

Legal Issues Regarding Discipline and  
Special Education: Implications for School  
Administrators

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For the

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Behavior Issues  
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## For Discussion

- What are expectations under IDEA in behavioral and discipline areas?
- What are some focused themes that seem to be the most salient in meeting these expectations?
- “What every administrator should know”

## IDEA Expectations

- IEP Special Considerations (including use of research-based practices)
- Case-by-Case Determination
- Manifestation Determination
- Continuation of Services
- Functional Behavioral Assessments
- Behavioral Intervention Plan
- Interim Alternative Settings

## IEP Special Considerations

In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

## Case-by-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the requirement of this section, is appropriate for a child with disability who violates a code of conduct.

## “Case-by-Case”

- Child's disability history
- Ability to understand consequences
- Expression of remorse
- **Supports provided to a child with a disability prior to the violation of a school code.**

## Manifestation Determination

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

## Yes to Manifestation

The Team must either:

- Conduct a functional behavioral assessment . . . and implement a behavioral intervention plan for the child, or
- If the behavioral intervention plan already has been developed, review. . . And modify it, as necessary, to address the behavior

## Continuation of Services

- Continue to participate in the general education curriculum although in another setting
- To progress toward meeting the goals set out in the child's IEP
- To receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

## Functional Assessment

"Such an approach draws on different assessment sources (interview, direct observation, and behavioral ratings) from significant persons within the child's environment (teachers, parents, peers and child) that are to be analyzed in a systematic decision making structure. From these data, interventions should be developed."

## Positive Behavioral Supports

The term "positive behavioral supports" refers to a variety of comprehensive, individually designed management methods and strategies which are used to promote desirable responses in a fashion which is respectful of a person's dignity. Positive behavioral supports include systematic changes of environmental conditions and antecedent variables, skill development strategies, and use of behavioral consequences

Richard Simpson

## Behavior Support Plans

- Setting event strategies
- Antecedent strategies
- Behavior teaching strategies
- Consequent strategies
- Implementation scripts
- Emergency/crisis plans
- Program monitoring

U.S. Dept. of Education (2000)

## Interim Alternative Settings

- Carries a weapon to or possesses a weapon at school . . .
- Illegal drugs
- 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 LEA.

## “Serious Bodily Injury”

“A bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” Title 18, U.S. Code

## Ten Days: Consecutive or Cumulative?

“We believe the extent to which educational services need to be provided and the type of instruction to be provided would depend on the length of the removal, the extent to which the child has been removed previously, and the child’s needs and educational goals.” (Fed Reg, 8-14-06, 46717)

## Even if cumulative is accepted

. . .

Educational services must be provided . . . while the removal continues . . . (46717)

## Protections for Students Not Yet Eligible

- An LEA is deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action a:
  - Parent expressed concern in writing to an administrator or teacher
  - Parent had requested evaluation of the child
  - Teacher or other school or LEA personnel expressed concerns about a pattern of behavior to administrator

## Major Components of NCLB

Accountability for Results (AYP)

Scientifically Based Instruction

Highly Qualified Teachers

## Scientifically Based Instruction

- According to *NCLB*, schools have too often relied on programs and practices based on fad, fancy, and personal bias at the expense of students
- *NCLB*, therefore, emphasizes using educational programs that have been demonstrated to be effective by rigorous scientific research
- All professional development activities and use of funds must be grounded in scientifically based research and must focus on improving student academic achievement

## Scientifically Based Research

“...means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs”

(No Child Left Behind Act of 2001)

## Evidence Based Education -- Where are we?



•This graph is from a presentation by Dr. Grover “Russ” Whitehurst, the Director of the Institute for Education Sciences (IES) in the U.S. Dept. of Education

## NCLB & IDEA

(Yell, Katsiyannis, & Shriener, 2005)

### **NCLB**

- **Focus:** Group (AYP)
- **Value:** Proficiency
- **Target:** Absolute (AYP)
- **Accommodations:** Preserve validity of measure
- **Instructional priority:** Reading & math

### **IDEA**

- **Focus:** Individual (IEP)
- **Value:** Progress
- **Targets:** Relative (Goals)
- **Accommodations:** Modifications to include children in assessments
- **Instructional priority:** Academics, functional skills (e.g., Behavior)

## One View of . . .

Major themes in IDEA '04

***Procedural Requirements:***  
**Knowing** what the law requires and fulfilling those requirements

***Substantive Requirements:***  
Developing programs that confer **meaningful** educational benefit

“A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether a child received a free appropriate public education” (IDEA, 20 U.S.C. § 1415(f)(3)(E)(i))

## Procedural Issues

- In matters alleging a procedural violation, a hearing officer may find that a student has not received a free appropriate public education (FAPE) only if the procedural violations:
  - Impeded a student’s right to a FAPE
  - Significantly impeded the parent’s opportunity to participate in the decision-making process
  - Caused a deprivation of educational benefits

## An Early Look (June 1997 - December 1998)

Rates at Which Team Decisions Are Supported When Challenged (n = 123)

- IEP/Behavioral Planning (n=59) 27%
- Behavioral Intervention Plan (n=19) 26%

Smith (2000)

## Initial “Stumbling Blocks” in Meeting Behavioral Planning Expectations

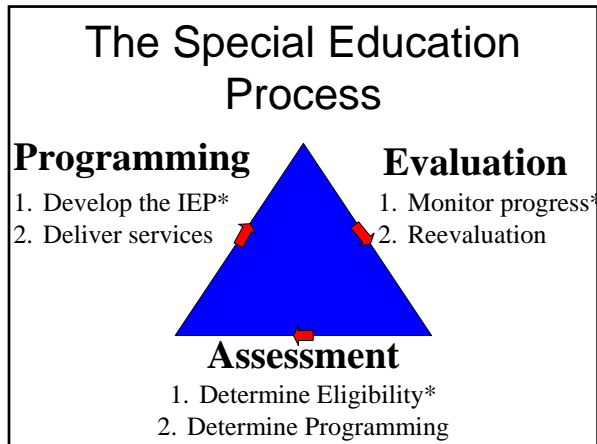
- Fixation on “Behavioral Intent”
- Team Competencies in Developing Goals or Designing Programs
- Intervention Integrity
- Provision of Comprehensive Services
- Program Progress Monitoring

Question: How Do We Meet the Substantive Requirements of IDEA 2004?

