

We're in This Together: A Team Approach to Special Education

Presenters:

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- Tim Malm, KSB School Law
- Mike Elsken, Disability Rights of Nebraska
- Vicki Depenbusch, Arc of Lincoln
- Laura Barrett, ESU 13

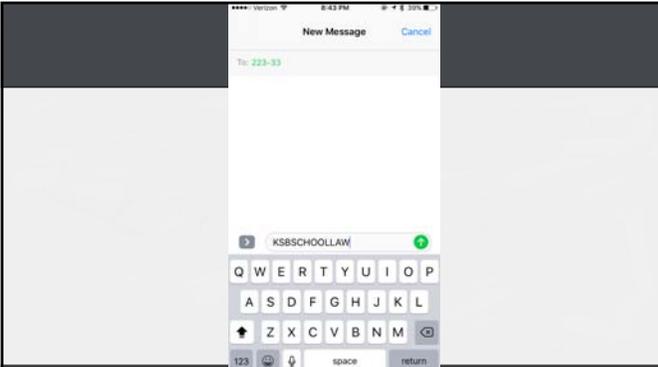



Overview of Applicable Laws
9:00-9:50



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Individuals with Disabilities Education Act (IDEA)

- The IDEA is a federal law passed in 1975 to provide the states with funding to create and develop programs to provide eligible disabled children with a free appropriate public education (FAPE).
- IDEA is administered by the Office of Special Education Programs (OSEP), in the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS).

IDEA Terminology

- Free Appropriate Public Education (FAPE): Must be provided to eligible disabled students through individualized special education and related services.
- Multidisciplinary Team: individuals who evaluate eligibility
- Individualized Education Program (IEP): All students eligible for special education services have an IEP, which must include a statement of measurable annual goals and the special education and related services that will be provided to the student.

IDEA Terminology (Continued)

- IEP Team: The group that makes all decisions regarding educational programming and placement for eligible students with disabilities.
- Least Restrictive Environment (LRE): To the maximum extent appropriate, children with disabilities should be educated with non-disabled peers. Special classes or other separate schooling only when regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.

IDEA Terminology (Continued)

- "Parental Consent": IDEA requires parental input in decision making, including parental consent in the following circumstances:
 - To conduct initial evaluation
 - To begin services
 - Re-evaluations
 - Release of records
 - NOTE: parent/guardian signature is NOT required to finalize IEP

Rule 51

- The Nebraska Department of Education's Implementation of the IDEA

Section 504 Eligibility

- Section 504 and ADA: child who
 - has a physical or mental impairment
 - which substantially limits
 - a major life activity
- And who "needs or is believed to need" services
- NOT necessary to establish adverse affect on educational performance

Americans with Disabilities Act

- 28 C.F.R. § 35.160(a)(1)
 - "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity"
 - A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

Interaction of ADA/504 & IDEA/Rule 51

- IDEA students all also have § 504/ADA protections *Letter to Mentink*, 19 IDELR 1127 (OCR 1993)
- Dual eligibility does not mean that schools provide an IDEA student with a § 504 plan in addition to his/her IEP. *Protecting Students with Disabilities*, 116 LRP 4782 (OCR 10/6/15)
- Parent may be able to reject IEP and demand § 504 plan
- Parent and student now can demand accommodations under § 504 that IEP team has rejected

Litigation Trends

- IDEA is the 4th most litigated federal law in U.S.
- Virtually every case that goes to court now alleges violations of IDEA, 504/ADA, and often constitutional provisions.
- Increase in litigation alleging “abuse” or “neglect” by staff or bullying by students.
- Since parents can get reimbursed for educational expenses, and attorney’s fees, stakes are often high.

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Andrew F. v. Douglas Co. Sch. Dist. RE-1 580 U.S. ____ (2017)

- Student with autism
 - Parents claimed that IEP had same basic goals from year to year
- Removed from public school and enrolled in “Firefly Autism House”
 - Behavior improved dramatically
 - Made “a degree of academic progress that had eluded him in public school”

Andrew F. v. Douglas Co. Sch. Dist. RE-1 580 U.S. ____ (2017)

- School presented a new IEP 6 months after private school enrollment
- Parents rejected because similar BIP
- Filed d.p. for tuition reimbursement
 - Contended that final IEP was not “reasonably calculated to enable Andrew to receive educational benefits.”

Andrew F. v. Douglas Co. Sch. Dist. RE-1
580 U.S. ____ (2017)

- ALJ found for school
- District Court found for school
 - performance under past IEPs "did not reveal immense educational growth"
 - annual modifications to IEP were "sufficient to show a pattern of, at the least, minimal progress"
- 10th Circuit found for school
 - School's IEP was calculated to confer "some educational benefit"

Andrew F. v. Douglas Co. Sch. Dist. RE-1
580 U.S. ____ (2017)

- Supreme Court granted certiorari
- Unanimous decision to remand to district court
- Court: It true that Rowley said "some education benefit" - but in Rowley the issue was not whether student was receiving minimum of benefit
- "An IEP is not a form document"

Andrew F. v. Douglas Co. Sch. Dist. RE-1
580 U.S. ____ (2017)

- For a child integrated in the regular classroom
 - "an IEP typically should . . . be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."
 - When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum." [footnote]

Andrew F. v. Douglas Co. Sch. Dist. RE-1
580 U.S. ____ (2017)

- For a child not integrated into regular classroom
 - “If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances. . .
 - “...every child should have the chance to meet challenging objectives.”
 - “...this standard is markedly more demanding than the ‘merely more de minimis’ test. . .

