

# **SPECIAL EDUCATION ISSUES FOR BUILDING ADMINISTRATORS**

**2013 Oregon School Law Conference  
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## **MOST FREQUENTLY ASKED QUESTIONS: STUDENT DISCIPLINE**

Can students be removed for more than ten school days if the removal isn't called a suspension or an expulsion?

How should disciplinary action be handled if the student is not yet identified, but is in the middle of being evaluated for IDEA or Section 504 eligibility?

## **MOST FREQUENTLY ASKED QUESTIONS: IEP MEETINGS**

Which teachers need to attend IEPs meetings, and how long do they need to stay?

What if parents are divorced and in the middle of a custody battle, and there is a dispute over who can attend the IEP meeting or who can access the student's education records?

## **MOST FREQUENTLY ASKED QUESTIONS: PLACEMENT**

When can a student be placed on home tutoring or on a reduced day schedule?

How can a building administrator support all staff when a student is struggling behaviorally in the general education classroom?

## **MOST FREQUENTLY ASKED QUESTIONS: STAFF**

How can a building administrator respond when parents are using up too much of a teacher's time through e-mails, calls, etc, or when a parent wants to observe or otherwise be present in a teacher's classroom?

How should staff respond to parent requests or information about a student's special needs?

## **Q&A**

# I.D.E.A. DISCIPLINARY RULES

**Rule:** A disabled student may be suspended for up to ten cumulative school days in a school year by using the same procedures as applicable to non-disabled students.

**Manifestation determination needed?** No

**Functional behavioral assessment needed?** No (but should be considered)

**Educational services during suspension needed?** No

*Practice Tip:* Keep special ed apprised of the number of days of suspension that each special education student has per year

**Rule:** Other disciplinary measures (e.g., in-school suspension, Saturday School, detention, community service, etc.) may be imposed on disabled students using the same procedures as applicable to non-disabled students.

**Manifestation determination needed?** No

**Functional behavioral assessment needed?** No (but should be considered)

**Educational services during suspension needed?** No

*Practice Tip:* If the student is spending a considerable amount of time away from his/her placement (e.g., in the principal's office every day), this may constitute a change in placement or a failure to implement the IEP

**Rule:** A disabled student may be suspended for more than ten cumulative school days in a school year by using the same procedures as applicable to non-disabled students so long as the removals are not a "pattern" that constitute a change in placement.

**Manifestation determination needed?** No

**Functional behavioral assessment needed?** Yes (IEP team must convene within 10 business days to develop plan to assess or review/revise existing behavior plan)

**Educational services during suspension needed?** Yes (regular and special ed curriculum - personnel decides which services provided and location - could be home tutoring - could it be simply allowing the student to make up work missed?)

*Practice Tip:* As a rule of thumb, inform the student's case manager when the number of days of suspension reaches 15, and do not go over 20 days in a school year, as anything above 20 may be deemed to constitute a "pattern"

**Rule:** A disabled student, like a non-disabled student, may not be "suspended" for more than ten consecutive school days; any amount exceeding ten days in a row constitutes an expulsion and due process, including an expulsion hearing, must be provided

*Practice Tip:* Expulsion hearing must be held and decision rendered within ten school days of the student's removal for the misconduct, or else the student must be allowed to return to school until a decision is reached

**Rule:** A disabled student may be expelled (i.e., excluded from school for more than ten consecutive school days or 20 cumulative school days) by using the same due process proceedings as used with non-disabled students if the IEP team concludes that the student's misconduct was not a manifestation of his disability.

