

Discipline Basics

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Statutes, Regulations and Education

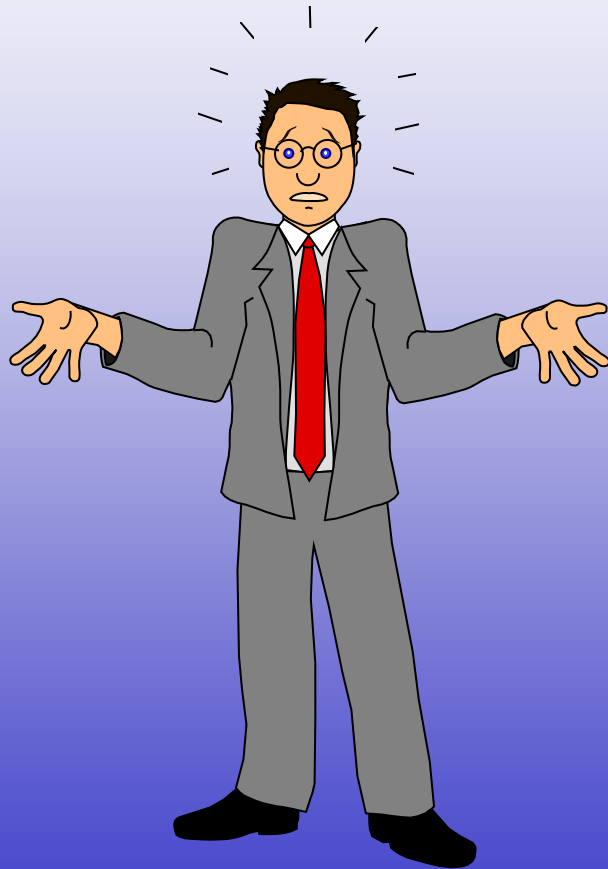
- Education is a statutory right
- Fundamental rights versus statutory or regulatory rights
- Regular education versus special education

Regular Education Children

- What rights do regular education children have?
- NO RIGHTS relative to education
- Only right TO an education and to attend, NOT quality



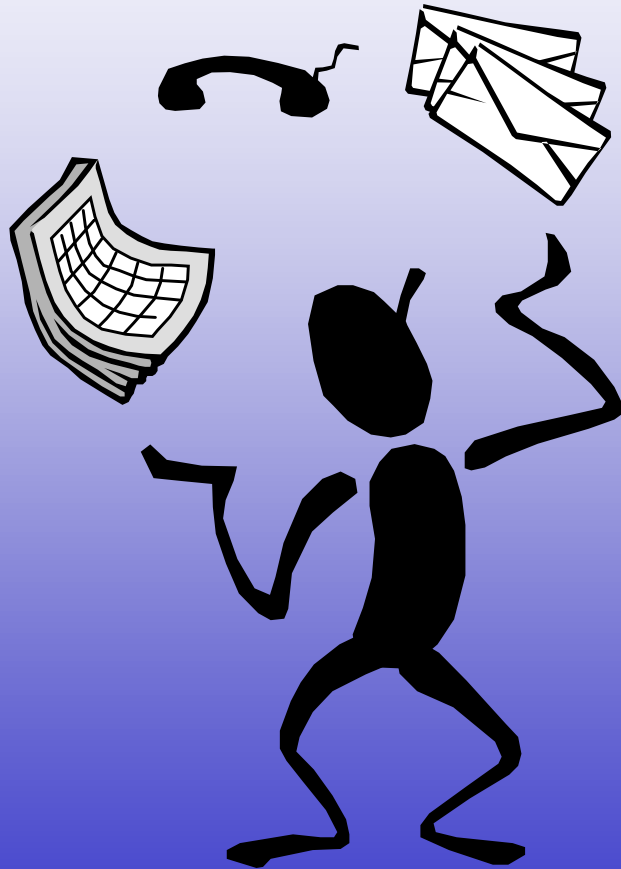
WHO IS PROTECTED



- IDEA Students
- Students protected by Section 504 of the Rehabilitation Act
- Thought-to-be eligible students

IDEA Students

Special Education Children



- Have a right to an appropriate level of education
- Must take appropriate steps for the exclusion of special needs students

