Manifestation Determination

IDEA ’97 and ‘04

- Mandates schools make a determination as to whether a school policy (or rule) violation by a special education student is a manifestation of their disability.

Section 615(k) of P.L. 108-446

- Requires procedures to be followed in the event any special education student violates a school discipline policy that …
  - Results in a suspension of over 10 days
  - Results in a suspension, which when combined with other suspensions, totals more than 10 days
  - Results in a proposed expulsion
- Such are viewed as a change of placement
Section 615(k)(e)(g) of P.L. 108-446

These procedures are…

• The IEP team and other qualified personnel will conduct a review…
  • Determine if the behavior was caused by, or had a direct and substantial relationship, to the child’s disability; or the direct result of the LEA’s failure to implement the IEP.
  • The review shall be conducted within 10 days of the school policy violation.
  • If the behavior was not a manifestation of the student’s disability, then the student may be disciplined under the general conduct code of the school…
  • Though whatever change in placement that is made must include the continuation of special education services.

Review Requirements

The team considers all relevant information
  • Evaluation findings
  • Teacher observations of the student
  • The student’s IEP and placement
  • Relevant information provided by the parents

The team makes four determinations
  1. If the IEP/placement are appropriate
  2. If the IEP is being implemented.
  3. If the disability impaired the students ability to understand the impact/consequences of the behavior
  4. If the disability impaired the students ability to control the behavior

In other words…

Discipline of special educations students is not reflexive and reactive.

IDEA 2004 mandates that an IEP team, not just an administrator in charge of discipline, carefully review the data on a particular special education student to decide if there is a direct relationship between a current instance of misconduct and the student’s disability to make decisions about the consequence for the misconduct as well as the student’s continuing educational and behavioral needs.

In other words…

The specific questions the IEP team must address:
1. Is the IEP appropriate?
   • Including whether or not a BIP is in place/effective.
2. Is the IEP being implemented as written, including appropriate behavior management procedures?
   • Including whether or not a BIP is being followed.
3. Did the disability prevent the student from understanding the impact and consequences of the behavior in question?
4. Did the disability prevent the student from controlling the behavior in question."


In other words…

If the LEA, parents, and IEP team determine the student’s conduct was a manifestation of the student’s disability…
• If not part of the IEP conduct a FBA and implement a BIP.
• If a FBA and BIP have been completed review and modify the BIP as indicated.
• Return the student to the placement from which the child was removed.
• Exception added by IDEA 2004 [615 (k) (1) (G)]
  • Child carries a weapon to or possesses a weapon
  • Knowingly possesses or uses illegal drugs
  • Child has inflicted serious bodily injury (i.e., involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member) upon another person.

Recommendations

Develop behavior management plans
• Have behavior intervention/management plans in place for all special education and 504 students who need them.
  • including specific behavior emergency procedures.
• In other words,
  • Special education students with behavior problems should have either a BIP and specific goals addressing behavioral needs.

Recommendations

- Provide discipline policy
  - Provide parents and students with a discipline procedures policy that includes permitted, controlled and prohibited procedures, noting consistency with procedures for the non-disabled population.
  - Ensure your school district has a written policy of discipline procedures used with special education students, as well as procedures for non-disabled students.
  - These policies need to be regularly given to special education students and their families.


Recommendations

- Provide documentation
  - If it isn't written down, it didn't happen!
    - Individuals working with students with behavioral needs should be keeping logs/calendars/charts of each student's behavior.
    - Recording systems that are best are linked to daily or weekly goals from the Behavior Management Plans or specific IEP behavior goals.
    - Notations on logs/calendars/charts need to be made about the context of inappropriate behavioral episodes and the methods employed to manage behavior.


Sample Form
12 Best Practices (Meloy, 1999)

1. Collection and examination of behavior records over the period of the IEP.
2. Examination of the components of the IEP’s BIP for its impact in increasing/decreasing the behavior(s) of concern.
3. Collection of information on general school performance from school staff.
4. Collection of information on home behavior/concerns from parents.
5. Review of academic/behavioral historical data on the student.

