

Think Before You Discipline: Lessons Learned in the Field

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Regulatory Requirements

Disciplinary Procedures

Not Yet Eligible



Change of Placement



Manifestation Determination



Functional Behavioral Assessment (FBA)



Placement during Appeals



Thought to be/Not Yet Eligible

Having knowledge...

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
2. The parent of the child requested an evaluation of the child

Thought to be/Not Yet Eligible (cont'd)

3. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

**Child may assert protections
of eligible student, including MDR**

Not to Have Knowledge

- The parent has not allowed an evaluation of the child; or
- The parent has refused services (including revocation); or
- The child has been evaluated and determined to not be a child with a disability

§300.534

If No Basis of Knowledge

- ▶ The child may be subjected to same disciplinary measures as children without disabilities who engage in comparable behaviors
- ▶ If request for evaluation during the time of disciplinary measures, evaluation conducted in expedited manner
 - ▶ Until evaluation completed, child remains in the educational placement determined by school authorities (can include suspension or expulsion without services)
 - ▶ If child determined to be a child with a disability, LEA must provide special education and related services.

Case Examples: Thought to Be/Not Yet Eligible

- ▶ *Chippewa Local School District, 117 LRP 7220 (OH SEA 2017)*
- ▶ *Upper Merion Area School District, 117 LRP 27965 (SEA PA 2017)*

Short Term Removals

Not a change of placement

- ▶ Removals of 10 or fewer consecutive days (and not ID)
- ▶ Removals of 15 or fewer cumulative days (and not ID)
- ▶ Not a pattern of removals

Change of Placement: Defined

1. Removals of >10 consecutive school days
2. Removals of > 15 cumulative school days (PA)
3. Removals for even one school day for a student with intellectual disability

§300.530 and §14.143

Must conduct Manifestation Determination Review

Change of Placement: Defined (Cont'd)

4. When days 11-15 constitute a pattern of removals

- ▶ Series of removals constitute pattern
 - ▶ > 10 school days in school year **AND**
 - ▶ Behavior substantially similar to previous incidents **AND**
 - ▶ Such factors as length of each removal, total amount of time removed, proximity of removals to one another

§ 300.536

**Must conduct Manifestation
Determination Review**

Case Examples: Change of Placement

- ▶ *Dear Colleague Letter*, 68 IDELR 76
(OSERS/OSEP 2016)
- ▶ “Case by Case” is key



Provision of Services: After Day 10

If NOT a change of placement

- ▶ Services required for removals beyond 10 days to enable student to
 - ▶ Continue to participate in GEC
 - ▶ Progress toward meeting IEP goals
- ▶ School personnel determine extent of services

§300.530 (d)

Provision of Services: After Day 10

If Change of Placement

- ▶ Services required for removals beyond 10 days to enable student to
 - ▶ Continue to participate in GEC
 - ▶ Progress toward meeting IEP goals
 - ▶ Receive FBA and behavioral interventions to address behavioral violation
- ▶ IEP team determines appropriate services

§300.530 (d)

Who Conducts MD? §300.530 (e)

LEA

Parent

“Relevant” members of IEP team

Case Example: MD Team

Fitzgerald v. Fairfax County School Board, 556 F.Supp.2d 543 (E.D. Va. 2008)

How Conduct MD?

Conducted within 10 school days of decision

- ▶ Review all relevant information: IEP, teacher observations, relevant information provided by parents
- ▶ Two key determinations re conduct in question
 - ☑ If caused by, or had direct and substantial relationship to, child's disability **OR**
 - ☑ If direct result of LEA's failure to implement IEP
- ▶ Examination of both school's and child's behavior

§300.530 (e)

MD: Questions to be Answered

- Was the behavior caused by, or directly related to, the student's disability?

OR

- Was the behavior a direct result of the LEA's failure to implement the IEP?

