



Beyond the Behavior:

Exploring Strategies for Responding to Mental Health and Aggressive Students



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Caution!

We speak in general terms today. The specific facts of each situation can make a difference in the legal principles that apply.

This presentation must not be treated as legal advice about any specific situation.

Due to the rapidly changing nature of the law information in this presentation may become outdated.

What you'll hear about today:

Child Find

Evaluations

Eligibility

Placement,
Services &
Supports

Other
Students

Student
Discipline

Personnel

Hypotheticals



Child Find

The IDEA's child find mandate requires that districts seek out students who are potentially IDEA eligible and refer those students for an evaluation.

Child find is the **affirmative, ongoing** obligation of states and local districts to **identify, locate, and evaluate** all children with disabilities residing within the jurisdiction who are in need of special education and related services. 34 C.F.R. 300.111

Child Find

Under 34 CFR 300.11(C) child find must include:

- Children who are suspected of being children with disabilities under 34 CFR 300.8 and in need of special education, even if they are advancing from grade to grade; and
- Highly mobile children, including migrant children

What are the consequences of a child find violation?

- Failing to meet child find requirements may constitute a denial of FAPE.
- The violation may entitle the student to compensatory education or tuition reimbursement.

Child Find

What may put you on notice of a child find issue?

- **Excessive absences potentially linked with medical conditions**
 - If a student is excessively absent and the District is aware the student has a medical condition that may be causing the absences, the district may have reason to suspect a disability.
- **Parent pickup for behavior problems**
 - If a student's behavior is worsening to the point where you must call parents repeatedly to pick up the student early, it is time to consider a referral for evaluation
- **Ineffective section 504 accommodations or languishing in the RTI process**
 - If a student has been on RTI for a significant amount of time or on a 504 plan with appropriate accommodations, but no improvement then it may be time to consider a referral
- **Multiple hospitalizations**
 - If a student has had repeated psychiatric hospitalizations, that information may be sufficient to create notice that a student meets IDEA criteria for emotional disturbance and trigger child find.
- **Severe Behaviors that Persist in Young Students**
 - If a child's behavior is extreme and persistent and they do not respond to informal interventions (or RTI interventions) then it may be a behavior-related disability.
- **Request for Evaluation or Receipt of a Private Evaluation or Medical Report**

Child Find: Hypotheticals

- #1: You have a 2nd grade student that is on a 504 plan for ADHD. This semester the principal has had to call the parent to pick up the student early 10 times due to disruptive classroom behavior that could not be addressed by the school.
- #2: A 9th grade student has been absent for weeks at a time this semester. When contact is made with the parent you are told that the student has been hospitalized for anxiety and depression and that she was also hospitalized throughout middle school for similar concerns.



Evaluations

The background of the slide is a close-up, high-angle photograph of a bubble sheet. The sheet is filled with a grid of bubbles, each containing a number from 1 to 4. A black pen is positioned diagonally across the sheet, with its tip pointing to one of the bubbles. The lighting is soft, creating a slight shadow of the pen on the paper.

- Performed to identify a “child with a disability” as defined by IDEA
- Required before the provision of special education and related services

Evaluations: FBA

Designed to uncover the purpose behind a student's problem behavior.

The purpose of an FBA is to isolate a target behavior and develop a hypothesis regarding the function of the target behavior.

A target behavior is one that interferes with a student's ability to progress in the curriculum and to achieve the student's IEP goals.

Once the target behavior is identified and the hypothesis is developed, a positive behavior intervention plan (BIP) can be prepared to address the target behavior with strategies and interventions, if necessary, or the target behavior can be addressed using a more formal approach.

Evaluations: FBA

When is it required?

- If an MDR is held and the team determines the behavior is a manifestation of the student's disability, the IEP team **MUST** conduct an FBA (if there is not already a recent FBA) and implement or modify a BIP for the child. 34 CFR 300.530(f)

When is it discretionary?

