Following the Rules: Discipline for Students with Disabilities
California Charter Schools Conference
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Your presenters today are...
Special Rules for Students with Disabilities

- Students with disabilities are “special” when it comes to discipline.
  - Special education student (eligible under IDEIA).
  - Student in process of being assessed for special education.
  - Student whom the local educational agency (LEA) had a “basis of knowledge” the student might be a special education student.
  - 504 students (Section 504 of the 1973 Rehabilitation Act).
- California law defers to IDEIA federal law and regulations regarding suspension and expulsion of special education students. (Ed Code 48915.5)

Why Are There Special Rules?

- Prior to the amendments to the Education of the Handicapped Act (EHA) in 1975, (now known as Individuals with Disabilities Education Improvement Act or IDEIA), the special educational needs of children with disabilities were not being met.
- Disciplinary measures were used to exclude children with disabilities from public schools because they were “more difficult” to educate than nondisabled children.
- Public Law 94-142 was developed, with one of its primary goals being the elimination of any exclusion of children with disabilities from education.
Why Are There Special Rules?

- IDEA reauthorizations of 1997 and 2004, Congress recognized that in certain instances schools need increased flexibility to deal with safety issues while maintaining needed due process protections in the IDEA.
- IDEA emphasizes proactive approach to addressing behavior.

IDEA’s Proactive Approach to Behavior

- For children with disabilities whose behavior impedes their learning or that of others, IEP teams must consider, as appropriate, and address in the child's IEP, the use of positive behavioral interventions and other strategies to address the behavior.
- IDEA clearly establishes that IEP teams should consider and implement behavior interventions for students with behavior problems well before the point when the student exhibiting problem behavior is facing removal.
- Whenever a student with a disability requires a BIP as part of his IEP, then the BIP becomes an element of FAPE.
What Kind of Behaviors Should Be Considered and Addressed by IEP Team?

- Dangerous behavior and non-dangerous violations of the school's disciplinary rules are not the only triggers for a BIP.

- Triggers include behavior that "interferes with the important teaching and learning activities of school." 64 Fed. Reg. 12,405 and 64 Fed. 12,586 (1999).

Is a shortened school day ever appropriate for a student with behavioral issues?

- MAYBE... BUT BE CAUTIOUS.

- Students with disabilities have the right under to access the general education setting for the full day.

- Offering a shortened day in lieu of providing appropriate behavioral supports is problematic.

- If you offer a shortened day because a child has behavioral issues and not because he is transitioning or has medical issues, say established when (not if) the child is going to return to a full day – should be limited to the short-term.

- Also, leaving early can be very reinforcing.
Causes for Discipline in Charter Schools

- Charters are exempt from most Education Code requirements including statutory expulsion and suspension rules.
- May provide for a different / lower due process standard than school districts.
- Charters create their own procedures/timelines, so long as it provides due process.

Students Not Yet Eligible

- “We’ve got an expulsion coming up, but the student is just a general education student.”

- General education students – not already identified as needing special education – may be entitled to the protections under the IDEA.
- Compliance with the regulations is critical to ensuring defensibility and minimizing risk for challenges to disciplinary decisions.
Students Not Yet Eligible

- Parent’s requests and concerns related to a disciplinary action against the child may determine how a district responds.
  - When?
  - How?
  - What?
- Train staff on various procedural requirements and processes involved

When May Students Who Are Not Eligible Receive Protections Before Disciplinary Removals?

- When there’s a “basis of knowledge” that the district knew (or should have known) the child was a child with a disability under IDEA.
- Based on what the district knew (or should have known) prior to the behavior underlying the disciplinary action!
What triggers a “basis of knowledge” that a student has a disability?

• If, *before the behavior that precipitated the disciplinary action*...
  ▪ Parent expressed concern in writing to supervisory or administrative personnel, or the student’s teacher, that the child needs special education;
  ▪ The parent requested an evaluation; or
  ▪ Student’s teacher or other district personnel expressed specific concerns about a pattern of behavior ... directly to the director of special education or to other supervisory personnel.

What triggers a “basis of knowledge” that a student has a disability?

- “Pattern of behavior” does not necessarily implicate disciplinary issues.
- **Example**: a child may exhibit severe forms of autism such that the child does not speak or engage but does not act out or violate rules. A teacher may recognize that such a child has a disability and communicate that fact to an administrator without identifying any disciplinary problems.
- No magic language required. A teacher who expresses concerns about a student’s pattern of behavior need not communicate that the child is in need of special education, or special education assessment, in order to trigger the “basis of knowledge” standard.
What triggers a “basis of knowledge” that a student has a disability?

