Addressing the Needs of Behaviorally Challenged Students

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Behavior Intervention Plans ("BIP"s) and Functional Behavior Assessments ("FBA"s):

1. Must we consider positive behavioral supports for behavior that interfere with learning?

Yes. When developing the IEP, the ARD Committee "must, 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." 34 C.F.R. §300.324(a)(2).

Be sure the positive behavioral supports to address the behavior are documented in the IEP, either in a BIP or on the accommodations page.

T.M. v. Cornwall Central Sch. Dist., 59 IDELR 286 (S.D.N.Y. 2012): The Court rejected the parent's argument that the District should have completed an FBA and developed an IEP to address the student's interfering behaviors. The record supported that the student's interfering behaviors were not of such frequency or degree that they impeded the student's learning, or that of other students. Additionally, the student's IEP addressed the behaviors with accommodations and positive behavioral supports.

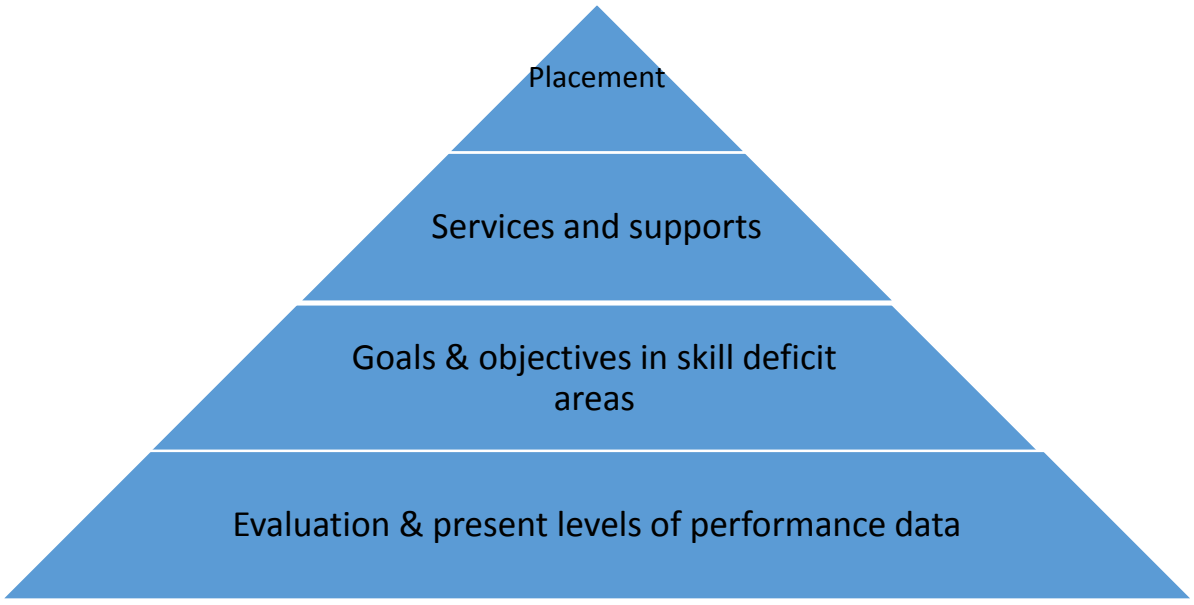
2. **Key point here is you must address skill deficits in the IEP, including emotional/behavioral skill deficits resulting from the student's disability which interfere with the student's learning or the learning of others.**

   A student's IEP must be reasonably calculated for the student to receive meaningful benefit in his/her skill deficit areas resulting from his/her disability. This includes nonacademic skill deficits.

   Failure to address nonacademic skill deficits in an IEP is a frequent, if not constant, allegation in special education due process hearings. Examples of nonacademic skill deficits include: behavioral skills; emotional skills such as coping skills; social skills; daily living skills; communication skills; social communication skills; motor skills; organizational skills; and, study skills.

   Remember, we don't just accommodate skills deficits. Instead, we must teach to skills deficits to facilitate progress in the deficit area and measure progress with progress monitoring on measurable annual goals and objectives.