Andrew F. v. Douglas Co. Sch. Dist. RE-1
580 U.S. ____ (2017)

- “a student offered an educational program providing ‘merely more than de minimis’ progress from year to year can hardly be said to have been offered an education at all.”
- “The IDEA demands more. It demands an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Paris Sch. Dist. v. A.H,
2017 U.S. Dist. LEXIS 50042 (W.D. Ark. April 3, 2017)

- Student with autism moves into district in November of 4th grade
 - Team met and developed plan
 - Met in December to develop BIP
 - Met in March to discontinue PT (therapist not at meeting)
 - Met in May to develop plan for 5th grade (shortened day, resource room)
 - Met in August to place in ALE
- Mom sued over both placement and progress

Paris Sch. Dist. v. A.H,
2017 U.S. Dist. LEXIS 50042 (W.D. Ark. April 3, 2017)

- 4th grade year
 - School couldn't provide copy of BIP
 - Speech therapist testified she provided services
 - No notes
 - No progress noted
 - PT billed for 13 sessions
 - No notes other than billing records
 - No documentation of being attacked

Paris Sch. Dist. v. A.H,
2017 U.S. Dist. LEXIS 50042 (W.D. Ark. April 3, 2017)

- 5th grade year
 - School provided no data to justify change from shortened day to ALE
 - Questions re qualifications of "Coach"
 - No plan for existing ALE
 - SRO cited student 9 times for assault

Paris Sch. Dist. v. A.H,
2017 U.S. Dist. LEXIS 50042 (W.D. Ark. April 3, 2017)

- Court:
 - 4th grade year
 - Couldn't produce BIP
 - Meeting at which PT discontinued unlawful
 - o No PT
 - o No PWN
 - No progress notes
 - 5th grade year
 - SRO was used instead of BIP
 - No exit plan for ALE

Paris Sch. Dist. v. A.H,
2017 U.S. Dist. LEXIS 50042 (W.D. Ark. April 3, 2017)

▪ Court:

- “Additionally, there was no exit plan for AH to leave ALE so it appears that PSD intended to send her to ALE indefinitely. Sending a fifth grader indefinitely to an ALE program like this one could possibly be ‘sitting idly . . . Awaiting the time when they were old enough to drop out.” Endrew F.
- Granted summary judgment and attorney fees to parent

I.Z.M. v. Rosemount-Apple Valley-Eagan Sch.
117 LRP 27963 (8th Cir. July 14, 2017)

▪ 9th grade student with visual impairment

- IEP called for materials in Braille
- At times staff used other accessible formats for shorter assignments
- AT devices sometimes did not work or were not available

▪ Family sued for implementation violations

I.Z.M. v. Rosemount-Apple Valley-Eagan Sch.
117 LRP 27963 (8th Cir. July 14, 2017)

▪ Court

- “provisions of the IEP were largely, although not perfectly, implemented”
- Student capable of reading Braille but chose not to so do
- Student’s lack of Braille progress did “not negate the fact that he received significant educational benefit from his participation and progress in his classes”

I.Z.M. v. Rosemount-Apple Valley-Eagan Sch.
117 LRP 27963 (8th Cir. July 14, 2017)

- Court
 - IEP did not guarantee that the child would use Braille
 - School has to provide “instruction sufficient to enable child to attain the specified level of proficiency.”
 - Cited Endrew F.’s “educational program reasonable calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
 - “all reasonable steps, not perfect results”

Verification and Child Find
10:00pm – 11:00pm

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Section Outline

- Child Find Obligations and Referral, generally
- SAT/RTI
- IEEs
- Consent
- Prescription pad IEPs
- Verification Categories—briefly
- Staffing the Child Find Process

Child Find: 3 Eligibility Groups

- IDEA Part C
- IDEA Part B
- Section 504

Child Find in IDEA Part C

- Quality indicators in 2011 regulations compare percentage of identified infants to national average
- Research shows still under identification issues

Child Find in IDEA Part B

34 C.F.R. §300.111

- Affirmative, ongoing obligation of states and local school districts to identify, locate and evaluate all children with disabilities
- Specifically references:
 - homeless
 - wards of the State
 - attending private schools
 - migrant and mobile students
- Regardless of the severity of disability
- Even if they are advancing in grade year to year

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

Child Find and The Duty to Evaluate

- Child Find duty is triggered when district has reason to suspect a disability coupled with reason to suspect special education services may be needed to address the disability
- IDEA requires that all children with disabilities... "who are in need of special education services be identified, located and evaluated."
 - Regulation: 34 C.F.R. § 300.311
 - NDE Rule: Rule 51 § 006.01

Section 504 of the Rehab. Act

34 C.F.R. § 104.32

- A recipient that operates a public elementary or secondary education program or activity shall annually:
 - (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
 - (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

When is a school required to make a 504 referral?

- (1) When district believes that the student has a physical or mental impairment that substantially limits one or more major life activities; **AND**
 - ADA: Must consider the student without mitigating measures
- (2) Student is in need of either regular ed. with supplementary services or special ed. and related services

When To Refer A Student

- Parents report health condition
- Parents request evaluation*
- Student failing to make progress
- Staff refers student to SAT*
- Student returning to school after a serious injury
- Student failed to verify for SpEd
- Student habitually absent

**Parent request is a "trump card"*

Compliance with Child Find Two-Part Inquiry

- When did district have reason to suspect presence of disability and need for special education?
- Did district evaluate student within a reasonable time after having notice of circumstances likely to indicate a disability and a need for services?

Example: Failure to Identify

Freedom Area (PA) Sch. Dist., 111 LRP 64831 (OCR 2011).

- Parents of an elementary student noticed significant change in daughter's personality.
- She stopped smiling, began touching herself inappropriately in public, was anxious, and resisted going to school.

Example: Failure to Identify

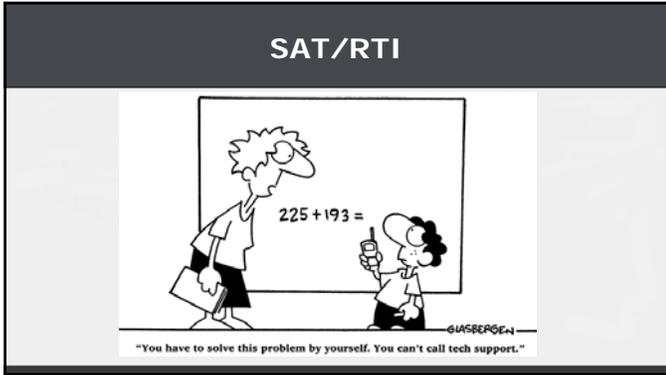
- Parent told a teacher and another staff member that "she saw a problem and needed help."
- Subsequently, the district received several mental health evaluations of the student.
 - One diagnosed student with ADHD, ODD, depression, mood disorder, OCD, and noted her excessive anxiety and refusal to go to school.
- The student's teacher and another staff member knew the student was touching herself inappropriately in front of others at school.

Example: Failure to Identify

- District did not evaluate because student had excellent grades and did not appear to need disability-related services at school.
- The parent never requested an evaluation.
- The parent filed a complaint with OCR and alleged a child find violation.
 - OCR agreed, concluding that the child's behavior demonstrated a need for a referral and an evaluation under Section 504.