- However, the LEA will not be deemed to have a basis of knowledge if:
  - Parent has not allowed an evaluation of the child;
  - Parent has refused special ed services; or
  - Child has been evaluated and determined not to be eligible under IDEA.

Does an LEA Have to Assess a Child Who Is Pending a Removal for Disciplinary Reasons?

- If parent requests an evaluation of a child during the disciplinary timeframe, the evaluation must be conducted in an expedited manner.
  - Child remains in the educational placement determined by school authorities.
  - If child qualifies, the LEA shall provide special education and related services.
Does an LEA Have to Assess a Child Who Is Pending a Removal for Disciplinary Reasons?

- After conducting the expedited evaluation, hold IEP meeting to determine eligibility:
  - If not eligible, process stops and general ed procedures apply.
  - If eligible, conduct an MDR!
  - If misconduct is a manifestation, disciplinary process cannot move forward, and student must receive FAPE services and placement.

May an Expulsion Hearing Move Forward if a Parent Requests a Special Ed Evaluation Prior to a Student’s Expulsion?

- Yes, but...
  - Although a hearing officer (HO) has yet to decide whether a district had knowledge of a student’s alleged disability, district has no obligation to postpone student’s expulsion hearing.

*Letter to Anonymous*, 49 IDELR 227 (OSEP 2007)
A student eligible for special education has committed an act that constitutes grounds for suspension or expulsion. Now what??

Certain protections are triggered when a removal of a student with disabilities constitutes a “change in placement”

What is a Removal?

- Any instance in which a child is removed from his/her educational placement for disciplinary purposes, such as suspension or expulsion.
- Special education students are “removed” when they cannot:
  - Progress in Reg. Ed. Curriculum;
  - Receive services or progress on goals listed on their IEP; or
  - Participate with non-disabled peers to the extent dictated by their IEP.

What About In-School Suspensions?

- An “in-school suspension” is not considered part of the days of suspension as long as the student:
  - Is afforded an opportunity to continue to appropriately participate in the general curriculum,
  - Continues to receive services specified on the child’s IEP, and
  - Continues to participate with nondisabled children to the extent that they would have in their current placement.


Is there a “Change in Placement”?

- Occurs in the disciplinary context when:
  - The removal is for more than 10 consecutive school days; or
  - The child has been subjected to a series of removals that constitute a pattern:
    - Because the series of removals total more than 10 school days in a school year;
    - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - 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.
Counting the Days of Suspension

- Portions of a school day that a child has been suspended may be considered a removal in determining whether there is a pattern of removals.
- There is no guidance as to how to calculate a partial day - whether it is to be "rounded up" to a full day.
- If an administrator sends a student home for the day, the prudent course is to count that entire day against the 10-day limit.
- A "school day" means any day, including a partial day that children attend school for instructional purposes. "School day" has the same meaning for all children in school, including children with and without disabilities.
  34 CFR § 300.11 (c)(1).

10 Day "FAPE Free" Zone...Sort Of

- Local educational agencies may “remove” a student with a disability for up to 10 school days regardless of their disability.
- After the 10th school day of removal, a student must continue to receive educational services to allow the student to participate in the general educational curriculum, although in another setting, and to progress toward meeting his/her IEP goals.
Manifestation Determination – 2 Key Questions

- Within **10 school days** of removing a student beyond the 10th day, the local educational agency, parents, and relevant members of IEP team are required to meet to determine:

  1. **Was the conduct caused by, or did it have a direct and substantial relationship to, the student’s disability; or**
  2. **Was the conduct the direct result of the LEA’s failure to implement the student’s IEP?**

If the Misconduct is Found to Be a Manifestation of the Child’s Disability...

- Either:
  - Conduct a functional behavioral assessment, unless the LEA 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;

- Return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement.
“Unless the Parent and School District Agree to Change Placement”

- IEP team (including parent) can hold an IEP and determine that a placement should be somewhere else.

**EXAMPLES:**
1. Temporary placement pending additional assessments.
2. Child requires a more restrictive placement with more intensive behavioral support in order to ensure FAPE.

If the Misconduct is Found to NOT Be a Manifestation of the Child’s Disability...

- Then the child is subject to the same sanctions for misconduct as a child without a disability.

- 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.

- Parents have the right to appeal this decision by filing a due process complaint.
Still Entitled to FAPE After Expulsion?