6. Interview with the student, emphasizing the student’s current emotional health as well as his/her understanding of the school policy violation.
7. Interview with the teacher(s) involved with the student, emphasizing the extent of normalcy of the behavior in question for the student/peers.
8. Interview with administrators in regard to the particulars of the school policy violation.
9. Review of the current program for and placement of the student.

10. Consideration of the characteristics of individuals with this student’s disability to identify consistency/inconsistency of behavioral characteristics of this student to expectations for a group of similarly disabled students.
11. Consideration of the cognitive, emotional, and behavioral status of the student in regard to the school policy violation and self-control.
12. Review of options for available and appropriate programming.

Example 1: Hearing Impaired Student

- **Services:** Resource Room daily and Itinerant Hearing Impaired Services weekly
- **Incident:** Junior girl caught smoking for the third time in the high school restroom
- **School Discipline Policy:** 3-day in-school suspension—1st offense; 6-day in-school suspension—2nd offense; suspension from school for remainder of semester—3rd offense.
- **Background Information about Student:** No complaints from parents for offenses 1&2. Student has high average intelligence; reads at the sixth grade level, reads lips extremely well and has fairly good oral speech. Student has a history of frequent absences – just under the amount needed to be referred for truancy.


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Example 1: Hearing Impaired Student

- **The Dozen Do's:**
  1. No other discipline problems
  2. Nothing on current IEP in regard to the high absenteeism
  3. Student failing in some subjects and doesn't have the credits to graduate with her class without attending summer school
  4. Parents’ concern now for possibly not meeting graduation requirements and current defiance of their home curfew rules
  5. Recently the student had a part-time job at Hardee's that she couldn't handle due to the ambient noise
  6. Student read the school policies and gave appropriate interpretations for each
  7. The hearing impairment would not interfere with misinterpretation of the school's no smoking rules


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Example 1: Hearing Impaired Student

- 8. Protocol followed
- 9. Resource support daily and itinerant hearing impaired services weekly
- 10. Other high average intelligence, hearing impaired students would be expected to understand and follow this school policy
- 11. Understands policy and appears to want to use her disability in order to not lose credits and be able to graduate with her class; self-control is not an issue
- 12. Discipline per school policy*, although student's IEP needs to better address current needs with an increase in the amount of time for special assistance, a home-school coordinated behavior management plan to increase school attendance when she returns second semester, and career counseling
- 13. Suspension from school for the remaining three weeks of the semester, but with continuation of special education services, which in this case were delivered as homebound instruction


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Manifestation Determination
Sensory Issues
Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

**Services:** Self-contained Program for MDE/EMH.

**Incident:** Junior boy lays younger female student with mental disabilities (moderate) on floor during drafting class and proceeds to undress her for presumed sexual activity – with regular education class spectators.

**School Discipline Policy:** 10-day suspension; mental health evaluation prior to school reentry.

**Background Information about Student:** Intellectual functioning in the 60-64 range (at or above 1% of others of the same chronological age). Student is 18 years old, reads at the early second grade level and has been in a self-contained special education classroom since age three.


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The Dozen Do's:

1. No previous behavioral problems
2. No Behavior Management Plan
3. Functional academics and life skills programming
4. Foster family's concerns of late for inappropriate touching of female siblings and cousins
5. Appropriate progress for a mental disabilities student
6. Student could report what he did, that he'd seen the same thing on TV, and that the girl "liked him"; student stated that the other boys in the class were clapping; he also stated that he "was in trouble;" he could separate pictures into two piles for "friend touching" and "intimate sexual touching."
7. Hard-working and kind boy who wants to please and is responsible at his work placements


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Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