Takeaways

- Many due process and procedural safeguards ask whether the student **should** have been identified
- If a parent asks for evaluation and the school doesn't agree, provide procedural safeguards
- Respond to parent requests for evaluation immediately



Student Assistance Team (SAT)

003.58 **Student assistance team (SAT)** means a group of persons utilizing problem solving and intervention strategies to assist the teacher(s) in the provision of general education.

006.01B Student Assistance Team (SAT) or Comparable Problem Solving Team

006.01B1 For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.

006.01B2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.

006.01B3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

SAT

- The SAT process is a resource and screening tool
- Even a parental request doesn't bypass the SAT process, they could run it concurrently with eval process
- If the team decides to go through the SAT process and not evaluate, need to provide PWN

RTI

- Response to Intervention (RTI): High-quality instruction and intervention matched to student need, provided to all students who are struggling academically, including those who are struggling due to behavior problems or social skills deficits
 - Generally considered part of the "SLD" eval process

RTI

§ 300.307

Specific learning disabilities.

- (a) **General.** A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—
- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);
 - (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
 - (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).
- (b) **Consistency with State criteria.** A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

RTI

- 006.04K3** The MDT may determine that a child has a specific learning disability if:
- 006.04K3a** The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.
- 006.04K3b** The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in 02 NAC 51-006.04K3a when using a process based on the child's response to scientific, research-based intervention; or
- 006.04K3b(1)** The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 02 NAC 51-006.02.

IEE



"Doctor and physician are outdated terms. I'm your biological tech support specialist."

IEE

- Independent Educational Evaluation (IEE): Evaluation by a qualified person who is not employed by the school.
- Can be done at the request of the parents if they disagree with the school's evaluation of the student.
- Schools can develop reasonable policies and procedures which the family must follow
 - Qualifications, location, cost

Parental Consent



"I don't like the term 'yes man.' I'm more of a consent provider."

IDEA Consent is Required Twice!

NDE Rule 51 § 009.08

- Consent for Initial Evaluations
 - Must make "reasonable efforts"
 - School **can** file "due process" to force evaluation
- Consent for Services
 - Must make "reasonable efforts"
 - School **cannot** file "due process" to force services

Section 504 Consent

Letter to Durham, 27 IDELR 380 (1997)

- No consent requirement in text of 504 or regulations
- "Informed consent" still required
- Parental discretion is "an appropriate and necessary policy component at the initial evaluation phase"

Prescription Pad IEPs



Team must consider 'scrip

- OSEP : reviewed by team, discussed, and if not adopted, team explains the basis for disagreement.
- *T.S. v. Bd. of Educ. of the Town of Ridgefield*, (2nd Cir. 1993) "consider" means only to reflect on or think about with some degree of care.

Responding to Prescription Pad IEP

- FERPA Release
- HIPAA Release if necessary
- "mild cross examination"
- Diagnosis =/= services
 - Even if the diagnosis is a listed disability in Rule 51

Verification Categories

NDE Rule 51

- All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.
- School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

Eligibility

- IDEA and NDE Rule 51: child with an enumerated disability who, by reason thereof, needs special education and related services
 - Autism, behavior disorder (ED), deaf-blindness, developmental delay, hearing impairment, intellectual disability, multiple impairment, orthopedic impairment, other health impairment, specific learning disability, speech-language impairment, traumatic brain injury, or visual impairment

Eligibility Concepts to Remember

- 79-1118.01 contains the verification categories
- All disability categories are a door into the same room
- Once in the room, teams must address any disability and consider services even if it wasn't the door used to get in

Special Note on Dyslexia

- LB 645 (2017) added a definition of "dyslexia" to 79-1118.01

(6) Dyslexia means a specific learning disability under subdivision (13) of this section that (a) is neurobiological in origin, (b) is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities, (c) typically results from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and effective classroom instruction, and (d) has secondary consequences that may include problems in reading comprehension and reduced reading experience that may impede growth of vocabulary and background knowledge;

Staffing the Child Find Process

003.41 *Multidisciplinary evaluation team (MDT)* means a group of qualified professionals and the parent whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the definition of a child with a disability.

004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.

Staffing the Child Find Process

006.03 Multidisciplinary Evaluation Team (MDT) Requirements

006.03A The multidisciplinary evaluation team (including the child's parents) shall be responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP.

IEP Meeting Process 11:00pm – 12:00pm

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Notice and Schedule of Meetings



DAN BEGAN TO SUSPECT HE'D BEEN LEFT OUT OF THE LOOP AGAIN.

Preparation

- School: Provide parents previews of changes that might concern parents and/or new issues that are arising
- Parents: give school heads—up about new requests or issues at home
- The more transparent everyone is, the better it is for our kids!

Prior Written Notice

34 CFR 300.503/Rule 51 § 009.05

- Must be provided to parents if:
 - School is proposing evaluation or change in placement, FAPE, eligibility, and IEP
 - School has refused to do one of those things
 - After revocation of consent but before discontinuation of services

Contents of PWN

34 CFR 300.503/Rule 51 § 009.05

- Description of action being taken/refused
- Explanation of why
- Documentation and data used as basis for decision
- Other options considered and why rejected
- Other factors relevant Copy of procedural safeguards.
- Sources to contact for assistance.

Mandatory IEP Participants



"Before we start, shall we go round the table, and each share our name and a horrible dark secret from our past."

Mandatory Participants
34 CFR 300.321/Rule 51 007.03

- Parents
- Regular education teacher (if appropriate for student)
- Special education teacher
- Representative of the public agency
- Individual who can interpret the evaluation results
- Other individuals who have knowledge or expertise (at parents'/LEA's discretion)
- Whenever appropriate, the child with a disability.

A parent is...