- Yes
- After the 10th day of removal (e.g., an expulsion) student must continue to receive educational services that allow the student to:
  - Participate in the general educational curriculum, although in another setting, and
  - Progress toward meeting his/her IEP goals.
- Not required to replicate all services and instruction student would have been offered had he remained in school.
- Charter schools may be able to arrange for the student to attend their county’s community day school or other alternative program.

But There Are Exceptions...

- 3 special circumstances when an LEA may remove a student to an interim alternative educational setting for 45 school days
  - Carries or possesses a weapon at school, on school premises, or at a school function;
  - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school functions; or
  - Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.
- Whether or not behavior is manifestation of Student’s disability
Still Hold a Manifestation Determination under Special Circumstances?

- YES, an IEP team is required to hold a manifestation determination review each time that a student is removed for more than 10 school days, even in cases where the removal is made for violation of 34 C.F.R. § 300.530(g) (removals for weapons, drugs, or serious bodily injury).

William S. Hart UHSD, OAH Case No. 2016030901 (May 10, 2016)

What is Considered a Weapon?

- “Device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury”

- Exclusion for pocket knife with blade less than 2½ inches

- Cases:
  - “Adult size scissors” – yes
  - “Safety scissors” – no

(34 C.F.R. §300.530(i)(4); 18 U.S.C. §930(g); Student v. California Montessori Project (OAH 2011) No. 2011030849)
What is considered “serious bodily injury?”

- The injury will require more than minor medical treatment from a school nurse.
  - Substantial risk of death;
  - Extreme physical pain;
  - Protracted/obvious disfigurement;
  - Protracted loss or impairment of function of bodily member, organ or mental faculty.

May an LEA Place a Student in an IAES More Than Once During the Same School Year?

- Yes . . .
- IDEA does not “prohibit a child with a disability from be subjected to a disciplinary suspension, including more than one placement in a 45-day [IAES] in any given school year, if that is necessary in an individual case”
- However, District may not unilaterally extend 45-day IAES

What If an IAES Removal Is Made at the End of the School Year? Does It Carry Over Into the Following Year?

- Yes . .
- If IAES removal is made with fewer than 45 school days remaining in the school year, District may require Student to fulfill remainder of IAES placement when new school year begins.


And There Are More Exceptions...

- An LEA may request an expedited due process hearing when it believes that maintaining the current placement of the child is **substantially likely to result in injury** to the child or to others seeking an order to change the student’s placement to an appropriate interim alternative educational setting for not more than **45 school days**.

- **Even if the conduct was a manifestation of a student’s disability.**

- Unlike unilateral removals, LEA can ask ALJ to renew IAES placement for additional 45 school days


- Court may grant temporary restraining order (i.e., Honig injunction) to remove Student who is considered dangerous
Who Determines Interim Alternative Educational Setting?

- IEP team decision.

OSERS Guidance on Behavioral Supports to Students with Disabilities

Dear Colleague Letter, 116 LRP 33108 (August 1, 2016)

- Recent data on short-term disciplinary removals (10 school days or less) suggest that children with disabilities may not be receiving appropriate behavioral interventions/supports in their IEPs.
  - 10% of children with disabilities were subject to a short-term removal.
    - 19% of black children with disabilities.
OSERS Guidance on Behavioral Supports to Students with Disabilities

Dear Colleague Letter, 116 LRP 33108 (August 1, 2016)

- Guidance intended to clarify schools obligation to provide appropriate behavioral supports to children with disabilities who require such supports in order to receive FAPE.
- 2 resource documents to assist teachers and school leaders with classroom management strategies and assist schools in implementing schoolwide behavioral efforts.

Proactive Approach to Behavior
How can schools proactively address student behavior?

- Positive Behavior Interventions and Supports
- Social-Emotional Learning
- Function-based thinking and planning
- School mental health

Positive Behavior Interventions and Supports (PBIS)

PBIS is...

- Explicit instruction in expected behaviors
- Progress monitoring and data-based decision making
- Strategic planning differentiated by tier
- School-based design and implementation team
- District level coaching and support
- School-normed behavioral expectations
Positive Behavior Interventions and Supports (PBIS)

Strategic Planning Differentiated by Tier

TIER 3: Individual counseling; Behavior Intervention Plans; SST
TIER 2: CICO; informal behavior support plans; social skills groups
TIER 1: PBIS framework; SEL curriculum

Social-Emotional Learning (SEL)

- Instruction that emphasizes...
  - Understanding and managing emotions
  - Setting and achieving positive goals
  - Feeling and showing empathy for others
  - Establishing and maintaining positive relationships, and
  - Making responsible decisions

- Research cites...
  - Improvement in attitudes about self
  - Reduction of problem behaviors
  - Improvement in student achievement
SEL at Rocketship

Community Meeting

RULER
Building Emotionally Literate Schools

Social-Emotional Learning (SEL)

“SEL curriculum, specifically Kimochis, has enabled my vision to come alive. A huge part of my vision is that my students are problem solvers and I see them able to tackle social and emotional issues independent of me. It has also increased their confidence and made them more likely to try difficult problems and more willing to accept peer help. They hold each other accountable to strategies and I very seldom need to intervene which allows me to put more attention on their academic needs.”

