

**SPED COMPLIANCE:
WHEN THINGS DON'T WORK!**



Dispute Resolution
Discipline for Students with
Disabilities The 300's Indicators

NEW DIRECTORS' ACADEMY PRESENTATION

July 2016 Missouri Department of Elementary and Secondary Education

Session 4: Learning Objectives

- Know about the complaint process in IDEA and the implications for LEAs
- Know the legal basis for disciplining students with disabilities in order to protect their rights
- Understand terminology related to the discipline process
- Be able to document discipline decisions (both what they are and how they were made)
- Be able to apply the discipline process in making individual student discipline decisions





Parental Rights

Creating a Balance of Power Between Schools and Parents. . .

Procedural Safeguards

- Explains the parent/guardian's rights under IDEA in regards to:
- ▣ Written Notice and Consent
 - ▣ Independent Educational Evaluation
 - ▣ Access to Records
 - ▣ Confidentiality of Information
 - ▣ Destruction of Records
 - ▣ Parent Participation
 - ▣ Mediation prior to filing due process
 - ▣ Discipline
 - ▣ Private School placement by Parents
 - ▣ The Complaint System (Mediation, Child Compliant, Due Process, Civil Action)

- A copy must be provided:
- ▣ Annually
 - ▣ Upon initial referral or parental request for evaluation
 - ▣ Upon a disciplinary change of placement; and
 - ▣ Upon request by the parent

Parent Bill of Rights

- ▣ A Missouri state law requirement (162.850 RSMO).
- ▣ One page document that summarizes key parent/guardian rights contained in IDEA
- ▣ LEAs must provide to parents when:
 - ▣ a child is determined eligible for special education services or,
 - ▣ when an initial Individualized Education Program (IEP) is developed and,
 - ▣ whenever the Procedural Safeguards Notice is provided to parents



The Complaint System

- Mediation**
- Child Complaints**
- Due Process**

Comparing the systems	Mediation	Child Complaint	Due Process
Format?	Informal Confidential	Formal Confidential	Formal Confidential
Who decides?	Supports mutual problem solving	Assistant Commissioner of SpEd makes final determination	Solution ordered by hearing officer from the Administrative Hearing Commission
How long does it take?	Mediation session less than a day	Process may take several weeks	Hearing may last several days and process may take several months
How is information gathered?	Supports open communication	Communication with investigator	Witnesses testify under oath
How is decision made?	Agreements made jointly	Determined by allegations	Law-based solution
Agreement?	If no agreement reached, can pursue other complaint systems	Decision of Assistant Commissioner of SpEd is final	Decision binding; however, can be appealed to state or federal court
Timeline to complete process?	Must be completed in 30 days	Must be completed in 60 days unless an extension is needed to determine the facts	Can be completed in 45 days but usually takes approximately 6 months
Legal representation?	Attorneys cannot participate	Attorneys neither required nor prohibited	Although not required, parties are often represented by attorneys
Format of process?	Parties meet face to face for an informal discussion	Parties do not meet, investigator requests information from both sides and independently reviews it	Parties meet face to face in adversarial setting

Facilitated IEPs: A NEW Option to Resolve Disputes

- IEP Facilitation is . . .
 - The use of a NEUTRAL facilitator to help make the IEP meeting more effective
- IEP Facilitation is used when . . .
 - Conflicts or disagreements are likely to arise
 - History of contentious relationships
 - Discussions tend to waiver from student-focus
 - IEP team members need to focus on content rather than process



IEP Facilitation is All About the Process

- P = participation & prevention
- R = resolution of conflicts
- O = organization
- C = collaboration & consensus
- E = efficiency
- S = shared decision-making
- S = student focus & success!





Discipline for Students with Disabilities

**Legal Considerations
Key Terms and Concepts
The Discipline Process**

Why It Matters?

Process:

- Following the discipline process ensures the student's rights under IDEA are protected
- Involves a process of analysis and decisions that takes a child's disability into consideration

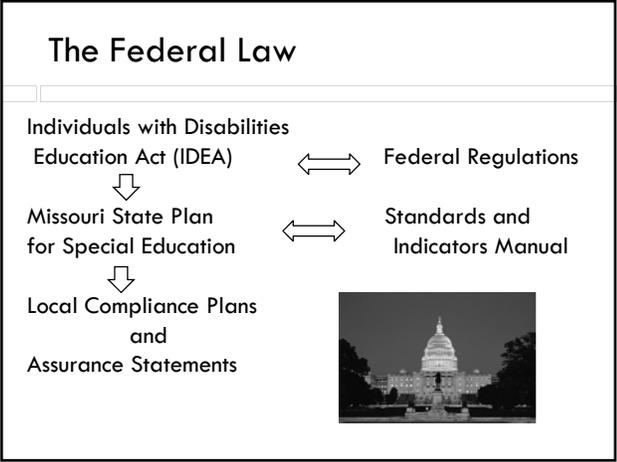
Accountability:

