Welcome to our session about the Discipline Process for Students with Disabilities. We will be describing and discussing both the process and the compliance requirements to ensure that students with disabilities who are disciplined will receive appropriate due process under the Individuals with Disabilities Education Act (IDEA). Today we will be reviewing the legal requirements for the discipline process as well as sharing model forms and flow charts to help you understand and follow the process. In addition, we will be using real-life situations to illustrate the process and documentation requirements. Finally we will be providing resources and answering your questions.
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

These are the learning objectives for Session 4. As you can see we have lots of information to cover. So let’s get started. . .
First, let’s look at the parental rights which provide the “rules” for the balance of power between schools and parents . . .
One of the basic requirements of the IDEA is the provision of the Procedural Safeguards to parents/guardians. This document explains their rights in regards to the special education process under IDEA. As you can see by this slide, these rights fall into 10 basic categories.

A copy of state approved procedural safeguards must be given to parents one time each school year. In addition, a copy shall also be given for the additional reasons stated here. The most recent update for procedural safeguards was made August, 2009. Be sure to destroy any copies dated prior to that date. A copy of the most recent procedural safeguards is included in your packet.

Parents must be provided a copy in their native language. If you need a copy in the language of the parent you are working with, contact DESE Compliance – Office of Special Education.
In Missouri there is a “companion” document to the Procedural Safeguards titled the Parent Bill of Rights. This became law in January 2010 as a result of a grassroots campaign from parents of children with disabilities in Missouri. The Parent Bill of Rights is a one page document that summarizes key parent/guardian rights contained in the IDEA.

LEAs must provide the Parent Bill of Rights to parents in 3 specific situations:
1. a child is determined eligible for special education services or,
2. when an initial Individualized Education Program (IEP) is developed and,
3. whenever the Procedural Safeguards Notice is provided to parents

A copy of the Parent Bill of Rights can be found in your packet.
Now we’re going to talk about the Complaint System. This is the process that the IDEA provides to parents and LEAs to use when disagreements cannot be worked out through the IEP process. This system is described in the Procedural Safeguards as well as the State Plan for Special Education in MO. There are three options in the Complaint System: Mediation, Child Complaints and Due Process.
### Comparing the systems

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

A copy of this chart is located in your Compliance packet. It includes a brief summary of some, but not all, of the differences between mediation, a child complaint, and a due process complaint. This is a very useful resource to have available when you’re faced with a parent filing a complaint. Another good reference for an explanation of the complaint process is the Procedural Safeguards Notice which can be found on the Department’s web site.

As you can see, the options in the complaint system move from informal and relatively quick in mediation to very formal and lengthy for due process. Also note that the decision of how to resolve the complaint moves from the parties closest to the situation (parents and LEA staff) in mediation to objective third parties (an investigator or administrative hearing judge) for child complaints and due process. This movement from lowest level of conflict resolution to highest level of conflict resolution is also seen in when attorneys can be involved in the process and the level of the adversarial relationship between the two parties.

IDEA encourages LEAs and parents to work cooperatively in resolving disputes at the lowest level of conflict resolution. This is why the Department will pay for mediation prior to the parent filing a child complaint or due process.
IEP Facilitation is a process that is being used in 38 states across the country and Missouri will join that group beginning mid-August this year as we offer IEP Facilitation state-wide during the 2016-17 school year.

IEP Facilitation is the process of utilizing a skilled and trained neutral facilitator to lead the IEP meeting when both the parent/guardian and school district agree that the IEP could benefit from a facilitator leading the IEP.

Either the parent or the school district can initiate the request, and both must agree to the use of the facilitator.

The facilitator is a neutral party who has no agenda other than to assist the group in reaching consensus and assure that the focus of the meeting stays on the student and their needs.

IEP Facilitation can be used when there is a history of contentious relationships and can be used before the relationship has a chance to fray.
IEP Facilitation is ALL about the process. You have several print materials in your folder and these will explain in more detail how an IEP Facilitator can be requested. During last school year, MO DESE conducted a pilot with selected school districts and collected data from parents, students, schools and administrators. Data collected told us that both parents and districts were encouraged by the results of the IEP meeting, felt their concerns were addressed and while not necessarily “thrilled and delighted” will all aspects of the IEP meeting, were satisfied with the final product and felt they could both support and implement the IEP.
Now let’s talk about discipline for students with disabilities. In this section we will cover the legal considerations and foundations as well as key terms and concepts that impact discipline decisions. Finally, we will run through the discipline process . . .
Some people believe that students with disabilities CANNOT be disciplined – that is simply NOT true. Yes, there are certain protections afforded to students with disabilities but these protections and processes were developed to ensure that the student’s rights under IDEA were not lost when they break school rules and are disciplined by the LEA. There are two parts to consider when disciplining students with disabilities – the process and accountability.