–3rd Grade Rocketship Teacher
Function-Based Thinking and Planning

**BEHAVIOR = COMMUNICATION**

I AM TRYING TO GET OR OBTAIN...
- A preferred object
- Peer attention
- Adult attention
- A sense of control or choice

I AM TRYING TO AVOID OR ESCAPE...
- A non-preferred activity
- A task which I perceive is too difficult
- A negative interaction with an adult

Function-Based Thinking and Planning

Diagram showing the process of behavior intervention plan (BIP) with boxes for target behavior, baseline, hypothesis, replacement behavior, and SMART goal.
School Mental Health

- Tier 2 group counseling
- Tier 3 individual counseling
- Community referrals/social work services
- Family education and partnership
- Crisis management
- Staff training and coaching

Accessible Academic Content

- Universal design for learning
- Small group instruction
- High levels of active student engagement
- Plan for high rates of student success
- Proactive scaffolding
- Multiple methods and opportunities for student response
Responsive Approach to Behavior

- IDEA guidelines on behavior interventions
- Functional Behavior Assessment (FBA)
  - Provides additional information, analysis and strategies for dealing with undesirable behavior, especially when it is interfering with a child's education.
- Behavior Intervention Plan (BIP)
  - Describes how a student, staff, parents, teachers, and other important team members will change their behavior.
Restorative Justice

- A philosophy based on a set of principles that guide the response to conflict and harm.
- These principles are based on practices that have been used for centuries in indigenous cultures and religious groups.
- Three main goals are:
  - Accountability
  - Community Safety
  - Competency Development

Restorative Justice in Schools

- Emphasis placed on values, empathy, respect, honesty, acceptance, responsibility, and accountability
- Effectively addresses behavior and other complex school issues
- Improves safety by preventing future harm
- Offers alternatives to suspension and expulsion
How to Respond to Problem Behavior

- Non-Violent Crises Intervention
  - Preventative strategies for safely defusing anxious, hostile, or violent behavior at the earliest possible stage
- Problem Solving for Code of Conduct
  - Identify conduct principles that were violated
  - Analyze the results conduct behavior had on self or others
  - Determine consequences for behavior
  - Address next steps
  - Plan preventative strategies for the future
- Social Skills Training
  - Teach a process that uses a behavioral/social learning approach
  - Universal language or set of steps that facilitate learning of new behavior
  - Interventions can be implemented school-wide, specific setting, a classroom, or individual level
- Social Thinking
  - What we do when we interact with people
  - What we think about others
  - Thoughts effect behavior
  - Behavior effects how others respond to us which effects emotions
  - Teach social thinking abilities to improve social interactions

FBA and BIP Resources

- Positive Environments, Network of Trainers (PENT)
  http://www.pent.ca.gov
- PENT BIP Desk Reference Manual
  http://www.pent.ca.gov/dsk/bipmanual.html
- Special Connections
  University of Kansas
  http://www.specialconnections.ku.edu
- Positive Behavioral Interventions and Supports (PBIS) World
  http://www.pbisworld.com/
- PBIS World BIP resource:
- Positive Behavioral Interventions and Supports (PBIS)
  U.S. Department of Education, Office of Special Education Programs
  http://www.pbis.org
Restorative Justice Resources

- Restorative Justice for Oakland Youth
  http://rjoyoakland.org/

- Video Resource

- Implementing Restorative Justice
  A guide for schools written by, Jessica Ashley and Kimberly Burke

- Restorative Justice or Restorative Practices from the Fix School Discipline Article
  Public Counsel

Resources

- Non Violent Crises Intervention
  http://www.crisisprevention.com/

- Positive Environments, Network of Trainers
  http://www.pent.ca.gov/hom/bio/dianabw.html

- Problem Solving for Code of Conduct
  www.pent.ca.gov/pos/cl/es/problemsolving.doc

- Social Thinking
  http://www.socialthinking.com/what-is-social-thinking

- Social Skills: Promoting Positive Behavior, Academic Success, and School Safety
  http://www.nasponline.org/resources/factsheets/socialskills_fs.aspx
Questions

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