   The ARD pyramid provides a good visual of this IEP development process:



3. Include a statement of functional present levels of performance in the IEP.

Remember, the regulations require that a statement of the student's present levels of functional performance, as well as academic achievement, be included in the IEP. 34 C.F.R. § 300.320(a)(1). For students' with behavioral difficulties, specificity with regard to present levels of functional performance is a necessary starting point in developing an IEP and measurable behavioral goals and objectives. To avoid conclusory statements of a student's present levels of functional performance, present levels of functional performance may be stated in terms of frequency.

In Northside ISD, Dkt. No. 245-SE-0606 (Texas Hearing Officer Mary Carolyn Carmichael, Jan. 5, 2007): The District gathered present levels of behavioral performance. The student met eligibility criteria as a student with ED/LD. The District conducted an FBA "to determine behavioral antecedents, what happens after the problem behavior occurs, the effectiveness of strategies and reinforcers used over the past year, and the function of the problem behaviors. The target behaviors included physical aggression, peer interactions, and poor self-management and included frequency data on the behaviors (e.g. "2 times a month"). The BIP addressed the target behaviors and included positive behavioral supports, direct instruction in pro-social behaviors, and consequences. In February 2006, the ARDC conducted another FBA and revised the BIP. The parent's alleged the District failed to provide a behavioral baseline for the student during the 2005-2006 school year, among other allegations. The Hearing Officer disagreed.

> Key Quotes: "Documentation of the ARDC meetings held on February 9, 2006, and on May 17, 2006, included documentation that established the baseline of the student's behaviors…As part of the ARDC deliberations on May 17, 2006, the ARDC performed an FBA of the student using a variety of data sources that included the student's conduct grades from current and previous report cards, written documentation produced by teachers and/or administrators, classroom observations by three teachers…, information from the student, the BIP, the student's discipline records, his behavior checklist, Respondent's evaluations of the student, and parental information. Based on these sources, the ARDC concluded a baseline of the student's behaviors and exhibited physically aggressive behaviors about *** times a month in all school locations. The student exhibited poor self-management in the classroom once a week. He had problems with peer interaction in all school locations *** a week."

Coventry Public Sch. v. Rachel J., 59 IDELR 277 (D.R.I. 2012): The Court affirmed the HO decision and ordered the District to reimburse the parents for past placement of their child at a therapeutic out-of-state private school, and also continue funding for the future private school placement. The student, a teenager with ADHD and ODD, was inattentive, disobedient, emotional, and hyperactive, and he had had extreme difficulties with behavior since he was one-year old. Twice in the past, the school system had determined that the student needed an out-of-district therapeutic placement to address his non-compliant behaviors and for the student to make academic progress. Each time the

student returned to the public school setting, his IEP included positive behavioral supports and a behavior plan.

In the sixth grade, however, when his IEP team convened to develop an IEP, despite the long history of behavioral issues impeding his academic progress, and his apparent current need for continued behavioral support, the student's IEP contained no goals, objectives, or statements of present levels of performance for social, emotional, or behavioral functioning. Due to his extreme behaviors that year, the student failed to make adequate progress academically, but no behavior plan was instituted even though his teachers noted his behaviors were interfering with his progress. His parent's withdrew him from the public school and placed him at a therapeutic private school. The Hearing Officer and the Court agreed that, in light of the undisputed fact that the student was unable to make academic progress absent behavioral interventions, the District had not provided a FAPE by not providing these supports in the student's IEP.

Red Clay Cons. Sch. Dist., v. T.S., 59 IDELR 287 (D. Del. 2012): The Court overturned a HO decision and held that even though the student's IEP did not include historical baseline data, this did not render it deficient. Parents of a student with Down Syndrome and other disabilities asserted that the student's IEP was deficient because the current IEP did not include progress made on the previous years IEP, and this made it impossible to track the student's overall progress. The HO agreed that the District had denied the student a FAPE when the IEP failed to include baseline data from previous years of the student's previously mastered skills.

The District Court however, disagreed, noting that even though the student's IEPs did not include the history of progress over the last several years, the parent's argument that the IEPs were formed with little regard for the previous year's programming was not supported by the evidence. The Court found historical baseline data was not required by law as a necessary substantive component of an IEP, and that the District, in using its current present levels of performance data, was still able to effectively measure the student progress under each IEP absent the historical data.