When disciplining students with disabilities, there are specific steps that must be followed which involve an analysis of the incident along with additional discipline data and then making a decision based on that analysis and documenting that decision. We will spend quite a bit of time discussing the process and the documentation of disciplining students with disabilities as these are key in maintaining compliance with IDEA.

It is important to note that school districts are required to collect and report data about discipline to the Department of Elementary and Secondary Education for both students with and without disabilities. The report must include both Out of School Suspension (OSS) and In School Suspension (ISS). This data must be reported by race/ethnicity as well. The data that each school reports is then analyzed to determine if there is disproportionate representation based on races and/or disability in the actual discipline imposed in each district. If disproportionality is found, the district must conduct a review of their policies, practices and procedures to determine if these are contributing to the disproportionality. If noncompliance is found, changes must be made in those policies, practices and/or procedures. Each year, all of this data on disproportionality must be reported by the State to the Office of Special Education Programs (OSEP) for State Performance Plan indicators 4A and 4B.
Let’s start by looking at the laws that directly affect disciplining students with disabilities.
As you remember from previous sessions, the IDEA is the federal law that governs everything we do in special education. The federal regulations help explain the law. The Missouri State Plan for Special Education describes how the IDEA will be enacted in our state with the Standards & Indicators manual providing guidance and further explanation. Finally, each LEA has a Local Compliance Plan that outlines how the IDEA and the MO State Plan will be implemented at the local level. The LEA makes an annual assurance that they will follow the IDEA.
There is also a MO law that affects special education. The Safe Schools Act, contained in sections 160.261–160.272 of the Revised Statutes of Missouri, was originally passed in the Legislature and signed into law by the Governor in 1996. The main provisions of the Safe Schools Act fall into two categories – written policy / definitions and reporting. The act requires each local school board to establish a written discipline policy. The policy must include definitions of key terms and the policy must provide for a one-year suspension or expulsion of a student who brings a weapon to school in violation of school policy. The policy must require administrators to report acts of school violence to district employees with a “need to know” and administrators must report to law enforcement any students’ acts that would constitute a felony if committed by an adult. Let’s take a few minutes to look at some of the key terms in the Safe Schools Act.
The first key term is “violent behavior” . . . As you can see the behavior could occur both ON or OFF of school grounds and there are specific legal charges that are associated with the term “violent behavior.”
The second key term in the Safe Schools Act is “Serious Bodily Harm” which means a serious bodily injury which involves . . . (read slide)

IDEA uses the term “Serious Bodily Injury” instead of “serious bodily harm.” For that reason these terms are sometimes used interchangeably.

It is important to remember that a trip to the emergency room does NOT necessarily mean the person has sustained a serious bodily injury resulting in serious bodily harm.
The final key term is “Weapon”. A weapon is defined as a 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. Each of these weapons is described and defined in the Missouri Revised Statutes.

It is easy for administrators to assume that they know what a weapon is – for example, a “knife.” In Missouri the legal definition of a “knife” in terms of being a weapon is 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. For discipline purposes, "knife" does not include ordinary pocketknives with blades less than four inches in length.

As you can see it is important to know the legal definitions when making discipline decisions about students.
It is also important to be aware of your school board policy in regards to discipline. Every school district in Missouri has a school board policy for the use of seclusion and restraint. This is required under Missouri State law and affects both students with and without disabilities.

Your school board policies can be found online on the district’s webpage or in the office of the superintendent at the school district. School board policies are divided into sections and the Seclusion and Restraint policy is located in the Student section. Since the many school districts use the model policies developed by the Missouri School Boards Association, the Seclusion and Restraint policy is indexed as policy JGGA.

Missouri state law requires that the Seclusion and Restraint policy includes terms and definitions, specific procedures that must be followed when using seclusion and/or restraint, as well as a description of how staff will be trained on the use of seclusion and restraint.

