



Disability Rights

FLORIDA

Keeping the Behaviorally Challenged Student in School Learning

GAL Conference 2016

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Advocacy. Equality. Dignity.

Disability Rights Florida

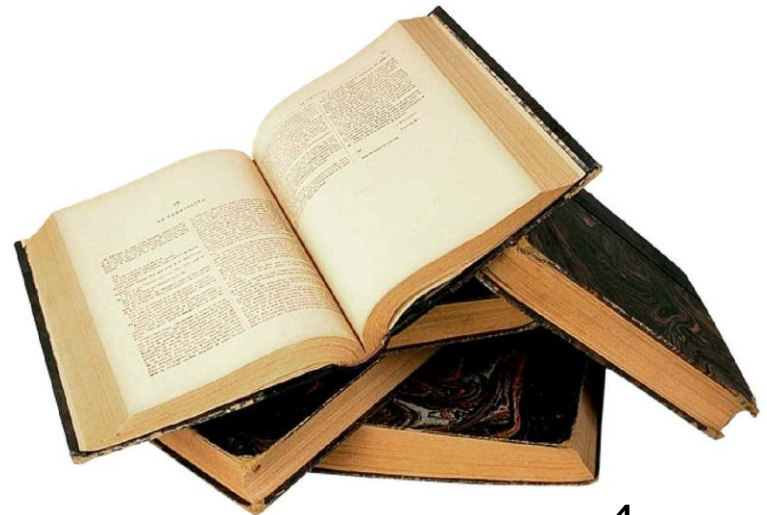
- Funding, responsibility, and authority under eight federal programs to protect the rights of Floridians with disabilities.
- A not-for-profit corporation since 1987.
- Main offices in Tallahassee, Tampa and Hollywood.
- Satellite offices in several other communities.

Our Mission

To advance the quality of life, dignity, equality, self determination, and freedom of choice of persons with disabilities through collaboration, education, advocacy, as well as legal and legislative strategies.

What We Will Cover In This Session

- Overview – Purpose of Discipline
- School Authority Regarding Behavior/Discipline
- Key Rules/Statutes
- What does IDEA say about Behavior/Discipline
- Suspension/Expulsion
- Manifestation Determination
- FBA
- PBIP
- Strategies



Philosophy

- School's are responsible for keeping all students safe.
- This responsibility often leads them down the path of punishment for the student who exhibited inappropriate behaviors.
- Many schools have difficulty focusing on the function of the behavior vs. the behavior itself.

Discipline

- Sometimes administration has difficulty seeing the behavior as a manifestation of the student's disability.
- Administration can get caught up in the need to enforce consequences without regard to the manifestations of the students disability to keep things "fair".
- Is it really fair to be punished for a manifestation of one's disability?

Legal Authority

- Individuals with Disabilities Education Act (IDEA) and Final Regulations (CFR)
- Section 504 of the Rehabilitation Act
- Florida Statutes
- State Board of Education Rules
- District School Board Policies
- Special Programs and Procedures



Suspension for Students with Disabilities

- Defined - a temporary cessation of educational services.
 - Federal law and state statutes regulate the length of a suspension, reason a suspension may be ordered and the procedure(s) which must be followed.
 - The Student Code of Conduct must conform with federal and state law.

Suspension Laws

- Ensure that discipline action takes into consideration the student's disability:
 - Ensure that the student's disability is taken into consideration when administering consequences (Manifestation Determination).
 - Require interventions/consequences meet the IEP needs of the student.
 - Define procedures for making these things happen.
 - Require that it be in accordance with the Code of Conduct/Discipline Matrix and not be discriminatory in nature.

Effects of Suspension/ Expulsion on Students



Coping Skills

- Students need to learn appropriate ways to cope with frustration and anger -- if they are in school, they can learn and practice those skills.
- When we send students home, they lose the opportunity to learn and practice those skills and we may reinforce the behavior.
- We need to address inappropriate behaviors and replace with appropriate behaviors.

What We Know

- Punitive discipline strategies breed fear, contempt and produce recidivistic behavior.
- Research does not support suspension as an effective method to teach replacement behavior.



Suspension and FAPE

- Rule of thumb
 - When the number of days of suspensions exceeds 10, then it can be considered a **change in placement**.
 - When this happens a variety of steps must occur— manifestation determination/IEP/FBA/PBIP.
 - These will be discussed in detail .