**Manifestation determination needed?** Yes (within 10 school days - must do sooner)

**Functional Behavioral Assessment?** Yes

**Educational services during expulsion needed?** Yes (IEP team drafts interim placement (such as home tutoring or alternative ed) and interim IEP to be implemented at the interim placement during the period of expulsion)

*Practice Tip:* Expelling a special education student may not be worth the effort, as the student will have to be provided with educational services in an interim setting during the period of expulsion - the IEP team may instead simply meet and change the IEP and placement to that interim setting, as the student's new placement, without going through the disciplinary process

**Rule:** An IEP team may change a student's placement at any time, and the new placement will go into effect without parental consent unless the parent files for due process, in which case "stay put" applies

*Practice Tip:* "Stay put" can be avoided with a 45-day interim alternative educational placement if the student's misconduct involved weapons, drugs, or infliction of serious bodily injury. Further, "stay put" is the IAES if the team found that the student's misconduct was not a manifestation of his disability.

*Practice Tip:* There is no need to use the 45-day interim placement unless "stay put" is invoked, as the IEP team may change the student's placement at any time; however, the IEP team may decide on its own to make a placement change to an interim placement such as home tutoring (for whatever length of time it deems appropriate) if it is waiting on more evaluative data or a slot in another placement

# 2004 IDEA REGULATIONS: Student Discipline

	Manifestation Determination <sup>1</sup>	FBA/BIP <sup>2</sup>	FAPE <sup>3</sup>
Removal of less than 10 cumulative days	NO	NO	NO
Removal of more than 10 days cumulatively, but not so much as to constitute a "change in placement"	NO	YES	YES <sup>4</sup>
Removal of more than 10 consecutive days or its cumulative equivalent to constitute a "change in placement"	YES	YES	YES <sup>5</sup>

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<sup>1</sup> The IEP team must convene for a manifestation determination 10 school days after the date on which the student is removed from school.

<sup>2</sup> FBA - Functional Behavioral Assessment  
 BIP - Behavior Intervention Plan  
 For a child who does not already have a current FBA, the IEP team must convene and draft an "assessment plan" within 10 business days after the student has been removed for more than 10 consecutive days or for more than 10 cumulative days (if it constitutes a "change in placement"), and must "as soon as practicable" after the FBA is conducted meet to draft a BIP. For a child who has already had an FBA and BIP, the IEP team must convene within 10 business days to review the BIP and any related portions of the IEP, and modify as needed.

<sup>3</sup> Whether the student must be provided with FAPE during the period of removal from school.

<sup>4</sup> A district official, in consultation with the student's special education teacher, determines what constitutes FAPE during the period of removal sufficient to enable the child (a) to appropriately participate in the general curriculum, and (b) appropriately advance toward his/her IEP goals.

<sup>5</sup> IEP must be implemented, or interim IEP must be drafted by the IEP team.

## **Three possible outcomes when an expulsion or a removal constituting a "change in placement" occurs:**

### **1. IEP team completes manifestation determination and finds that misconduct was not a manifestation of the disability**

- \* Expulsion hearing proceeds and student may be expelled
- \* Student must be provided with alternative education constituting a FAPE during the period of expulsion, including implementation of his/her IEP
- \* IEP team meets to draft interim IEP and placement for period of expulsion
- \* Interim IEP must provide for access to regular education curriculum, must address the behavior that resulted in the misconduct (through FBA/BIP or review of existing BIP) and should not wholly eliminate any areas of service in prior IEP
- \* FBA is conducted and BIP drafted if not already in existence

### **2. IEP team completes manifestation determination and finds that misconduct was a manifestation of the disability**

- \* Expulsion proceedings are halted
- \* IEP team convenes to review the IEP and revise, if necessary, including conducting an FBA and then possibly adding a BIP
- \* Placement team convenes to consider changing placement

### **3. Student is either expelled (if no manifestation found) or placement is changed (if manifestation is found) and parent files for due process and institutes "stay put"**

- \* Student remains in prior placement unless misconduct involved weapons, drugs, or infliction of serious bodily injury OR no manifestation was found
- \* If weapons/drugs/serious bodily injury misconduct OR if no manifestation was found, IEP team can unilaterally place student in interim alternative education setting (and draft interim IEP / placement accordingly) for 45 days
- \* Interim alternative educational setting must provide FAPE, in that (a) IEP (or newly drafted interim IEP) must be implemented; (b) student must have access to regular education curriculum; and (c) IEP must be modified, with BIP or otherwise, to address precipitating behavior