Each district’s policy is unique. It is VERY important that you are aware of and follow your LEA’s board policy on the use of seclusion and restraint.
Our next topic will help us all be “on the same page” as we discuss discipline for students with disabilities. It is VERY important to understand the terms used in association with disciplining students with disabilities as well as several of the key concepts about discipline included in the IDEA.
First, the only form of discipline for students with disabilities that is relevant to this discussion is a removal from the current educational placement to another setting where the student does not receive the special education and related services described in the student’s IEP. Time out in the student’s classroom, detention, community services, Saturday School, or other restrictions of privileges are not subject to the requirements relating to discipline under IDEA unless the student’s IEP specifically precludes these or addresses these. In that situation, the IEP provisions must be implemented.

Removal from the educational placement is not considered a change of placement unless it lasts longer than 10 school days. This is why it is referred to as “Long Term Suspended.” This can be more than 10 consecutive school days - for example, a student receives 11 days in a row of Out of School Suspension for fighting in the cafeteria. OR there can be a series of removals that total more than 10 cumulative school days and these removals create a pattern of suspension. The district determines on a case-by-case basis whether a pattern of suspension has been created. For example, a student receives 8 days of out of school suspension for bullying a classmate after being previously out of school suspended for 5 days for bullying a different classmate the month before. We will talk more about the difference between Short-term and Long-term suspensions in just a minute and provide additional examples.
But first we need to look at some of the key concepts when disciplining students with disabilities. First, let’s address the difference between in-school and out-of-school suspension.

In-school suspensions or ISS means that a student is removed for disciplinary reasons from their assigned classroom and schedule to some type of school staff supervised setting during the school day. It can be called “being assigned to the ISS program”, “temporary attendance at the Alternative School”, “being sent to the Recovery Room,” or some other similarly named “room” or “program” – the key is that the student is removed from their current educational program to another setting for disciplinary reasons. Many school administrators prefer to use ISS as it keeps the student in school and provides supervised time to make-up school work and keep current on assignments while the student is assigned ISS. ISS does not count towards change of placement so long as the student with a disability still receives special education and related services as described in their IEP provided by appropriate sped staff.

Out-of-school suspension or OSS, by contrast, means a student is removed from the current educational setting for a set period of time for disciplinary reasons. OSS days always count toward a change of placement since, by definition, the student is not at school and cannot receive their special education and related services as described in their IEP. The key for OSS is that the suspension results in the student with a disability NOT receiving the services required by their IEP. That is why bus suspensions count as OSS for students with disabilities if transportation is listed as a related service for the student regardless of whether or not the
student attends school during the bus suspension. And it is why the parent picking the student up early at the school’s request for discipline reasons is considered OSS as well.

So the next logical question is “Is there ever a time when ISS becomes OSS?” The answer is “YES”. ISS settings are considered general education settings. When a student with a disability is in ISS, they must still receive their special education and related services as described on the IEP in order for the ISS to be considered “ISS” and not count towards a change in placement. Remember the key is that if the disciplinary action results in the student with a disability not receiving the special education and related services and maintaining the current placement required by the IEP, then no matter what you call it – it is OSS and that day counts toward a change of placement.
Now let’s discuss the difference between a short-term suspension and a long-term suspension.

So, what constitutes a short-term suspension? Any suspension that is less than or equal to 10 school days during a school year that is not a change of placement. What educational services must be provided when a student with a disability is short-term suspended? For suspensions of 10 days or less in a school year, the LEA is NOT required to provide services unless services would be provided to a student without a disability who has been similarly removed.

However, if the short-term suspension results in the student being suspended greater than 10 days in a school year, even when no pattern of suspensions has been established, the LEA MUST CONSIDER providing services beginning on day 11. School personnel, in consultation with at least one of the student’s teachers, determines the extent to what services are required beginning on the 11th school day and thereafter, and the location of those services. If services are provided they must permit the student to participate in the general education curriculum and progress towards IEP goals. Sending missed assignments and homework to a student with a disability who is suspended is NOT providing services. Remember that the services to be provided are determined by school personnel in consultation with at least one of the student’s teachers – not the parent or the IEP team.