Expulsion

- Defined - a complete termination of educational services for a definite period of time.
 - Generally longer than a suspension.
 - Law requires that greater due process rights be afforded to all students who are at risk for expulsion .
 - A child with a disability can be expelled, but still must be provided a free and appropriate public education.

Due Process Rights of Students with Disabilities

- When a school district is considering either suspension for a cumulative period of over 10 days or the expulsion, of a student with a disability, or suspected to be a student with a disability, they must afford the student with certain special due process procedures.



Discipline

- School may make unilateral change in placement:
 - For 10 school days or less for students who violate the code of conduct.
 - Over 10 days a manifestation determination must be held and **IF NOT** a manifestation of the student's disability can be disciplined but **FAPE cannot be denied** and **IEP Team determines placement.**

Special Circumstances

- School personnel may recommend removal of a student to an interim alternative educational setting for **not more** than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a student:
 - Carries or possesses a weapon at school or school function;
 - Knowingly possesses or uses illegal drugs or sells at school or school function; or
 - Has inflicted **serious** bodily injury upon another person at school or school function.

Serious Bodily Injury

- Another special disciplinary circumstance occurs when a student has inflicted serious bodily injury on another person while at school, on school premises or at a school function. The definition of serious bodily injury, according to Section 1365 (h)(3) of Title 18, U.S.C. is:
 - ***bodily injury which involves - (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty***
- If a student has inflicted serious bodily injury on others, the student can be placed in an alternative setting for not more than 45 school days just as a student would be for illegal drugs and weapons.
 - (115 LRP 1141)***Central Dauphin School District***

Services

- Services during change of placement
 - Placement determined by IEP team.
 - Participation in general education curriculum.
 - Progress to meet IEP goals.
 - Behavioral services to prevent recurrence.
 - Related services continue.

Code of Conduct

- **All students** must meet the requirements of the Student Code of Conduct.
- The Student Code of Conduct must be in conformity with state and federal law.
- Students with disabilities must have the **disability considered** when implementing the Code of Conduct.
- Students with disabilities can receive consequences – the same as all students **under 10** consecutive/cumulative days.
- It is when the **10 Day Rule** becomes an issue, that IDEA becomes significant.



Discipline Overview

- It is when the “10 day rule” becomes an issue that IDEA and Section 504 of the Rehabilitation Act, etc. become significant.
- Students with disabilities are treated the same as their non-disabled peers, prior to the 11 day of suspension.

Discipline Overview

- When a student with a disability is suspended for 10 days the following must occur:
 - A Manifestation Determination Meeting must be held. (66 IDELR 294) Broward County School Board



Manifestation of the Disability

- The determination that there exists a **substantial** relationship between the student's disability and a specific behavior that usually results in disciplinary action outside the classroom and/or school setting (such as suspension).
- A manifestation determination must be made any time school officials are considering a disciplinary change of placement for a student with a disability.

Manifestation of the Disability

- A manifestation determination review would **not** be required unless the removal includes the 11th cumulative school day, in a school year, constituting a change of placement.
- 34 CFR §300.523(a).

MD

- If the MD reveals that the student's conduct was a manifestation of a disability, the student generally cannot be expelled or suspended for the conduct beyond the 10th day. See *Honig v. Doe*, [559 IDELR 231](#) (U.S. 1988); *S-1 v. Turlington*, [552 IDELR 267](#) (5th Cir. 1981); and *OSEP Memorandum 95-16*, [22 IDELR 531](#) (OSEP 1995).

Manifestation Determinations

- Manifestation determinations should be conducted by the IEP team and are **only required** when a student is subjected to a disciplinary change of placement.
- These changes should eliminate the need for unnecessary, repetitive IEP team meetings (no more S-1 vs. Turlington requirement).

Manifestation of the Disability

- If the LEA, parent and relevant members of the IEP team determine that either reason I or reason II below apply, the conduct **shall** be determined to be a manifestation of the student's disability:
 - I. If the conduct in question was **caused by, or had a direct and substantial relationship to,** the student's disability; **or**
 - II. If the conduct in question a **direct result of the LEA's failure to implement the IEP.**
- If the LEA, parent and relevant members of the IEP team determine that either I or II is applicable for the student, the conduct **shall** be determined to be a manifestation of the student's disability.

Manifestation Determination Means:

- Was the resulting behavior significantly related to the student's disability (not label)?
- Was this behavior adequately addressed through an IEP or Positive Behavior Intervention Plan?
- Would you expect a student with this disability, in these circumstances and under the supervision provided, to commit the behavior?
- Student cannot receive a consequence if it is a manifestation of his/her disability.