- IEP teams have discretion on when to conduct an FBA. Must conduct an FBA if doing so is necessary in order to develop an appropriate IEP to provide FAPE to the student.
- Examples: Behaviors that affect attendance, such as anxiety-related school avoidance may trigger a district's duty to conduct an FBA; Increased aggression or property destruction; Task avoidance; Not completing assignments

Evaluations: FBA

Procedures for Conducting an FBA

- No Procedure set forth by State Law or the IDEA specific to an FBA
- Generally includes
 - Defining the Problem Behavior
 - Collecting Data on the antecedents and consequences of the behavior (“ABC data”); and
 - Developing a hypothesis about the function of the behavior
- If an FBA is an evaluation under the IDEA it must comply with the IDEA evaluation procedures at 34 CFR 300.304 through 34 300.311
 - Consent
 - Drawing information from a variety of sources, etc.
- Cobb County Sch. Dist. v. D.B. 66 IDELR 134 (N.D. Ga. 2015): An evaluator’s failure to collect sufficient data on the consequences of the child’s aggressive behaviors undermined the FBA’s conclusion that the child’s tantrums were to avoid the academic demands of kindergarten.

Who can conduct?

- The IDEA does not specify who is qualified to conduct FBAs. There is no requirement that a BCBA or any other specific individual conduct an FBA.
- Must make sure whoever is conducting the FBA is adequately trained.

Can they get an IEE?

Evaluations: FBA

- How do we use an FBA?
 - The IDEA requires that IEP teams consider behavior management when a student's behavior is interfering with their ability to benefit from educational programming.
 - The IDEA states the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning of that or others." 34 CFR 300.324 (a)(2)(i).

Evaluations: Comprehensive Evaluation

- A comprehensive psychoeducational evaluation will also include tools to address a student's behavior.
- Observation(s)
- Parent/Private reports
- Rating Scales:
 - Parent
 - Teacher
 - Self

Eligibility

Key: An educational disability that negatively impacts learning

Eligibility: In General

ALTHOUGH CERTAIN ELIGIBILITY CATEGORIES FOCUS MORE ON A STUDENT'S BEHAVIOR FOR ELIGIBILITY PURPOSES, WE SEE BEHAVIOR ISSUES THAT MUST BE ADDRESSED THROUGH THE IEP PROCESS IN A RANGE OF ELIGIBILITY CATEGORIES.



DON'T GET HUNG UP ON THE ELIGIBILITY CATEGORY—INSTEAD FOCUS ON WHAT YOU CAN DO TO PROVIDE SUPPORT TO ADDRESS THE BEHAVIOR CONCERNS.

Eligibility: Categories

- Emotional Disturbance
 - A condition exhibiting one or more of the following characteristics “over a long period of time and to a marked degree that adversely affects a child’s educational performance.”:
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
 - Inappropriate types of behavior or feelings under normal circumstances
 - A general pervasive mood of unhappiness or depression
 - A tendency to develop physical symptoms or fears associated with personal or school problems

34 CFR 300.8(c)(4)(i)

IEP Development

Placement, Services, Accommodations & Supports

IEP Development: Placement

- Each LEA must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities.
- The continuum must:
 - Include the alternative placements listed in the definition of special education under 34 CFR 300.39 (instruction in regular classes, special classes, special schools, home instructions, and instruction in hospitals and institutions; and
 - Make provisions for supplementary services to be provided in conjunction with regular class placement. 34 CFR 300.114(b)

IEP Development: Placement

- A district can place a child in a particular classroom or school based on the availability of special education services, but it cannot allow such concerns to dictate the child's placement on the LRE continuum.
 - What about staffing issues?
- There is no requirement in the IDEA that a student be placed and fail in a less restrictive setting before moving to a more restrictive one.
 - If the IEP team decides it is necessary you can “skip” a stop on the continuum of placements.