Behavior Support Planning

Federal Statutes and Regulations

- Under IDEA, IEP teams must consider interventions, strategies, and supports to address behavior when it impedes students' learning or that of others

Pennsylvania Regs

- Positive, rather than negative measures
- Variety of techniques
- Least intrusive necessary

Positive vs. Negative Techniques

- Restraints/mechanical restraints
- Corporal punishment
- Locked rooms
- Noxious substances
- Withholding meals, water or fresh air
- Treatment of a demeaning nature
- Electric shock

**Punishment for manifestation of
disability and suspensions
constituting a pattern are also
inappropriate**

22 Pa. Code 14.133

Regular Education Students and Exclusion from School

- Section 1318 of the Public School Code and Chapter 12 of the State Board of Education Regulations and School Board Policy
- The Board of School Directors defines and publishes the types of offenses that would lead to exclusion from school.
- Exclusion may be either suspension or expulsion.

Suspension v. Expulsion

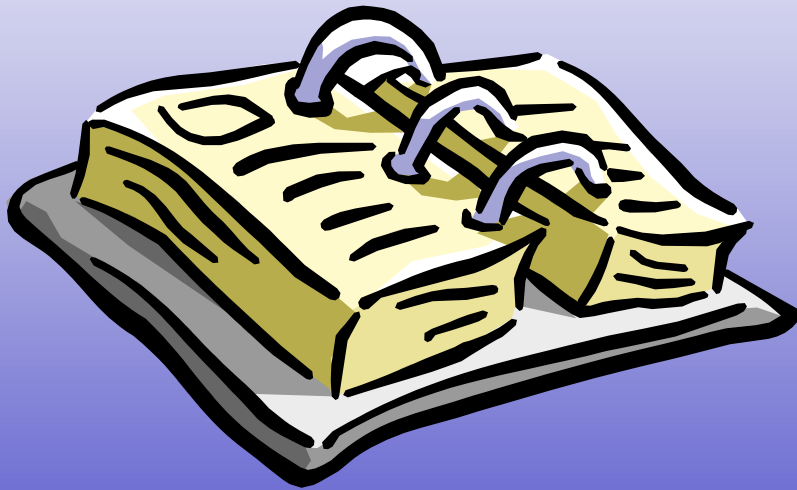
- A suspension is exclusion for 1 to 10 days
- They can be given by the principal or person in charge
- An expulsion is exclusion exceeding 10 days and may be permanent
- They can be given only by the school's board of education

1-3 Day Suspension



- **Inform the student of the reasons**
- **Provide an opportunity for the student to respond**
- **Inform the parents and the superintendent in writing immediately**
- **No notice required if the health, safety or welfare of the school community is threatened**

3-10 Day Suspension



- Informal hearing w/i 5 days of suspension w/ sufficient notice of time and place
- Notice of the reasons in writing
- Student can question witnesses present
- Student can speak and present witnesses

An Expulsion

- **A formal hearing before the school board, authorized committee or hearing examiner**
- **Notification of the charges by certified mail**
- **Sufficient notice of time and place**
- **Right to be represented by counsel**
- **Right to have names of witnesses against the student, and copies of the statements and affidavits**
- **Right to request that witnesses appear and answer**
- **Right to testify and present witnesses**
- **A record must be kept**
- **Hearing must proceed in reasonable time period**

Special Needs Students and Exclusions from School



- Individuals with Disabilities Education Act (IDEA) and Chapter 14 of the State Board of Education Regulations

Section 504 Protections v. IDEA Protections

- Can exclude a student for more than 10 consecutive days if behavior is a manifestation of disability, but no formal manifestation determination review is required.
- No explicit “stay put” provision.
- Students probably not entitled to FAPE after expulsion.

A Student is Thought-to-be-Eligible if:

- The parent expressed a concern in writing or requested an evaluation
- School personnel expressed concern
- The student's behavior or performance indicated a need for services



Remember

“Once suspected, then protected.”