Manifestation Findings

- If the team determines that the behavior/conduct is **not a manifestation** of the disability then:
 - Relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which the procedures would be applied to student without disabilities, **except**:
 - The student must continue to receive IEP services and progress towards achievement of the regular sunshine state standards.
 - The student must receive a FBA and PBIP.
 - The IEP Team determines placement.

Parents and Manifestation Meetings

- Each decision is a **TEAM** decision.
 - Parents are an important part of this team
- If the parent disagrees with a decision or action, the parent has the right to request an expedited due process action.
- The hearing must be held within 20 school days and a resolution session within 7 days of the LEA receiving the notice of the due process complaint.

Individual Education Plan

- Review IEP.
- Present level of Performance should clearly document need for service.
- There should be goals and objectives to address behavior.
- Related services.
- Supplementary aids and services.

Definitions of Terms

- **Functional Behavioral Assessment (FBA):** A process for identifying relationships between a person's behavior and aspects of their environment.
- **Positive Behavior Intervention Plan (P)(BIP):** Strategies for effectively addressing behavioral problems that are proactive, educative, and functional in nature.

Best Practice

- Whenever behavior appears to be significantly interfering with the learning process and well before behaviors reach crisis proportions an FBA needs to commence.
- **Proactive** not Reactive.



Functional Behavioral Assessment And Positive Behavior Interventions

WHY?

- If behaviors are impeding the students ability to gain educational benefit a functional behavior assessment should be conducted and a positive behavior intervention plan should be developed.

When is a FBA and (P)BIP Warranted?

- Pattern of disciplinary removals.
- Considering a change in placement.
- Intrusive methods to manage behavior.
- Risk of harm to people or property.
- Exclusion from integrated activities.
- Less systematic strategies have failed.

Functional Behavior Assessment

- The first step is to conduct a Functional Behavior Assessment or FBA.
 - Observation and **data** collection.
 - What is the antecedent?
- Behavior is related to the context where it occurs.
- Behavior has a purpose or function.
- Behavior is often communication.



Suggested FBA Procedures

- Observations of the behavior in one or more settings at various times.
- Interviews with individuals familiar with student, such as family, teachers, and student.
- Review of records.
- Formal and informal measurement.

FBA

- Without analyzing the behavior the school would not recognize the pattern and the student's behavior will continue to become more challenging.
- Behavior is a form of communication.
- For non-verbal students, behavior is often their only method of communication.

Personnel Qualifications

- Effective problem-solving skills
- Knowledge about the numerous possible causes of behavior problems
- Knowledge of curriculum and instruction at appropriate developmental levels



Personnel Qualifications

- Ability to develop and implement effective interventions based on behavioral function
- Knowledge and skill in creating objective, measurable intervention monitoring systems
- Ability to conduct assessments that guide the development of effective interventions

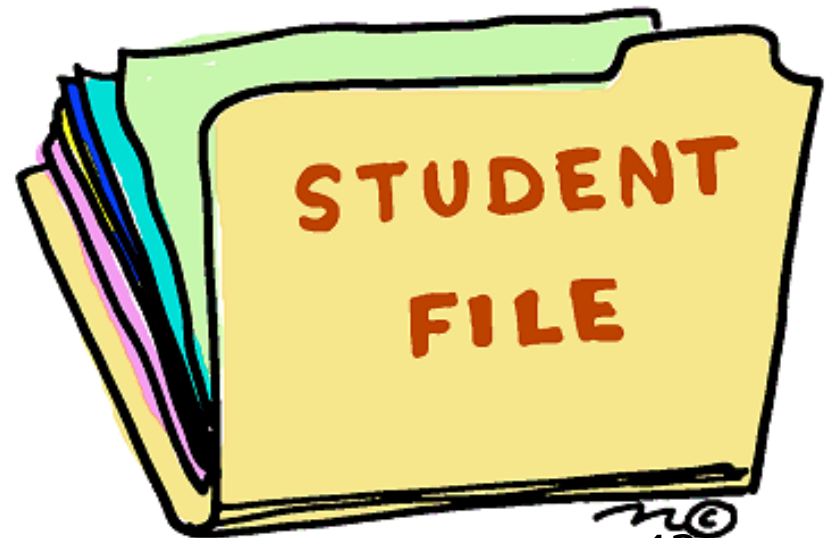
FBA Components

- Identify and describe target behavior
- Indirect assessment-review of events, environmental factors
- Direct assessment-observation and recording of data
- Data analysis
- Strengths of student
- Reinforcement determination
- Hypothesis development



