

Addressing Challenging Behavior: Legal Rights and Responsibilities- Strategies for building a behavioral safety net

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Star Net Presentation

IDEA and Section 504

- ◆ IDEA is a funding statute- requiring all states to comply with its conditions for funding special education
- ◆ Section 504 is a civil rights statute requiring all recipients of federal funds to provide non-discriminatory services, including reasonable accommodations
- ◆ Key is leveraging school services to support kids despite reducing services

Accessing Special Education Services in Preschool

- ◆ Several ways children 3–5 may begin receiving services
 - ◆ Transition out of early intervention under Part C of IDEA at three to Part B
 - ◆ Identified and found eligible between ages of three and five

Developmental Delay

Covers children ages 3-9 who have a developmental delay, but doesn't require assigning a more specific disability category.

Expires when the child turns 9.

IDEA

Emotionally Disturbed

Emotional Disorder Must be Present:

- Over a long period of time
- To a Marked degree
- Adversely affects a child's educational performance

ED Criteria.....

Must Meet One of Following:

- Inability to learn due to emotional factors
- Inability to build or maintain interpersonal relationships
- Inappropriate types of behavior or feelings under normal circumstances
- General pervasive mood of unhappiness or depression
- Physical symptoms or fears

ED Eligibility Based On....

- ◆ Child's functioning in school
- ◆ Child's social relationships
- ◆ Child's ability to complete work
- ◆ Child's ability to conform to school rules and classroom expectations
- ◆ ED includes both aggressive-externalized behaviors and internalized behaviors

Other Health Impaired

- ◆ Chronic or acute health condition such as asthma, diabetes, sickle cell anemia, **AD/HD or Tourette Syndrome**
- ◆ Results in Limited strength, vitality or alertness
- ◆ Includes limited alertness to educational tasks due to heightened alertness to environmental stimuli
- ◆ Adversely affects educational performance

All IDEA eligibility categories require:

- ◆ Meet criteria for specific category
- ◆ Disability adversely affects educational performance
- ◆ Child requires special education intervention

IEP Basics

- All kids identified as eligible for special education must have an IEP that is in place before the start of the school year and must be revised annually.
- The IEP should identify all the student's areas of (educational) need and provide goals and objectives that address the needs.
- The IEP must also specify the actual minutes of special education and related services to be provided, as well as all accommodations that will be given.

The best defense is a good offense- Develop a pro-active IEP

300.324 (a) § (2) Consideration of special factors.

The IEP Team must—

(i) 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;

**Distinction Between Goals and
Accommodations –
Why they need to be complimentary
rather than mutually exclusive**

How will the goals be accomplished?

- ◆ Once the goals are agreed upon, the IEP must specify the special education and related services needed for the child to have a realistic chance of accomplishing the goal.
- ◆ Behavior issues generally need to be considered as an educational issue
- ◆ Remember that special education is a service, not a place.

The devil is in the detail

- ◆ The IEP must indicate the starting date, duration, frequency and location of all services
- ◆ The IEP must specify all supplementary aids, services, modifications, and accommodations that the child needs to benefit from education
- ◆ The IEP should also list the supports the staff need to effectively implement the IEP
- ◆ IDEA 2004 requires that IEP address developmental and functional needs
- ◆ Requires that program be based on peer reviewed research to the extent possible (Behavior programs should be peer reviewed)
- ◆ Make sure that the IEP actually lists everything promised – if it wasn't written, it didn't happen!

Special Considerations for Preschoolers

- ◆ Not every district operates a public preschool program, but this doesn't relieve it of its responsibility to provide FAPE in the child's LRE
- ◆ Embedding interventions into the classroom is especially important for young children

<https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0105>

<https://www.illinoislegalaid.org/legal-information/can-my-child-be-expelled-preschool>

Related Services

- ◆ List is non-exclusive
- ◆ Any non-medical service necessary for child to benefit from education
- ◆ Medical services are those services which can only be provided by a doctor – psychiatric treatment is not a related service, but psychiatric evaluation can be

Related Services for Kids with AD/HD or emotional/behavioral issues

- ◆ School social work, psychology or counseling
- ◆ Social Skills Training
- ◆ 1-1 aides to provide structure
- ◆ Positive Re-enforcement System
- ◆ Parent Counseling
- ◆ Medication Administration
- ◆ Transportation if disability makes walking unsafe

Additional strategies for children with emotional issues

- ◆ Training programs for staff & students (IEP must include supports for the staff as well as student)
- ◆ Monitoring strategies – alertness coupled with privacy protection
- ◆ Services to address academic consequences of emotional and behavioral problems (and emotional impact of learning problems)

Special Considerations

- ◆ Variability of symptoms and manifestations may confuse staff
- ◆ Calling attention to problem may cause adverse reactions or stigmatize student with others
- ◆ Provide caring/trusted adult to provide support to student

Discipline & Behavior Management

- ◆ IDEA 2004 weakens protections
- ◆ No cessation of services for exclusions in excess of ten days, unless no impact on education
- ◆ School may unilaterally place student in Interim Alternate Educational Setting (AES) for drugs, weapons, serious injury to others, or if IHO says serious danger to self or others

Due Process Rights

Right to Expedited Special Ed Hearing if Child has an IEP, 504 plan, or school is on notice of suspected disability

Still have right to regular ed suspension/expulsion hearing (totally separate from special ed hearing)

IAES Placements

- Administration makes the decision, but IEP team decides the placement
- Must provide means to address goals and cause of behavior
- Placement is frozen in IAES if parent requests a hearing
- Parent can negotiate where IAES takes place.