## **RED FLAGS AND WARNING SIGNS: PROACTIVE STEPS FOR BUILDING ADMINISTRATORS**

1. Ensure that all staff have been regularly trained in the use of your building's pre-referral and referral processes.
2. Review with your staff the "red flags" for pre-referral: Decline in grades / academic achievement, increase in behavior problems, drop-off in attendance.
3. Train staff to use the pre-referral process as a way of addressing other information obtained from parents and students, including medication issues, excessive parent involvement in student's schoolwork and/or homework, and any other personal information passed on to staff that may impact the student educationally.
4. Designate yourself or another individual and instruct staff to inform that individual immediately if staff learn from a parent or student that the student is obtaining a private evaluation, private tutoring or psychological services, has been hospitalized, is considering a move to a private or residential placement, or is dissatisfied with school services and/or looking for the school to fund private services.
5. Ensure that staff are aware of how to communicate with the special ed case manager if a special ed student is not doing well in class behaviorally or academically, or if "new" problems are arising (e.g., behavior problems for an LD student).
6. Document communications with parents regarding any issues or concerns they raise about the student's educational program, or any inquiries they make regarding public funding of private services.
7. All staff should notify a designated person immediately if they learn that a student has been withdrawn and placed in a private day or residential program.
8. Notify the special education director immediately if staff receive behavior rating scales, forms to complete, or are in any way contacted by a parent or outside specialist related to an outside evaluation and/or a private program admissions process – instruct staff to NOT fill out any forms or discuss the student with any outside service provider or evaluator until receiving the okay from the special education director.

# The Well-Conducted IEP Meeting

- I. An accurate, timely IEP meeting notice**
  - listing meeting participants
  - providing the notice in advance of the meeting
  - carefully considering the purpose of the meeting
  
- II. The set-up**
  - agenda
  - ground rules
  - time limits
  - prep with team members
  
- III. Roles at the meeting**
  - everyone participates
  - the facilitator
  - the note taker
  - input needed from regular ed staff
  
- III. Being prepared to answer the “hard questions”**
  - why a goal isn’t necessary or isn’t an “area of need”
  - how you determine what is “reasonable progress”
  - how you determine service levels
  - why an accommodation isn’t “necessary”
  - what “least restrictive environment” means
  
- IV. How to process disagreement amongst team members and still complete the IEP meeting**
  - when you should – and shouldn’t – terminate the meeting
  - excluding a participant from the meeting
  - be prepared for a lack of consensus at IEP meetings
  - strategies to obtain and retain control of the meeting process
  
- V. After the meeting**
  - providing copies of the meeting minutes
  - providing a copy of the revised IEP
  - providing notice of special ed action
  - meeting applicable timelines

## **REGULAR EDUCATION TEACHERS: YOUR RESPONSIBILITIES UNDER SECTION 504 AND THE I.D.E.A.**

**DO** help identify students who might be eligible under Section 504 or the IDEA.

**DO** attend every IEP or 504 meeting at which your attendance is required.

**DO** inform the case manager ahead of time if you have a schedule conflict or if you will need to arrive late or leave early to an IEP or 504 meeting – this information may require the rescheduling of the meeting.

**DO** provide feedback (written or oral) to the case manager, prior to the IEP/504 meeting, about how the student is performing in your class and whether the current accommodations/modifications are successful and/or necessary.

**DON'T** be a bump on a log at the IEP/504 meetings; be an active participant when you attend IEP/504 meetings, especially when the team is discussing the student's present levels of performance, the need for accommodations/modifications, and placement options.

**DON'T** forget to inform the case manager BEFORE the IEP/504 meeting if you have information that may raise concerns at the meeting (e.g., the student's lack of progress, issues raised with you by the parent, failure to implement the accommodations/modifications, etc).