Did the District Know or Should Have Known Where:



- Comments of passing nature were made among staff
- Academic difficulties were seen but ameliorated w/ small classes taught by a special ed teacher, but no SDI
- ADHD diagnosis

No Special Protections for Suspensions Up to 10 Days in a Row

- However, Pennsylvania's rules regulating discipline of all public school students must still be followed
- Chapter 12 and Section 1318

Remember:

- Any removal from school for an MR student is a change of placement unless the student is being placed in a 45-day IAES (Interim Alternative Educational Setting) for a drug/weapon offense

Does the Proposed Exclusion Constitute a Change in Placement?

- Will the suspension exceed 10 days?
- Will this suspension result in exclusion for more than 15 days total in a school year?
- Does the suspension amount to a “pattern” of suspensions?
- Is it a student with Mental Retardation?

When Do Cumulative Days of Suspension Equal a Change in Placement?

- A pattern of serial suspensions will constitute a change in educational placement when the suspension exceeds 10 days in any school year and the pattern looks bad in light of:
 - (1) the length of each suspension
 - (2) the proximity of time between suspensions;
 - (3) the total time out of school.

IN PENNSYLVANIA THE
PATTERN CAN NEVER
EXCEED FIFTEEN DAYS

Timely Functional Behavior Assessments

- Can Lead to an Effective Behavior Intervention Plan (BIP).

FBA

- What is it?
- Process consisting of gathering info to better understand specific reasons behind student's behavior
- Developing specific recommendations to extinguish target behaviors.



FBA Process

- Identify target behavior
- Observe student at school and home
- Collect data on target behavior, antecedents and consequences
- Formulate hypotheses about cause(s) of behavior
- Develop intervention(s) to address behavior
- Collect data on effectiveness of interventions

Who Needs an FBA?

- Students with daily infractions in classroom
- Students with above average office/discipline referrals
- Students whose behavior endangers self or others
- Persistent problem behaviors despite less formal interventions
- Team is considering more restrictive placement based on behaviors

When is an FBA Mandatory?

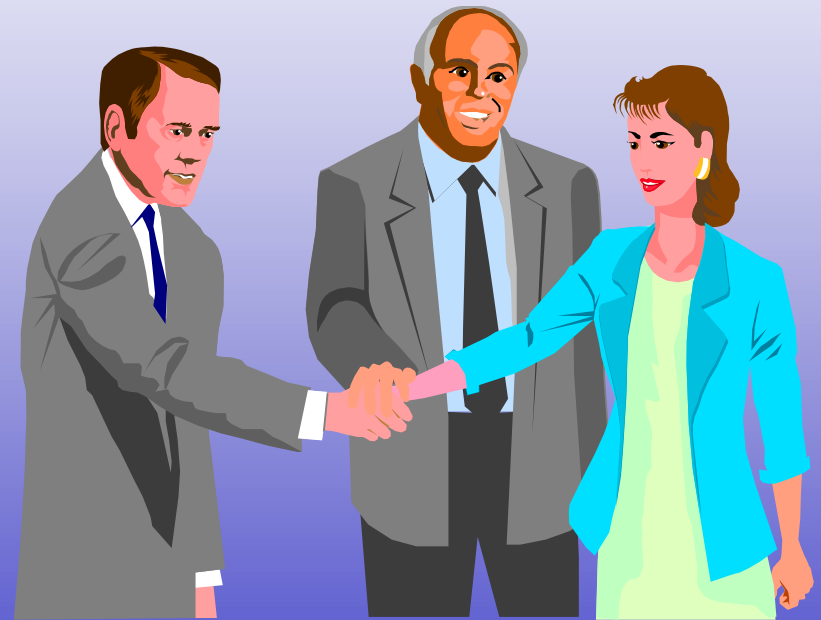
- **When the student's behavior interferes with his/her learning or that of others; and**
- **When the District takes any of the following disciplinary actions...**
- **Removal of a student for more than 10 school days in a school year for the first time**
- **Any disciplinary removal that constitutes a change of placement**
- **Placement of a student in an IAES for drug/weapon offense**

Behavior Intervention Plans (“BIP”)

- Addresses prospectively how school personnel will deal with student’s behavior
- Outlines target behaviors
- Contains positive interventions, strategies and supports to address the target behaviors

Parental Consent is Required to Conduct an FBA

- Even if no formal testing will be administered by the school district.



