THE DISCIPLINE PROCESS FOR STUDENTS WITH DISABILITIES

NEW DIRECTORS’ ACADEMY PRESENTATION

July 25, 2014
Learning Objectives

- 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
- Know where to get additional assistance and resources
Disciplining Students with Disabilities

Process:

- Following the discipline process ensures the student’s rights under IDEA are protected
- Involves a process of analysis and decisions

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
The Law

Individuals with Disabilities Education Act (IDEA) -> Missouri State Plan for Special Education -> Local Compliance Plans and Assurance Statements

Federal Regulations

Standards and Indicators Manual
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

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.

- See the *Missouri Revised Statutes* for the exact definition of each of these weapons (Section 571.010).

- 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.
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

- In-School Suspension (ISS)
  - Does not count towards change of placement so long as student still receives special education and related services described in IEP

- 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 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**
= Change of Placement

[Calendar page with crosses indicating consecutive days]
Greater than 10 days *Cumulatively without* a PATTERN ≠ Change of Placement

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<thead>
<tr>
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*District personnel determine a pattern does NOT exist*
Greater than 10 days **Cumulatively with a** PATTERN = Change of Placement

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+ District personnel determine a pattern **DOES** exist
Actions Required for Long-term Suspensions

- MUST provide parents with Procedural Safeguards
- MUST hold Manifestation Determination meeting to determine if conduct is related to the child’s disability
  - If behavior is related to disability, the student CANNOT be long-term suspended
  - If behavior is NOT related to disability, student CAN be long-term suspended
    - Services required beginning on 11th day EVEN IF conduct is unrelated to the disability
The Discipline Decision Process

CASE STUDIES
CASE #1: Robert

Robert is an 5th grader who receives special education services for sound system disorder.

- Sept 3 – Throwing food in cafeteria; 1 day of OSS
- Nov 25 – Pulled fire alarm; 5 days of OSS
- April 10 – Insubordination; 1 day of OSS
1. Number of OSS days for this infraction _____1_____
   Is the total number of days for this infraction greater than 10?
   ☑ No. Go to #3.
   ☐ Yes. Go to #2.

2. Is this a 45 school day suspension or interim alternative placement for drugs/weapons/serious bodily injury or for a violent/dangerous student?
   ☐ Yes for drugs/weapons/serious bodily injury. Go to Section E.
   ☐ Yes for a violent/dangerous student. Go to Section F.
   ☑ No. Go to Section B. (Manifestation Determination)

3. Number of OSS days this school year prior to this infraction _____6_____

4. Total number of OSS days this school year (1 + 3) _____7_____

5. Total OSS days (Line 4) is greater than 10?
   ☑ No—STOP. No special procedures required.
   ☐ Yes, proceed to next question.
CASE #2: Kimmie

Kimmie is an 7th grader who receives special education services under Other Health Impaired. She has medical diagnoses of nephritis, asthma, and ADHD.

- Sept 3 - Threw food in cafeteria; 1 day of OSS
- Dec 5 - Cursed at the math teacher and walked out of class; 2 days of OSS
- Feb 14 - Tore up the decorations for the Sweethearts dance; 1 day of OSS
- April 6 – Hit a student in the head with a text book; 5 days of OSS
- May 12 – Shoved a student in her locker; 5 day of OSS
1. Number of OSS days for this infraction __5__
   Is the total number of days for this infraction greater than 10?
   ☐ Yes. Go to #2.
   ☒ No. Go to #3.

3. Number of OSS days this school year prior to this infraction ____9____

4. Total number of OSS days this school year \( (1 + 3) \) ___14___

5. Total OSS days (Line 4) is greater than 10?
   ☐ Yes, proceed to next question.
   ☒ No—STOP. No special procedures required.

6. Has a pattern been created?
   In determining if a pattern has been created, school staff must consider the following:
   • If the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and,
   • Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

   ☐ No. Proceed to Section A.
   ☒ Yes. Go to Section B. (Manifestation Determination)
SECTION A
Removal of a student over ten school days when no long-term suspension is involved (no pattern created)

School personnel, in consultation with at least one of the child’s teachers, determines the extent to which services are required on the 11th school day and thereafter in which the child is in OSS for this infraction and the location of those services.