4. Do we have to do another FBA every time we make revisions to the BIP?

No. An FBA is required under IDEA when conduct is determined to be a manifestation of the student's disability and the IEP Team did not conduct an FBA before the behavior that resulted in the change of placement occurred. 34 CFR 300.530(f) (1)(i).

Additionally, a school district should conduct an FBA where the information is needed to develop an appropriate BIP for the student. The ARDC determines whether a new FBA is needed, just as with any other evaluation data.

R.K. v. New York City DOE, 56 IDELR 212 (E.D.N.Y. 2011): The judge's decision adopts a Magistrate's Report which can be found at 56 IDELR 168

The court held that the absence of a FBA and BIP in the IEP for a student with autism was a serious omission which, when coupled with other defects, rendered the IEP inappropriate.

K.L. v. New York City Dep't of Ed., 59 IDELR 190: The Court ruled that the district's failure to conduct an FBA was not a denial of FAPE due to the district's successfully managing the student's behaviors by providing the student a one-to-one paraprofessional, and by addressing with IEP goals the student's underlying anxiety which was causing the behaviors. The eleven-year-old student with autism had significant delays and would chew and shred her clothes while in class. However, the BIP outlined strategies for changing K.L.'s behavior and the district provided support to implement those strategies. The IEP team did not conduct an FBA because it believed it had a "relatively solid understanding of the functions of K.L.'s behaviors." The Court found this reasoning sufficient.

5. In disagreements over area of eligibility, whether the student's individual needs are identified and addressed in the IEP key.

You often see situations in which evaluators disagree over the particular diagnosis/area of eligibility for a student. In these situations, identification of individual needs, and the development of an IEP to address all those individual needs will leave you in a defensible position where disputes over area of eligibility exist.

D.B. v. Houston ISD, 48 IDELR 246 (S.D. Tex. Sept. 28, 2007): In this case, the student received services from Houston ISD as a student with an emotional disturbance. D.B. demonstrated behavioral difficulties from an early age and received multiple diagnosis including "Attention Deficit Hyperactivity Disorder ("ADHD"), Oppositional Defiance Disorder ("ODD"), Major Depressive Disorder, Bipolar Disorder, mixed, and most recently Asperger's Syndrome." The parties disagreed regarding autism eligibility. Results of the District's autism evaluation recommended the student did not meet eligibility criteria. However, the parent's independent evaluator diagnosed D.B. with Asperger's Syndrome. The Hearing Officer and District Court held the District provided the student FAPE.

> Key Quotes: "HISD individually addressed D.B.'s behaviors and provided tailored instruction accordingly....Failure to identify (or agree with) a particular disorder is not a per se denial of a FAPE as long as individualized services are being provided."

6. What do we do about behaviors that are simply a manifestation of the student's particular disability?

Address them in the IEP. The following case illustrates how a denial of FAPE may be the result for failure to address a student's behaviors based on a belief that the behavior is simply part of the disability.

Escambia County Bd. of Educ. v. Benton, 44 IDELR 272 (S.D. Ala. 2005): The issue in this case was whether the District provided the student with autism a FAPE. Specifically, the parent's alleged "(a) failure to address the escalating inappropriate, self-injurious and aggressive behaviors exhibited by [Student] in recent months; (b) failure to state strategies in a manner consistent with [Student's]

needs…and; (c) failure to address [Student's] need for an appropriate behavior intervention plan." Student's IEP did not include a behavior management component. The ALJ observed the Student during the hearing "flapping his arms, repeatedly striking his chest and stomach with an open hand, making unintelligible noises, clapping and pacing around the room…pulling his lawyer's hair, kissing his expert on the cheek twice, touching/rubbing the Hearing Officer's head, and grabbing the shoulders of another lawyer." Evidence presented at the hearing showed such behaviors occurred in the classroom as well. These types of behaviors were not addressed in the IEP and the District's expert testified Student did not require an FBA or BIP because the behaviors were characteristic of his autism, the behaviors "were successfully managed by school personnel, and that the school system appeared to be managing [Student] appropriately via one-on-one instruction in a predictable, structured environment." The District argued the behaviors didn't interfere with Student's education and that because the behaviors were a byproduct of his autism, no behavioral plan was needed. The ALJ ruled in favor of the Student and the District Court affirmed.