IEP Development: Placement

- Placements on the Continuum from Least Restrictive to Most Restrictive
 - General Education Classroom
 - General Education Classroom with Accommodations and modifications
 - General Education Classroom with Individualized Instruction
 - General Education Classroom with pull-out services
 - Part-time in a general education classroom with most of the day in another setting
 - Self-contained special education classroom
 - Special day school
 - Residential treatment facility or hospital
 - Home instruction

IEP Development: Placement

- Least Restrictive Environment Mandate
 - To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; AND
 - Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.

The LRE mandate does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such a benefit, the child is entitled to be placed in a more restrictive program.

IEP Development: Placement

- **Practical Guidance:**

- Consider a range of placements on the continuum and document that the team considered multiple placements and why those are not appropriate to meet the specific needs of the student.
- If you have a student who needs a therapeutic placement, this is an area of flux in our state.
 - Build your own program or band together with other nearby districts to create a program
 - Begin identifying resources where you may need to place a student on an interim basis (Residential, day programs, etc.)
 - Build a team of people you can contract with to assist—BCBAs, RBTs, etc.
- Balancing Act: Providing FAPE in the LRE v. Student and Staff safety
- Does Homebased or Virtual Instruction provide FAPE?

IEP Development: Placement

Hypothetical: A 6th grade GAA student with autism is exhibiting increasingly aggressive behaviors. The student has bit the teacher, hit the teacher, and kicked two other students in the classroom. In addition, the student destroys the classroom at least one time per week, which includes flipping over desks and ripping apart bulletin boards. This is disrupting the classroom for at least two hours each day. The student has a BIP that includes de-escalation strategies. What should you do?

Hypothetical: A student recently enrolled in your District and they are eligible for special education services under EBD. The parent mentions to you that they are having trouble getting the student's medications refilled since they moved and are waiting to get in with a new doctor. The student is currently without medication. The student exhibits daily aggression toward the teacher and other students. Last week the teacher was scratched in the face and the student pushed her to the ground causing a knee injury. What are your options?

IEP Development:
Services/Supports/
Accommodations

BIP

Behavior Goals

Counselor

Social Worker

BCBA/RBT/Behavior Specialist

Wrap Around Services

IEP Development: BIP

Behavioral Intervention Plan (BIP) is a component of the IEP that describes positive behavioral interventions and strategies that must be implemented to prevent and/or manage a student's undesirable or inappropriate behavior.

The BIP outlines the target behavior, behaviors that can be expected, positive interventions, strategies and supports to address the behaviors and consequences for the behavior.

IEP Development: BIP



When is it mandatory?

- The IDEA mandates the development of a BIP if a student is subjected to a disciplinary change in placement and the conduct is found to be a manifestation of the disability. 34 CFR 300.530(f).

FAPE Concerns:

- Generally an IEP team has discretion over when a BIP is necessary to provide FAPE.
- Like an IEP, the BIP must be tailored to the unique needs of the child and be appropriately ambitious in light of the child's circumstances.
- Need to discuss how this will be implemented across various settings, including transportation.
- Failure to develop a BIP (or developing an inappropriate BIP) when a child needs one can result in a denial of FAPE.
- Failure to implement the BIP can also result in a denial of FAPE.

IEP Development: BIP

Referral to Law Enforcement:

- The IDEA specifically allows schools to refer students with disabilities to law enforcement and juvenile authorities notwithstanding their disability status. 34 CFR 300.535
- However, if there is not a threat of harm to himself or others, you should first implement the BIP before calling police

Restraint and Seclusion:

- You can include restraint as a last resort in the BIP, but it must only be used when you meet the standards set forth in the DOE regulations and any restraints used must be in line with DOE regulations and your local district guidelines.
- Be mindful of this if an advocate or behavior specialist is recommending a different restraint technique or method.