Documentation Review

- Psychological and/or Psychiatric evaluation report
- Psycho-Social Report - developmental history
- IEP
- Eligibility staffing form
- Data
- Disciplinary records
- Progress reports



Positive Behavior Intervention Plan AKA “PBIP”

- Practical, workable, reasonable
- Specifics: time, duration, setting, roles
- Buy-in from student and persons implementing plan
- Activities should target student needs identified from FBA
- Determine what is reinforcing to student

(P)BIP

- Replacement behavior - must be realistic
- Consistent and reasonable duration for intervention implementations
- Possible initial escalation of behaviors
- Evaluate effectiveness of PBIP
- Student must have “buy in”



The Plan (P)(BIP)

- It needs to address the target behavior(s).
- It needs to be based on data.
- It needs to be realistic.
- It needs to be positive and not punitive in nature.
- If it isn't working, it needs to be addressed.
- All staff working and in contact with the student need to be trained in the plan.

Things to Look For in a Positive Behavior Intervention Plan

- Positive interventions
- Natural consequences
- Not focused on negative consequences or punishment
- Teaches appropriate behavior
- Based on data from a comprehensive FBA
- Plan for training all staff that work with the child
- Plan for monitoring and collection of data
- Incorporates the families concerns

PBIP

- A positive BIP should be developed on the **data** collected in the FBA.
- The positive BIP **must be individualized** to meet the unique needs of the student.

Strategies

- Reward desired behavior.
- Notice behavior cues.
- Provide space.
- Avoid confrontation.
- Seize teachable moments.
- Provide appropriate replacement behavior.

Suspensions and Positive Behavior Intervention Plans

- If a student's IEP or positive behavior intervention plan addresses a particular behavior, it generally would be **inappropriate** to utilize some other response, such as suspension, to that behavior (and could be viewed as discrimination).

Restraint & Seclusion

- Restraint and Seclusion is a crisis intervention and should not be included in an Individual Education Plan or a Positive Behavior Intervention Plan.
- These crisis interventions are not researched based nor **data** driven, to support improvement of behavior.

Research

- Research shows most restraint and seclusion interventions could have been prevented through:
 - positive behavior intervention,
 - appropriate services, and
 - qualified school staff who are appropriately trained.

Recommended Actions

- IEP committee address future and potentially difficult situations by including in the IEP specific goals/interventions/consequences.
- Evaluation data may need to be collected for consideration in a later manifestation determination.

Q & A

- When are manifestation determinations required?
- Who participates in the determination?
- What data should/should not be considered?
- Would a student with a disability, described by this profile, placed in this set of circumstances, be expected to act in this manner?

How Do I Effectively Advocate for the Student During These Meetings?

- First have a **student profile** ready for the meeting.
 - Review all current evaluation reports, referrals and disciplinary reports.
 - Take note of anything in the report that describes the student:
 - Easily distracted
 - Poor impulse control
 - Problem with authority figures
 - Responds well to verbal praise
 - Works best when corrected one on one

Process Steps

- Step 1: Develop student profile.
- Step 2: Summarize prior interventions.
- Step 3: Verify current placement .
- Step 4: Describe the incident.
- Step 5: Make a manifestation determination.



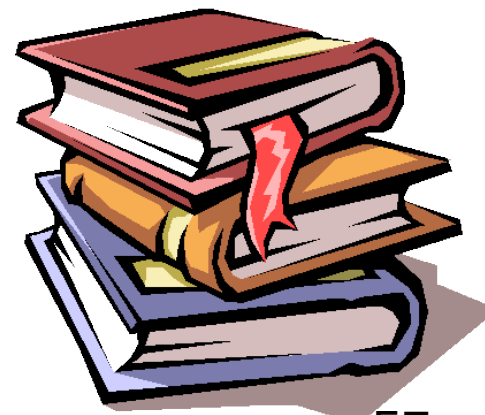
Advocacy

- The student is more than an eligibility/label.
- He/she has unique characteristics that must be considered and eligibility does not dictate the need.



Next Step

- Making the determination is the first step.
- Next we want to ensure that the final intervention fits the “violation.”
 - Target the intervention – develop entrance and exit criteria.
 - Monitor effectiveness.
 - Re-assess if necessary.



Questions and Answers





Disability Rights

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