34 C.F.R. § 300.30/Rule 51 § 003.44

- Biological or adoptive parent of a child
- A foster parent
- A guardian
 - Must be individual generally authorized to act as the child's parent or authorized to make educational decisions
 - but not the state if the child is a ward of the state (thus no caseworkers)
- An individual acting in the place of a biological or adoptive parent with whom the child lives who is legally responsible for the child's welfare

"Biological or Adoptive Parent"

34 C.F.R. § 300.30(b)/Rule 51 § 003.44

- Two caveats to "parent" definition:
 - Presumption in favor of Biological or Adoptive Parent if
 - Bio./adoptive parent still has legal authority
 - Bio./adoptive parent is "attempting to act as the parent"
 - Unless a court orders someone else to act as the "parent"
 - So if bio parent present, but there is a foster parent, foster parent is the "parent"
 - Cannot be "the state" (not caseworker or DHHS employee)

Letter to Caplan
58 IDELR 139 (OSEP 2011)

- CWA director – is surrogate parent required when:
 - Court assigned limited guardianship to state agency and parent is available
 - Court assigned guardianship and reunification sought
 - Court has revoked educational rights
- OSEP:
 - We do not believe 34 CFR 300.519(b) requires automatic appointment of surrogate parent for every child who is a ward of the State
 - Decision lies with the school, not the CWA
 - Key is whether biological or adoptive parent retains the authority to participate in the development of the child's IEP and make other educational choices for the child

"Other Adults"

- Foster Parent, unless state law, regulations or contractual obligations with the state or local entity prohibit
- Guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives or and individual who is responsible for the child's welfare
 - This could also be non-relative

Parent Participation Decisions

- *Doug C. v. Hawaii Dep't of Ed.*, 720 F.3d 1038 (9th Cir. 2013)
 - Request to reschedule due to illness not refusal to attend
 - Need to conduct annual review doesn't justify excluding parents
- *Toledo Sch. Dist. v. Horen*, 55 IDELR 102 (N.D. Ohio 2010)
 - Asking to reschedule is not refusing to attend
 - Schedule of large team doesn't justify excluding parents
- *T.S. v. Jerry D. Weast*, 54 IDELR 249 (D. Md. 2010)
 - Repeated rescheduling can constitute refusal to attend
- *B.H. v. Joliet Sch. Dist.*, 54 IDELR 121 (N.D. Ill. 2010)
 - School not required to schedule meetings after hours

Regular education teacher

34 CFR 300.321(a)(2)/Rule 51 § 007.03A2

- "Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)"
- *R.G. v. New York City Dept. of Ed.*, 62 IDELR 84 (E.D.N.Y. 2013)
 - "...inclusion of a general education teacher . . . would not necessarily have led to the formulation of a different IEP. . . . But the teacher would have had the opportunity to provide his or her views about F.G.'s needs and to persuade the other members to consider a general education placement . . .

Special education teacher

34 CFR 300.321(a)(2)/Rule 51 § 007.03A3

- "Not less than one special education teacher, or where appropriate, not less than one special education provider of the child"

Individual Able to Interpret Eval. Results

34 CFR 300.321(a)(2)/Rule 51 § 007.03A5

- "An individual who can interpret the instructional implications of evaluation results"

Representative of the public agency
34 CFR 300.321(a)(4)/Rule 51 007.03A4

- A representative of the public agency-
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the public agency

Permissible Participants



Other Individuals
34 CFR 300.321(a)(6)/Rule 51 § 007.03A6

- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- *Blackman v. District of Columbia*, 64 IDELR 169 (D.D.C. 2014)
 - School found to have violated FAPE when it had student's attorney excluded from IEP meeting

Bringing an Advocate or Attorney to an IEP Meeting

- Parent Rights
 - May bring an advocate/attorney
 - Not *required* to notify district before bringing advocate/attorney
 - Attorneys: still covered by ethics rules re: represented parties
- District Obligations
 - Cannot prevent parent's advocate/attorney from attending
 - May postpone meeting until district's counsel can attend
 - District *can* have its counsel attend even when the parent is unrepresented
 - Requires notice to the parent
 - Discouraged by federal policy

Delivery and Signing of "Final" IEP Documents



"Mrs. Cranley! You need to sign this HIPAA privacy form before the doctor can look at those warts on your stomach!"

Services for Parents and Others Attending



"I said Logan has trouble staying on task."

IDEA

- Schools must ensure that parents “are afforded the opportunity to participate.” 34 C.F.R. § 300.322(a)
- School districts “must take whatever action is necessary to ensure that the parent understands the proceedings ... including arranging for an interpreter for parents with deafness.” 34 C.F.R. § 300.322(e)

Section 504

- “No otherwise qualified individual with handicaps ... shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination.”
 - Facilities
 - “Qualified handicapped persons” with respect to “other services” if eligible

ADA

- Public entity is required to ensure that communications with individuals with disabilities are as effective as communications with others.
- Title II of the ADAAA prohibits disability discrimination by all public entities
 - Facilities
 - Service animal;s

Sidney Pub. Schs.,
110 LRP 19430 (SEA NE 01/23/10)

- Mother had a visual impairment which prevented her from reading text which was not in at least 36 point bold font
- District:
 - Provided some documents in requested font
 - Other times read the documents aloud
 - Mailed forms to mother's scribe
 - Refused request for large-print textbooks and other homework materials

Sidney Pub. Schs.,
110 LRP 19430 (SEA NE 01/23/10)

- Mother filed due process claiming inability to meaningfully participate
- Hearing officer:
 - No particular format required
 - Mailing regular print forms to address of mother's reader was permissible
 - Non-disabled parents were not expected to read students' textbooks or other homework papers, therefore no discrimination

Questions?

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at PallEx.com/app

Panel Discussion
12:00 – 1:00

A cartoon by Schwab showing a man in a suit looking at a panel of four experts. The panel is labeled 'PANEL OF EXPERTS' and is under a sign that says 'IN CASE OF EMERGENCY'. The cartoon is signed 'SCHWAB' and 'Cartoonists.com'.

IEP Contents
1:00pm – 2:00pm

<p>Tim Malm KSB School Law (402) 804-8000 tim@ksbschoollaw.com f /ksbschoollaw t @timjmalm</p>	<p>Vicki Depenbusch Arc of Lincoln (402) 421-8866 autismfamilynetworklincoln@gmail.org www.arclincoln.org</p>
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A cartoon by Randy Glasbergen showing a man with curly hair sitting at a desk with a laptop, a coffee cup, and a document. He is looking at the document.

"Here are the minutes of our last meeting: We drank a lot of coffee and everybody disagreed about everything until Todd looked like he was going to cry and then everyone was really super nice."