BIP Development is Not Enough It Must be Implemented

- Distribute and explain the BIP
- Provide staff training, if necessary
- Collect data as prescribed by the BIP
- Review and modify the BIP
- Remember it's an ongoing process
- Share the data with the IEP team

Behavior/Discipline Issues as a Part of the IEP

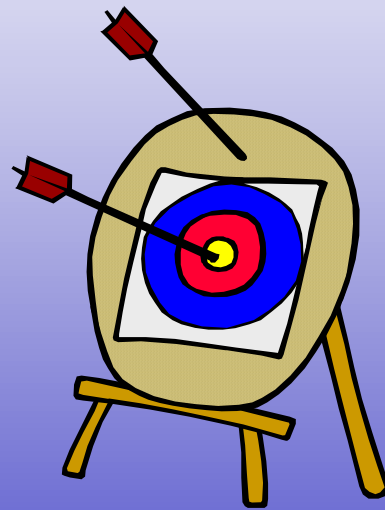
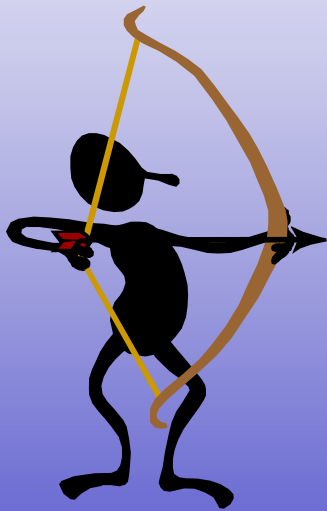
- The IEP must address a student's behaviors to the extent that those behaviors interfere with the student's learning or the learning of other students.
- Positive rather than negative measures must form the basis of BIPs.
- Continued behavior problems may indicate that a child's educational program is not appropriate

**THERE ARE EXCEPTIONS TO
THE LIMITS ON THE NUMBER
OF DAYS THAT STUDENTS WITH
DISABILITIES CAN BE
EXCLUDED FROM SCHOOL.**

School Officials Can Place Students in an IAES for up to 45 days if, While at School Function, he/she:

- I. Carries a dangerous weapon
- II. Knowingly uses or possesses illegal drugs or buys/sells a controlled substance
- III. Presents a danger to himself or others as determined by a hearing officer

What is a Dangerous Weapon?



... “Device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.” This definition excludes a pocketknife with a blade of less than 2 ½ inches in length.

18 U.S.C. §930 (g) (2)

What is an Illegal Drug?

. . . Defined as a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the Controlled Substances Act. . .

Danger to Himself or Others

- Pursuant to an expedited hearing, a Hearing Officer can order a change of placement for up to 45 days at an IAES, when the Hearing Officer has considered the following factors:

#1

- District has demonstrated by substantial evidence that maintaining the student in the current placement will likely result in injury to the student or to others



#2



- The Hearing Officer must consider the appropriateness of the student's current educational placement

#3

- Has the school district made reasonable efforts to minimize the risk of harm in the child's current placement?

#4

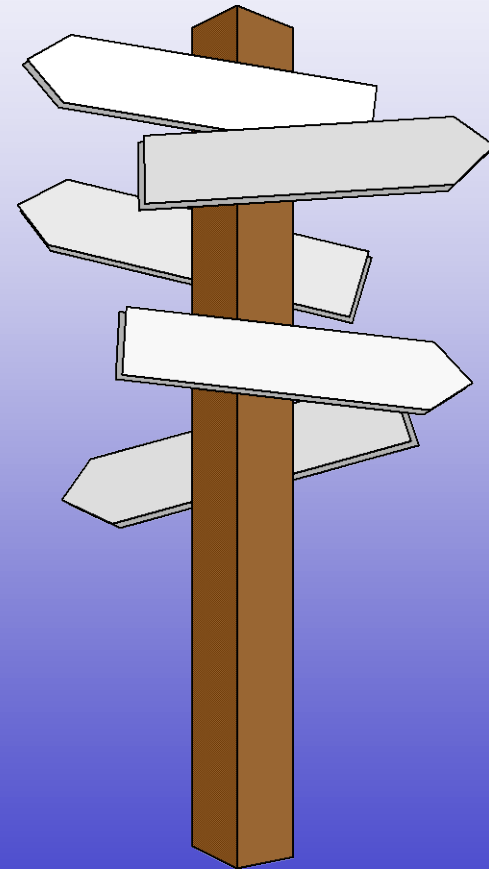
- Does the proposed IAES provide the student with FAPE by allowing the student to progress in the general curriculum and receive services to address the problem behaviors?