**DO** design a system to use in your classroom to enable you to track which students need which accommodations/modifications.

**DO** timely report to the case manager problems or questions about an IEP/504 student's grades, attendance, behavior, your understanding of and ability to implement the accommodations/modifications, and if you believe the accommodations/modifications aren't necessary or aren't working.

**DON'T** decide on your own not to implement any of the accommodations/modifications that pertain to your class on a student's IEP or 504 plan – if you think the accommodations/modification isn't working or isn't needed, notify the case manager but continue making a good faith effort to implement it until and if the IEP team reconvenes and removes it from the IEP.

**DON'T** modify a student's curriculum (and grade) unless the IEP team has made this decision and you receive assistance in this course of action from the case manager.

# CHECKLIST FOR EVALUATION OF SPECIALISTS

## **1. Review students' IEPs prior to teacher observation and during observation look to see if:**

- \* Instruction is being provided in the areas specified in the IEP (e.g., math, reading, etc)
- \* Instruction matches the goals and objectives (i.e., the lesson plans and the resulting instruction are targeted toward the skills outlined in the goals and objectives, and are at the level of instruction appropriate for obtaining those goals and objectives)
- \* Instruction is being provided at the correct level of difficulty, based on the PLEP in the IEP and any subsequently collected data (may be necessary to ask the teacher about recent data probes or other data collected recently)

## **2. Attend IEP meetings and determine if:**

- \* Special educator is organized and prepared with appropriate materials and an agenda
- \* All individuals who are listed on the meeting notice are present
- \* Special educator begins the meeting on time, provides appropriate introductions and starting comments, keeps the meeting proceeding at an appropriate pace, ensures that all individuals have an opportunity for input and that the appropriate etiquette is observed and the appropriate tone is maintained throughout the meeting
- \* Special educator ensures that he/she (or another individual) takes meeting minutes
- \* Special educator brings the meeting to conclusion in a timely manner after ensuring that the purpose(s) of the meeting have been met (e.g., a placement determination has been made, etc) even if all parties have not reached consensus
- \* Special educator deals appropriately with any dissent, disagreement among team members, or inability to reach consensus by ensuring all parties have an opportunity to speak, by summarizing the area of dissent and how the dissent will be dealt with (e.g., the district's determination is the final one) and moving the team on to another topic in a timely manner

## **3. Supervision of instructional assistants**

- \* Instructional assistants delivering direct instruction to students should be equipped with lesson plans (at least weekly) that specify teaching techniques/methodologies, teaching materials, and the goals/objectives (underlying skills) that are to be worked on
- \* Special educator has a system in place for reviewing data collected by instructional

assistants and “meeting” with instructional assistants to determine students’ weekly progress, as well as for the special educator to administer his/her own data probes and assessments to formally assess students’ progress toward IEP goals

**4. Systematic procedures – check to see if special educator has a system set up to:**

- \* Indicate which students’ IEPs are up for annual review
- \* Indicate which students are up for three-year re-evaluations
- \* Provide multiple contacts (at least one in writing) to parents for IEP meeting notices
- \* Regularly check on special education students’ grades, attendance, and behavior, and determine whether “red flags” in these areas exist to indicate the need for an IEP meeting
- \* Regular check-ins with gen ed to determine whether IEP accs/mods are being implemented successfully

**5. Interaction with regular educators and other school staff:**

- \* Special educator should be able to establish regular contact with each of his/her students’ regular educators, including communication of accs/mods to gen ed (including any new teachers mid-year or after semester change)
- \* Indicators that special educator has opened a line of communication with regular educators, and the regular educators view special educator as a resource
- \* Special educator has followed through on any requests from other staff for assistance or materials

