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**Addressing Disability  
Related Student  
Misbehavior**

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**OVERVIEW**



- Introduction
- Goals and Disclaimers
- Topics for Discussion
  - Discipline
  - Common Disability Related Behavior That Impacts Education
  - Assessments
  - Behavior Intervention Plans
  - Services and Accommodations
  - Temporary or Permanent Placement With Parent Consent
  - Temporary Placement without Parent Consent and Without OAH Order
  - Temporary Placement Without Parent Consent and With OAH Order
  - Permanent Placement With OAH Order
  - Behavior Emergency Interventions and Reports

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**HYPOTHETICAL**



**JOHNNY BE GOOD!**  
*(Why can't they just be good?)*

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**DISCIPLINE** 

Can we just suspend Johnny?

How about expulsion?

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**DISCIPLINE OF STUDENTS WITH IEPS AND SECTION 504 PLANS** 

- Students with Section 504 Plans and IEPs may be disciplined to the same extent as their peers.
- **However:** Special education students under Section 504 or the IDEA are entitled to additional protections when a change in placement occurs as the result of discipline.
- **A Manifestation Review Must Occur Prior to a Change in Placement** : More than 10 days or pattern of removal of more than 10 days in one school year.

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**MANIFESTATION DETERMINATION MEETING** 

**Manifestation Determination (“MD”) Review Meeting**  
 A MD review team examines the nexus between the student’s misconduct and the student’s disability. The manifestation determination team needs to answer two questions:

1. Was the misconduct caused by, or did it have a direct and substantial relationship to, the child’s disability?
2. Was the misconduct the direct result of the district’s failure to implement the IEP?

If the answer to either is YES, then the misconduct is a manifestation of the disability and the expulsion may NOT move forward.

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**COMMON DISABILITY RELATED BEHAVIOR THAT IMPACTS EDUCATION**

Johnny is not expellable b/c the IEP determines that the "tantrum" had a direct and substantial relationship to his disability.

**Other behaviors of Johnny's that *could* be disability related:**

- Work avoidance/ missed assignments/ failure to turn in completed work
- Sleeping in class
- School avoidance/ tardies/ truancy
- Threats of harm
- Property Destruction
- Verbal outbursts
- Physical Harm

**Other common disability related behavior: lying, stealing, elopement, disruption, self-stimulating behavior.**

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**ASSESSMENTS**

Johnny has a behavior intervention plan in place for disruptive behavior including talking too much and getting out of his seat. The BIP was established after a functional behavioral assessment. No assessments have been done regarding his work refusal, sleeping in class, school avoidance, and tantrum type behavior.

- Functional Behavioral Assessment
  - An FBA *must* be conducted when school authorities seek to change the placement of a child with a disability because of a violation of a code of student conduct **and** the IEP team determines that the conduct was a manifestation of the child's disability **and** the LEA had not conducted an FBA prior to such determination before the behavior that resulted in the change of placement.
- Functional Analysis Assessment
  - No longer required by law
- Social Emotional
- Mental Health Services Assessment

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**CREATING A BEHAVIOR INTERVENTION PLAN**

- **Behavior Intervention Plan**
  - Developed by the IEP Team
  - Required to consider BIP in the case of a child whose behavior impedes the child's learning or that of others
  - Required to develop BIP if a student is subjected to a disciplinary change of placement and the conduct is found to be a manifestation of a disability
  - No required "title" or "format" of the BIP
  - Address the student's behaviors and possible consequences with consideration of the student's individual needs
  - Consider positive behavioral interventions and supports of behaviors that impede a student's learning
  - Include the goal, triggers, the function of the misbehavior, replacement behavior, environmental changes, strategies, services, monitoring

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## SERVICES AND ACCOMMODATIONS



- What services and/or accommodations might we consider for Johnny?
- **Services:**
  - Specialized Academic Instruction
  - One-on-One Aide/BII/BID
  - Counseling (Student and Parent)
  - Mental Health
  - Transportation
- **Accommodations**
  - Frequent prompting
  - Preferential Seating
  - Homework Log for Parent Communications
  - De-escalation Breaks
  - Wake Up Walks
  - Shortened Assignments
  - Extended Time for Assignments

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## TEMPORARY OR PERMANENT CHANGE OF PLACEMENT WITH PARENTAL CONSENT



Other parents are complaining about Johnny’s behavioral episode and are demanding that their kids be moved out of that class. The School is considering moving him into a nonpublic school at least temporarily while they do further assessments.