- District's core data reporting includes discipline data
- Monitored by the Department and OSEP
- Annual Discipline Review for SPP 4A / 4B



Discipline and the Law





Missouri State Law

- Safe Schools Act
 - Sections 160.261–160.272 of the Revised Statutes of Missouri
 - Passed in 1996
 - Applies to all students
 - Provisions
 - Written Policy / Definitions
 - Reporting



Violent Behavior

- Violent Behavior
 - The exertion of physical force by a student with the intent to do serious bodily harm ...to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities
- No student shall be readmitted or enrolled if charged with or convicted of any of the following serious offenses:
 - First or Second degree murder
 - First degree assault
 - Forcible rape or sodomy
 - Statutory rape or sodomy
 - Robbery or Arson in the first degree
 - Distribution of drugs to a minor



Serious Bodily Harm

- Means a **serious bodily injury** which involves—
 - a substantial risk of death
 - extreme physical pain
 - protracted and obvious disfigurement
 - protracted loss or impairment of the function of a bodily member, organ, or mental faculty
- As distinguished from a **bodily injury** which means a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary



! Emergency Room visit does not equal serious bodily injury !

Weapon

- Firearm, blackjack, explosive weapon, firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun, and a switchblade knife.
- Knife: any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person.
- See the **Missouri Revised Statutes** for the exact definition of each of these weapons (Section 571.010)



School Board Policy

- Seclusion and Restraint
 - Found in the Student section of the policies
 - Usually recorded as “Policy JGGA”
 - Includes . . .
 - Terms and definitions
 - Procedures for use
 - Staff training requirements



Discipline Terms / Key Concepts



The Basics . . .

- What is DISCIPLINE?
 - Removal from the current educational placement in response to a violation of the student code of conduct
 - To another setting
 - To an interim alternative educational setting
 - Out of School by suspension or expulsion
- When is a removal a CHANGE OF PLACEMENT?
 - More than 10 consecutive school days
 - OR
 - A series of removals that exceed 10 cumulative school days and constitute a pattern

Key Concepts: ISS / OSS for Determining a Change of Placement

- In-School Suspension (ISS) 
 - Does not count toward change of placement **so long as** student still receives special education and related services described in IEP provided by appropriate sped staff
- Out of School Suspension (OSS) 
 - Always counts toward change of placement
 - Bus suspensions count IF student misses school
 - ISS can become OSS in certain situations

Key Concepts: Short-term / Long-term

- Short-term Suspension
 - ≤ 10 days and no change of placement
 - First 10 days = NO services required
 - >10 days cumulative in school year and no pattern = services must be considered beginning on 11th day
- Long-term Suspension
 - More than 10 consecutive days OR >10 days cumulative and a pattern




Greater than 10 days Consecutively

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					X	
	X	X	X	X	X	
	X	X	X	X	X	

© Cegron Calendars

Greater than 10 days Consecutively = ALWAYS a Change of Placement

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					X	
	X	X	X	X	X	
	X	X	X	X	X	

© Cegron Calendars

Greater than 10 days Cumulatively:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			X	X	X	
		X				
	X			X	X	
		X	X	X	X	

Greater than 10 days Cumulatively:
MUST Determine if a PATTERN Exists

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			X	X	X	
		X				
	X			X	X	
		X	X	X	X	

Is it a "Pattern" of Suspensions?

▲ ◆ ▲ ◆

- >10 days cumulatively in the school year
- Behavior must be substantially similar to behavior in previous disciplinary incidents
- Additional Factors to be considered. . .
 - Length of each removal
 - Total amount of time of the removals
 - Proximity of the removals to one another

Is it a "Pattern" of Suspensions?



- >10 days cumulatively in the school year
- Behavior must be substantially similar to behavior in previous disciplinary incidents
- Additional Factors to be considered. . .
 - Length of each removal
 - Total amount of time of the removals
 - Proximity of the removals to one another



School staff determine if a pattern exists.