Required Contents of IEP
34 CFR 300.320(a)/Rule 51 007.07

- Present Levels of Academic Achievement and functional performance (PLEP)
- Measurable annual goals
- How progress will be measured
- Statement of services and supplementary aids
- Extent child will not participate in mainstream
- accommodations on assessments
- Start date and duration of services
- Transition services
- Transfer of rights at age of majority

"PLEP" or "PLOP"
34 CFR 300.320(a)(1)

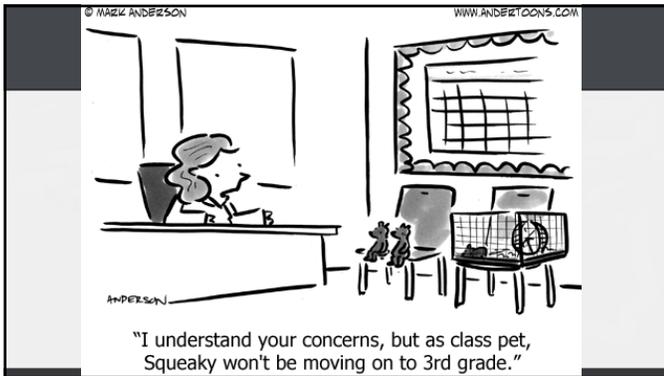
- A statement of the child's present levels of academic achievement and functional performance, including--
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

"PLEP" or "PLOP"

- In re Child with a Disability, 50 IDELR 236 (SEA NY 2008)
 - IEP noted that the child had gross motor coordination delays, not specific difficulties he faced as a result
 - Lack of detail about severity of motor skills impairment
- Baltimore City Pub. Schs, 113 LRP 14659 (SEA MD 2013)
 - PLEP did not identify need for functional life skills, so IEP goal to "improve functional life skills" improper

Parental Information/Concerns

- Be sure parent concerns are noted, even if not specifically addressed by the IEP
 - Do not only respond to the latest and loudest parental concern—keep a record!
 - Parents, get your concerns in writing—keep a record!
- Parents and advocates: prepare a statement to include if that is helpful.
- Not all IEP work has to happen in the IEP meeting.



Measurable Annual Goals

34 CFR 300.320(a)(2)

- A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;

Measurable Annual Goals
34 CFR 300.320(a)(2)

- *Jefferson County Bd. v. Lolita S.*, 64 IDELR 34 (11th Cir. 2014) (unpublished)
 - High school student reading at 1st grade level, but IEP reading goal based on state standard for 9th grade

Measurable Annual Goals

- *Mason City Cmty. Sch. Dist*, 46 IDELR 148 (SEA IA 2006)
 - "stranger" test: Could a stranger to the IEP goal be able to implement the goal, be able to implement the assessment of student's progress on the goal, and be able to determine whether the student's progress was satisfactory.

Progress Measures and Reports
34 CFR 300.320(a)(3)

- A description of--
 - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

Progress Measures and Reports

34 CFR 300.320(a)(4)

- *Jaccari J. v. Board of Ed. of City of Chicago*, 54 IDELR 53 (N.D. Ill. 2010)
 - Not required to use standardized tests as a measure of progress
- *Eastland Cmty. Unit Sch. Dist. #308*, 10 ECLPR 54 (SEA IL 2012)
 - Goals for student to "increase" and "improve" specific skills have no criteria for measurement

Statement of Services & Supplementary Aids

- Statement of services to child
- Statement of program modifications or supports for personnel to enable the child to:
 - Advance toward annual goals
 - Make progress in gen ed curriculum
 - Participate in extracurricular and non-academic activities
- Explanation of Non-Participation
 - A statement that explains the extent of non-participation in general education curriculum and activities



Extended School Year Services

- Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
 - 34 CFR 300.106(2)

ESY Services

- If the student will experience any loss or regression in skills during the break from school, services should be made available to the student.
- A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

ESY Services

- Not a recitation of summer school offerings
- School should consider
 - Regression/recoupment
 - Degree of progress
 - Emerging skills & breakthrough opportunities
 - Interfering behaviors
 - Nature and/or severity of the disability
 - Special circumstances

Accommodations on Assessments

- State what accommodations are necessary to measure academic achievement
- "In the case of a district-wide assessment, the school district shall develop guidelines for the provision of appropriate accommodations." (Rule 51, 004.05B)

Accommodations on Assessments

- If IEP determines student should take an alternate assessment:
 - Statement of why a child cannot participate in standard assessment
 - Explain why the chosen alternate assessment is appropriate
- ESSA is making changes to this area, pushing more toward standard assessments with accommodations vs. alternate assessments.

Start Date & Duration of Services

- Clearly establish: start date, frequency, and duration of services
- An IEP must include sufficient information about the amount of services that will be provided so that the agency's level of commitment to the student will be clear
 - 71 Fed. Reg. 46,667 (2006)

Start Date & Duration of Services

- *Rachel G., et al. v. Downington Area Sch. Dist.*
 - School offered a combination of individual and group speech therapies to student
 - Parents allege IEP does not offer enough therapy services
 - Parents place student in private school with more therapy services

Start Date & Duration of Services

- *Rachel G., et al. v. Downington Area Sch. Dist.*
 - “The District’s proposed speech therapy is within suggested guidelines, and the speech and language goals would have been reinforced in the classroom.”
 - Court does not compare IEPs; looks at if IEP services are reasonably calculated to enable child to receive meaningful benefit
 - Summary judgment granted for the school
 - NOTE: IEP could have been more specific

Transition Services

- Appropriate transition assessments that relate to:
 - Training
 - Education
 - Employment
 - Independent Living Skills
- Could focus on life skills (food prep, personal hygiene, etc.) if job training or postsecondary education are not realistic. *Simi Valley Unified Sch. Dist., 50 IDELR 267 (SEA CA 2008)*

Transfer of Rights at Age of Majority

- School must provide notice of impending transfer rights to student and student’s parents unless student has been deemed incompetent under state law.
 - 34 CFR 300.520 (a)
- One year before student reaches the age of majority, student’s IEP MUST include a statement that the student has been informed of the rights and responsibilities that will transfer

Transfer of Rights at Age of Majority

- Transition services that are not tailored to student’s unique disability-related needs can result in a denial of FAPE.
 - *S.G.W. v. Eugene Sch. Dist.*, 69 IDELR 181 (D. Or. 2017)
- “School district must do more than enroll a student in generally available courses and send the student to one career day to comply with the IDEA’s transition services requirement.”

Transportation

- Rule 51: The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district
- Whether a student needs transportation services is up the IEP team
- HOW a student gets those transportation services is up to the district
 - The parent of a special education student cannot be made responsible for all of their student’s transportation (unless paid for mileage)



What is a BIP?