IEP Development: BIP

- **Key Takeaways:**

- Description of the Behavior should be specific instead of lumping various behaviors under broad categories
- Work with a behavior specialist to draft the BIP and provide support to the team on implementation.
- Train the team on how to implement the BIP and have them sign off on training and receipt of BIP
- Make sure what you include in the BIP can be easily understood and successfully implemented and is not impossible for your staff to implement when a behavior occurs.
- Do you need a crisis plan in addition to the BIP?

Impact on FAPE for Peers



Impact on FAPE Peers

A student's behavior may impact their ability to receive FAPE and the ability for the classmates to receive FAPE.

Hypotheticals:

- A student has exhibited aggressive behaviors, including destroying the classroom. As a result, the classroom has been evacuated 4 times this semester. What are your concerns?
- A student in a self-contained classroom has behavior that has become so significant that the classroom teacher is dedicating all of her time and support to try to keep the student's behavior under control. There are 5 other students in the classroom and 2 paraprofessionals. The paraprofessionals also have to assist the classroom teacher with supporting the student's aggressive and destructive behaviors. What are the concerns?

A row of wooden figures, with one red figure standing out in the center. The figures are arranged in a line, receding into the background. The red figure is positioned in the middle of the row, drawing attention. The background is a light, neutral color, and the surface is reflective.

Personnel Issues: What about staff?

Personnel Issues

- Personnel Issues are often unveiled when there are concerns regarding student behaviors.
 - Teacher complaining about the amount of support needed for the student
 - A teacher is injured
 - An allegation of a teacher injuring a student
- What do you do?
 - Investigate the concerns or allegations and review video footage
 - Meet with the teacher about any concerns from reviewing the video footage
 - Provide Documentation to the teacher regarding your concerns and next steps
 - Training and Re-Training
 - Is additional support needed in the classroom?
 - If the teacher is following the BIP and doing all of the right things---is this a placement issue with the student instead of a personnel issue?





Restraint

Know the rules!

Restraint: Georgia BOE Reg 160-5-1-35

“The use of physical restraint is prohibited in Georgia public schools and educational programs except in those situations in which the student is an immediate danger to himself or others and the student is not responsive to less intensive behavioral interventions including directives or other de-escalation techniques”

Under what circumstances can you utilize restraint?

- Immediate risk of harm to the student;
- Immediate risk of harm to others; OR
- Imminent Danger

Restraint: Hypothetical

- A new student in your building is exhibiting aggression toward other students.
- On several occasions during his first week, he has hit/kicked students in the class.
- He currently has a BIP that includes the use of physical restraint when demonstrating harm to himself or others.
- There is only one teacher on his team that is trained in restraint.
- What are your concerns?

Crisis Plan & Risk Assessment

Elopement

Suicide/Self-Harm

Risky behavior


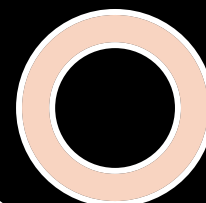


Threats



Student Discipline

A Last Resort?




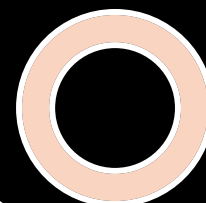




Student Discipline: School Removals

- Portions of a school day that a student has been suspended may be considered as removal for purposes of the 10-day rule. 71 Fed. Reg. 46, 715 (2006).
- In the discipline context, administratively shortened school days occur when a child's school day is reduced solely by school personnel, rather than the child's IEP Team or placement team, in response to the child's behavior.
- Generally, the use of informal removals to address a child's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions; Office of Special Education and Rehabilitative Services; July 19, 2022





Student Discipline: School Removals

Therefore, the discipline procedures in 34 C.F.R. Sec. 300.530 through 300.536 would generally apply to an administratively shortened school day unless all three of the following factors are met:

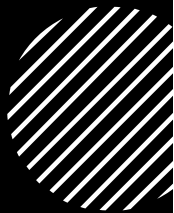
1. The child is afforded the opportunity to continue to appropriately participate in the general curriculum;
2. The child continues to receive the services specified on the child's IEP; AND
3. The child continues to participate with nondisabled children to the extent they would have in their current placement

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions; Office of Special Education and Rehabilitative Services; July 19, 2022





Student Discipline: Hypothetical



Principal has called the parent to pick up a student found eligible under EBD on four separate occasions. The student leaves around 1:00 p.m. each time.

