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**Precarious Balance:
School Safety and Discipline of
Special Education Students**

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I. STUDENTS COVERED BY THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

A. Students who have qualified to receive special education services following a comprehensive evaluation.

B. Students who are not yet determined eligible for special education, if the school had knowledge that the child had a disability before the behavior occurred precipitating the disciplinary action.

1. Imputed Knowledge

a. The parent expressed concern in writing to school administration, or student's teacher that he or she is in need of special education;

b. The parent has requested an evaluation; or

c. The teacher or other personnel has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education or to other supervisory personnel.

2. Knowledge not Imputed

a. The parent has not allowed an evaluation of the child;

b. The parent has refused special education services;

c. The child has been evaluated and determined not a child with a disability.

Ala. Admin. Code § 290-8-9.09(5); 34 C.F.R. § 300.534.

II. CHILD FIND OBLIGATION

- A. School districts have an affirmative duty to identify students who are:
 - 1. Suspected of being a child with a disability, and
 - 2. In need of special education.
- B. Applies regardless of whether the child is progressing from grade to grade.
- C. Parents are not required to request a school district to identify and evaluate their children.
- D. School district must actively seek out students with disabilities.

Ala. Admin. Code § 290-8-9.01; 34 C.F.R. § 300.111.

III. ALTERNATIVE EDUCATIONAL PLACEMENTS

- A. Removals for not more than 45 school days to an interim alternative educational setting (“IAES”).

Ala. Admin. Code § 290-8-9.09(2)(e); 34 C.F.R. § 300.530(g).

- B. Manifestation determination meeting must be held.
 - 1. Student can be placed in IAES regardless of whether the behavior is a manifestation of the student’s disability.
 - 2. Ensure proper notice to parent.

C. IEP team determines IEAS and services provided during removal.

D. Removal of 45 days may carry forward into following school year.

E. Special circumstances allowing 45 day removal:

1. Drugs

a. Student must knowingly:

(1) possess drugs,

(2) use illegal drugs, or

(3) sell/solicit the sale of a controlled substance.

b. Must occur:

(1) at school, or

(2) at a school function under the jurisdiction of the school district or state educational agency.

c. Illegal drug is a controlled substance not legally possessed or used under the supervision of a licensed health-care professional.

d. Controlled substance means a drug or substance identified in the Controlled Substances Act, 21 U.S.C. § 812(c), and includes marijuana, cocaine, heroin, amphetamines, and anabolic steroids.

2. Weapons

a. Student must:

(1) carry a weapon or possess a weapon,

(2) at a school function under the jurisdiction of school district or state educational agency.

b. Weapon has the same meaning as the term “dangerous weapon” of 18 U.S.C. § 930(g)(2):

(1) weapon, device, instrument, material or substance, inanimate or animate, that is used for or readily capable of causing death or serious bodily injury.

(2) does not include a pocket knife with a blade less than 2.5 inches in length.

3. Serious Bodily Injury

a. A bodily injury which involves one or more of the following:

(1) substantial risk of death

(2) extreme physical pain,

(3) protracted and obvious disfigurement, or

(4) protracted loss of impairment of the function of a bodily member.

b. Bodily injury is defined as:

(1) a cut, abrasion, bruise, burn or disfigurement,

(2) physical pain

(3) illness,

(4) impairment of the function of a bodily member, or

(5) any other injury to the body, no matter how temporary.

F. Case Law

Bisbee Unified Sch. Dist., No. 2, 54 IDELR 39 (SEA AZ 2010).

Special education student with autism exhibited aggressive behaviors and violence towards teachers and students. Behaviors continued to escalate and principal restrained student. During the restraint, the student kicked the principal in the knee, causing a sharp pain. The principal had a swollen knee and hurt his shoulder due to the incident. The principal drove 200 miles the next day for a doctor's appointment where he received a cortisone injection.

The hearing officer held the evidence did not show the principal suffered extreme physical pain. The principal did not "cry out in pain, drop to the floor, become unconscious, call for an ambulance or do anything else that one would expect when a person is in 'extreme' physical pain."

G. Special education student removed to IAES continues to receive educational services:

1. "to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the IEP."

2. Participating in the general education curriculum does not require school districts to replicate every aspect a child would receive in the normal classroom.

3. For example, students in IAES may not receive chemistry lab, woodshop, auto mechanics, or culinary arts classes.

71 Fed. Reg. 46, 716 (2006).

H. Case Law

District of Columbia Public Schools, 115 LRP 16763 (SEA DC 2015).

A special education student with cognitive delays and a learning disability was removed from school for 45 days for possessing marijuana at school. He also possessed a knife at school. The student had several behavioral issues, including physical aggression, moodiness and attention seeking. Instead of sending the student to the alternative school, the school district sent "work packets" for the student to complete at home. The student was unable to progress towards meeting his IEP goals due to missing 29 days of instruction.

The hearing officer rejected the school district's argument that the "work packets" allowed the student to keep up with his assignments. The failure to provide an IAES was a

denial of FAPE. The hearing officer awarded compensatory services and independent counseling.