Factors considered in making this decision include:

- Length of the removal: On May 12th for 5 days
- Extent to which the student has been removed previously: Total of 9 days previously suspended. Suspensions occurred on Sept 3, Dec 5, Feb 14, April 6.
- Student’s needs and educational goals: Kimmie has nephritis, asthma, and ADHD. She receives services under Other Health Impaired.

Decision: Services are NOT required on the 11th day of school and thereafter.

Plan: 

Decision: Services ARE required on the 11th day of school and thereafter.

Plan: Kimmie will receive 5 hours of homebound instruction for 4 days.

Date of Decision: 05/12/2014

Name(s) and role(s) of individual(s) making the decision:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ROLE</th>
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<tr>
<td>Debbie</td>
<td>Director of Special Education</td>
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<tr>
<td>Director</td>
<td>Principal/LEA</td>
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<tr>
<td>Susan</td>
<td>Regular Education Teacher</td>
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<td>Speakeasy</td>
<td>Special Education Teacher</td>
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<tr>
<td>John Doe</td>
<td>Parent</td>
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<tr>
<td>Jane Doe</td>
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<td>Jimmie Johns</td>
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</table>
Case #3: Charlie

Charlie is an 9th grader who receives special education services for a specific learning disability in reading fluency. He has no history of behavior problems.

- Feb 10 – Caught by a paraprofessional stealing software from computer lab; 3 days OSS
- March 1 - Confronted a paraprofessional in the hallway and called her inappropriate names; 5 days OSS
- March 21 – Confronted the same paraprofessional in the hallway, called her names, and pretended to hit her; 5 days OSS
1. Number of OSS days for this infraction 5
   Is the total number of days for this infraction greater than 10?
   □ Yes. Go to #2.
   □ No. Go to #3.

3. Number of OSS days this school year prior to this infraction 8

4. Total number of OSS days this school year (1 + 3) 13

5. Total OSS days (Line 4) is greater than 10?
   □ Yes, proceed to next question.
   □ No—STOP. No special procedures required.

6. Has a pattern been created?
   In determining if a pattern has been created, school staff must consider the following:
   • If the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and,
   • Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

   □ No. Proceed to Section A.
   □ Yes. Go to Section B. (Manifestation Determination)
SECTION B
Documentation of MANIFESTATION DETERMINATION

Documentation is present that within 10 school days of any decision to implement a long-term suspension, the local educational agency, the parent and relevant members of the IEP team met to conduct a manifestation determination.

Manifestation Determination meeting:
Step 1:
Team reviewed the following:
- All relevant information in the student’s file □ yes □ no
- Child’s IEP □ yes □ no
- Any teacher observations □ yes □ no
- Relevant information provided by parents □ yes □ no

Step 2:
Team determined that:
- Conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or □ yes □ no
- The conduct in question was the direct result of the LEA’s failure to implement the IEP. □ yes □ no

Finding of the team:

[Green arrow indicates selection]
- Conduct is not a manifestation of the disability. Go to Section C.
- Conduct is manifestation of the disability. Go to Section D.
SECTION C
(Long-term suspension—conduct was not a manifestation of the disability)

Documentation is present that:
- Relevant IEP team members found the conduct was not a manifestation of the disability.
- The IEP team determined placement (except for a 45 day interim alternative educational setting that is an LEA decision)

School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities except that the IEP team must determine services that will enable the child to:

- Continue to receive educational services to continue to participate in the general education curriculum, although in another setting.
- Progress toward meeting goals in the IEP
- Receive, as appropriate, a functional behavioral assessment (FBA) and behavior intervention services and modifications designed to address the behavior violation so that it does not recur.

- Parent provided with prior written Notice of Action for change of placement/services
- Parent provided a copy of the Procedural Safeguards

Updated July 1, 2014
Case 4: Lori

Lori is an 11th grade student. She was identified with an Intellectual Disability in 3rd grade. She has a history of emotional and behavior difficulties, dating back to 1st grade.

- Sept 1 – Refused to work in science class; directed profanity at the teacher; given 2 days of OSS
- Oct 5 – Made inappropriate sexual remarks toward a student; given 3 days of OSS
- Oct 11 – Told a sexual joke directed at the PE teacher; given 3 days of OSS
- Nov 1 – Knocked books out of another student’s hands, pushed the student to the ground, and made several inappropriate sexual comments to the student; given 5 days of OSS
1. Number of OSS days for this infraction \( \frac{5}{5} \) 
   Is the total number of days for this infraction greater than 10? 
   [ ] Yes. Go to #2. 
   [X] No. Go to #3.