Illinois SB 100 Reg Ed Discipline Reforms

- Prevents schools from having Zero Tolerance policies
- Requires schools to avoid suspension and expulsion where possible and use non-exclusionary strategies
- May only suspend for more than 4 days, expel or transfer to alternative school if danger or severe disruption
- Must continue to provide supports to student
- Effective 9/15/16

Manifestation Determination

- ◆ If child being considered for cumulative suspension in excess of 10 school days or expulsion, school must convene manifestation conference to determine if behavior is directly related to disability.

IL Expulsion Protections for Preschoolers

- In 2018, IL enacted a law prohibiting schools receiving state funding from expelling preschool students for exhibiting challenging behavior
 - May temporarily remove from group settings if safety threat but must help the student return to group setting as quickly as possible
 - May transition to another program if all available interventions and supports have been exhausted, and it is necessary for child's well-being

<https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0105>

<https://www.illinoislegalaid.org/legal-information/can-my-child-be-expelled-preschool>

Limit use/availability of restrictive/punitive/exclusionary measures

- ◆ Planned ignoring
- ◆ Exceptions to class or school behavioral rules, e.g., for child with improper vocalizations due to TS
- ◆ Replace or supplement school or class wide behavior/PBIS system with child specific plan
- ◆ Avoid removal from class as a response where possible and if it is a reinforcement for poor behavior

IEP Should Include Positive Behavior Interventions and Supports

- ◆ Planned ignoring
- ◆ Descriptive praise
- ◆ Creating routines
- ◆ Changing environment
 - ◆ E.g., changing physical environment, changing timing of activities, and alternating between requests and instructions
- ◆ Distraction
 - ◆ Only before the child does something wrong or gets upset

Building a behavioral umbrella

- ◆ Use IEP process to clearly identify student's behavioral challenges & needs, as well as difficulty understanding or complying with behavioral expectations
- ◆ Build into IEP a hierarchy of positive behavioral supports & interventions
- ◆ Write behavioral goals
- ◆ Find a trusted ally in the school
- ◆ Build in training for staff about the child's condition and about proper intervention
- ◆ Promote positive behavioral support school-wide

The Behavioral Support Safety Net

- ◆ Conduct functional behavioral analyses to ID problem behaviors and their causes and update the FBA as needed and at regular intervals
- ◆ Build in multiple short and long term positive re-enforcement systems for positive behavior
- ◆ Build in aggressive monitoring
- ◆ Provide for skills training in the areas of difficulty, e.g., social skills, anger management
- ◆ Provide for trusted adults to be available to student as mentor/advocate within school

The Safety Net - Continued

- ◆ Provide for voluntary time outs or quiet spaces for student to access if stressful situations arise
- ◆ Use FBA to identify academic, environmental and behavioral stressors which cause or aggravate the student's behavior, including interventions that are contra-indicated

Safety Strategies Should Include the Parents

- ◆ Provide for counseling for the child
- ◆ Make sure the parent is included in the planning and implementation of behavioral strategies. No system will work if the parties aren't cooperating. Insure active and immediate communication with parents in relation to behavioral incidents
- ◆ Provide for parent counseling and training as needed

Functional Behavioral Analysis

- ◆ Must be conducted when the child has been or is being considered for suspension or expulsion in excess of 10 school days
- ◆ Can be conducted at any time, including if it is determined that an FBA had not been previously conducted at the time of a manifestation determination meeting
- ◆ Functional analysis and behavior plans do not have to be limited to behavior that is disruptive or aggressive. It can also address social issues or academic non-compliance

FBA – Garbage in, Garbage out

- ◆ Functional analysis requires direct observation of the student in the environments where the problems are occurring, to identify the antecedents and consequences of the behavior as well as the behavior itself.
- ◆ Retrospective or brief data collection is unlikely to produce accurate or meaningful information that will allow for useful analysis of the behavior and how to respond to it.

Functional Analysis – Making It Real

- ◆ The purpose of functional behavioral analysis is to:
- ◆ identify the causes of a child's behavior and internal and external conditions that can be addressed that will promote positive behavior,
- ◆ reduce negative behavior and identify external triggers that may be contributing to problem behavior
- ◆ Identify strategies that are in place and whether they are helping to reduce or increase the problem behavior and develop alternative strategies to promote appropriate behavior.

Resources

www.mattcohenandassociates.com

www.nami.org

www.ldonline.org

www.chadd.org

www.ndrn.org

www.nichy.org

www.copaa.org

Advocacy Strategies

- ◆ A Guide to Special Education Advocacy: What Parents, Advocates and Clinicians Need to Know

By Matt Cohen

Jessica Kingsley Press, 2009

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www.mattcohenandassociates.com to
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