> Key Quotes: "The fact that the behaviors demonstrated by the child are a manifestation of [Student's] autism does not excuse a school system from providing behavior management techniques either in the child's IEP or in a separately formulated behavior intervention plan…That omission violated [Student's] right to a [FAPE]…Thus, the touchstone of the analysis as to whether a behavior plan is necessary is not the type of disability the child has; rather, the propriety of those instruments turns on 'whether or not there are significantly inappropriate behaviors for which we do not understand their cause.' Good professional practice dictates that you determine interventions based on the unique needs of each child, rather than categorically stating that no behavioral intervention is needed because the behaviors in question arise from autism."

7. Revise the IEP when a student demonstrates ongoing behavioral difficulties at school.

If the student is performing poorly, consider revisions to the IEP to address the student's educational needs. Evaluation may also be requested and perhaps provide valuable information as to why the student is not making expected progress. Evaluations should be thoroughly reviewed by the ARD committee and include recommendations for the ARD Committee to consider for implementation in the student's IEP.

Failure to amend the IEP when a student's functional performance demonstrates the IEP is ineffective may constitute a denial of FAPE.

K.F. v. Houston ISD, Dkt. No. 362-SE-0605 (SEA TX 2006): The Hearing Officer concluded the District failed to provide the student FAPE. With an IEP in place, the student's behavioral difficulties continued. Counselors reported he was unable to generalize skills learned in counseling. The ARD Committee requested a psychological consultation, which never occurred. Many of the problematic behaviors were not addressed in the BIP and the same BIP, which had been shown to be ineffective the previous school year, was implemented. The student had been hospitalized for emotional/behavioral issues.

> Key Quotes: "The District did not appear to respond appropriately to [the student's] cycling behavior by requesting further assessment to determine what adjustments should be made to his program in light of his behavior. From a behavior standpoint, it does not appear that much change was made to [the student's] educational program between the 2003-2004 and the 2004-2005 school years. The student received approximately 38 disciplinary referrals during the 2004-2005 school year, and on many occasions, the consequences imposed were the same consequences previously identified as being generally not effective."

Council Rock Sch. Dist. V. M.W., 59 IDELR 132 (E.D. Pa. 2012): The court affirmed the hearing officer's decision and concluded the district denied the student FAPE for two years and ordered tuition reimbursement. The student had ongoing behavioral issues, such as anxiety and inappropriate social behavior, due to his chromosomal condition, none of which required a formal behavior plan at school. However, when the student began to exhibit new and more severe behavioral problems at school, including tantruming, engaging in sexual comments, stealing, and intense sexual interest in a girl, the school determined that the current programming was still sufficient to prevent the student's new behaviors from interfering with his academic progress. The court disagreed, noting that the student's teacher had expressed in correspondence with the parent a concern regarding the escalating behaviors, and had suggested the parent take the student to his outside psychiatrist to address them. Therefore, the court concluded that the district had a duty to address these new and escalating behaviors.

B.H. v. West Clermont Board of Education, 56 IDELR 226 (S.D.Ohio 2011): The court held that the district denied FAPE to the student by failing to intervene while behaviors were escalating, and relying too much on physical restraint. The court noted that the SRO, who had ruled for the school district, based that ruling on the fact that the student had not regressed academically.

> Key Quote: "To support her position, the SLRO cited a number of cases for the proposition that adverse impact on academic performance is the deciding factor in determining whether or not FAPE has been denied to a student with behavioral issues. This fact alone supports a finding that the SLRO failed to apply the proper standard and recognize that schools are required to look to both academic and functional advances."

The "FAPE" FREE ZONE

1. When do we have to provide services?

On the 11th day of removal.

"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 C.F.R. § 300.530(d)(3).

SHORT TERM REMOVALS AFTER THE "FAPE" FREE ZONE

Services During Removals:

1. **What services must be provided beyond the FAPE Free Zone for removals that ARE NOT a change of placement?**

   Beginning on the 11th day of removal in a school year, the child must continue to receive educational services 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 C.F.R. § 300.530(d)(1)(i).

2. **Who decides what the services will look like for removals that are not a change of placement?**

   If not a change of placement, the regulation provides:

   > … school personnel, in consultation with at least one of the child's teachers, [must] determine the extent to which services are needed, as provided in § 300.101(a) [guarantee of a FAPE], 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 C.F.R. § 300.530(d)(4).

