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Webinar!

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Disciplinary Requirements for Students  
with Disabilities: Lessons Learned in the  
Field

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# Disciplinary Requirements for Students with Disabilities: Lessons Learned in the Field

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## PaTTAN's Mission

The mission of the Pennsylvania Training and Technical Assistance Network (PaTTAN) is to support the efforts and initiatives of the Bureau of Special Education, and to build the capacity of local educational agencies to serve students who receive special education services.

PDE's  
Commitment  
to Least  
Restrictive  
Environment  
(LRE)

Our goal for each child is to ensure Individualized Education Program (IEP) teams begin with the general education setting with the use of Supplementary Aids and Services before considering a more restrictive environment.

# Regulatory Requirements

# Disciplinary Procedures

Not Yet Eligible

Change of Placement

Manifestation  
Determination (MD)

Functional Behavior  
Assessment (FBA)

Placement during  
Appeals

Forms

# 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

§300.534

Thought  
to Be/  
Not Yet  
Eligible

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**

§300.534

# Not to Have Knowledge

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

## 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.  
§300.533

Case  
Examples  
of 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

- Fewer than 10 consecutive days (and not ID)
- Fewer than 15 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

**Must conduct Manifestation Determination Review**

§ 300.530 and §14.143

## Change of Placement: Defined

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

**Must conduct Manifestation  
Determination Review**

§ 300.536

## 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  
(determined by  
parent and LEA)



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)

## 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)

# Actions to be Taken

If yes to either question,  
behavior IS a  
manifestation of the  
child's disability

- Conduct FBA
- Implement behavioral intervention plan (PBSP)/Review PBSP and modify it 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 a  
manifestation of the  
child's disability

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

§300.530 (f)

Notify  
Parents  
via  
NOREP/  
PWN and  
PSN

On date of decision to make 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

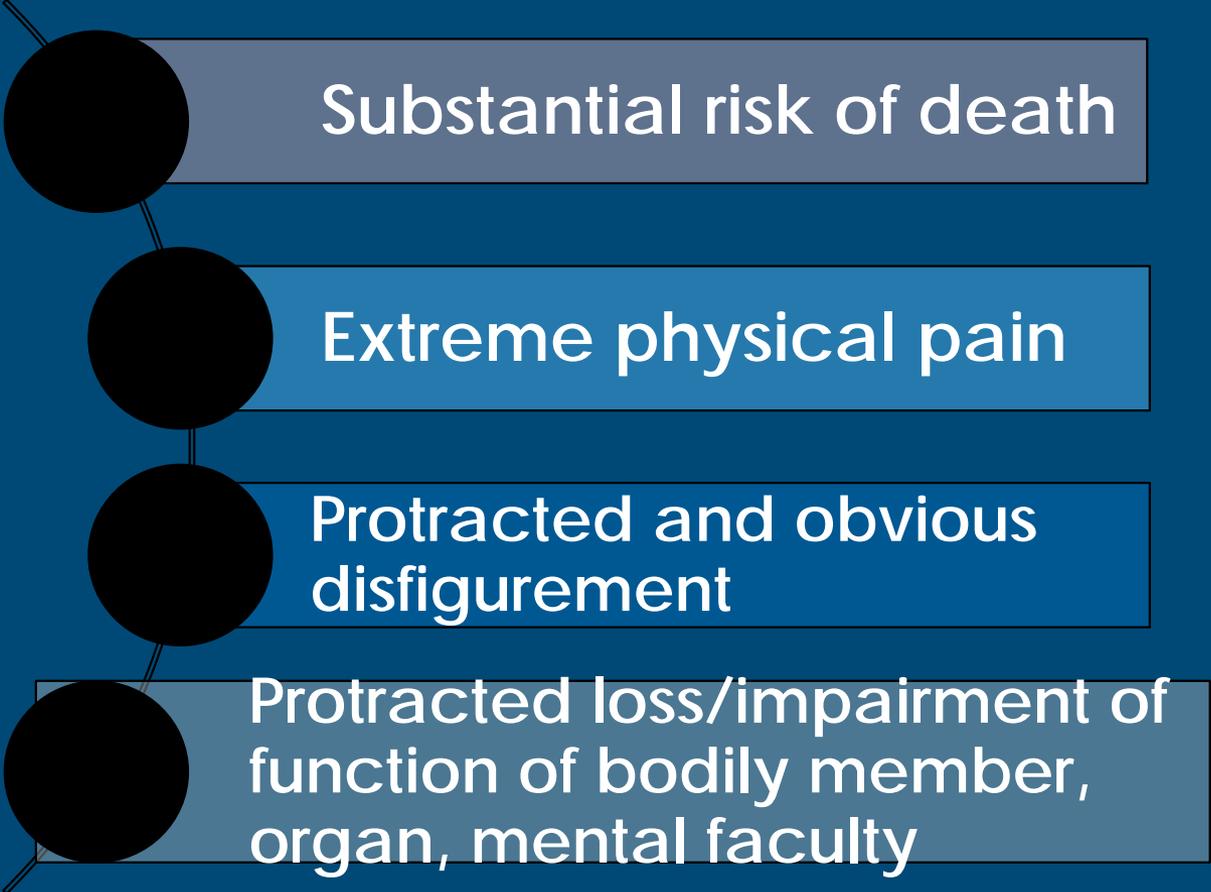
Special  
Circumstances:  
Drugs,  
Weapons,  
Serious Bodily  
Injury

- 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

§300.530 (i)



Substantial risk of death

Extreme physical pain

Protracted and obvious  
disfigurement

Protracted loss/impairment of  
function of bodily member,  
organ, mental faculty

## Drugs and Weapons Case Examples

- *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)

## "Serious Bodily Injury" Case Examples

- *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



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Behavior is a manifestation of student's disability

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Student's behavior impedes his/her learning or learning of others

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When 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



§300.532

## 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.

34 C.F.R. § 300.532(a)(2).

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

## 504 v 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, Not Yet Posted (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.”

34 C.F.R. § 300.535(a)

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