

EPSY Distinguished Speaker Program
DR. ANTONIS KATSIYANNIS

Tuesday, October 4, 2016

**1:30-3:30
pm**

**Lecture #1: Recent Trends in Litigation in
Special Education**
MSC Room 1400

Issues

- Elementary and Secondary Education Act (formerly NCLB) 2015
- ADA 2008
- Bullying
- Athletics
- Exclusionary Discipline
- Case law
 - Child Find
 - IEPs
 - Residential Placements

No Child Left Behind

Accountability for Results (AYP)

Highly Qualified Teachers

Scientifically Based Instruction

<http://www.ed.gov/nclb/landing.jhtml?src=pb>

The Every Student Succeeds Act of 2015

December 10, 2015
Reauthorizes ESEA and replaces NCLB

Important Dates

- 2016 - 2017 Transition year
- Grant programs begin in 2016
- State accountability plans go into effect in the 2017 - 2018 school year

The Intent of ESSA

ESSEA is an attempt to preserve the standards-based reform intent of NCLB (high standards, accountability, closing the achievement gap) while doing away with many of the unworkable and stringent requirements of NCLB and moving authority to the states and away from the federal government

Changes From NCLB: Gone

- Adequate Yearly Progress (AYP)
- Highly Qualified Teachers (HQT)
- Teacher evaluation through student outcomes
- Sanctions on schools and districts failing to meet AYP

Changes From NCLB: Remaining, but different

- Challenging content standards
- State accountability and testing requirements remain although states have great leeway
- U.S. Department of Education's role continues but limited
- Intervening and reforming low performing schools is entirely left to the states
- States can create testing opt out laws
- Weighing of indicators is left to the states

Disaggregation of Subgroups

- Racial and ethnic group
- Economically disadvantages students
- Students with disabilities
- English language learners
- Gender
- Migrant status

Changes From NCLB: New

- Multi-tier system of supports
- Positive Behavioral Interventions and Supports and mental health services
- Universal Design For Learning
- Emphasis on improving school climate and reducing bullying & use of aversives
- Preschool Development Grant Program
- Evidence-based Research & Innovation Program

ADA

ADA Amendments of 2008- Mitigating Factors

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--

- (I) medication, medical supplies, equipment, or appliances, low-vision devices, prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - (II) use of assistive technology;
 - (III) reasonable accommodations or auxiliary aids or services; or
 - (IV) learned behavioral or adaptive neurological modifications.
- (ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses

Section 504

Is giving SDC students a head start on dismissal discriminatory?

A California district sent students in special day classes to the bus five minutes earlier than it released general education students. SDC students were either students with intellectual disabilities or students with emotional disturbances and behavioral needs. Teachers explained to OCR that the students were released early so that they could walk through the hallway before it became overcrowded. The teachers said many of the students became anxious or exhibited behavioral issues in crowds. Also, many SDC students had long bus rides and needed to use the restroom before they left, according to the teachers. The parent of one of the students told OCR that the student didn't have difficulty navigating the hallway when it was crowded. The individual filed an OCR complaint alleging disability discrimination. Under Section 504, a district may not, on the basis of disability, afford a student an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. 34 CFR 104.4(b)(1).

Section 504

Does dismissing students five minutes early constitute discrimination?

- A. Yes. The district didn't evaluate each SDC student before having them leave earlier than general education students.
- B. No. The district provided a legitimate, nondiscriminatory reason for its policy when the teachers pointed to the students' need to avoid crowded hallways.
- C. Yes. Providing a shorter school day to a student with a disability is always discriminatory.

Section 504

Do passing grades disqualify child with ADHD from OHI eligibility?