Now let’s focus on long-term suspensions. So, what constitutes a long-term suspension? Any suspension for disciplinary reasons that exceeds 10 consecutive school days in a school year OR any suspension that exceeds 10 cumulative school days in a school year where a pattern of behavior is established triggers a change of placement and is considered a long-term suspension. Let’s look at these two situations more closely. . .
This slide shows a removal of MORE than 10 consecutive school days and is . . .
**ALWAYS** considered a Long-term suspension and a CHANGE OF PLACEMENT . . .
This slide shows a removal for MORE than 10 cumulative school days. It becomes a bit more complicated to discipline the student now because the school staff must determine if the most current suspension shown in RED is a short-term or a long-term suspension.
When the removal is for MORE than 10 cumulative school days, the key factor is whether or not a PATTERN has been created by the suspensions.

If a pattern exists, then the final suspension is considered a LONG-TERM suspension.

And if a pattern does NOT exist, then the final suspension is considered a SHORT-TERM suspension.

So... just how is a pattern determined?
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

There are three key Factors that must be considered in making the determination of whether or not a “pattern” exists. These include the following:

First, the series of removals must total more than ten (10) school days cumulatively in a school year.

Second, the child’s behavior must be substantially similar to the child’s behavior in the previous incidents that resulted in the series of removals;

and, finally, school staff must consider additional factors such as the length of each removal, the total amount of time the child has been removed from their current educational setting, and the proximity of the removals to one another.

It is important to remember that the school staff, not the parents, must determine if a pattern of suspensions exists. However, if the parent disagrees with the school staff’s determination, that determination is subject to review through due process and judicial proceedings.
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.

It is important to remember that the school staff must determine if a pattern of suspensions exists. If the parent disagrees with the school staff’s determination, that determination is subject to review through due process and judicial proceedings.
So what are the immediate steps that the LEA must take when long-term suspending a student?

First, on the date the decision is made to long-term suspend a student, the district must notify the parent of that decision and provide them with a copy of the procedural safeguards.

Then within 10 school days of the decision to make a change of placement, the district and relevant members of the IEP team along with the parents of the student MUST meet to determine if the conduct resulting in the disciplinary action was caused by or had a direct and substantial relationship to the child’s disability or if the conduct was a result of the district’s failure to implement the IEP. This meeting is known as the Manifestation Determination meeting.
The Manifestation Determination Meeting

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

First, when is a manifestation determination required? We found that most districts seemed to understand that every disciplinary action of more than 10 days consecutively is a long-term suspension and MUST have a manifestation determination meeting. However, when the greater than 10 days was cumulative in a school year, districts had much more difficulty in making a determination of whether or not this was considered a long-term suspension. We found this is because school districts are unclear for how to ascertain if the removals for cumulative days constitute a pattern of suspension resulting in a long-term suspension. Documentation showed, more often than not, that many districts automatically conducted a manifestation determination regardless of whether it was a short-term or long-term suspension.

The key is that manifestation determinations are required ONLY when the disciplinary action results in a change of placement. And a change of placement occurs when a student is removed from their educational placement for more than 10 days. And for cumulative days, there must be a pattern for the greater than 10 days to be considered a change of placement. Remember that the LEA is who determines if there is a pattern and that decision must consider:

- Are the behaviors that led to each suspension substantially similar?
- What is the total amount of time suspended?
- What is the proximity of the suspensions/infractions to each other?

So, to determine if a pattern exists, the LEA should be looking at the current and prior discipline reports for the student.
Finally, districts often forget that the timeline for conducting a manifestation determination meeting is 10 **school** days from the date of the decision to long-term suspend the student – NOT calendar days. Since building administration can only assign 10 days of OSS, the potential change of placement occurs only for cumulative 10 day situations with a pattern. The other potential time this decision would occur is when the superintendent recommends an extension to the 10 days of OSS assigned by the principal. In both situations, the IEP team must decide what services are required and where those services will take place.
Next, who must be invited to a manifestation determination meeting? The required members are the LEA representative, parents of the child, and relevant members of the IEP team. Relevant members would be expected to include, at a minimum, the special education teacher.
## 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

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Next, WHAT documentation must be considered when making a manifestation determination?

Since the purpose of the meeting is determine whether the student’s disability had a direct and substantial relationship to the violation of school conduct, or if the conduct in question was a direct result of the LEAs failure to implement the IEP. It would be important to look at:

- The child’s IEP
- Teacher observations
- Relevant information provided by the parents
- The most recent evaluation report
- The results of any functional behavior assessments and/or behavior intervention plan
- Discipline history
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?