**6. Parent communication:**

- \* Special educator communicates with parents as required on the IEP, as documented by log or e-mail records (e.g., if a student’s IEP requires daily/weekly notebook sent home)
- \* Special educator issues progress reports as often as regular education students receive report cards, that contain all legally required information (e.g., how students are progressing toward annual IEP goals and whether that progress is sufficient to allow them to attain the goals by the end of the IEP period)

# **Steps to Effective Supervision in Special Education Programs**

## **1. Before Beginning of School Year**

- \* Clarify who will supervise which staff (assistants, itinerant staff, role of special education director)
- \* Review most recent evaluations of all staff you are assigned to – note particularly any teachers who will be in third probationary year, any aides still in probationary period
- \* Review collective bargaining agreements and district procedures on evaluation
- \* Make a chart or notebook of all staff you supervise and what evaluation process will be used, goal areas for improvement
- \* Make sure all staff are aware of the procedures and standards for evaluation
- \* Initiate plan of assistance for any teachers where such a plan was indicated in end-of-year evaluation the previous year
- \* Plan staff development on topics where many staff need improvement, and/or where requirements are changing
- \* Ask special ed case managers to keep a status report on all students on their caseload or referred during the year

## **2. September – October**

- \* Do an initial round of drop-in observations on all staff, if possible
- \* Write up observations and hold post-observation conferences for all probationary employees and any employee with known performance deficiencies or difficulties
- \* Finalize goals with teachers, focusing on areas of weakness, where there are district-wide goals, or remediation necessary
- \* Review selected special education files maintained by staff, especially probationary and any staff with noted performance issues

## **3. November – December**

- \* Initiate plan of assistance for any probationary teacher where there is doubt of renewal
- \* Schedule time to observe staff in IEP meetings
- \* Do repeat observations in any classrooms with problems
- \* Consider “buddy” approaches for newer teachers and/or teachers w/ changed assignments
- \* Consider “team review” process to review randomly selected IDEA paperwork

## **4. January – February**

- \* Conclude any plan of assistance and recommended renewal / nonrenewal as indicated
- \* Initiate remedial process for any contract teacher who is being nonextended
- \* Continue observations, especially looking for (a) lesson plans following IEP goals and objectives; (b) individualizing instruction; and (c) proper teacher supervision of assistants
- \* Ask all special education teachers to provide a status report of all students under their case management (including those in the process of being referred / evaluated)

## **5. March – May**

- \* Zero in on any problems or concerns regarding contract teachers or post-probationary assistants to prepare for spring evaluation report
- \* Return for observation in all classrooms, looking for evidence of follow-up and/or correction based on suggestions given during fall round of observations
- \* Do multiple observations or file review for teachers where inadequate progress is being shown
- \* Seek assistance from other administrators as needed

# EVALUATING EDUCATIONAL ASSISTANTS

1. Clarify the supervisory and evaluative roles of the special education director/coordinator, the school principal, and the teachers. Consider any classified CBA language.
2. Prior to conducting an evaluation, ask the EA for copies of all lesson plans or any other documentation for the week that the EA has been provided by the teacher.
3. When conducting classroom observations, observe the interactions between the EA and the students; refer to the lesson plan that the EA has been provided by the teacher.
4. When observing, take note of the EA's skill in dealing with student behaviors (e.g., positive reinforcement, ability to keep students on task and bring them back to task, relationships that the EA has formed with the students, etc)
5. Ask the EA to produce data collection documentation for each student and explain to you how and why data is collected and what use is made of the data.
6. In evaluating how the EA interacts with the supervising teacher and with other adults, consider observing during the teacher's weekly meeting with the EA, or other scheduled communication periods between the teacher and EAs.
7. Gather input from the teacher and any other certified or administrative staff in the building who work directly with the EA; however, if possible use this information as a "red flag" that directs your observations and data collection, not the "final word" on the EA's performance.
8. Ensure that teachers and building administrators clearly understand how and to whom any concerns about the EAs should be expressed. Complaints from other staff and parents can be considered as part of the evaluation process, but make sure that any complaint provision in the classified CBA is followed.