Student is exhibiting inappropriate and attention-seeking behavior in class. The student received three A's, one B, one C, and two D's during the 2012-13 school year. Because the student was receiving passing grades and had achieved a proficient score in standardized testing, the district determined that the student didn't meet the IDEA's criteria for "other health impairment." However, the district found that the student had a disability under Section 504. Subsequently, an independent evaluator determined that the student had symptoms related to ADHD such as impulsivity and hyperactivity. The evaluator suggested that the student was eligible under the IDEA as a child with OHI. The parent filed for due process, alleging that the district denied the student FAPE by failing to identify him as having a disability under the IDEA. A student with ADHD is eligible under the OHI category only if the condition limits the child's alertness to the educational environment in a way that adversely affects the student's educational performance. 34 CFR 300.8(c)(9).

Is the student eligible under the IDEA based on an "other health impairment"?

- A. No. A student whose grades average out to passing won't qualify as having OH!
- B. Yes. The student had limited alertness to the educational environment due to impulsivity and hyperactivity.
- C. No. The student's grades showed that his condition didn't have enough of an impact on his educational performance for him to qualify as having OHI.

Bullying

- Dear Colleague Letter (OCR 2000, 2010, 2013, 2014)
- Schools are obligated to (a) examine the nature of the misconduct itself for possible civil rights violations and (b) examine whether the harassment interferes with a student's participation in and benefits from educational services, activities, or opportunities.
- "Bullying of a student with a disability on **any** basis can similarly result in a denial of FAPE under Section 504 that must be remedied; it also reiterated schools' obligations to address conduct that may constitute a disability-based harassment violation and explains that a school must also remedy the denial of FAPE resulting from disability-based harassment."

Discipline

2013-14 Civil Rights Data Collection

Nationwide, 2.8 million K-12 students received one-or-more out of school suspensions (6%)-18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls.

Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white

Students with disabilities served by IDEA (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%).

Case Law - Child Find Activities

Compton Unified School District v. Starvenia Addison, 598 F.3d 1181(9th Cir. 2010)

- In 2002-2003, Addison, a high school freshman attending Compton Public Schools performed poorly in her classes and standardized tests (below the 1st percentile; fourth-grade level performance). The school counselor viewed this performance as "typical" and related to "transitional year" challenges.
- In the fall of 2003, Addison failed all classes; teacher comments described Addison as a "stick of furniture" and her work was "gibberish and incomprehensible." Addison sometimes refused to enter the classroom, colored with crayons during instructional time, played with dolls in class, and urinated on herself.
- Because of parental hesitation to have her daughter's academic challenges investigated, the school district decided not to pursue an evaluation; although, they did refer her to a mental health counselor. The counselor promptly recommended an evaluation for learning disabilities; the district ignored this suggestion and promoted her to the 11th grade.

The Argument

- The school district argued that IDEA's written notice procedures (i.e., with regard to proposals or refusals to initiate a change regarding a student's identification, assessment, or placement) limit the jurisdictional scope of the due process hearing. Because the district chose to ignore Addison's disabilities and take no action, the district had not in fact *refused* to act; therefore the notice requirement does not apply

Assessment

Does lack of parental consent to evaluate close the book on district's child find duty?

A Colorado district identified a student as potentially needing special education and related services in 2008, but his parents declined to consent to an evaluation. For the next few years, the district provided the student with "RTI," including peer tutoring to help him with his study habits. However, the student still struggled to organize his class materials, concentrate, and turn in assignments on time. Although the student appeared to respond to RTI in the sixth grade, his grades dramatically declined in the seventh and eighth grades. The district later explained that it believed that the student's problems stemmed from a lack of motivation. The parents didn't request an IDEA evaluation. However, in 2011, they informed the district of the student's recent ADHD diagnosis and asked whether a case worker "for students with disabilities" was available to assist him. The parents filed a due process complaint alleging a child find violation. Districts must evaluate students suspected of having a disability and needing special education and related services. 34 CFR 300.323(a).

Assessment

Do student's academic struggles revive obligation to evaluate?