Based upon a review of this information the team determines if the conduct is or is not a manifestation of the disability by answering the following questions:

1. Is there a direct and substantial relationship between the behavior resulting in the disciplinary action and the student’s disability?
2. Did the behavior resulting in the disciplinary action result from the IEP not being implemented as written – be sure to look at services, accommodations/modifications, special considerations, and the BIP.
If the conduct IS related to the disability, no long term suspension can occur. The LEA must conduct or review a functional behavior assessment and then develop or review/revise a behavior intervention plan for the student. At that point the LEA must either return the student to the placement from which he/she was removed OR the parent and LEA must agree to a change of placement as part of the IEP / BIP process.

If the student was long-term suspended for drugs, weapons or serious bodily injury for 45 days, the student can continue to remain in that placement even if the conduct was found to be a manifestation of the student’s disability.
If the conduct is NOT related to the disability, the LEA can impose the same disciplinary consequences as they would for a student without a disability. However, the IEP team must determine the setting and the appropriate services needed to enable the student with a disability to continue in the general education curriculum and to progress toward meeting IEP goals in the new setting while the student is being disciplined. The student must receive an FBA if appropriate. Because this is a disciplinary change of placement, the parent must be provided with a Notice of Action describing the action along with an explanation of the basis for the action.
This slide shows several of the resources developed by the Compliance Section to assist LEA staff in making compliant discipline decisions.

Let’s take a quick look at the Discipline Flow Chart and Discipline Documentation Form from the back cover of the Participant Notebook . . .

<brevily go over the Discipline Documentation Form>
In the “world” of special education discipline, students fall into two categories: students already identified or suspected of being a student with a disability (as shown on this flow chart) . . .
Or students not yet identified as a student with a disability. DESE has developed two flow charts to assist LEA staff to follow the IDEA discipline process and remain in compliance. It is suggested that special education staff as well as general education staff who work with discipline have access to and use these flow charts when disciplining students.
This slide shows the Discipline Decision Maker Chart. As you can see from this chart, making decisions about how to implement the discipline ALWAYS involves more than one person. Who is involved in the decision making process will depend up on the type of discipline procedure that is occurring.

<table>
<thead>
<tr>
<th>Type of discipline procedure occurring</th>
<th>Who is involved in implementing the discipline decisions</th>
</tr>
</thead>
<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>
</tr>
<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 must file for an expedited due process hearing</td>
</tr>
</tbody>
</table>
This slide shows the Department’s chart developed to assist LEAs to make compliant decisions regarding bus suspension and OSS. All of these resources are located on the DESE website on the Compliance Section’s Forms page.

<table>
<thead>
<tr>
<th>Student is suspended off bus and the student’s IEP shows transportation as...</th>
<th>And the student...</th>
<th>Does the day count as OSS?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Related service</td>
<td>Does not attend school</td>
<td>Yes</td>
</tr>
<tr>
<td>Related service</td>
<td>Attends school because parent provides transportation</td>
<td>Yes</td>
</tr>
<tr>
<td>Related service</td>
<td>Attends school because parent provides transportation and the school reimburses (or offers to reimburse) the parent for providing the “transportation service”</td>
<td>No</td>
</tr>
</tbody>
</table>
| Not a related service | Does not attend school | No
If student misses greater than 10 days due to bus suspension, the IEP team should reconvene to discuss behavioral concerns on bus and consider transportation as a related service.
Now it is time to actually make some decisions regarding the discipline process in our guided practice activity . . .

FIRST YEAR DIRECTORS:
- Divide the class into four groups.
- Each group gets one of the Cases (#1 - #4) and a copy of the Discipline Documentation Form.
- Have each group discuss and complete the Discipline Documentation Form for their case.
- Have each group share out their case and rationale for their decisions. Note correct answers are shown on slides following each case.

NOTE: Post version w/o case study and answers and then re-post w/ case study and answer slides after NDA.
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

Let’s take a moment to look at the first scenario. Robert is an 5th grade student who receives special education services under SSD. He was suspended for 1 day shortly after the start of the new school year for throwing food in the cafeteria. Then right before Thanksgiving he pulled the fire alarm in the hallway and received 5 days of OSS for that infraction. In the spring he was insubordinate to one of his teachers which earned himself 1 day of OSS. This totals 7 days of out of school of school suspension.