Actions Required for Long-term Suspensions

- MUST provide parents with Procedural Safeguards
 - When the decision is made to long-term suspend the student
- MUST hold a Manifestation Determination Meeting to determine if conduct is related to the child's disability
 - Within 10 school days of the decision

The Manifestation Determination Meeting

- WHEN** is it held?
 - Within 10 school days of decision to long-term suspend



The Manifestation Determination Meeting

- WHEN is it held?
 - ▣ Within 10 school days of decision to long-term suspend
- WHO attends?
 - ▣ LEA representatives
 - ▣ Parents
 - ▣ Relevant members of the IEP team



The Manifestation Determination Meeting

- WHEN is it held?
 - ▣ Within 10 school days of decision to long-term suspend
- WHO attends?
 - ▣ LEA representatives
 - ▣ Parents
 - ▣ Relevant members of the IEP team
- WHAT to consider?
 - ▣ Student's file, the IEP, teacher observations and relevant information provided by parents



The Manifestation Determination Meeting

- WHEN is it held?
 - ▣ Within 10 school days of decision to long-term suspend
- WHO attends?
 - ▣ LEA representatives
 - ▣ Parents
 - ▣ Relevant members of the IEP team
- WHAT to consider?
 - ▣ Student's file, the IEP, teacher observations and relevant information provided by parents
- WHY?
 - ▣ Is there a direct and substantial relationship between behavior and disability
 - ▣ Did behavior result from not implementing the IEP?



Conduct IS Related to the Disability

- Student **CANNOT** be long-term suspend
- IEP team must. . .
 1. Conduct or review an FBA of the student
 2. Develop or review/revise a BIP for the student
 3. Make a placement decision
 - a) Return child to current placement with BIP in place
 - b) Change placement with BIP in place
 - c) In case of 45 day suspension for drugs, weapons, or serious bodily injury, continue the placement in the interim alternative educational setting determined by LEA

Conduct IS NOT Related to the Disability

- Student **CAN** be long-term suspend
- LEA may apply the same discipline consequences as peers
- IEP team must. . .
 1. Determine services and placement beginning on the 11th day that allow the student to. . .
 - a) Receive educational services to continue to participate in general education just in an alternate setting during the suspension
 - b) Progress towards IEP goals
 - c) Receive an FBA if appropriate
 2. Provide parent with NOA for change of placement

Resources for Discipline Decisions

- [Discipline Flow Chart \(D1/D2\)](#)
- [Model Discipline Documentation Form and Discipline Flow Chart](#)
 - Step-by-Step guide to document decisions
- [Discipline Decision Maker Chart](#)
 - Discipline decisions related to students with disabilities ALWAYS require a team approach
 - Different discipline options have different **required** team members

The Discipline Decision Process

GUIDED PRACTICE



Avoiding Common Mistakes





Discipline

TOP 6 TEACHABLE MOMENTS

1. Provide Services When Needed

>10 days Consecutively
or
>10 days Cumulatively
(with pattern)

- MUST provide services beginning on Day 11
- The IEP team determines the services and location



≤ 10 days Consecutively
or
>10 days Cumulatively
(without pattern)

- School personnel along with at least one of the student's teachers determines the extent to which services are required on the 11th day and thereafter . . .
- Factors to consider include
 - length of the removal
 - extent to which the student has been removed previously
 - student's needs and educational goals.

2. Provide the Right Type of Services

Must decide . . .

- What services to provide
- Where to provide the services
- When to provide the services
 - How to handle a delay in starting to provide services

3. Have the Right People Making the Discipline Decisions

- ALWAYS document the name and role of persons involved in making decisions related to discipline for students with disabilities
- Discipline decisions related to students with disabilities ALWAYS require a team approach
 - Different discipline options have different **required** team members



4. Know When and How to Conduct a Manifestation Determination

- When must one must be conducted
 - ▣ Student removed for > 10 days consecutively
 - ▣ Student removed for > 10 days cumulatively with a pattern
- What documentation to look at
 - ▣ To determine if a pattern
 - ▣ To determine if a manifestation
- Timeline for conducting meeting
 - ▣ School days NOT calendar days



5. Know When to Conduct or Review a Functional Behavioral Assessment

- FBA is only **REQUIRED** when conduct **IS** a manifestation of the student's disability
- **MAY** conduct an FBA when conduct **IS NOT** a manifestation of the student's disability **IF APPROPRIATE** to address the behavior resulting in the disciplinary action so that it does not recur

6. Follow ALL of the Steps in the Discipline Process

Don't skip steps
 Don't stop before you're done with all the steps
 Document decisions
 Count OSS days accurately



QUESTIONS?



Department Contact Information

- Call Special Education Compliance
PHONE: 573-751-0699
FAX: 573-526-5946
- Email Special Education Compliance
secompliance@dese.mo.gov
- Access the Special Education Compliance website
<http://dese.mo.gov/divspeced/Compliance/>