3. Number of OSS days this school year prior to this infraction \( \frac{8}{8} \)

4. Total number of OSS days this school year \((1 + 3)\) \( \frac{13}{13} \)

5. Total OSS days (Line 4) is greater than 10? 
   [X] Yes, proceed to next question. 
   [ ] No—STOP. No special procedures required.

6. Has a pattern been created? 
   In determining if a pattern has been created, school staff must consider the following: 
   • If the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and, 
   • Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

   [ ] No. Proceed to Section A. 
   [X] Yes. Go to Section B. (Manifestation Determination)
SECTION B
Documentation of MANIFESTATION DETERMINATION

☑ Documentation is present that within 10 school days of any decision to implement a long-term suspension, the local educational agency, the parent and relevant members of the IEP team met to conduct a manifestation determination.

Manifestation Determination meeting:

Step 1:
Team reviewed the following:
- All relevant information in the student’s file ☑ yes ☐ no
- Child’s IEP ☑ yes ☐ no
- Any teacher observations ☑ yes ☐ no
- Relevant information provided by parents ☑ yes ☐ no

Step 2:
Team determined that:
- Conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or ☑ yes ☐ no
- The conduct in question was the direct result of the LEA’s failure to implement the IEP.

Finding of the team:
☐ Conduct is not a manifestation of the disability. Go to Section C.
☒ Conduct is manifestation of the disability. Go to Section D.
SECTION D
(Long-term suspension—conduct is manifestation of the disability)

Documentation is present that:

- Relevant IEP team members found the conduct a manifestation of the child’s disability.
- The IEP team:
  - Conducted a functional behavioral assessment (FBA),
    OR
  - FBA was conducted prior to this behavioral incident
- The IEP team:
  - Developed a behavior intervention plan (BIP),
    OR
  - Reviewed an existing BIP,
    AND/OR
  - Modified an existing BIP, as necessary, to address the behavior related to this incident
- The IEP team made the following placement decision:
  - Agency returned child to the placement from which the child was removed.
    OR
  - Parent and LEA agreed to a change of placement as part of the modifications of the BIP.
    OR
  - In the case of a 45 school day placement for drugs, weapons, or serious bodily injury:
    - Continued the child’s placement in the interim alternative educational setting as determined by the LEA.
    AND
  - Determined services that would enable the child to:
    - Continue to participate in the general education curriculum, although in another setting.
    - Progress toward meeting goals set out in the IEP.
    - Receive, as appropriate, behavior intervention services and modifications designed to address the behavior violation so that it does not recur.

Documentation is present that:

- If the IEP team determines a change of placement/services is required, parent is provided with a prior written Notice of Action for the proposed change of placement/services.
Avoiding Common Mistakes
TOP 5 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
<table>
<thead>
<tr>
<th>Type of discipline procedure occurring</th>
<th>Who is involved in implementing the discipline decisions</th>
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<tbody>
<tr>
<td>Cumulative short term suspensions &gt;10 days in a school year</td>
<td>School personnel in consultation with at least one of the child’s teachers</td>
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<tr>
<td>Conducting a manifestation determination</td>
<td>The local education agency (LEA), the parent and relevant members of the IEP team</td>
</tr>
<tr>
<td>Long term suspension – conduct was not a manifestation of the disability</td>
<td>School personnel and relevant IEP team members</td>
</tr>
<tr>
<td>Long term suspension – conduct is manifestation of the disability</td>
<td>School personnel and relevant IEP team members</td>
</tr>
<tr>
<td>45 day IAEP – weapons/drugs/serious bodily injury</td>
<td>School personnel</td>
</tr>
<tr>
<td>45 day removal – violent/dangerous student</td>
<td>Designated school personnel file for an expedited due process hearing</td>
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</table>
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. 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
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/
RPDC Compliance Consultants

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573-651-2621

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THE DISCIPLINE PROCESS FOR STUDENTS WITH DISABILITIES

Missouri Department of Elementary & Secondary Education
Office of Special Education

www.dese.mo.gov/top10by20