The Student has a BIP and his student records show no OSS days.


What are your concerns?

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○ Student
○ Discipline:
Interim
Alternative
Educational
Settings


34 CFR 300.530(g)

School personnel may remove a student to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child:


1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

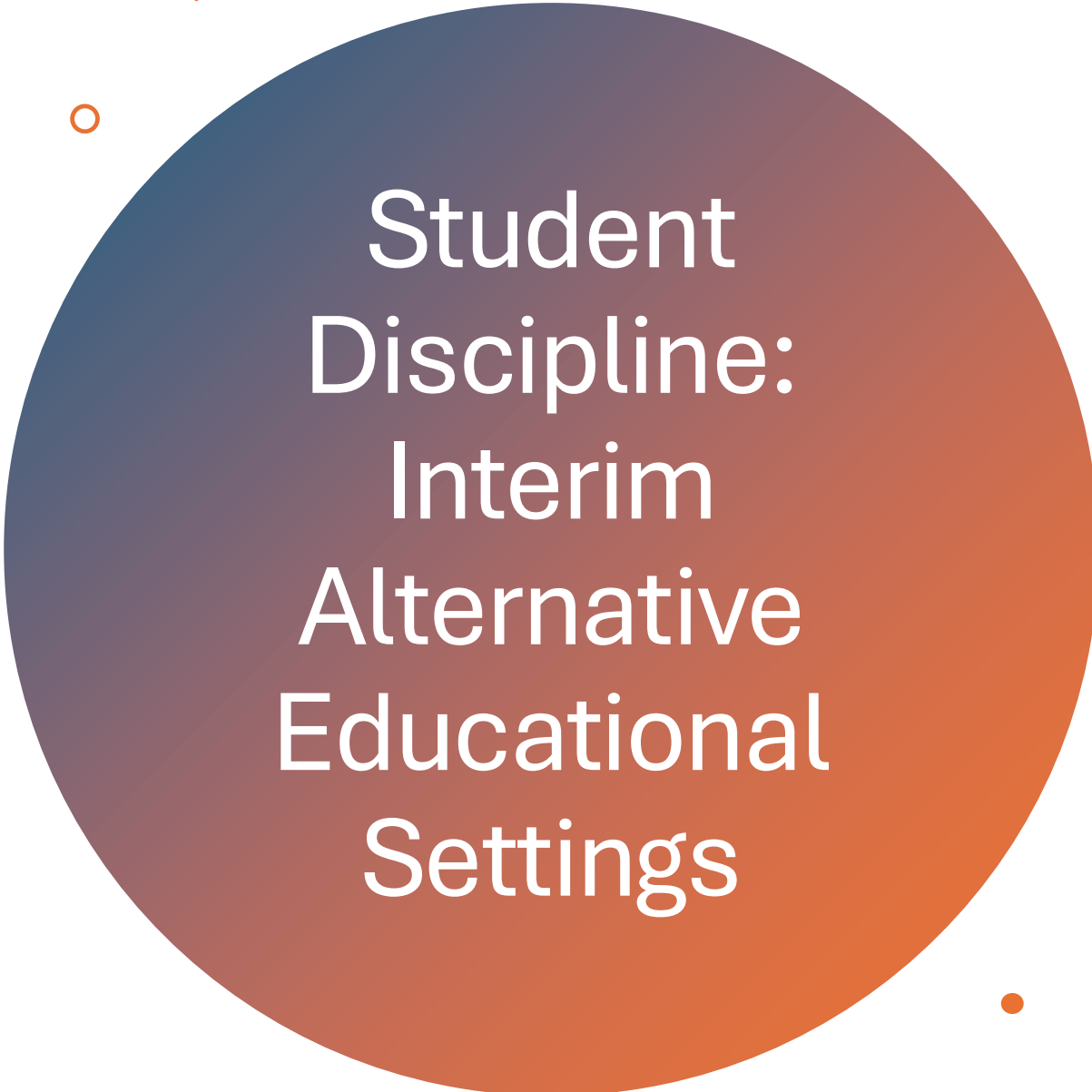



Student Discipline: Interim Alternative Educational Settings




Serious Bodily Injury