- A. No.** The parents made it clear years earlier that they opposed an evaluation.
- B. No.** It wasn't clear that the student's struggles stemmed from a disability, rather than lack of effort.
- C. Yes.** After the parents refused consent, the student struggled for a long time despite RTI.
- D. Yes.** A medical diagnosis always triggers child find.

Case Law-Parental Participation

Doug C. v. Hawaii Department of Education (2013)

The student, Spencer, an 18 year old has been receiving services under IDEA under the label of Autism. Spencer has been receiving educational services at a private special education facility (Horizon Academy) at public expense since his fifth grade. The Department of Education changed the placement to a program at Maui High School, his local public school in the annual IEP meeting held on November 9, 2010 without the presence of his parent.

IDEA 2004

IDEA mandates that

- “the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.” (§ 1414 (e)).
- Schools are required to “take steps to ensure that one or both of the parents of a child with a disability are present
- A meeting may only be conducted without a parent if “the public agency is unable to convince the parents that they should attend.” § 300.322(d)
- IEP teams must consider “the concerns of the parents for enhancing the education of their child;” (§ 614 (d) (3) (A) (ii)).

Ruling

- Procedural matters as meeting strict review timelines are secondary to the importance of parental participation
- Failure to meet timelines does not render the IEP obsolete thus resulting in service lapse
- Scheduling meetings and managing conflicts for staff are secondary in securing parental participation
- A follow-up IEP meeting to address parental absence in the IEP development does not remedy a district’s decision to proceed with an IEP meeting without the parent as parental participation is expected in the development of the IEP

IEPs

Is translating portions of IEP during meeting 'meaningful' enough?

A Pennsylvania district convened an IEP meeting for a high school student with SLD and a knee-related impairment. Neither the student's nor the parent's native language was English, and the parent's English proficiency was limited. In preparing for the IEP meeting, the district provided forms to the parent in English and her native language. At the IEP meeting, the parent had counsel present and the district presented a reevaluation report in the parent's native language. However, the draft IEP was not fully translated into the parent's native language, and the district relied on someone to translate the English portions of the draft IEP at the meeting. Contending that a dictated sight-translation of parts of the draft IEP kept her from meaningfully participating in the IEP process, the parent filed a due process claim against the district. The IDEA requires districts to use procedures that afford parents an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child.

IEPs

Did the district do enough to ensure meaningful parental participation?

- A. Yes. The district took steps to make sure all information was communicated to the parent in her native language, so it met IDEA requirements of parental participation.
- B. Yes. Because the parent was represented by counsel, it was necessary only for the attorney to know what was being proposed.
- C. No. The purpose of an IEP meeting is to develop an IEP for the student, and it requires more than a recitation of the IEP.

Case Law-Retrospective

R.E., M.E., et al v. New York City Department of Education, Nos. 11-1266/11-1474/11-655 (2d Cir. 2012).

Because the parents must have sufficient information about the adequacy of an IEP before agreeing to a placement, the judges in this case found that the use of retrospective testimony would seriously impede the parent's ability to make an informed decision about the placement of their child.

IEP must be judged on the contents of the IEP at the time of its composition and that testimony indicating that school personnel would provide services (as a matter of practice) beyond those listed in the IEP may not be considered.

Case Law-Peer-Reviewed Research

Ridley School District v. M.R. and J.R. (680 F3d. 3rd Cir. 2012)

The Ridley School District diagnosed the student, E.R., as having a learning disability. At the IEP meeting the school district suggested a phonic-based program called Project Read. The parents countered that the IEP was inadequate because the E.R., was not taught using a research-based, peer-reviewed reading program. The parents requested the Wilson Reading Program and subsequently unilaterally placed E.R., in a private school.