§300.530 (e)

MD: Actions to be Taken §300.530 (f)

If yes to either question,
behavior IS manifestation of
disability

- ▶ Conduct FBA
- ▶ Implement behavioral intervention plan (PBSP)/Review PBSP and modify as necessary to address the behavior
- ▶ Return student to previous placement, unless
 - Special circumstances
 - Parents and LEA agree to change of placement as part of PBSP
- ▶ IEP team makes decisions about FBA, PBSP, placement

If **no** to both questions,
behavior IS NOT
manifestation of disability

- ▶ Impose same consequences as applicable to student without disability
- ▶ Continue to provide appropriate services
- ▶ IEP team determines
 - Services
 - Setting
 - Need for FBA/PBSP

Notify Parents via NOREP/PWN and PSN

On date of decision to implement a removal that constitutes a change of placement LEA must notify parents of the decision

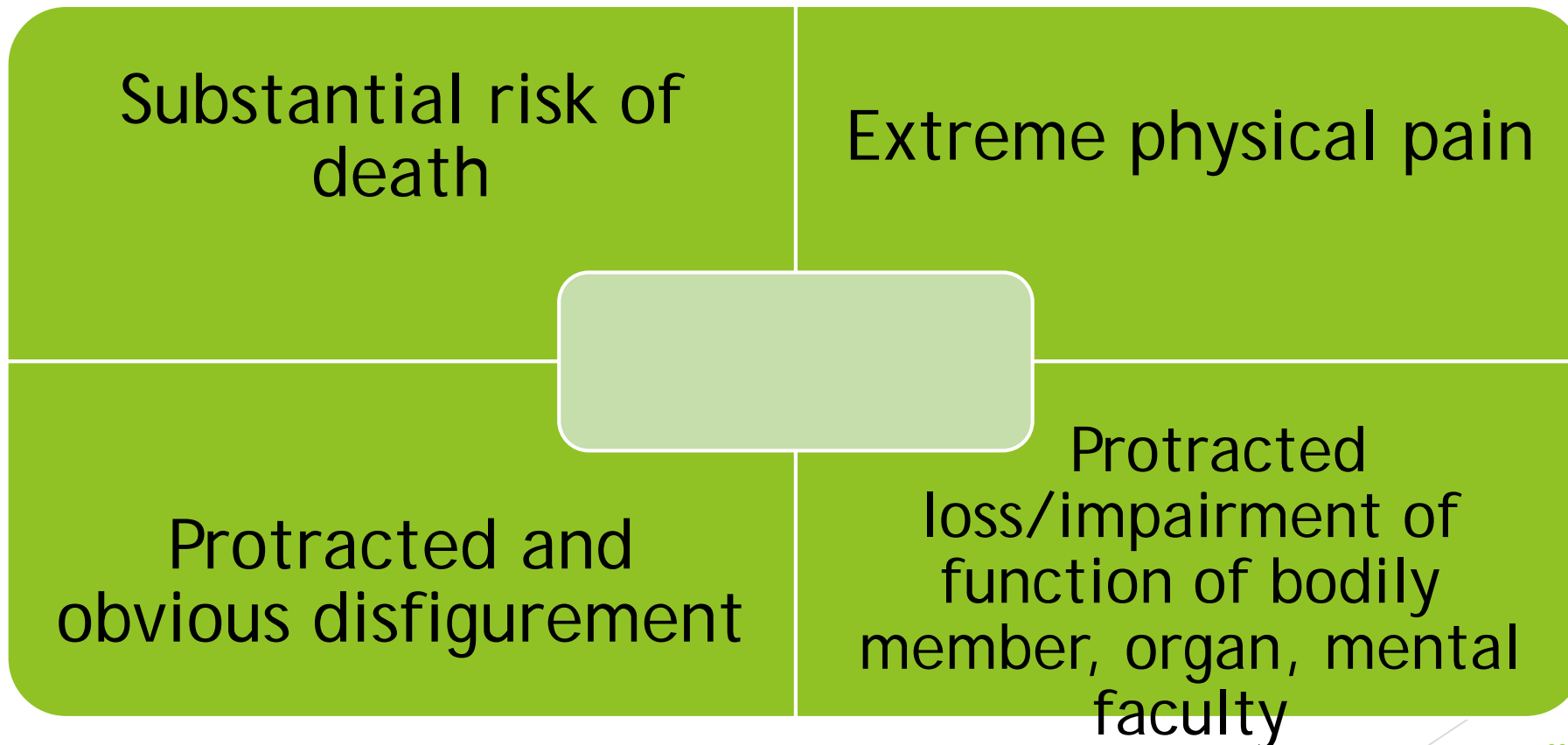
- ▶ Via Notice of Recommended Educational Placement/Prior Written Notice
- ▶ Provide Procedural Safeguards Notice
 - ▶ Must offer printed copy