- There disciplinary section of IDEA/Rule 51 is the only place that uses the term "behavioral intervention plan"
- Even there, the term is not defined

Behavior Intervention Plan (BIP)

- BIP is required if removing the child from his placement for discipline.
 - Receive, as appropriate, a functional behavioral assessment, behavior intervention services, and modifications that are designed to address the behavior violation so that it does not recur.
 - Doesn't have to be a free-standing BIP (but it can be).

Requirement to Evaluate Behavior Under IDEA

- In conducting the evaluation, a variety of assessment tools and strategies should be used to gather relevant functional, developmental, and academic information about the child. 34 CFR 300.304(b)(1)

Requirement to Evaluate Behavior Under IDEA

- Evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the child's disability category. 34 CFR 300.304(c)(6)
- When appropriate, the district shall use "technically sound instruments" that assess behavioral factors. 34 CFR 300.304(b)(3)

Positive Behavioral Interventions
34 CFR 300.320(a)(2)(i)/Rule 51

- "In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior."
- If behavior impedes learning and you are considering PBIS, you should have a BIP
 - In IEP or freestanding

Positive Behavioral Interventions

- NOTE: Reciting this standard is not a BIP.
- That is NOT just a statement that
 - This kid will follow the Rules
 - You will use school-wide PIBS
 - You will call the cops or the parents if the kid acts up

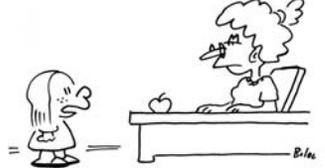
Things We Suggest For BIPs

- Don't forget this is a plan for "positive behavioral supports," not a code of conduct.
- Review possible menu of supports (e.g. Intervention Central, Autism Speaks).
- Be leery of "schoolwide behavior" programs.
- Time in ISS as accommodation (not change in placement).

Things We Suggest For BIPs

- Distinguish between seclusion and cool-down.
 - "Refocus room."
 - "Place of privacy."
 - "Time out room."
- Day at home to regain emotional control as placement, not suspension.
- Review wording for summoning parents.
- Send the school psychologist to observe at home or in community.
- Involvement of law enforcement.

Lack of Written BIP



"I didn't do my homework because my attorney advised me never to put anything in writing."

Overton (NE) Pub. Sch. Dist.,
112 LRP 7488 (OCR 11/23/11)

- Parent concerned that daughter was inattentive.
- School tested; student didn't verify.
- School determined that inattention was not adversely affecting her academics, and thus, she was ineligible for special education and related services under the IDEA at that time.

Overton (NE) Pub. Sch. Dist.,
112 LRP 7488 (OCR 11/23/11)

- Following school year, school verified OHI.
- Teachers provided:
 - Flip sheets to assist in organization.
 - Communication notebook
 - Sensory breaks in the form of time to work in the hall.
 - Shortened assignments.
 - Preferential seating.
 - Sticker chart.
 - Para-assistance planner.

Overton (NE) Pub. Sch. Dist.,
112 LRP 7488 (OCR 11/23/11)

- Parent filed complaint alleging failure to provide BIP.
- Special education teacher believed implementing the IEP functioned as a BIP.
- Classroom teacher working on inattention.
- Special education teacher working on social interactions.

Overton (NE) Pub. Sch. Dist.,
112 LRP 7488 (OCR 11/23/11)

- OCR:
 - There is no requirement that the district provide a BIP.
 - District's actions in addressing behaviors were taken as part of the IEP process.
 - Decision to provide accommodations rather than BIP was an educational determination.
 - Student not denied FAPE by failure to provide BIP.

Appoquinimink Sch. Dist.,
61 IDELR 178 (SEA DE 2013)

- 8-year-old with ADHD and ODD.
- Threatening and aggressive to staff, meltdowns when forced to perform non-favored tasks.
- BIP:
 - Started school day in separate room with para.
 - Behavior chart and reward system.
 - Student was removed to a quiet room with adult supervision when he became dangerous or disruptive.
- Parents: filed state complaint arguing that seclusion in quiet room was disciplinary change in placement.

**Appoquinimink Sch. Dist.,
61 IDELR 178 (SEA DE 2013)**

- Education Department: not a change in placement.
- School implemented BIP with fidelity.
- Removals helped the student manage his behavior during less structured activities, which in turn allowed him to spend more time with nondisabled peers.
- Student did not lose any educational opportunities as a result of the removals.

**Francis Howell (MO) Sch. Dist.,
18 IDELR 78 (OCR 1991)**

- High school student with behavioral disorder, SLD.
- IEP goal:
 - "Will improve behavior to a level required for success in regular class, special service class and the general school setting."
 - The first objective: "Will participate in at least one extracurricular activity throughout the school year."
 - The second objective: "Will follow code of conduct."
- IEP goal: Student will participate in one extracurricular.
 - Was on wrestling team.

**Francis Howell (MO) Sch. Dist.,
18 IDELR 78 (OCR 1991)**

- In December, student swore at teacher.
 - Given 3 days ISS (could have been kicked off team).
 - While in ISS, again directed profanity at a teacher and refused to move when instructed to do so.
 - Suspended from wrestling for two weeks (could have been suspended).
- Parent: Suspension discriminatory and contrary to IEP.
- Filed complaint with OCR.

**Francis Howell (MO) Sch. Dist.,
18 IDELR 78 (OCR 1991)**

- OCR: No violation.
 - Participation in an extracurricular activity and his adherence to the code of conduct are specifically related to the annual goal in his IEP of improving his behavior.
 - District was implementing his IEP when it suspended him from wrestling.
 - "Statement that student 'will participate in at least one extracurricular activity throughout the school year' does not prevent the District from withholding this activity to discipline him."

**J.W. v. Johnson County Unif.,
58 IDELR 124 (D. Kan. 2012)**

- Student with autism had increasing self-injurious behavior and "rage incidents"
- Sued claiming that IEP failed to provide educational benefit because it did not prevent his behaviors from substantially interfering with his learning.
- Court: this is not the standard by which a court evaluates compliance with the IDEA

**J.W. v. Johnson County Unif.,
58 IDELR 124 (D. Kan. 2012)**

- Court:
 - "The IDEA does not require a school district to eliminate interfering behaviors. It requires only that the school district 'consider the use' of positive behavioral interventions and supports to address the behavior."
 - The evidentiary record supported that the school met this responsibility by having a behavioral component to the IEP.