What Kinds of Challenges Can Parents Make?

- They can challenge whether the IAES setting meets the requirements set forth in the IDEA
- They can challenge the underlying issue of whether the student had a prohibited drug or weapon at school
- They can appeal the decision of the hearing officer

“Stay Put” Applies During a Challenge of the IAES:

- The student remains in the alternate setting pending the decision of the hearing officer, or until the expiration of the time period, whichever occurs first, unless agreed to otherwise



What Happens at the End of the 45 Days?

- The student returns to his/her previous educational setting
- Unless the school seeks an expedited hearing to keep the student in the IAES because he/she is an immediate danger to himself or others

If the Child's Educational Placement is Going to be Changed:

- The IEP team must meet and devise a FBA plan if an FBA has not been done, and
- Develop and revise the student's BIP
- The IEP team must meet and conduct a manifestation determination review

When is a Manifestation Determination Required?



- A formal manifestation determination is required only when a school district is considering a disciplinary exclusion for a period that constitutes a change in educational placement.

What is a Manifestation Determination?

- A determination made by the student's IEP team that answers the following questions about the behavior for which the district seeks to suspend or expel the student:



- Was the IEP and placement as they relate to the behavior in question appropriate? (This includes the appropriateness of the behavior interventions/behavior support plan).
- Was the IEP as it relates to the behavior in question implemented?
- Was the student able to understand the effect on others or the consequences of the behavior in question?
- Was the student able to control the behavior in question?

If you answer yes to all four questions
you may proceed with a
suspension/expulsion hearing.

If you answer NO to any
question, you may not proceed
with the suspension or expulsion.

Timeline for Manifestation Determination

- Immediately, if possible, but in no case later than 10 days after the decision to take disciplinary action is made, IEP team must meet to conduct manifestation determination

If the behavior was *not* a manifestation of the student's disability, and the District seeks to change the student's placement:

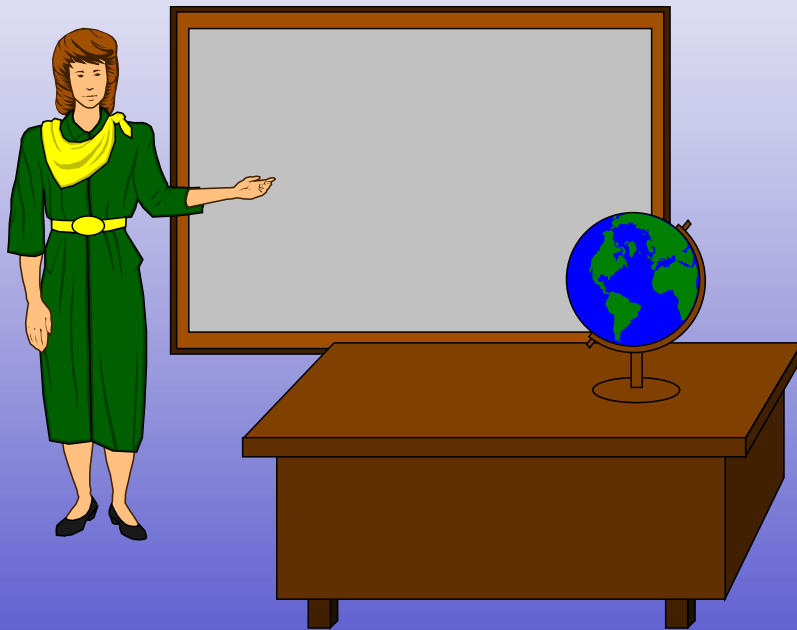
- The School must provide the Parents with prior written notice of its decision . . .
- So that the parent has an opportunity to disagree and
- Can initiate due process proceedings
- During the course of any proceedings, the student “stays put” unless an exception applies
- If the Parents do not disagree, follow Chapter 12

Questions and Answers

True or False?

A school district can call the police even if a student with a disability has a BIP.