Let’s look at the discipline documentation form to see what action, if any, is required on behalf of the school district.
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 1. | Number of OSS days for this infraction: 1.  
Is the total number of days for this infraction greater than 107?  
- Yes. Go to #2.  
- No. Go to #3. |
| 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 107?  
- Yes, proceed to next question.  
- No—STOP. No special procedures required. |

Discuss slide
CASE #2: Kimmie

Kimmie is a 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 textbook; 5 days of OSS
- May 12 – Shoved a student in her locker; 5 day of OSS

The next scenario involves a middle school student. Shortly after the start of the school year Kimmie received 1 day of OSS for throwing food in the cafeteria. In December, she received 2 days of OSS for cursing at the math teacher and for walking out of his class. On Valentine's day Kimmie was mad at her boyfriend and tore up the decorations for the Sweethearts dance. She was given 1 day of OSS for that infraction. In the spring she hit a student in the head several times with her math book earning herself a total of 5 days of OSS. Right before the end of the school year she shoved a girl in a locker. This infraction earned Kimmie another 5 days of OSS. This gives Kimmie 14 days of cumulative suspensions for this school year.

Using the discipline documentation form let’s walk through the steps.
As I just said, Kimmie has been suspended for this infraction for 5 days and previously suspended for 9 days for a cumulative suspension totaling 14 days. It was determined that no pattern of suspension occurred because the behaviors she has been exhibiting are not substantially similar to one another, the length of time for each suspension has varied from 1 day to 5 days of OSS, and although the last two incidents are a little over a month apart the other incidents have occurred in the Fall, right before winter break and early spring. Therefore, the team must proceed to section A of the discipline documentation form.
This is where school personnel in consultation with at least one of Kimmie’s teachers’ has to determine whether or not Kimmie needs any services during her suspension. There are some factors that they have to consider when making this decision.

The first factor is, the length of the removal. In this case, on May 12th Kimmie was suspended for 5 days.

The next factor deals with the extent to which Kimmie has been removed previously. As you know, Kimmie has been cumulatively suspended for 14 days this school year. The slide shows the specific dates and length of removal for each suspension.

The last factor deals with her needs and educational goals. In this case, Kimmie has several medical diagnoses and is receiving services under OHI. Therefore, the individuals involved made the decision to provide 5 hours of homebound instruction to Kimmie for 4 days.

It’s important to carefully and accurately document decisions made through this process including the names and roles of the individuals involved in making the decision. And of course, document the date the decision was made.
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 – Cursed at his computer teacher when caught 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

Let’s look at another scenario. For Charlie, he has been cumulatively suspended 13 days this school year. Note that the original incident was for stealing and cursing at a teacher while the two subsequent infractions have involved inappropriate language and actions and were related to the paraprofessional in some way.
For Charlie you can see at the top that he was suspended for 5 days for this infraction. He was previously suspended for 8 bringing his total to 13 days this school year. This is where the team has to determine if a pattern had been created or not. In this case, the team agreed a pattern had been created because the proximity of the removals has been over the past 6 weeks and the behaviors have been pretty similar to one another because of the inappropriate language towards persons in authority. Therefore, the next step in the process is to conduct a manifestation determination to determine if the behavior in question is related to his disability or not.
When conducting a manifestation determination the LEA, parent, and relevant members of the IEP team have to review all relevant information in the student’s file, the child’s IEP, any teacher observations, and any relevant information provided by the parents. The team also has to determine if the conduct in question was caused by the child’s disability and if the conduct in question was result of the LEA’s failure to implement the IEP. If the student had a BIP the team also has to look at if the BIP was implemented as well. When a BIP is developed it becomes part of a student’s IEP.

After reviewing the information the team made the decision that the behaviors Charlie exhibited were not related to his specific learning disability in reading fluency. The team made this decision because these incidents did not occur during the time in which reading instruction occurred or a time where he was asked to use his reading skills. Therefore, the conduct is not a manifestation. This requires the team to proceed to section C of the discipline documentation form.
Because Charlie’s conduct was found to not be related to his disability school personnel may apply the same disciplinary procedures to Charlie as they could for a student without a disability. However, the IEP team has to determine services that will enable Charlie to –

- Continue to receive educational services to continue to participate in the general education curriculum, although it could be in another setting
- To progress toward meeting his IEP goals
- 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.

