

# Behavior, IEP's and the Law

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# Discussion Points

- School District Policy
- Functional Behavior Assessments
- Behavior Intervention Plans
- Manifestation Determination
- The “10 Day Rule” – change in placement
- Intermediate Alternative Educational Setting ( 45 days)

# School District Policy

- Must a school district's discipline policy be in writing?
- May a school district sanction a student's misconduct more severely than suggested in its disciplinary code?
- Does the 1<sup>st</sup> Amendment limit a school district's right to discipline a student for expressing his opinions in school?

# IDEA 2004

- In the case of a child whose behavior impedes the child's learning or that of others, consider, the use of positive behavioral interventions, strategies and supports, and other strategies, to address that behavior.

# OSEP Commentary

- If a student has a history of problem behavior, or if the behavior can be readily anticipated, then the student's IEP must respond to that behavior (Appendix A, question 39)

# Functional Behavioral Assessment

- "Functional behavioral assessment" means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

- Clearly describes the challenging behaviors, including behaviors that occur together
- Identifies the events, times & situations
- Identifies the consequences (what the person “gets out” of the behaviors, e.g., attention, escape, preferred items)
- Develops a summary that describe specific behavior, specific types of situations and their inforcers
- Collects directly observed data

# FBA Flexibilities

- Not defined in the law or the regulations
- Is to be developed by the IEP team
- May be a review of existing data
- On a 'case by case' basis
- No time limit for completion
- Is not required until change in placement

# Behavior Intervention Plan

- Behavioral intervention plan" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- Definition from OAR 581-015-2400

# Developing Behavior Intervention Plan

- Define the Target Behavior
  - Observable, measurable, and clear descriptions of behaviors
    - Don't use words that cannot be measured and observed like: aggressive, or frustrated
    - Do use observable & measurable words like:
      - hitting with hands
      - screaming
      - laying down on the floor

- Identify criteria that will be used to measure success:
  - Frequency
  - Accuracy of response
  - Duration
- Identify timeline for:
  - Implementation
  - Monitoring progress
    - Data collection
      - Who & when
      - Materials for data collection
      - Types of data collection
    - Demonstration of mastery

- Plan for Prevention - change some of the who, what, when and where information
- Teach replacement skills - so the student can satisfy the need filled by the behavior
- React - to reinforce appropriate behavior
- Plan - for crisis management
- Data collection - measure progress
- Review date - review and reconsider plan

# Question to Consider:

“Can my child follow the school district and building discipline policy?”

Agreeing that a child is able to follow the discipline policies is agreeing that the consequences are appropriate.

This determination must be based on data. If a child is frequently disciplined for not following the district policy, the team should consider whether the consequences are appropriate. If necessary, the IEP team can modify the policy.

# Disciplinary removals that are NOT a Change in Placement

- The first 10 school days either cumulative or sequential in a school year
- Subsequent removals for separate incidences that are not considered a pattern

\*Manifestation Determination not required\*

## Disciplinary Removals that are a Change in Placement – 10 Day Rule

- Defined as removal for more than 10 consecutive days or removals after first 10 school days that constitute a “pattern”
  - Must notify parents of intended action
  - Must do FBA/behavioral intervention plan
  - Prior written notice
  - Must do a Manifestation determination no later than 10 school days after decision was made
  - Services must be provided

# What is a Pattern?

- Who decides?

- The public agency makes the determination on a case-by-case basis
- Does not require a meeting

- Basis of determination

- Length of Removal
- Total amount of time removed
- Proximity of removals to one another
- Whether the behavior was substantially similar in nature to previous incidents that resulted in the series of removals.

# Manifestation Determination

615(k)(1)(E)

- . Under Section 615(k)(1)(E)(i), the behavior is a manifestation of the child's disability if the conduct in question was:
  - Caused by, or had a direct and substantial relationship to, the child's disability; or
  - A direct result of the District's failure to implement the IEP.

## If Not a Manifestation

- Regular disciplinary procedures may be applied (same extent and duration as for nondisabled students)
- Must continue to provide a FAPE to the student, though in an alternative setting:
  - Continued participation in the general education curriculum
  - Services necessary to progress toward IEP goals
  - If appropriate, FBA & BIP

## ■ If Behavior Is a Manifestation

- IEP team shall conduct FBA (if not already done) and implement BIP (or review and revise current BIP)
- Student returns to placement before removal, unless...

# If Behavior Is a Manifestation...

- Unless:
  - "special circumstance"
  - parent and district agree to a change of placement
  - removal by administrative law judge (ALJ) for behavior substantially likely to result in injury

# Special Circumstances

## 615(k)(1)(G)

- A school is permitted to remove a child with a disability to an alternative setting for up to 45 school days for:
  - Weapons and drug offenses; or
  - Serious bodily injury upon another person.

- A **weapon** is "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, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length."

# “Serious bodily injury”

- “Serious bodily injury” is an injury that involves:
  - Substantial risk of death;
  - Extreme physical pain;
  - Protracted and obvious disfigurement; or
  - Protracted loss or impairment of function of a bodily member, organ or mental faculty.

# Interim Alternative Educational Setting (IAES) up to 45 School Days

- Applies to students who:
  - Carry a weapon to school or school function
  - Knowingly possess or use illegal drugs
  - Sell or solicit the sale of a controlled substance while at school or a school function
  - or a hearing officer finds the student substantially likely to injure themselves or others

# IAES Requirements

- Determined by the IEP Team
- Student must be able to
  - Receive services on the IEP
  - Participate in the general curriculum
  - Receive services to address behavior

# Expedited Hearing

## When

- Parent can request to challenge decision related to manifestation determination or change in placement related to disciplinary action
- District can request to obtain ALJ order for removal to IAES for behavior that is substantially likely to result in injury

## Timeline:

- Hearing within 20 school days of the request
- Order within 10 school days after the hearing

# Placement During Appeals

## 615(k)(4)

- A child remains in an interim alternative educational setting until:
  - The appeal is resolved;
  - Expiration of the suspension or expulsion; or
  - Whichever comes first.
- Unless the parent & SD agree otherwise

# Protections for Children Not Yet Eligible

615(k)(5)(B)

- A District “has knowledge” that a child has a disability if, before the behavior that precipitated the disciplinary action
  - Parent expressed concern in writing to an administrator or teacher;
  - Parent requested evaluation of the child; or
  - Teacher or other District personnel expressed specific concerns about a pattern of behavior to administrator.

# Physical Restraint & Seclusion

## Corporal Punishment

- Effective September 1, 2007, school district boards must establish written policies and procedures on the use of physical restraint and seclusion.
- No student in Oregon shall be subjected to **corporal punishment** in any public elementary or secondary school. A school administrator is not authorized to waive the prohibition against corporal punishment based upon the request of a parent or guardian

# Cases to know

Brown V. Board of Education

*S-1 v. Turlington (5<sup>th</sup> Circ. 1981)* - Manifestation Determination

Honig v. Doe – Dangerousness/stay – put

Goss V. Lopez – discipline of non-disabled persons – 10 day rule

**B.O.E. *Of Hendrick Hudson Cent. Sch. Dist v. Rowley***  
***basic floor of opportunity***

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