Special Circumstances: Drugs, Weapons, Serious Bodily Injury

- ▶ Unilateral decision of LEA for removal regardless of whether manifestation or not
- ▶ For up to 45 school days
- ▶ Manifestation determination must be conducted
 - If manifestation, FBA and PBSP required and removal limited to 45 school days
 - If not manifestation, same consequences as student without disability

§300.530 (g)

Serious Bodily Injury: Defined



Case Examples: Drugs and Weapons

- ▶ *Pocono Mountain School District*, 117 LRP 23351 (SEA 2017)
- ▶ *Baltimore City Public Schools*, 46 IDELR 179,106 LRP 53472 (SEA MD 2006)
- ▶ *Upper St. Clair School District*, 110 LRP 57903 (SEA PA 2010)

Case Examples: “Serious Bodily Injury”

- ▶ *Pittsburgh Public School District*, 116 LRP 48011 (PA SEA 2016)
- ▶ *In re Student with a Disability*, 115 LRP 44815 (NH SEA 2014)
- ▶ *Westminster School District*, 56 IDELR 85, 111 LRP 4796 (CA SEA 2011)
- ▶ *Pocono Mountain School District*, 109 LRP 26432 (PA SEA 2008)

FBA: When Required



- ▶ Behavior is a manifestation of student's disability
- ▶ Student's behavior impedes his/her learning or learning of others
- ▶ When process determined appropriate by IEP/school team

Placement during Appeals

- ▶ Disagreement: complaint, mediation, due process hearing
- ▶ Stay-Put: changed in IDEA 2004 for disciplinary cases
 - Child shall remain in IAES pending the decision of the hearing officer or until the expiration of the removal period, unless parent and LEA agree otherwise
 - Expedited hearing shall occur within 20 school days of date requested and decision within 10 school days after hearing

Case Examples: Expedited Discipline Hearings

- ▶ 34 C.F.R. §§ 300.530 – 300.536
- ▶ ODR Expedited Hearing Fact Sheet:
<http://odr-pa.org/due-process/hearing-procedures/>

Hearing Officer Authority: Expedited Discipline Hearing

(1) return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530, or that the child's behavior was a manifestation of the child's disability; or

(2) order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Hearing Officer Authority: Expedited Discipline Hearing (cont'd)

District of Columbia v. Doe, 391 U.S. App.
D.C. 388, 611 F.3d 888 (2010) (Authority of
HO)

Expedited Discipline Hearing Timelines

- ▶ Resolution meeting within 7 days
- ▶ Hearing within 20 school days
- ▶ Decision within 10 school days of hearing

Letter to Fletcher, 118 LRP 35317 (OSEP 2018)

504 vs IDEA

Section 504 of the Rehabilitation Act

- ▶ 34 C.F.R. §§ 104.1 - 104.61
- ▶ 22 Pa. Code §§ 15.1 - 15.11
- ▶ *Letter to Zirkel*, 22 IDELR 667 (OCR 1995)

Lessons Learned in the Field

Lessons Learned

- ▶ *Rose Tree Media School District, 72 IDELR 258 (SEA PA 2017)*
- ▶ *Colonial School District, 117 LRP 26506 (SEA PA 2017)*
- ▶ *Bensalem Township School District, 119 LRP 784 (SEA PA 2018)*

Referral to Law Enforcement

- ▶ “Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.”

§ 300.535(a)

Thanks for your participation!

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