Finally, if a change of placement or services occur the parent must be provided with prior written Notice of Action and a copy of the procedural safeguards.
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. Her IEP includes a BIP based on an FBA conducted last school year after an incident of inappropriate comments and touching of another student.

- 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 when BIP was not being implemented; 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

The last scenario is a little different. In this scenario most of Lori’s behaviors are substantially similar to one another, the incidents occurred between September 1 to November 1 and the total amount of time suspended ranges from 2-5 days.
Lori has been suspended for a total of 13 days during the school year.

Can the LEA determine that the removals constitute a pattern and, thus, a change of placement?
In this case, Lori has an intellectual disability coupled with a history of emotional and behavior problems. . . And the team determined that the conduct in question is a manifestation of Lori’s disability.

Just like we did for Charlie, the team had to review all relevant information in Lori’s file, her IEP, any teacher observations, and any relevant information provided by Lori’s parents. The team also has to determine if the conduct in question is related to the disability and if the conduct happened because of the LEAs failure to implement the IEP. Remember that the BIP is part of Lori’s IEP so, in this case, since the BIP was not implemented during one of the incidents, the conduct is considered a manifestation of Lori’s disability. As a result of this decision we have to go to section D of the discipline documentation form.
Since relevant members of the IEP team found the conduct to be a manifestation of Lori’s disability the IEP team must decide if they need to conduct a FBA or if one has already been developed, review the existing BIP or modify the existing BIP to address the behavior related to this incident. In this case, the IEP team decided, since a new FBA was conducted prior to the behavior incident, to review/revise Lori’s existing BIP. In addition, the IEP has to make placement decisions. The options include returning Lori to the placement from which she was removed or, if the parent and LEA agree, change her placement as part of the modification of the BIP. In this case, the team decided to strengthen her BIP by increasing the frequency of behavior monitoring from daily to hourly and leave her in her current placement, for now.

Since no change of placement or services has occurred, no NOA is required to be provided to the parents.
Now that you have a good understanding of the discipline process and the multiple options available for outcomes, let's take a few minutes to talk about how to avoid common mistakes. We like to talk about these mistakes in terms of . . .
The top 6 teachable moments for school staff when dealing with discipline!
1. Provide Services When Needed

<table>
<thead>
<tr>
<th>&gt;10 days Consecutively or &gt;10 days Cumulatively (with pattern)</th>
<th>≤ 10 days Consecutively or &gt;10 days Cumulatively (without pattern)</th>
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</thead>
<tbody>
<tr>
<td>• MUST provide services beginning on Day 11</td>
<td></td>
</tr>
<tr>
<td>• The IEP team determines the services and location</td>
<td></td>
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<tr>
<td>• 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 . . .</td>
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<tr>
<td>• Factors to consider include</td>
<td></td>
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<tr>
<td>• length of the removal</td>
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<tr>
<td>• extent to which the student has been removed previously</td>
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<tr>
<td>• student’s needs and educational goals.</td>
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</tbody>
</table>

Number 1: Provide services when needed.

Remember that IF the disciplinary action last for more than 10 consecutive days OR more than 10 cumulative days in a school year WITH a pattern, the student MUST be provided services beginning on day 11 even if the behavior is determined to NOT be related to the student’s disability. This is because student’s with disabilities are entitled to FAPE. Even though the school can impose the same disciplinary action for the same duration as given to nondisabled peers, it is up to the IEP team to decide what services are required for the student to continue to participate in the general education curriculum and progress towards meeting goals in their IEP and the location of those services.

Now let’s look at the opposite situation. For any disciplinary action less than 10 consecutive days OR greater than 10 cumulative days in a school year without a pattern, the district determines the extent to which services are required beginning on day 11. The LEA must consider on a case-by-case basis the length of removal, the extent to which the student has been previously suspended and well as the student’s needs and educational goals. Some students will require services; others will not. This is not a one-size-fits-all decision. It is recommended that the rationale for the decision that a pattern does not exist be documented since the parent has the right to file due process if they disagree with the conclusion of the LEA.
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

Number 2: Providing the right type of services.

Special education services means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Specially designed instruction refers to adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability, and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

Homework allows the student to apply the information learned through the services provided. When the definition of special education services is compared to the purpose of homework, it is clear that homework, by itself, is NOT a service; rather it is a support provided after the certificated teacher has provided the instruction.