IEP Implementation
2:00pm – 3:00pm

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 @KarenHaaswe

Implementation Issues



"To get what you want, first create a list of compelling and meaningful goals. Next, draft a dynamic plan of action, then follow through with consistent maximum effort. If that doesn't work, just cry and point."

Least Restrictive Environment (LRE)

- Special education students must be placed in the least restrictive environment.
- Determined by IEP team.
- Restrictions are permitted to meet:
 - Disabled child's needs.
 - Needs of child's peers.*
- No entitlement to regular school day or week.
- Restrictive placement is not discipline.

The LRE Continuum

- Schools are required to begin with a presumption that a student will be in the regular classroom in his neighborhood school. 34 CFR § 300.115 (a).
- Team can then move a student along a range of increasingly restrictive placements until they discover the one that is appropriate for the child.
- Should include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300. § 115 (a); and 34 CFR § 300.39.

Change in Placement



"Can't we just Find & Replace everything that's not working?"

In Theory...

- IDEA 2004: Disciplinary measures are to be applied to children with disabilities to the same extent they are applied to children without disabilities. 34 C.F.R. § 300.530(b)(1).
- Administrators may remove a student with disabilities from school by using the same procedures that are used for nondisabled students.

In Reality...

- Discipline of special education students is highly regulated and legally complicated.
- Regulations apply to all kinds of discipline – not just removals from school.
- Schools are not prohibited from disciplining special education students, but they do have to follow specific special ed AND gen ed procedures

34 CFR § 300.530(a)

▪ "School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct."

34 CFR § 300.530(b)

▪ "School personnel ... may remove a child with a disability who violates a code of student conduct from his or her current placement ... for not more than 10 consecutive school days ... "

Placement vs. Discipline



"I'm afraid my brain is full and I can't learn any more. I'll need a few days off to dumb down."

Lancaster Co. Sch. Dist. 001, 110 LRP 51715 (SEA NE 09/10/10)

- Student aggressive, autistic 3rd-grader.
- As school year progressed, behavior deteriorated.
- Student spent less time in general education classroom and more time in the calm-down room, away from general education peers.
- Parents sued, asserting that this constituted a disciplinary removal that required the school to make a manifestation determination.

Lancaster Co. Sch. Dist. 001, 110 LRP 51715 (SEA NE 09/10/10)

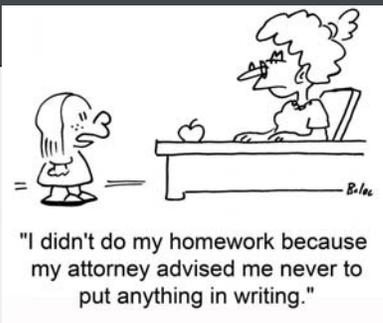
- H.O:
 - School was not punishing bad behavior.
 - "Clearly behavioral problems at school were caused by and had a direct and substantial relationship to autism ... However it is equally clear that [the student] was not disciplined for those behaviors, and that there was not a change in placement as described by [Section 16 of Rule 51].
 - Time in "calm down room" was in IEP, therefore not a change in placement.
 - Since not discipline, no requirement for manifestation.

Ogallala (NE) Pub. Sch.,
106 LRP 913 (SEA NE 12/15/05)

- Student with Down syndrome transitioning from elementary to middle school.
- Parents disagreed with program and methods.
- Some sexualized misbehavior.
 - Suspended for two days in September.
 - Suspended for three days in October.
 - Team determined that the misbehavior was a manifestation.
 - Placed student in intensive social skills program.

Ogallala (NE) Pub. Sch.,
106 LRP 913 (SEA NE 12/15/05)

- Parents sued claiming that the social skills program was a punitive removal.
- School argued it was serving educational needs.
- H.O.: placement, not disciplinary.
 - "A plan needed to be put in place to deal with that behavior before it seriously interfered with [the student's] educational progress. That plan was put into place, [the student's] behavior improved, [the student] met the required goals, and the Respondent returned [the student] to the regular education classroom."



Removal from Current Educational Placement

- What is current educational placement?
 - Includes out-of-school suspension.*
 - Could include in-school suspension (ISS).
 - Could include removal from classroom activities such as field trips.
 - Determined on a case-by-case basis.
- Farmington (MI) Pub. Sch. Dist., 110 LRP 57410 (OCR 01/29/10).
 - "Generally, whether an in-school suspension should be counted depends upon whether educational and special services were provided during the in-school suspension."

Know Which Days to Count

- Always count
 - Out of school suspensions
- Sometimes count
 - In-school suspensions
 - Bus Suspension
 - Portions of a school day
- Rarely count
 - After school detention
 - Lunch detention

Detention



"If your cell phone has five hundred minutes, and you use one of them during this class, how long will you be in detention?"

**Temecula Valley (CA) Unif. Sch. Dist.,
10 ECLPR 47 (OCR 2012)**

- 1st-grader with cognitive and psych disorders.
- Student subjected to three lunch detentions and one in-school detention.
- Complainant alleged change in placement.
- OCR: "A small number of lunch detentions and one in-school suspension do not constitute a significant change in placement that trigger a school's responsibility to first convene a 504 or IEP meeting."

In-School Suspension



**Smackover (AR) Sch. Dist.,
113 LRP 24693 (OCR 03/01/13)**

- 7th-grade student with ADHD and speech deficit.
- 16 days of ISS.
 - 2/1 – 3 days (yelling, kicking peer, running away).
 - 3/14 – 5 days (accumulated more than 30 detentions).
 - 3/28 – 2 days (talking after he was asked to stop).
 - 4/2 – 3 days (argued with and pushed another student).
 - 5/1 – 3 days (pulled down his pants in class and showed his boxer shorts).
- School: 16 days in 1 year; complainant: 16 days in 3 months.

Smackover (AR) Sch. Dist.,
113 LRP 24693 (OCR 03/01/13)

- The ISS program:
 - Portable classroom separated from the school building, where students worked at individual cubicles.
 - Talking was not allowed.
 - Supervised by paraprofessional.
 - Students worked on assignments independently.
 - If a student had an academic question, para would email teacher.
 - If teachers believed that a lecture was critical, could ask for student to attend.
 - ... said no teacher ever.