IDEA Language

States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child's IEP Team based on the child's individual needs. (U.S. Dept. of Ed. Fed. Register, Vol. 71, No 156, pp. 46663-4666

Ridley Ruling

- Court did not need to decide if lack of peer-reviewed research would be a denial of FAPE because Project Read was research based.
- IEP retains flexibility to devise an appropriate program in light of available research
- Courts must accord deference to choices made by school district
- The IDEA does not require the school district to choose the program supported by the optimal level of research as long as program is “calculated to enable the child to receive meaningful educational benefit.”

Interesting Observations by the Court

“We will not set forth any bright-line rule as to what constitutes an adequately peer-reviewed special education program...courts must assess the appropriateness of an IEP on a case-by-case basis, taking into account the available research. We recognize that there may be cases in which the instruction proposed by the school district is so at odds with current research that it constitutes a denial of FAPE

Case law-Residential Placements

Forest Grove School District v. T.A., 129 S. Ct. 2484 (2009).

T.A. attended kindergarten through eighth grade at Forest Grove Public Schools with teachers observing problems associated with paying attention and completing his assignments. When T.A. entered high school, his difficulties increased and prompted the mother to visit with a school counselor to discuss school related problems

A school psychologist evaluated the student and concluded that the child did not qualify for services and there was no need for additional testing for learning disabilities or other health impairments (including ADHD).

Court-Forest Grove

- With parental support, the student went through the sophomore year, but problems exacerbated in his junior year.
- Parents discussed different options with the school district, consulted with a specialist who diagnosed T.A. as having ADHD and other related learning disabilities, and upon the specialist recommendations, enrolled T.A. in a structured, residential learning environment at a private academy.
- Soon after, parents hired legal counsel, notified the school district of their actions and after a few weeks requested a due process hearing to determine the child's eligibility under IDEA.
- Following the evaluation process, the multidisciplinary team determined that the T. A. as not eligible for special education services and declined to develop an IEP.

Court-Forest Grove

- The Court held that IDEA authorizes reimbursement for private placement when a public school fails to provide FAPE and the private school placement is appropriate, regardless of the child's prior enrollment in special education.
- IDEA does not impose a categorical bar to reimbursement based on prior enrollment (or state approval of the facility as presented in Carter), but rather IDEA ensures FAPE through special education and related services designed to meet the child's unique needs.

Limitations

- At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed and their intent to enroll the child in a private facility or
- 10 business days prior to the removal of the child from the public school, the parents failed to give written notice
- if, prior to the parents' removal of the child from the public school, the LEA informed the parents of its intent to evaluate the child but parents failed to did not make the child available

Residential Placements

A student attended public school from kindergarten until ninth grade. During his seventh and eighth grade years, he began experiencing emotional and academic problems. The district evaluated him and determined he had a learning disability. It provided him with resource room services and placed him at a high school for two general ed classes. The parent objected to the placement, claiming the student's academic and emotional problems continued. She removed the student from school at the end of the first semester of his ninth grade year and placed him in a private residential school that specifically taught students with special ed needs. The parent subsequently placed the student in another non-state approved private school, which he attended through the end of high school. The district and parent entered into a settlement agreement under the district agreed to fully reimburse the parent for the student's junior year tuition. The parent sought reimbursement for the student's final private school year through due process. The impartial hearing officer ruled the parent was the only entitled to reimbursement for 20 percent of the tuition costs. However, the state review officer reversed, granting the parent full reimbursement. The district appealed the matter to federal district court. While it admitted the individualized education program offered to the student was inappropriate, it argued the services provided by the private school far exceeded what would have been provided under a proper IEP. Thus, it did not believe it was required to bear the full cost of his private school program.

Residential Placements

Should the court limit the reimbursement award to 20 percent of the tuition costs?

Yes. The services the student received went beyond those required by the IDEA.

Yes. There was no showing the IHO abused his discretion in limiting the award 20 percent.

No. The district previously agreed to fully reimburse the parent for the previous year's tuition.

No. The district agreed its IEP was improper and there was no showing that full reimbursement was unreasonable.

