

# Deep Dive Into Discipline

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## Is Discipline Worth it?

What is the reason for the disciplinary action?

What impact does the disciplinary process have on the student, the student's behavior, or the school overall?

Ask **before** imposing discipline



# Scenario #1

- You are the administrator. Decision required now.
- Student with an IEP (EBD):
  - Hits a staff member
  - 9 cumulative suspension days
  - BIP exists but inconsistently implemented
  - Parent recently claimed IEP not being followed
  - Teacher refuses student return
  - Principal: “Suspend and move to setting 4 now!”

# Scenario #1

- **Vote (no discussion yet):**
- What do you do **today?**
  - A. Suspend immediately
  - B. Send home but not count as suspension
  - C. Keep student in school, schedule a manifestation determination
  - D. Remove and begin change of placement process
- *Now turn and defend your answer*

# Deconstruct the Decision

## Attorney Perspective

- Pattern suggests change of placement
- MDR required
- Failure to implement IEP creates legal exposure

## Administrator Perspective

- End-of-day decision pressure is real
- Staff refusal complicates implementation
- Decisions often made without full information

# Reviewing the Situation Beyond the Discipline Decision

## What Went Right?

- Special education involved before student suspended
- Time to review the situation before a change in placement occurs

## What Concerns do you Have?

- Implementation (IEP and BIP)
- Is this the LRE (or is the Principal's statement off base)?
- Teacher refusal presents concern under IDEA and anti-discrimination laws

Top Ten (in one Lawyer's Opinion  
Anyway) Legal and Logistical Concerns  
in Student Discipline Situations that  
Result in Liability for Schools (in no  
Particular Order)

# Number 10: Errors in the Manifestation Determination Process

## Failure to Consider “all” Relevant Information

During the manifestation determination, IEP teams must “review all relevant information in the student’s file...and any relevant information provided by the parents...” to make the determination as to whether the behavior was a manifestation of the student’s disability. 34 C.F.R. § 300.530(e)(1).

## Limiting Discussion to Certain Disabilities

The IEP team must determine whether the student’s behavior is a manifestation of the “child’s disability.” 34 C.F.R. § 300.530(e). That determination is not limited to a specific disability, or even a disability identified in the student’s IEP or evaluation.

# Number 9: Failures to Implement the IEP/BIP

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Failures to Implement an IEP/BIP can Result in Behavior that is a Manifestation of a Student's Disability

Failures to Implement that Result in a loss of Education can Result in a loss of FAPE

# Number 8: Communication Breakdown Between Special Education and General Education Staff

- Every staff member who interacts with a student with a BIP must follow the applicable provisions of the BIP (or applicable provisions of an IEP or Section 504 plan)
- Substitutes need to know how to implement relevant provisions of students' IEPs/BIPs/Section 504 plans (not just related to discipline)
- On the other hand, there are legitimate data privacy concerns that limit what information staff can access about disabled students.
- Administrators and special education staff should be in consultation prior to major discipline decisions (especially when the decision is likely to result in a change in placement)

# Number 7: Inconsistent Decisions

## Students with Disabilities are Entitled to all Process due to Nondisabled Students

- Students with disabilities are entitled to all of the same procedures and processes described in the Pupil Fair Dismissal Act, the Constitution, other applicable laws, and applicable district policies as their nondisabled peers.

## Inconsistent Decisions can Result in Discrimination Claims

- Disciplining a student with a disability more harshly than a nondisabled peer who engaged in similar misconduct may result in liability under Section 504, the ADA, and/or the Minnesota Human Rights Act.

# Number 6: Lack of Documentation

## The Pupil Fair Dismissal Act and the IDEA Require Certain Documentation Related to Discipline

- The Pupil Fair Dismissal Act has specific requirements related to notices of suspension and notices of expulsion that districts must follow.
- MDE has the authority to investigate alleged violations of the Pupil Fair Dismissal Act as it applies to students with disabilities.

## Lack of Documentation can harm the District's Ability to Prevail in Administrative Claims or Litigation

- Documentation often provides critical evidence in disputes with parents.
- Contemporaneous documentation can help fill in the blanks, especially in chaotic disciplinary situations or if staff are unavailable later.

## Number 5: Documenting the Wrong Message

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Unprofessional language, personal attacks, or other inappropriate language in internal documents can be used against the district in a due process hearing, an appeal of an expulsion, other administrative proceedings, or litigation.

That includes emails, text messages, and other “private” correspondence that references a student or a parent (and therefore is an “education record” or data on that student or parent that the parent can request).

# Number 4: Counting to 10

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## What Disciplinary Removals Count Towards a Change in Placement (other than the obvious)?

- Bus removals? (Yes, but only if the student has special transportation in the IEP)
- In-school-suspension? (Yes, unless three factors are met)
- Partial days of suspension? (Yes, you can count accurately)
- Informal removals? ...

## Number 3: Informal Removals

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The July 2022 OCR Guidance Regarding Discipline of Students Under Section 504 Cautions Districts Against Using “Informal Removals” that Avoid Section 504’s Procedural Protections.

- Calling a parent to pick up the child
- Having law enforcement remove the child
- “Let’s just call it an excused absence” or a “mental health day.”
- Shortened school days.

## Number 2: Protections for Students not yet Eligible for IDEA Services

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Does the District Have “Knowledge” that the Student has a Disability?

If the District has “Knowledge” of the Student’s Disability, then the Student is Entitled to all of the IDEA’s Procedural Protections.

Even Without Knowledge of a Disability, Behavior may Trigger Child Find.

# Number 1: 45-Day Unilateral Removals

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## Grounds for Removal

- Weapons
- Possession or use of illegal drugs
- Sale or solicitation of the sale of illegal substances
- Serious bodily injury

## Procedural Hurdles

- The district has the authority to remove the student, **but the IEP team** has to decide the placement.
- A manifestation determination is required, but the district can go forward regardless of the outcome.



ADDRESSING  
BEHAVIOR  
THROUGH  
THE IEP  
PROCESS

# Scenario #2

- Student with ADHD:
  - Multiple short removals
  - Now exceeds 10 cumulative days
  - No MDR held

# Scenario #2

- Finger vote:
- Is this a change of placement?
  1. Yes
  2. No
  3. Depends

# Scenario #3

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- Student with Emotional Disability:
  - Threatens to kill peer and peer's family
  - Has BIP
  - Staff say interventions are not working
  - Parent wants student to stay in current placement (and have rejected setting 4 earlier in the year)

# Table Task

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- Discuss:

- Is this a manifestation?
- What data matters most?
- Where do teams go wrong?
- Can the district impose a 45-day placement?



# Section 504 Scenario

- Student with 504 (anxiety):
  - Repeated vaping violations
  - Multiple suspensions
  - Parent requests manifestation review

# Poll

- Finger vote:
- Does 504 require a manifestation analysis in this case?
  1. Yes
  2. No
  3. Only after 10 days



*Any questions*