Smackover (AR) Sch. Dist.,
113 LRP 24693 (OCR 03/01/13)

- School: ISS not a change in placement.
 - Related aids and services were provided.
 - Attended speech therapy.
- OCR: "Confinement in ISS significantly altered his access to regular educational services provided in his IEP."
 - Denied access to instructions
 - Confined to an area where he simply completed work on his own.
 - Removed from the school building.
 - Placed in an isolated temporary classroom with students from all grades.

Dear Colleague Letter on PBIS
68 IDELR 76 (8/1/2016)

- "Schools should take care when implementing exclusionary disciplinary measures that significantly interfere with a child's instruction and participation in other school activities."
- Improper use of these measures could rise to the level of a disciplinary removal. These exclusionary disciplinary measures also could include:
 - A pattern of office referrals, extended time excluded from instruction (e.g., time out), or extended restrictions in privileges;
 - Repeatedly sending children out of school on "administrative leave" or a "day off" or other method of sending the child home from school;
 - Repeatedly sending children out of school with a condition for return, such as a risk assessment or psychological evaluation; or
 - Regularly requiring children to leave the school early and miss instructional time (e.g., via shortened school days).

Dear Colleague Letter on PBIS
68 IDELR 76 (8/1/2016)

- In general, the Department does not consider the use of exclusionary disciplinary measures to be disciplinary removals from the current placement for purposes of 34 CFR § 300.530, so long as children with disabilities are afforded the opportunity to continue to be involved in and make progress in the general education curriculum, receive the instruction and services specified on their IEPs, and participate with nondisabled children to the extent they would have in their current placement.

Dear Colleague Letter on PBIS
68 IDELR 76 (8/1/2016)

- "We believe it would be appropriate for a parent to request an IEP Team meeting following disciplinary removals or changes in the child's behavior that impede the child's learning or that of others, as these likely indicate that the IEP, as written or implemented, may not be properly addressing the child's behavioral needs."
- "...parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a reasonable parental request for an IEP Team meeting. Parents may be particularly interested in making such a request following changes in the child's behavior that result in disciplinary removals."

Discipline/Manifestation



Manifestation Determination

- "Was this misbehavior caused by the student's disability?"
- Was conduct in question caused by or did it have a direct and substantial relationship to the child's disability?
- Was the misconduct a direct result of the district's failure to implement the IEP?



Manifestation Determination

- If no:
 - Child can be punished like a regular education student.
 - Sort of ...
- If yes:
 - Cannot punish.
 - Must conduct FBA, implement BIP, OR review existing BIP.
 - Must return to prior placement (unless agreement otherwise).

The Answer is "No"



Misconduct NOT a Manifestation

- Must follow Nebraska Student Discipline Act
- Assign student to Interim Alternative Educational Setting
 - Determined by IEP team
 - Can be as same meeting as manifestation

Fisher v. Friendship Charter Sch., 58 IDELR 287 (D.D.C. 2012)

- 17-year-old with ADHD expelled for coming to school stoned
- Services pre-expulsion: six hours a week of specialized instruction, 30 minutes a week of counseling, and inclusion in the regular classroom
- Services post-expulsion: six hours a week of specialized instruction and 30 minutes a week of counseling

Fisher v. Friendship Charter Sch.,
58 IDELR 287 (D.D.C. 2012)

- Court:
 - Denial of FAPE
 - Awarded reimbursement for private school placement until the student graduates
 - "It can hardly be argued, and the defendant makes no effort, that the six hours of individualized instruction qualified as a FAPE that would allow R.G. to progress in the general education curriculum"

34 CFR 300.101(a)

- "A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d)."

The Answer is "Yes"



Functional Behavioral Analysis (FBA)

- Not required in every IEP.
 - Required if multi-disciplinary team conducts.
- Seeks to discover what triggers the student's behavior.
- Document and retain all of the analytical efforts made by the team in this process because this is probably chronic behavior.

Functional Behavioral Analysis (FBA)

34 CFR 300.530(f)

- If student's conduct is a manifestation of the student's disability, the IEP team must:
 - Conduct a functional behavioral assessment (provided the district had not conducted such assessment prior to the conduct at issue) and implement a behavioral intervention plan for the child.
 - When a behavioral intervention plan already has been developed, review the plan and modify it as necessary to address the behavior.
 - Return the child to the placement from which he was removed, unless the parent and district agree to a change in placement as part of the modification of the behavioral intervention plan.

Special Rules For Weapons, Drugs And Serious Bodily Injury



"There's a zero tolerance policy for bringing weapons to school. Do you want to explain how this rolled up newspaper got into your locker?"

34 CFR 300.530 (g)

- May remove a student to IAES for 45 days (regardless of manifestation) if student:
 - Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency.
 - 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 under the jurisdiction of a state or local educational agency.
 - Has inflicted serious bodily injury upon another person while at school.

**California Montessori Project,
56 IDELR 308 (SEA CA 2011)**

- 8-year-old boy with ED.
- Class cutting hearts out for Valentine's Day project.
- Student has history of behavioral outbursts.
- Student became angry with peer.
 - Menaced with scissors.
 - Teacher intervened, student threw down scissors and began lunging at teacher, then chased other students.
 - Eventually had to be physically restrained; student was repeatedly saying that Z had "lied on" him.

**California Montessori Project,
56 IDELR 308 (SEA CA 2011)**

- School removed student to an IAES on the grounds that he possessed a weapon.
- Family challenged.
- ALJ: Not a weapon.
 - However, an instrument or device qualifies as a "weapon" only if it is used for or capable of causing death or serious bodily injury.
 - Fiskars scissors did not meet that standard.
 - "Even if [the student] had made contact with [his classmate's] body using [the scissors], the scissors were only capable of causing cuts or some physical pain."



Appeal of Manifestation Determination 20
USC 1415(k) (4)

- When an appeal under paragraph (3) has been requested by either the parent or the local educational agency:
 - The child shall remain in the interim alternative educational setting pending the decision of the hearing officer. . . . ; and
 - The State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing."

Questions?

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We're in This Together: A Team Approach to Special Education

Presenters:

- Karen Haase, KSB School Law
- Steve Williams, KSB School Law
- Bobby Truhe, KSB School Law
- Tim Malm, KSB School Law
- Mike Elsen, Disability Rights of Nebraska
- Vicki Depenbusch, Arc of Lincoln
- Laura Barrett, ESU 13