8. Teacher not in room (reprimand issued to teacher); parents of female student very concerned about daughter's vulnerability and future safety, demanding "proof" from the administration that this thing would not occur again; male student sent home the remainder of the day of the incident, was ill the next day, and then there was a four-day school holiday
9. Self-contained Mental Disabilities Class with work study, but no sex education curriculum
10. Not uncommon for adolescent MD students to exhibit inappropriate sexual behavior in various settings
11. Limited if any understanding of inappropriateness of his behavior in the school setting, due to his limited mental capacity; usually well-controlled behavior compromised due to peer attention

Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

12. Suspension of school discipline procedures because it is determined that the student's intellectual capacity limits his understanding of appropriate sexual conduct, though the student's IEP needs to include a sex education curriculum, as do the IEPs of the other MD students in the program; 1 1/2 day suspension sufficient; behavior monitoring the rest of the school year for absence of inappropriate sexual contact with peers; individual time weekly with school psychologist for repetition of the sex education curriculum from classroom in a one-to-one setting.


Identifying Sensory Issues

- **Hypersensitivity**
  - Results in avoidance behavior that obtains negative reinforcement.

- **Hyposensitivity**
  - Results in seeking behaviors that obtains positive reinforcement.

Responding to Sensory Issues

- **Hypersensitivity**
  - Make environmental changes that reduce the presence or amount of the irritating stimuli.
    - For example, reducing sound by moving the location of certain activities or installing carpet to minimize sounds.
  - Teach/allow the student to engage in behaviors that more appropriately allow him or her to cope with the irritating stimuli.
    - For example, allowing the student to go to a “quiet corner” or make use of a headset to listen to music when environmental stimuli are too aversive.

Source: Positive Intervention for Severe Behavior Problems, by Diane R. Brumley Wright, Harvey Gottlieb, and CASP. Copyright 1996, California Department of Education.
Responding to Sensory Issues

Hypersensitivity

- Provide access to calming stimuli that may make inappropriate responses to irritating stimuli irrelevant.
  - Examples of calming stimuli may include deep pressure; chewing, sucking, licking; low frequency vibratory stimuli; swinging or rocking; and quiet music.
- Minimize exposure to alerting stimuli that may make inappropriate responses to irritating stimuli more relevant.
  - Examples of alerting stimuli may include light touch, spinning, coldness, and high frequency vibratory stimuli.

Source: Positive Intervention for Serious Behavior Problems, by Diana Browning Wright, Harvey Gurman, and CASP. Copyright 1998, California Department of Education.

Responding to Sensory Issues

Hyposensitivity

- Identify and make use of desired stimuli as a positive reinforcer.
  - For example, provide contingent access to Koosh balls, pieces of cloth, and specific smells.

Source: Positive Intervention for Serious Behavior Problems, by Diana Browning Wright, Harvey Gurman, and CASP. Copyright 1998, California Department of Education.

Responding to Sensory Issues

1. Try to identify and minimize exposure to aversive stimuli.
2. Try to give students warnings when aversive stimuli (e.g., the lunch bell) are about to occur.
3. Try to find another, more appropriate behavior that obtains the same function as the problem behavior.
4. Make use of calming stimuli to set the student up for success.
5. Provide opportunities to obtain desired sensory stimuli.

Source: Positive Intervention for Serious Behavior Problems, by Diana Browning Wright, Harvey Gurman, and CASP. Copyright 1998, California Department of Education.
Responding to Sensory Issues

6. Alternate activities.
7. Allow students to make decisions regarding where (and in what position) they will work.
8. Recognize that sensory stimuli may have a cumulative effect (i.e., the student can take just so much of aversive stimuli). If this is the case, make special accommodations at the end of the day (e.g., ensuring a quiet work area after lunch).
9. Do not surprise students with new stimuli.
10. Make use of systematic desensitization when certain stimuli cannot be removed or modified.

Source: Positive Intervention for Serious Behavior Problems, by Diana Browning Wright, Harvey Gurman, and CASP. Copyright 1998, California Department of Education.

Next Week

- Assignment
  - Turn in BIP evaluation data (5 points)
  - Turn in any FBA revisions
  - Turn in any BIP revisions

- Have a great holiday season!
- NASP/CASP Preparation