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EPSY Distinguished Speaker Program
DR. ANTONIS KATSIYANNIS

Wednesday, October 5, 2016

9:00-11:30 am

Lecture #2:

**Disciplinary Issues in the Individuals with Disabilities Education
Improvement Act**

MSC Room 1400

Discipline

2013-14 Civil Rights Data Collection

Nationwide, 2.8 million K-12 students received one-or-more out of school suspensions (6%)-18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls.

Black preschool children are 3.6 times as likely to receive one or more out-of-school suspensions as white

Students with disabilities served by IDEA (11%) are more than twice as likely to receive one or more out-of-school suspensions as students without disabilities (5%).

Discipline

- The U.S. Department of Education, in conjunction with the Department of Justice issued a "Dear Colleague Letter" alerting school districts to discriminatory discipline practices in light of Titles IV and VI regarding race and Section 504/Title II of ADA regarding disability)

Discipline

- DOE identified three guiding principles to improve school climate and discipline:
- (1) Create positive climates and focus on prevention;
- (2) Develop clear, appropriate, and consistent expectations and consequences to address disruptive student behaviors; and
- (3) Ensure fairness, equity, and continuous improvement"

U.S. Department of Education (2016)

In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider – and, when necessary to provide FAPE, include in the IEP – the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34CFR §§300.324(a)(2)(i) and (b)(2); and 300.320(a)(4).

IDEA

- IAES
- Manifestation Determination
- FBAs/BIPs
- Cessation of Services
- Proactive Means in Discipline
- Section 504
- General Protections
- Case Law

Interim Alternative Education Setting

- School personnel may remove a student to an interim alternative educational setting for not more than 45 school days when a child--
- (i) carries or possesses a weapon
- (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

Services in IAES

continue to receive educational services to enable the child to continue to participate in the general education curriculum

progress toward meeting the goals set out in the child's IEP; and

receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Hearings-IAES

- A student with E/BD was placed in an interim alternative educational placement after he brought a paintball gun to school (without the paintballs used to fire the gun). The hearing officer concluded that the student's IEP team inappropriately found that the student's behavior was not caused by his disability. The ALJ also found that the district improperly concluded that the paintball gun was a dangerous weapon. Lastly, the school district failed to conduct a behavioral intervention plan to analyze the student's behavior within the required time. **Independent Sch. Dist. No. 279, 30 IDELR 645 (SEA MN 1999)**

IAES

Does threat to 'kill everyone' by teen without history of violence justify placement in IAES?

On July 6, 2015, a 10th-grader with an emotional disturbance wrote on a math assignment: "kill everyone!" Above that phrase, he wrote, "unlimited solution." The principal later asked the student, "[D]o I have reason to be concerned?" The student responded, "I don't know, do you?" and offered no reassurances. The student had no history of actual violence and didn't have access to firearms at home. However, in June 2015, he stole a firearm from someone else's home. And in seventh grade, he threatened to burn the vice principal and the vice principal's car. The Washington district filed a due process complaint seeking an order to remove the student to an interim alternative educational setting. Among other evidence mentioned above, the district pointed to the student's statements that he used marijuana daily; drank alcohol; and used ecstasy, LSD, and other drugs. A district that believes that maintaining a student's current placement is substantially likely to result in injury to the student or others may file a due process complaint asking a hearing officer to change the student's placement to an IAES for not more than 45 school days. 34 CFR 300.532.

IAES

Should high school student be placed in IAES?

- A. No. In order to obtain an order placing the student in an IAES, the district had to show that the student engaged in actual violence.
- B. Yes. Considering that the student stole a firearm before writing the threat to kill everyone, his prior threat, and his use of drugs, the district had sufficient evidence to show a substantial likelihood of injury.
- C. No. Because the student had no history of actual violence, there wasn't a substantial likelihood that maintaining his placement would result in injury.