- IDEA states “serious bodily injury” has the same definition as in Section 1365(h)(30 of the U.S. criminal code. The U.S. Criminal Code defines seriously bodily injury as bodily injury that involves: (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
 - Serious Bodily Injury means Serious. Most student assaults of another student, teacher or administrator, even if they produce genuine pain and discomfort will not meet this definition.
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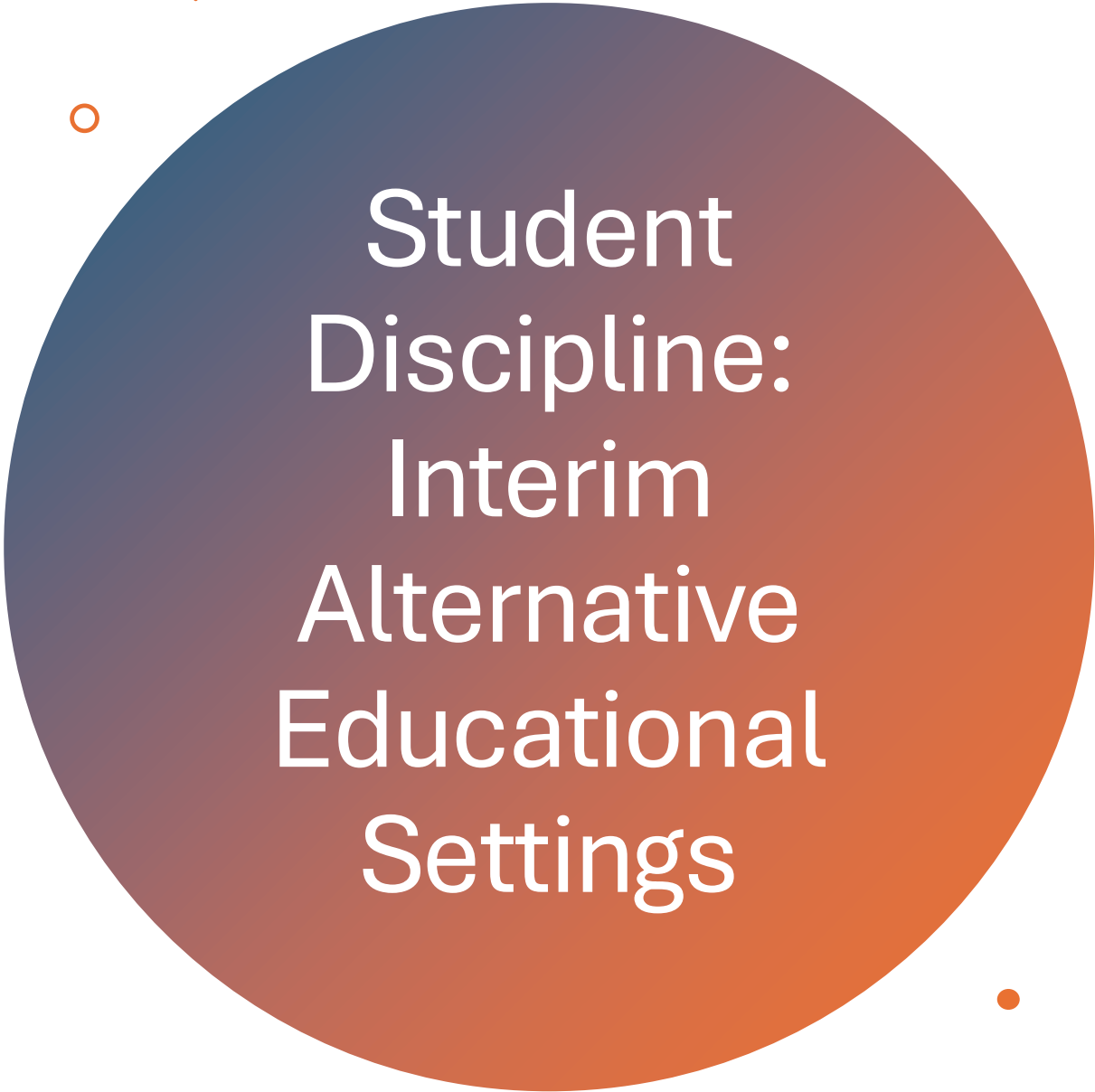



