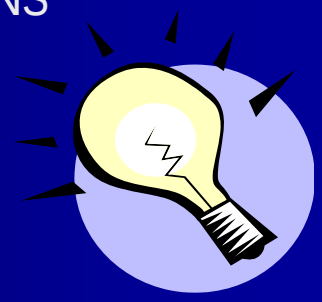
# SPECIAL EDUCATION DISCIPLINE UNDER THE REVISED IDEA 2004 AND 2006 REGULATIONS



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## Short-Term Removal

- School personnel may remove a child with a disability who violates code of conduct to interim alternative setting, another setting, or suspension for not more than 10 school days to the extent such removal applies to children without disabilities. (Assuming no special provisions in the student's IEP)
- IDEA does not mention multiple removals of less than 10 days each but the final regulations do.

## 34 CFR § 300.530(b)

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change or placement under § 300.536).

## What Constitutes a Removal?

In other words, "What counts as a day?"

- Suspension from school?
- Portions of the day?
- Bus removals?
- In-school suspension (ISS)?

## 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

Portions of a school day that a child had been suspended my be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536.

Federal Register, Vol. 71, p. 46715 (August 2006)

## 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered.

Federal Register, Vol. 71, p. 46715 (August 2006)

## 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under § 300.530.

Federal Register, Vol. 71, p. 46715 (August 2006)

## 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

Federal Register, Vol. 71, p. 46715 (August 2006)

## 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

**An in-school suspension would not be considered a part of the days of suspension in § 300.530 as long as the child is:**

- Afforded the opportunity to continue to appropriately participate in the general curriculum;
- Continue to receive the services on his or her IEP;
- Continue to participate with non-disabled children to the extent they would have in their current placement.

Federal Register, Vol. 71, p. 46715 (August 2006)

## Illustrative Case from Texas

*Randy M. b/n/f Mrs. M. v. Texas City Independent School District*; Docket No. 162-SE-100 (April 7, 2000), appealed, *Randy M. v. Texas City ISD*, 32 IDELR 168, 93 F. Supp 1310, (S.D. Tex. 2000)

- **ISSUE**: Whether Randy's assignment to ISS pending the resolution of the MDR and due process case is an inappropriate change in placement.

## Randy M.

*Randy M. b/n/f Mrs. M. v. Texas City Independent School District*; Docket No. 162-SE-100 (April 7, 2000), appealed, *Randy M. v. Texas City ISD*, 32 IDELR 168, 93 F. Supp 1310, (S.D. Tex. 2000)

- **HELD**: For Respondent. Respondent showed that Randy's existing IEP has been implemented during his assignment in ISS. Therefore, Randy's assignment in ISS does not constitute a change in placement under IDEA.

## 34 CFR § 300.536(a) Change of placement because of disciplinary removals

- For purposes of removals of a child with a disability from the child's current educational placement under § § 300.530 through 300.535, a change of placement occurs if –
  - (1) The removal is for more than 10 consecutive school days; or
  - (2) The child has been subjected to a series or removals that constitute a pattern --

## 34 CFR § 300.536(a) Continued . . .

- (i) Because the series of removals total more than 10 school days in a school year;
- (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

## 34 CFR § 300.536(b)

- (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings.

## 34 CFR § 300.530(d)(4)

- After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

## Long-Term Removals & Manifestation Determination Reviews

## MDR Meeting

- When district proposes removal of student that would exceed 10 school days due to violation of code of conduct, district, parent, and relevant members of IEP Team shall meet to conduct MDR within 10 school days of district's decision.
- Relevant members of IEP team shall be determined by parent and district.

## Consideration of Information at MDR Meeting

- Group shall review all relevant information in student's file, including:
  - IEP;
  - Any teacher observations; and
  - Any relevant information provided by parents.

## Consideration of Information at MDR Meeting

- Other relevant information in student's file, including:
  - Evaluation data;
  - Discipline history;
  - Details of the incident.

## MDR Questions

- Group shall determine:

(1) Was the conduct in question caused by, or did it have a direct and substantial relationship to, the child's disability?

(2) Was the conduct in question the direct result of the district's failure to implement the IEP?

## When is Behavior a Manifestation?

- If the answer to either question (1) or question (2) is "yes," the conduct shall be determined to be a manifestation of the child's disability.
- To be manifestation, conduct cannot have "attenuated association, such as low self esteem, to child's disability." H.R. REP. No. 779, 108th Cong., 2d Sess., at 225 (2004).

## When Behavior is Manifestation

- IEP Team shall:
  - (1) Conduct FBA and implement BIP (if not done prior);
  - (2) If BIP exists, review BIP and modify it, as necessary, to address behavior; and
  - (3) Return child to placement (unless parent & district agree to change placement as part of BIP modification and unless 45-day removal applies).

## When Behavior Isn't Manifestation

- If no manifestation, relevant disciplinary procedures applicable to children without disabilities may be applied to child in same manner and for same duration as for children without disabilities (except student must continue to receive FAPE).
- Interim alternative educational setting will be determined by IEP Team.