Manifestation Determination

Within 10 school days of any decision

- (a) to change the placement of a child or
- (b) placement in an IAES

the IEP Team shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine

if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

Landmark Court cases (MD)

Before a disruptive child with a disability can be expelled, it must be determined whether the disability is the cause of the child's propensity to disrupt

- **Prince William County Board v. Malone, 762 F.2d 1210 (4th Cir. 1985)** - This case also addressed the issue of knowing right from wrong as sufficient grounds to exclude a connection between a student's misconduct and disability. The court held that although the student probably understood that involvement with drugs was wrong, his learning disability prevented him from comprehending or giving long term consideration to the consequences of his actions.

Hearings-MD

- Fort Smith Public Schools (1998). In filling for a hearing, the parents were able to convince the hearing officer that the student was not able to control his behavior and prevailed over an ensemble of district experts. The hearing officer agreed that the student was able to differentiate right from wrong but disagreed with the district's position that he was able to control his behavior. Specifically, the student would frequently become agitated and red-faced before attacking a person attempting to intervene during a behavioral incident. Consequently, the hearing officer ruled that the student's disability impaired him from controlling his action and therefore the behavior was a manifestation of his disability.

MD

Does student's 8-day bus suspension require manifestation determination review?

In January 2015, a Maryland district suspended a 14-year-old with emotional disturbance from the bus for eight days. The district already had given the student out-of-school suspensions four times during the 2014-15 school year. In February 2015, the IEP team added transportation as a related service to the student's IEP. At the time of the bus suspension, the student received bus transportation pursuant to a district policy providing transportation to any student living more than 1 mile from school. According to the district, it offered the student no-cost alternative transportation, but the parent drove the student throughout the suspension. A complainant filed a due process complaint with the Maryland ED, alleging that the bus removal should have triggered a manifestation determination review. An MDR must be performed within 10 school days of any decision to change the placement of a child with a disability because of a code of conduct violation. 34 CFR300.530(e). A change in placement occurs when a removal (including a bus suspension) exceeds 10 consecutive school days or the child is subjected to a pattern of removals exceeding 10 total days. 34 CFR 300.536. Does bus removal entitle teen to IDEA's disciplinary protections?

MD

Does bus removal entitle teen to IDEA's disciplinary protections?

A. No. A bus removal constitutes a change of placement only if it exceeds 10 school days.

B. No, The student received transportation pursuant to a school policy that applied to all students.

C. Yes. The student was receiving transportation as a related service beginning in February.

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Functional Behavior Assessment Behavior Intervention Plans

- If the conduct was a manifestation of the child's disability or a placement in an IAES for up to 45 school days, the IEP Team shall--
 - conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child
 - in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior

Functional Assessment

- It is the process of analyzing contextual factors related to the occurrence of inappropriate behaviors in order to draw conclusions about the purpose or intent the behavior .
- Determining the intent of the behavior allows the teacher to identify contextual modifications that may reduce the inappropriate behavior and teach the student appropriate replacement behaviors (Maag, 1997)

Purposes of FBAs

- To predict *when* the problem behavior will and will not occur
- To understand *what* maintains the problem behavior
- To determine *why* the problem behavior occurs

Outcomes of an FBA

- ☞ A clear description of problem behavior
- ☞ Identification of the events, times, and situations that predict the behaviors
- ☞ Identification of the consequences that maintain the problem behaviors
- ☞ Developing a hypothesis regarding the problem behavior
- ☞ Collection of direct observation data that support the hypothesis
- ☞ The FBA data & hypothesis form the basis of the BIP

Cessation of Services

- Services must be provided after the 10th day of removal [Sections 300.520 (a)(1)(i) and 300.121 (d)]
- Section 300.121 (d)-For removals over 10 days in a school year, schools must provide services to the extent necessary to enable the child to progress in the general education curriculum and appropriately advance toward achieving IEP goals

Proactive-IEP "Consideration of special factors"

- IDEA 2004 provides that the "IEP Team shall 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" (Section 1414 (d)(3)(B) (i)).
- In such cases, the IEP team must include a statement regarding the particular device or service (including an intervention, accommodation, or other program modification) to be provided (34 C.F.R. [§] 300.346(a)(2)(c)).

