

OSEP Leadership Conference



Building the Legacy: IDEA 2004



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DISCIPLINE



U.S. Department of
Education
Office of Special
Education Programs

Building the Legacy: *IDEA* 2004



Introduction

- Topics for breakout sessions were selected by OSEP because each highlights critical implementation issues under the *IDEA* 2004 Statute and Regulations
- Presentation will track the Topic Brief (TB page-paragraph)

Key Issues: Discipline

- Add new authority that allows school personnel to consider unique circumstances on a case-by-case basis

34 CFR 300.530(a);
Section 615(k)(1)(A)

- Expand removal authority for special circumstances related to serious bodily injury

34 CFR 300.530(g)(1)-(3);
Section 615(k)(1)(G)(i)-(iii)

Key Issues: Discipline

Retain previous authority for:

- immediate short-term removals (10 days or less) and
- long-term removals (more than 10 days) for behavior that is not a manifestation of the disability

34 CFR 300.530(b)(1) and (c);
Section 615(k)(1)(B) and (C)

Key Issues: Discipline

- Clarify when services are required during a disciplinary removal:
 - For 10 school days or less, only if the agency provides services to others similarly removed (34 CFR 300.530(d)(3));
 - That occurs after a removal from the current placement for 10 school days in the same school year (34 CFR 300.530(b)(2));

Key Issues: Discipline

- That is a disciplinary change in placement for more than 10 consecutive school days where the behavior is not a manifestation of the disability; and
- For special circumstances related to drugs, weapons or serious bodily injury

34 CFR 300.530(d)(1);

Section 615(k)(1)(D)

Key Issues: Discipline

- Specify when:
 - The child's IEP Team determines services (34 CFR 300.530(d)(5))
 - School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed (34 CFR 300.530(d)(4))
 - The child's IEP Team determines the interim alternative educational setting (34 CFR 300.531)
 - The LEA must give parental notice related to a disciplinary removal

Key Issues: Discipline

- Establish new standards for making manifestation determinations (34 CFR 300.530(e); Section 615(k)(1)(E))
- Establish specific requirements when the behavior was a manifestation of the disability (34 CFR 300.530(f); Section 615(k)(1)(F))
- Retain a definition of change of placement and clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals meets that definition (34 CFR 300.536)

Key Issues: Discipline

- Retain protections if the public agency's has a "basis of knowledge" of a disability for children not determined eligible under the *IDEA* (34 CFR 300.534; Section 615(k)(5))
- Establish exceptions to the agency's basis of knowledge where the parent refuses an evaluation or services or where the child is determined not eligible (34 CFR 300.534; Section 615(k)(5))

Key Issues: Discipline

- Revise and clarify due process hearing provisions for discipline, including hearing officer's review and specific timelines (34 CFR 300.532; Section 615(k)(3))
- Define how expedited hearing procedures relate to standard hearing procedures, including timelines for resolution sessions (34 CFR 300.532)

IDEA Final Regulations

(TB 1-1)

(1) Add new authority for school personnel:

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

34 CFR 300.530(a); Section 615(k)(1)(A)

IDEA Final Regulations (TB 1-2)

(2) Add new removal authority related to serious bodily injury:

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child... *has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an State educational agency (SEA) or an LEA*

34 CFR 300.530(g)(3); Section 615(k)(1)(G)(iii)

IDEA Final Regulations (TB 2-2)

(2) Define serious bodily injury:

Serious bodily injury has the meaning given the term "serious bodily injury" under U.S.C. 18 1365(h)(3)

34 CFR 300.530(i)(3); Section 615(k)(7)(D)

The term "serious bodily injury" means bodily injury which involves—(A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty

18 U.S.C. 1365(h)(3)

IDEA Final Regulations (TB 1-2)

(2) Retain the prior removal authority related to drugs and weapons:

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

IDEA Final Regulations (TB 1-2)

- (2) Retain the prior removal authority related to drugs and weapons (*cont.*):
- [or] knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA...

34 CFR 300.530(g)(1)-(2);
Section 615(k)(1)(G)(i)-(ii)

IDEA Final Regulations (TB 2-3)

(3) Retain authority for immediate short-term removals:

School personnel under 34 CFR 300.530 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities),

34 CFR 300.530(b)(1); Section 615(k)(1)(B)

IDEA Final Regulations (TB 2-3)

(3) Retain authority for immediate short-term removals (*cont.*):

and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536)

34 CFR 300.530(b)(1); Section 615(k)(1)(B)

IDEA Final Regulations (TB 1-2)

- (4) Retain authority for long-term removals for behavior that is not a manifestation of the disability:

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 34 CFR 300.530(e),

IDEA Final Regulations (TB 2-4)