Answer: By providing an education that confers meaningful educational benefit

We Can Ensure that our Programs Provide Meaningful Educational Benefit By:

- Conducting **relevant** assessments that address a student’s instructional needs
- Writing **measurable** annual goals
- Developing special education programs based on **scientifically-based** instruction
- Collecting data to **monitor** student progress and adjusting instruction if it is not sufficient



## Peer-Reviewed Research

IEPS must include "a statement of special education services and supplementary aids and services based on peer reviewed research.

*(Individuals with Disabilities Education Improvement Act of 2004)*

## What is Peer-Reviewed Research?

- According to NCLB it means that the research has been accepted by a **peer-reviewed journal** (published) or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
- This means that a special education teacher is accountable for knowing what methodologies he or she are using, and whether the methodologies have support in the research.

## Research . . .

. . . as the foundation for soundly planned programs.

- ## IEP Elements
- Current Functioning
  - Baseline
  - Goal
  - Evaluation Procedures
  - District Standard/Benchmarks
  - Position(s) Responsible
  - Major Milestones, STO, dates expected
  - Progress report, etc.
  - Special Ed Services

- ## BIP Elements
- Link to FBA
  - Link to Goals
  - Replacement Behaviors
  - Intervention Strategy Selection
  - Antecedent/Setting Events
  - Behavioral Reduction Strategies
  - Prevention Strategies
  - Progress Monitoring
  - Evidence-Base
  - Perceived Overall Quality

## Challenges In Critically Applying Evidence-Based Practices

- Researchers
- Teacher Trainers
- Administrators, Support Staff
- Teachers
- Parents and Families

## Teachers

- How are you updating your strategies?
- Freeze framing the conclusion of an IEP meeting - can you answer why?
- What's behind the pretty faces, the pretty products?

## If our graduates are asked in the process of choosing interventions

- Describe the specific strategy or intervention that you will implement in your program to achieve this goal.
- Why did you choose this particular strategy or intervention to address this behavior of concern?
- Where or from whom did you learn the necessary steps and strategies in implementing this intervention?

## And . . .

- Provide a brief description of the research or data base suggesting that this particular intervention is appropriate for the behavior described in this goal statement.
- What other factors, beyond research, led you to choose your particular strategy or intervention?
- Other comments

## And what about . . .

. . .those folks who are ultimately accountable for these practices?

## Teacher Interviews

- Interviewed 35 teachers (represented a total of 44 goals)
- Teachers across 11 teams across one AEA (2-5 per team)

## Strategies Used to Address Behavioral Goals

- Redirection (13)
- Reward Systems (12)
- Time-Out (7)
- Group Behavioral Mgmt System (6)
- Associate (5)
- Structure of Program (5)
- Hands-On, Real Life (2)
- Social Skills Training (2)
- Progress Monitoring (2)
- Academic Programming (1)
- Journaling/Discussion (1)

## A Model for Considering Strategies

- Reactive, Consequence Driven (57%)
  - Redirection, Reward Systems, Time-Out
- Reliance on Structure (38%)
  - -Group Behavioral Mgmt, Associate, Structure of Program, Hands-On, Progress Monitoring, Academic Programming
- Teaching Focused (5%)
  - Social Skills Training, Journaling/Discussion)

A question to ponder . . .

Extent of individualized behavioral programs!

## Where/How Strategies Were Learned

1. College/University (18)
2. From Students/Experience (17)
3. Support Staff/AEA (9)
4. Inservice (5)
5. Common Sense (5)
6. Reading (2)
7. Administrator/Principal (1)
8. Other Special Setting (1)

## Locus of Training in Strategies

- Pre-Service (31%)
  - College/University
- Experience (34%)
  - From Students/Experience
  - Other Special Setting
  - Reading
- Job Supports (26 %)
  - Support Staff/AEA
  - Inservice
  - Administrator/Principal
- Intuitive ( 9%)
  - Common Sense

## To Ponder

Yes - we need to influence training programs but much learning occurs subsequent to formal training!

## Research Base for Interventions

- Have seen it work/hands on (8)
- Don't know (7)
- Reinforcement Theory (6)
- Caring Relationship (3)
- College-Taught there (3)
- Glasser Work (2)
- Self-Esteem Research (2)
- Articles/Books (2)

## Other Research (1)

- Other teachers (2)
- Applied Behavior Analysis
- Extinction
- Differential Instruction
- Belief
- Commercial Vender
- Progress Monitoring
- Not a lot of Research
- Other settings have researched

## The Challenge

- Using relevant and recent data in planning.
- Demonstrating individualization with behavioral interventions.
- Expanding scope of what we address in our behavioral planning.
- Considering factors beyond the child that influence behaviors seen (PBS-school-wide and individual).

## Other Considerations for Administrators

- Pushing for interventions that move beyond just consequenceing behaviors.
- Realizing the importance of demonstrating teaching interventions that have been used in cases where students demonstrate inappropriate behaviors.

## For Slides and Further Discussion

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