Section 504 MD

A manifestation determination is required in all cases when there is a proposed change of placement (an exclusion for over 10 consecutive days or exclusions of over 10 days cumulative with a pattern).

A pattern is determined by examining

the total number of days the child has been excluded, the length of each exclusion, and the proximity of each exclusion to another.

Section 504- In school suspensions

Dunkin (M) R-V School District, 52 IDELR 138 (OCR 2009)

~Not counted as a day of suspension when the nature and quality of the education services provided are comparable to those provided prior to the in-school suspension.

Regs-Not counted if student

~Has the opportunity to continue to participate in the general ed curriculum,

~Receives services outlined in the IEP, and

~Participates with peers to the extent student would have in current placement.

Section 504-OCR Rulings

In Kansas City (MO) #33 Sch. Dist. (2008) a school district suspended a student multiple times accounting for twenty-six days over a 5 month period. This formed a "pattern of exclusion" and resulted in a significant change in placement.

Landmark Cases

- *Goss v. Lopez, 419 U. S. 565 (1975)*-
 - Short term suspensions: written or oral notice of charges, an explanation of reasons, and the opportunity to respond
 - Long term/Expulsions: written notice, notice of evidence, hearing, witnesses, record of hearing, right to appeal
- *Honig v. Doe, 108 S. Ct. 592 (1988)*-
 - Congress intended to strip states of their unilateral authority to exclude students
 - During the pendency of proceedings, the student must remain in the then current placement
 - Expulsion constitutes a change of placement

Discipline: Excessive Force

- JGS by Sterner v. Titusville Area Sch. Distr. 55 IDELR 39 (W.D. Pa. 2010-lack of injury derailed 1st grader's constitutional claims
Student stood up and began screaming obscenities; aide placed hand sanitizer on her hand and held it over student's mouth
Court relied on a four part test by Gottlieb v. Laurel Highlands School District, 272F.3d 168 (3rd Cir. 2001)-
1. Was there a pedagogical justification?
 2. Was the force utilized excessive in light of situation?
 3. Was the force applied (in good faith) to maintain/restore discipline or for the purpose of inflicting harm?
 4. Was there a serious injury?

Injunctive Relief for Violent Students

Wayne-Westland Community Schools v. V.S. by Y.S., 65 IDELR 13 (E.D. Mich. 2015).
Granting a permanent injunction requires a plaintiff to give evidence of

1. The plaintiff must prove that an irreparable injury has been suffered.
2. Remedies available at law, i.e. monetary damages, are inadequate to compensate for the injury.
3. Consideration must be given to the balance between hardships endured by both the plaintiff and defendant and a remedy of equity provided.
4. Public interest cannot be disserved by the permanent injunction.

Key Reminders

- Basically, you get 10 days of removal per year without the need to provide any services
- School principals may consult with special education teachers regarding services during short term suspensions
- Schools may request additional 45 day IAES from hearing officers if student presents danger of injury
- Services must be provided after the 10th day of removal [Sections 300.520 (a)(1)(i) and 300.121 (d)]
- Section 300.121 (d)-For removals over 10 days in a school year, schools must provide services to the extent necessary to enable the child to progress in the general education curriculum and appropriately advance toward achieving IEP goals

Key Reminders

- MD Requirement
- Any time a change of placement is proposed-Change of placement is considered when there is a pattern of removals or a removal for over 10 consecutive days
 - Placement in an IAES
- FBA/BIP Requirement
- The behavior is a manifestation of the child's disability
 - Placement in an IAES
- IAES requirement
- Participation/progress in the general ed curriculum
 - Meeting IEP goals
 - Addressing behavior

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