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## TEMPORARY CHANGE OF PLACEMENT WITHOUT PARENT CONSENT AND WITHOUT OFFICE OF ADMINISTRATIVE HEARINGS (“OAH”) ORDER




**School personnel can consider removal of a student to an interim alternative educational setting for not more than 45 school days (without parent consent and without OAH order) in cases where a child:**

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function;
- (2) 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 function; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

**In our hypothetical, neither of these three would apply.**

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## TEMPORARY OR PERMANENT CHANGE OF PLACEMENT WITH OAH ORDER OR COURT ORDER



### Parents do not consent to Johnny's temporary placement in an NPS, but School feels that Johnny's behavior is substantially likely to result in injury to Johnny or others.

- Can request an expedited hearing with OAH for a 45 school days interim alternative educational placement (must occur within 20 school days with a decision 10 school days thereafter) based upon the determination that the student's current placement is substantially likely to result in injury to student or others. **(would likely need to show more than the one instance in our hypothetical)**
- Can request a temporary restraining order from court to temporarily remove a dangerous student from his current placement (could be used while awaiting an expedited hearing) **(very high standard and would not be granted on our hypothetical)**
- Can seek a permanent placement change with OAH based upon a determination by the IEP team that the general education placement with services and accommodations is no longer the least restrictive environment in which the student can receive FAPE.



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## BEHAVIOR EMERGENCY INTERVENTIONS



- Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the student with exceptional needs, or other, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to control the behavior and cannot be used as a substitute for a BIP.
- Emergency interventions shall not include an amount of force that exceeds that which is reasonable and necessary under the circumstances.
- Emergency interventions shall not be employed for longer than is necessary to contain the behavior. Any prolonged need to use emergency intervention may require a call to law enforcement for assistance.



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## BEHAVIOR EMERGENCY INTERVENTIONS



- **Cannot use interventions:**
  - Designed to or likely to cause physical pain
  - Involving the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face
  - Denies adequate sleep, food, water, shelter, bedding, physical comfort, access to bathroom facilities
  - Designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or that can be expected to cause excessive emotional trauma
  - Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention
  - Locked seclusion
  - An intervention that precludes adequate supervision of the individual
  - An intervention that deprives the individual of one or more of his or her senses



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## REPORT AND IEP AFTER EMERGENCY INTERVENTION



- Parent shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs.
- If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a BIP, the designated responsible administrator shall, within two days, schedule an IEP team meeting to review the emergency report, to determine the necessity for a FBA, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the FBA, not developing an interim plan, or both.
- If a behavioral emergency report is written regarding an individual with exceptional needs who has a BIP, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the BIP.



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## CONTENT OF BEHAVIORAL EMERGENCY REPORT



- (1) The name and age of the individual with exceptional needs
- (2) The setting and location of the incident
- (3) The name of the staff or other persons involved
- (4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan
- (5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident



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## OPTIONS FOR HANDLING THE OTHER PARENTS



- Class change
- Training
- Seating chart shifts
- Must maintain confidentiality
- Avoid fueling a mob mentality



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**YOU'RE INVITED!**  
 YM&C Hosted Reception  
 March 27th - 6:30 to 8:30 PM

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The Hard Rock Hotel is directly across from the convention center!

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**QUESTIONS AND RESPONSES**

**THANKS FOR ATTENDING TODAY**

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## JOHNNY BE GOOD

### A Hypothetical Example in Honor of All the Johnny's (and Jane's) You Serve

Johnny is a 7<sup>th</sup> grade student at Amazing Charter School. Johnny has an IEP under the eligibility of Other Health Impaired for Attention Deficit Disorder. Johnny engages in the curriculum when he is at school, but he never turns in his homework. His lack of homework completion negatively impacts his grades and his teachers have to repeatedly remind him that homework is a requirement. The teachers also notify Johnny's parents. The parents explain that Johnny always tells them that he does not have homework. When his parents push or ask him again, he often shuts down at home. Johnny's parents indicate that they do not know how to help him at home.

Lately, Johnny is also exhibiting attendance issues. He stops coming to school on a regular basis. When the school calls home, his parents state that Johnny is sick or that he refused to go to school. Amazing Charter finds out that Johnny has also skipped school without telling his parents. Again, Johnny's parents explain that they do not know how to make him go to school.

When Johnny is in class, his teacher notices that he is frequently tired. He even sometimes falls asleep at his desk. When he is awake, his behavior is disruptive. Johnny's teachers often have to send him out of class in order to continue teaching. One day, Johnny's English teacher wakes him up from a nap. In response, Johnny yells, "This class sucks. You better watch your back. Screw you and everyone in this room!" Johnny continues yelling even after the teacher asks him to come outside the classroom. Johnny also threatens the safety of other students by getting out of his chair and pushing it across the room, ripping a notebook in half, moving close to his classmates while still yelling and poking one girl in the arm repeatedly while making his points. Classmates report being afraid during this incident.