True or False?



- 1) FAPE must be provided during any period of exclusion.
- 2) The Parent can request due process proceedings to challenge whether FAPE has been offered during the exclusion.

Can a district suspend a student for more than ten consecutive days where the student has displayed inappropriate behaviors for a long period of time and where teachers have expressed concern over the student?

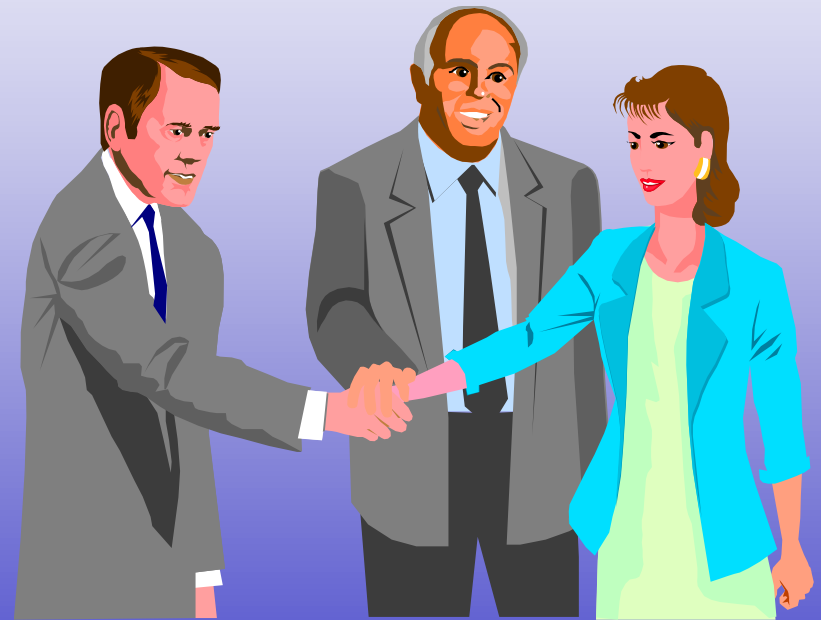
- A) Yes, because the teachers did not express their concern in writing.
- B) No, because the student is thought-to-be-eligible.
- C) Yes, as long as the district follows proper expulsion procedures.
- D) No, unless drugs or weapons are involved.
- E) Yes, as long as the parents agree with the suspension.
- F) None of the above.

An eligible student returns to school after a nine day suspension only to get in a fight with another student. How many days can the district suspend the student?

- A) None
- B) 10
- C) 6
- D) 15
- E) 1
- F) C or E
- G) Any number of days is ok

Is Parental Consent Required to Conduct an FBA?

- **A) Yes, even if you are not conducting any formal testing.**
- **B) No, because parents can't challenge the requirement that an FBA be performed.**
- **C) It depends, but consent is best practice.**
- **D) No, because it doesn't matter what the parents want.**



True or False?

- A parent cannot challenge the appropriateness of a unilateral forty-five day placement made for weapons or drugs

An eligible student is caught carrying his prescription of Ritalin on school grounds in violation of District's discipline policy. Can the District remove the student to a 45 day IAES?

- A) Yes, because the student was in possession of a controlled substance.
- B) No, because the student is eligible under the IDEA the District may not discipline a student.
- C) Yes, because a school district can unilaterally remove a student for 45 days for any reason.
- D) No, because the Ritalin was prescribed to the student.
- E) It depends on which Appeals Panel you get.
- F) None of the above.

The team determines that a student's behavior was not a manifestation of his/her disability, but the parents disagree and request a due process hearing. The District should:

- A) Proceed with the expulsion because the parents have no right to challenge the manifestation determination.
- B) Proceed with the expulsion and due process hearing.
- C) Stay the expulsion proceedings until the parents' challenge of the determination is complete.
- D) Stay the expulsion proceedings, but place the student in an IAES until the due process hearing is over.
- E) None of the above.

Due Process Hearings are Most Like Which of the Following?

- A) Sailing in your yacht sipping on a margarita
- B) Winning the lottery
- C) Root canal
- D) Root canal without novocaine



Key to Avoiding Many Problems in Special Education



- PROCESS
- PROCESS
- PROCESS
- PROCESS