Student Discipline: Interim Alternative Educational Settings




Drugs or Controlled Substances


- On Campus
 - “Controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act.
 - “Illegal drug” means a controlled substance. It does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed under any other authority under that act or any other provision of federal law
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Student Discipline: Interim Alternative Educational Settings



Weapons

- Mirrors the definition of “dangerous weapon” in the U.S. Criminal Code which defines “dangerous weapon” as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches in length.”
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- Student Discipline: Interim Alternative Educational Settings

- Hypothetical:
 - A student with aggressive tendencies destroys the classroom, knocks over a desk, slaps and hits the teacher and pins the teacher in the corner of the classroom by grabbing her neck. An administrator reports to the classroom to intervene and is able to restrain the student, so they let go of the teacher. The teacher sustained bruising on her neck and face and treated at the local emergency room, but was released with instructions to rest and take Tylenol. This is not the first time the student has hit or scratched the teacher or other students in the classroom. What are your options for this student?


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○ Student
Discipline:
Interim
Alternative
Educational
Settings


What about Stay-Put?

- When an appeal under 34 CFR 300.532 challenging the student's placement or manifestation determination has been made the child must remain in the IAES pending the decision of the hearing officer or the expiration of the time period specified in 34 CFR 300.530(c) or 34 CFR 300.530(g), whichever occurs first, unless there is an agreement otherwise. 34 CFR 300.533.



Student Discipline: Interim Alternative Educational Settings



- The District makes the decision to remove, but the IEP team is responsible for determining the student’s IAES placement—both location and services. 34 CFR 300.531.
 - Student “must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” 34 CFR 300.530(d)(1).
 - Must provide notice to the parents of the decision and provide a copy of procedural safeguards.
 - The removal period is measured in “school days” rather than “calendar days.”
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Section 504

If you have a 504 student that is experiencing behavior problems, you may want to consider a referral to evaluate for special education services.

Create a BIP as part of the 504 plan.

- OCR has interpreted Section 504 as requiring districts to develop an individualized BIP for a student with a disability when that student's behavioral difficulties significantly interfere with his ability to benefit from an education.
- Issues concerning the need for a BIP frequently arise in connection with students who have ADHD.
- The use of restraint and seclusion may be an indication that student needs a BIP.

Continuum of placements

- Section 504 does not contain an express provision regarding a continuum of placements, the same general concept is applied under Section 504.

Student discipline

- The same general procedural safeguards apply to students under Section 504 as under the IDEA (MDR, IAES)

How do we prove that we are providing FAPE?



Documentation of discussions on placement options



Evaluations and FBA results



BIP that is narrowly tailored to the student's individual needs and being implemented with fidelity



Sometimes we need to bring in outside experts to provide additional support.

This helps build trust with parents
Adds in a secondary fidelity check
Another set of eyes to provide suggestions
Can serve as an expert in a due process hearing and take some of the pressure off of your staff



Questions?

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