IV. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

A. IDEA does not prohibit a school district from filing a juvenile court petition. *Ala. Admin. Code* 290-8-9.09(6); 34 C.F.R. 300.535(a).

B. Procedural protections that apply to reports of a crime are established by criminal law, not IDEA. 64 Fed. Reg. 12,631 (1999).

C. IDEA cautions school districts to “take care not to exercise their responsibilities in a discriminatory manner.” 64 Fed. Reg. 12,631 (1999).

D. Manifestation determination meeting is not required where student is detained in a correctional facility for more than 10 days as consequence of the criminal action.

E. IEP team must within two weeks of child’s return to school setting:

1. If no imputed knowledge that the child has prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

2. Conduct a functional behavioral assessment, unless the school district has conducted a functional behavioral assessment during the previous 18 months before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child, and

3. If the behavioral intervention plan already has been developed, review the behavioral intervention and modify it, as necessary, to address the behavior.

F. Case Law

Papadelis v. Rochester, 2010 WL 3447897 (Ct. App. Mich).

Parents of a special education student with an adjustment disorder, Tourette syndrome and ADHD alleged the school district violated IDEA by filing juvenile court petition for the student's behavior at school. The court held the school district made every effort to address the student's behavioral issues and there was no violation of IDEA. The student was not entitled to manifestation determination hearing because he was not removed from school for more than 10 days, and his educational placement was not changed by the school district. All actions taken were within the jurisdiction of the juvenile court.

V. GUN FREE SCHOOL ACT

A. Boards of Education are required to develop and implement local policies and procedures requiring the expulsion of students, for a period of one year, who are determined to have brought to school or have in their possession a firearm in a school building, on school grounds, on school buses, or at other school-sponsored functions.

B. Boards of education may modify the expulsion requirement for a student on a case-by-case basis.

C. Students who are expelled for violation of this section shall not be allowed to attend regular school classes in any public school in the state during the expulsion period.

D. Students who are expelled from schools for firearm possession may be permitted to attend alternative schools designed to provide education services.

E. Discipline of students with disabilities who violate the firearm possession policies of boards of education shall be determined on a case-by-case basis in accordance with the requirements of the Individuals with Disabilities Education Act IDEA and Section 504 of the Rehabilitation Act.

Ala. Code § 16-1-24.3.

VI. EDUCATIONALLY RELATED MENTAL HEALTH,
PSYCHIATRIC OR MEDICAL EVALUATION

A. A student must be assessed in all areas related to the suspected disability, including, if appropriate...social and emotional status.

Ala. Admin. Code § 290-8-9.02(1)(g); 34 C.F.R. § 300.304(c)(4).

B. IEP team would determine an educationally related mental health, psychiatric or medical evaluation is necessary based on rationale, such as:

1. Issues have progressed to such an extent that a therapeutic approach may be needed.

2. To help inform the IEP team of the degree to which the student's medical conditions may impact his or her learning and daily functioning.

3. To inform the IEP team of how the student's medications impact cognitive functioning.

4. To assist in more fully assessing the student's behavioral difficulties and make recommendations regarding both the psychological and medical issues that may be causing the student's behaviors.

5. To help the IEP team determine the least restrictive environment.

C. School district pays for the evaluator.

D. School district can select the evaluator.

E. IEP team is required to consider any recommendations of the mental health, psychiatric or medical evaluation.

F. The parents need to consent for the evaluation.

G. A due process hearing complaint can be filed with the Alabama State Department of Education if the parents refuse to provide consent.

VII. ADDITIONAL PROACTIVE CONSIDERATIONS

- A. Provide counseling as a related service in the IEP.

- B. Communicate with parents about student's behaviors and request suggestions from parents about possible interventions.

- C. Seek a release to obtain medical treatment records of students.
 - 1. Summarize in educational terms the information provided in records.
 - 2. Document parents' refusal to allow consent.

- D. Seek a release to communicate with student's medical/mental health care providers.
 - 1. Develop open lines of communication and share information regarding behaviors and challenges observed at school.
 - 2. Document parents' refusal to allow consent.

- E. Conduct IEP meetings to incorporate reasonable recommendations from medical and mental health providers.

- F. Consult with a Board Certified Behavior Analyst ("BCBA"):
 - 1. Conduct behavior intervention plan.
 - 2. Develop behavior intervention plan.
 - 3. Collect data of behavioral disorders that are being treated.
 - 4. Document the nature, severity and frequency of the behaviors.

- G. Contract with mental health professionals or community mental health agencies.

H. Provide professional development and training to teachers in understanding the nature of students' behavioral disorders.

I. Work cooperatively with multi-needs teams to obtain additional behavioral resources for students.

J. Develop transition plans for reentry to school following treatment at residential and psychiatric facilities.

K. Collaboration with community professionals, such as probation officers and social workers.

L. Utilize the Alabama State Department of Education as a resource.