- (4) Retain authority for long-term removals for behavior that is not a manifestation of the disability (*cont.*): school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 34 CFR 300.530(d)

34 CFR 300.530(c); Section 615(k)(1)(C)

IDEA Final Regulations (TB 2-5)

- (5) Clarify services and appropriate interim alternative educational settings:

A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed

34 CFR 300.530(d)(3)

IDEA Final Regulations (TB 2-5)

(5) Clarify services and appropriate interim alternative educational settings (*cont.*):

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under 34 CFR 300.530(d)

34 CFR 300.530(b)(2)

IDEA Final Regulations (TB 3-5)

- (5) Clarify services and appropriate interim alternative educational settings:

Services. A child with a disability who is removed from the child's current placement pursuant to 34 CFR 300.530(c) or (g) must--continue to receive educational services, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP;

IDEA Final Regulations (TB 3-5)

- (5) Clarify services and appropriate interim alternative educational settings (*cont.*):
and 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

34 CFR 300.530(d)(1)

IDEA Final Regulations (TB 3-5)

(5) Clarify services and appropriate interim alternative educational settings:

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers,

IDEA Final Regulations (TB 3-5)

- (5) Clarify services and appropriate interim alternative educational settings (*cont.*):
determine the extent to which services are *needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP*

34 CFR 300.530(d)(4)

IDEA Final Regulations (TB 3-5)

(5) Clarify services and appropriate interim alternative educational settings:

If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 34 CFR 300.530(d)(1)

34 CFR 300.530(d)(5)

IDEA Final Regulations (TB 3-5)

- (5) Clarify services and appropriate interim alternative educational settings:

The services required by 34 CFR 300.530 (d)(1), (d)(3), (d)(4), and (d)(5) may be provided in an interim alternative educational setting

34 CFR 300.530(d)(2)

IDEA Final Regulations (TB 3-5)

- (5) Clarify services and appropriate interim alternative educational settings:

The *child's IEP Team determines the interim alternative educational setting for services under 34 CFR 300.530(c), (d)(5), and (g)*

34 CFR 300.531

IDEA Final Regulations (TB 3-6)

(6) Specify when the LEA must give notice:

On the date on which the decision *is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct*, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR 300.504

34 CFR 300.530(h); Section 615(k)(1)(H)

IDEA Final Regulations (TB 4-7)

(7) Establish new standards for making manifestation determinations:

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file,

IDEA Final Regulations (TB 4-7)

- (7) Establish new standards for making manifestation determinations (*cont.*): including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—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

34 CFR 300.530(e)(1); Section 615(k)(1)(E)(i)

IDEA Final Regulations (TB 4-7)

(7) Establish new standards for making manifestation determinations:

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either 34 CFR 300.530(e)(1)(i) or (1)(ii) was met

34 CFR 300.530(e)(2); Section 615(k)(1)(E)(ii)

IDEA Final Regulations (TB 4-7)

(7) Establish new standards for making manifestation determinations:

If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 34 CFR 300.530(e)(1)(ii) was met, the LEA must take immediate steps to remedy those deficiencies

34 CFR 300.530(e)(3)

IDEA Final Regulations (TB 4-8)

- (8) Add a new provision when the behavior was a manifestation of the disability:
- If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either:
 - conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

IDEA Final Regulations (TB 4-8)

(8) Add a new provision when the behavior was a manifestation of the disability (*cont.*):

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

34 CFR 300.530(f)(1);

Section 615(k)(1)(f)(i)-(ii)

IDEA Final Regulations (TB 4-8)

(8) Add a new provision when the behavior was a manifestation of the disability:

Except as provided in 34 CFR 300.530(g) (removals related to drugs, weapons, or serious bodily injury), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan

34 CFR 300.530(f)(2); Section 615(k)(1)(f)(iii)

IDEA Final Regulations (TB 4-9)

(9) Retain a definition of change of placement:

For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 through 300.535, a change of placement occurs if the removal is for more than ten consecutive school days OR

34 CFR 300.536(a)(1)

IDEA Final Regulations_(TB 4/5-9)

(9) Retain a definition of change of placement:

The child has been subjected to a series of removals that constitute a pattern:

- Because the series of removals total more than ten school days in a school year;
- Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

IDEA Final Regulations (TB 5-9)

(9) Retain a definition of change of placement (*cont.*):

Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another

34 CFR 300.536(a)(2)

IDEA Final Regulations (TB 5-9)

(9) Clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals is a change of placement:

- *The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement*
- *This determination is subject to review through due process and judicial proceedings*

34 CFR 300.536(b)

IDEA Final Regulations (TB 5-10)

(10) Address discipline for certain children not determined eligible for special education and related services:

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with 34 CFR 300.534(b)) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred

