10 school days in a school year;
    - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings. (Authority: 20 U.S.C. 1415(k))

# Manifestation Determination

- Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and **not a change of placement**), the school district, you, and other relevant members of the IEP Team must review all relevant information to determine:
  - 1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
  - 2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

# Manifestation Determination

- If the behavior is related to the child's disability or a failure to implement the IEP, then it is a Manifestation.
  - The IEP Team must either:
    - Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
    - If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

# NOT a Manifestation

- A child with a disability who is removed from the current placement for more than 10 school days and the behavior is not a manifestation of the child's disability *or the child is removed under special circumstances, the child must:*
  - Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
  - Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

# Exceptions to the rule...

- Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:
  - Carries a weapon (see the definition below) to school or has a weapon at school;
  - Knowingly has or uses illegal drugs ,or sells or solicits the sale of a controlled substance, while at school, **or**
  - Has inflicted serious bodily injury upon another person while at school, on school premises.

# Protections when child not yet eligible...

- If a student has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge before the behavior that brought about the disciplinary action occurred, that the student was a child with a disability, then the student may assert any of the protections described in this notice.

# Protections when child not yet eligible...

- A school district will be deemed to have knowledge that the student is a child with a disability if, before the behavior that brought about the disciplinary action occurred:
  - A parent expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to child's teacher that student is in need of special education and related services;
  - Parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
  - Child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by student directly to the school district's director of special education or to other supervisory personnel of the school district.

# Exclusionary School Discipline

- Suspension
  - In School – with and without full IEP services
  - Out of School
- Expulsion – (maximum of 1 year)
- Hybrid – Contracts in Lieu of Expulsion

# Concerns to Explore:

- The use of the IDEA's "10 free days" of removal when the IEP Team is already aware that the behavior has a direct and substantial relationship to the disability and the use of suspension will likely delay/undermine progress in changing the behavior.
- DISCUSS

# Concerns to Explore:

- The application of other school discipline consequences that are inconsistent with the student's BIP, like:
  - losing lunchroom privileges
  - Extracurricular activity restrictions
  - Seclusion/isolation from peers
- **DISCUSS**

# Concerns to Explore:

- Referrals to Law Enforcement.
  - Regulations may require disclosure of IEP & behavior information (34 CFR § 300.535)
  - Why?
- DISCUSS

# Concerns to Explore:

- Removals to Interim Alternative Placements or LRE changes to residential education settings due to behaviors.
  
- DISCUSS