It is the responsibility of the designated people to determine the location of the services that will be provided to a student with a disability who has been consecutively suspended greater than 10 days in a school year or cumulatively suspended greater than 10 days in a school year with a pattern. Services do not have to be provided in the home. For example, school districts can provide services at the local library, on campus before or after school, if appropriate, or at the local jail, if allowable. The site selected depends on the unique needs of the child.

If for some reason there is a delay in the provision of services, it is the responsibility of the IEP team to determine if any compensatory services are owed to the child with a disability. The team has to determine if the delay in providing services negatively impacted the provision of FAPE.
Number 3: Make sure to have the right people involved in making the discipline decisions.

Always document the name and role of persons involved in making decisions related to implementing discipline for students with disabilities and be sure that the right group of people are involved in the decision making – different discipline situations have different required team members. When it comes to students with disabilities, it is never wise to have just one person making the decision. It is extremely important that administrator’s become familiar with the discipline process under IDEA and understand it implications when assigning discipline. It becomes an especially difficult situation when a superintendent is wanting to assign a 180 day suspension and the team determines that the behavior resulting in the disciplinary action IS a manifestation of the child’s disability and the student must be returned to the original educational placement.
4. Know When and How to Conduct a Manifestation Determination

- When must one 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

Number 4: Know when and how to conduct a manifestation determination.

First, when is a manifestation determination required? We found that most districts seemed to understand that every disciplinary action of more than 10 days consecutively MUST have a manifestation determination meeting. However, when the greater than 10 days was cumulative in a school year, districts had much more difficulty. Also as a result of the discipline review, we found that school districts are unclear for how to ascertain if the removals for cumulative days constitute a pattern of suspension. Documentation showed, more often than not, that many districts automatically conducted a manifestation determination regardless of whether it was a short-term or long-term suspension.

The key is that manifestation determinations are required ONLY when the disciplinary action results in a change of placement. And a change of placement occurs when a student is removed from their educational placement for more than 10 days. And for cumulative days, there must be a pattern for the greater than 10 days to be considered a change of placement. Remember that the LEA is who determines if there is a pattern and that decision must consider:
- Are the behaviors that led to each suspension substantially similar?
- What is the total amount of time suspended?
- What is the proximity of the suspensions/infractions to each other?
So, to determine if a pattern exists, the LEA should be looking at the current and prior discipline reports for the student.
What documentation do you look at during a manifestation determination? At this point, the team is determining whether the student’s disability had a direct and substantial relationship to the violation of school conduct, or if the conduct in question was a direct result of the LEAs failure to implement the IEP. It would be important to look at:

- The child’s IEP
- Teacher observations
- Relevant information provided by the parents
- The most recent evaluation report
- The results of any functional behavior assessments and/or behavior intervention plan
- Discipline history

Based on this information the team determines if the conduct is or is not a manifestation of the disability.

Finally, districts often forget that the timeline for conducting a manifestation determination meeting is 10 school days from the date of the decision to long-term suspend the student – NOT calendar days. Since building administration can only assign 10 days of OSS, the potential change of placement occurs only for cumulative 10 day situations with a pattern. The other potential time this decision would occur is when the superintendent recommends an extension to the 10 days of OSS assigned by the principal. In both situations, the IEP team must decide what services are required and where those services will take place.
Number 5: Know when to conduct a functional behavioral assessment or FBA.

Remember that an FBA is only **REQUIRED** when conduct **IS** a manifestation of the student’s disability.

However, the LEA **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.

It is very important to be proactive when dealing with behavior that results in OSS because students cannot benefit from specialized instruction and have access to the general education curriculum if they are not in school.
And finally, Number 6: Follow ALL the steps in the discipline process.

One of the easiest ways to follow the discipline process is to use the state discipline documentation form or a district made discipline form. This ensures that you don’t skip steps and complete all of the required steps. Remember to document, document, document! All decisions must be documented. Finally be sure to count OSS days accurately. As was said previously, if a student is given ISS and does not receive any services, that is considered OSS.
Now it is time for questions. Please note there is a recorded webinar covering the topic of discipline at the website noted on the slide.
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/

AGAIN... There are multiple ways to contact the Department. Please contact us if you have questions or need assistance! We are here to help you stay in compliance!

Have a wonderful school year!!