34 CFR 300.534(a); Section 615(k)(5)(A)

IDEA Final Regulations (TB 5-10)

(10) Define basis of knowledge:

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

34 CFR 300.534(b)(1)-(2);

Section 615(k)(5)(A)(i)-(ii)

IDEA Final Regulations (TB 5-10)

(10) Define basis of knowledge (*cont.*):

- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency

34 CFR 300.534(b)(3); Section 615(k)(5)(B)(iii)

IDEA Final Regulations (TB 5-11)

(11) Establish exceptions to the public agency's basis of knowledge:

A public agency would not be deemed to have knowledge under 34 CFR 300.534(b) if—

- The parent of the child—
 - Has not allowed an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
 - Has refused services under this part; or
- The child has been evaluated *in accordance with 34 CFR 300.300 through 300.311* and determined to not be a child with a disability under this part

34 CFR 300.534(c); Section 615(k)(5)(C)

IDEA Final Regulations_(TB 5/6-12)

(12) Retain due process rights related to hearings on disciplinary issues:

The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b)

34 CFR 300.532(a); Section 615(k)(3)(A)

IDEA Final Regulations (TB 6-13)

(13) Specify the hearing officer's authority for decisions on disciplinary issues:

A hearing officer under 34 CFR 300.511 hears, and makes a determination regarding an appeal under 34 CFR 300.532(a)

34 CFR 300.532(b)(1); Section 615(k)(B)(i)

IDEA Final Regulations (TB 6-13)

(13) Specify the hearing officer's authority for decisions on disciplinary issues (*cont.*):

In making the determination under 34 CFR 300.532(b)(1), the hearing officer may—

- Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or

IDEA Final Regulations (TB 6-13)

(13) Specify the hearing officer's authority for decisions on disciplinary issues (*cont.*):

- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others

34 CFR 300.532(b)(2); Section 615(k)(3)(B)(ii)

IDEA Final Regulations (TB 6-13)

(13) Provide for the repeated use of due process hearings on disciplinary issues:

The procedures under 34 CFR 300.532(a) and (b)(1) and (2) may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others

34 CFR 300.532(b)(3)

IDEA Final Regulations (TB 6-14)

(14) Establish procedures for an expedited due process hearing:

Whenever a hearing is requested under 34 CFR 300.532(a), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through (c) and 34 CFR 300.510 through 300.514, except as provided in 34 CFR 300.532(c)(2) through (4)

34 CFR 300.532(c)(1)

IDEA Final Regulations (TB 6-14)

(14) Establish procedures for an expedited due process hearing (cont):

The SEA or LEA is responsible for arranging the expedited *due process* hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing

34 CFR 300.532(c)(2); Section 615(k)(4)(B)

IDEA Final Regulations (TB 6-14)

(14) Establish procedures for an expedited due process hearing (*cont.*):

Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506—

- A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

IDEA Final Regulations (TB 6-14)

(14) Establish procedures for an expedited due process hearing (*cont.*):

- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint

34 CFR 300.532(c)(3)

IDEA Final Regulations_(TB 6/7-14)

(14) Allow for state-imposed procedures for expedited due process hearings if consistent with the *IDEA*:

A State may establish different *State-imposed* procedural rules for expedited *due process* hearings *conducted* under 34 CFR 300.532 than it has established for *other due process hearings, but, except for the timelines as modified in 34 CFR 300.532(c)(3), the State must ensure that the requirements in 34 CFR 300.510 through 300.514 are met*

IDEA Final Regulations (TB 7-14)

(14) Allow for appeals of expedited due process hearing decisions:

The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.514

34 CFR 300.532(c)(5)

IDEA Final Regulations (TB 7-15)

(15) Address the child's placement pending a due process hearing decision on disciplinary issues:

When an appeal under 34 CFR 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise

34 CFR 300.533; Section 615(k)(4)(A)

Summary

- New authorities and new standards
- Retained authority for certain removals
- Clarifications related to services and appropriate interim alternative educational settings
- Revisions and clarifications related to expedited due process hearings on disciplinary issues

Web Resources

- Center on Positive Behavioral Supports:
www.pbis.org
- Functional Behavior Analysis (IRIS):
<http://iris.peabody.vanderbilt.edu/>

Regional Implementation Planning Meetings

What implementation issues and challenges on this topic should be addressed at the *IDEA* Regional Implementation Planning Meetings?

- January 30 and 31, 2007
 - *Washington, D.C.*
- February 12 and 13, 2007
 - *Los Angeles, California*
- February 15 and 16, 2007
 - *Kansas City, Missouri*

For More Information

Please go to
<http://sites.ed.gov/idea>
for resources on *IDEA*
2004 Final Regulations



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Discipline

Implementation Challenges?