## Considerations When Student Violates Code of Conduct

School personnel may consider any unique circumstances on case-by-case basis when determining whether to order a change in placement for child with disability who violated student code of conduct.

## 45-Day Removals (drugs, weapons, serious bodily injury)

For certain violations of code of conduct, district may remove student to interim alternative educational setting (determined by IEP Team) for not more than 45 ***school*** days regardless of whether behavior was manifestation.

## Possession of Weapons

District may remove student for 45 school days (regardless of MDR determination) if student carries or possesses a weapon on school premises or to or at a school function.

## IDEA Definition of "weapon" is in 18 USC 930(g) – "dangerous weapon"

- Weapon, device, instrument, material or substance
- Animate or inanimate
- That is used for, or is readily capable of,
- Causing death or serious bodily injury
- Term does NOT include a pocket knife with a blade of less than 2 ½ inches

Weapon includes a firearm defined in part by federal law as any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive . . .

And also any explosive, incendiary, or poison gas "destructive device"

## Weapon

- Metal awl (metal spike 2 inches long) was a weapon. *In re: Student With a Disability*,
  50 IDELR 180 (SEA VA 2008)
- Scissors qualified as a weapon. *Anchorage Sch. Dist.*, 45 IDELR 23 (SEA AK 2005)
- Cigarette lighter with retractable blade was a weapon. *Chester Upland Sch. Dist.*,
  35 IDELR 104 (SEA PA 2001)
- Knife with a blade 2 ½ inches or longer was a weapon. *Alameda Unified Sch. Dist.*,
  32 IDELR 159 (SEA CA 2000)

## Not a Weapon

- Pulling on the Assistant Principal's necktie. *Scituate Pub. Schs.*, 47 IDELR 113 (SEA MA 2007)
- Scratching a fellow student with a paper clip. *Anaheim Union High School Dist.*,
  32 IDELR 129 (SEA CA 2000)
- Stabbing a classmate with a pencil. *Independent Sch. Dist. #831*, 32 IDELR 163 (SEA MN 1999)

## Possession/Use of Illegal Drugs

District may remove student for 45 school days (regardless of MDR determination) if student 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;

## Definitions come from federal law

- Controlled substance – drug or other substance identified under the Controlled Substances Act
- Illegal drug – a controlled substance, but does NOT include a controlled substance that is legally possessed or used under the authority of a health care professional

## Infliction of Serious Bodily Injury

- District may remove student for 45 school days if student has inflicted serious bodily injury upon another person while on school premises or at school function.
- "Serious bodily injury": substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

## Serious Bodily Injury - NO

- Hardest of 3 to interpret
- Most assaults will NOT qualify
- Broken nose not enough. *Pocono Mountain Sch. Dist.*, 109 LRP 26432 (SEA PA 2008)
- Swollen kicked knee not enough. *Bisbee Unified Sch. Dist. No. 2*, 54 IDELR 39 (SEA AZ 2010)
- Lots of pain one day but not the next not enough. *In re: Student with a Disability*, 110 LRP 14304 (SEA KS 2010)

## Serious Bodily Injury – NO cont'd

- Kicked shins & stomped toes not enough. *In re: Student with a Disability*, 108 LRP 45824 (SEA WV 2008)
- Assault of district employee who returned to work next day not enough. *Southern York County Sch. Dist.*, 54 IDELR 305 (SEA PA 2010)

## Serious Bodily Injury – YES

- Student rammed head into teacher's chest with full force.
- Internal chest contusions.
- 2 medications – worst pain of her life.
- Missed one week's work.
- Extreme physical pain proven. *Westminster Sch. Dist.*, 56 IDELR 85 (SEA CA 2011)

## Provision of Behavioral Assessment and Services

- For student who is removed for drug or weapon offense, for inflicting serious bodily injury, or for violation of code of conduct that would lead to removal of more than 10 school days, district must provide FBA, behavior intervention services, and modifications designed to address behavior so it doesn't reoccur.
- Must provide regardless of MDR outcome.

## Hearings Regarding Discipline

## Appeal of Discipline or MDR Determination

Parent who disagrees with any decision regarding placement for disciplinary purposes or with the MDR determination may request a hearing.

## Hearing Officer's Determination on Appeal

- Hearing officer may order change in placement in response to appeal.
- Hearing officer may return child to placement from which he or she was removed or order that child be placed in appropriate interim setting for 45 school days or less if current placement is substantially likely to result in injury to child or to others.

## No Stay-Put During Discipline Hearing

While appeal is pending, child shall remain in interim alternative educational setting (discipline setting) until hearing officer makes decision or until time applicable to relevant disciplinary consequence expires, whichever occurs first.

## Expedited Hearing for Appeal of Discipline Decision

District or SEA shall arrange for expedited hearing, which shall occur within 20 school days of date hearing is requested and shall result in determination within 10 school days after hearing.

## Summary of Important Changes Regarding Discipline

- MDR meeting
- Standards for MDR
- Expanded allowable 45-day removals
- No stay-put during discipline hearing

## Thank you!

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