   There is no requirement that parents be consulted. See, U.S. Department of Education discussion of 34 C.F.R. § 300.530(d)(4), 71 Fed. Reg. 46718 (August 14, 2006).

3. **Does this include services leading up to a change of placement pending the MDR and IEP Team meeting?**

   Yes. If you are beyond the FAPE Free Zone for the period of 10 days or less pending the MDR and IEP Team meeting, school personnel in consultation with at least one of the child's teachers must determine services for those days that do not constitute a change of placement.

4. **Do we have any guidance as to what the services look like?**

   The U.S. Department of Education believes that "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. For example, a child with a disability who is removed for only a few days and is performing near grade level would not likely need the same level of educational services as a child with a disability who has significant learning difficulties and is performing well below grade level." 71 Fed. Reg. 46717 (August 14, 2006).

G.R. v. Dallas School District No. 2 57 IDELR 223 (D.C.Ore. 2011): The court held that the amount of services offered to the student during a period of expulsion satisfied the legal standard. The plan called for three hours a week of one-on-one tutoring in reading, five hours a week of tutoring via a computer-based program administered by a teacher. The district changed the computer program to a one-on-one tutor when it became clear that the student was not making progress. The court held that this satisfied the requirements of the law and that the state law setting out minimum instructional time requirements did not apply to students who were expelled.

Fisher v. Friendship Public Charter School, 58 IDELR 287 (D.C.D.C. 2012): The charter school expelled the student after making a manifestation determination that the student's drug-related conduct was not a manifestation of disability. The parent agreed with the manifestation determination. The school offered to provide only the specialized instruction that was in the IEP, (six hour per week and 30 minutes counseling) and only until the student was enrolled in another school. Eventually, the parent enrolled the student in a private program that served students with disabilities. The student graduated from the private school. The court held that the charter school denied FAPE by failing to provide for appropriate services post-expulsion.

> Key Quote: "It can hardly be argued and the [school] makes no effort, that the six hours of individualized instruction qualified as a FAPE that would allow [the student] to progress in the general curriculum."

5. When determining the setting, does Least Restrictive Environment ("LRE") apply?

The U.S. Department of Education refused to impose the LRE requirement on children who have been suspended or expelled: "School officials need some reasonable amount of flexibility in providing services to children with disabilities who have violated school conduct rules, and should not necessarily have to provide exactly the same service, in the same settings, to these children." 71 Fed. Reg. 46580.

"The Act does not require that children with disabilities suspended or expelled for disciplinary reasons continue to be educated with children who are not disabled during the period of their removal. We believe it is important to ensure that children with disabilities who are suspended or expelled from school receive appropriate services, while preserving the flexibility of school personnel to remove a child from school, when necessary, and to determine how best to address the child's needs during periods of removal and where services are to be provided to the child during such periods of removals, including, if appropriate, home instruction….

"We believe including the language recommended by the commenter [i.e., that children with disabilities continue to be educated with non-disabled peers during suspension or expulsion] would adversely restrict the options available to school personnel for disciplining children with disabilities and inadvertently tie the hands of school personnel in responding quickly and effectively to serious child behaviors and in creating safe classrooms for all children." 71 Fed. Reg. 46586.

Determination of Student Code of Conduct ("SCC") Violations:

1. The campus administrator determines whether a violation of the SCC occurred.

Danny K. v. DOE State of Hawaii, 57 IDELR 185 (D.C.Ha. 2011): The court held that the student received FAPE, was evaluated in all areas of suspected disability, and that the manifestation determination was properly done. The student was charged with setting off a bomb in the school bathroom, thus causing extensive damage. The vice principal investigated and found the student guilty of this offense, in part, based on the student's confession. The student and mother later claimed that he did not set off the bomb but only falsely admitted it to obtain money from the real perpetrators. The student was identified as having ADHD, inattentive type. The court held that the MDR team reviewed the records and had ample support for its conclusions.

> Key Quotes: "Plaintiffs cite no authority, and the Court has found none, to suggest that a manifestation determination team must review the merits of a school's findings as to how a student violated the code of student conduct. Such a requirement would essentially deputize manifestation determination teams, and in turn, administrative hearings officers and federal courts as appellate deans of students. This would be inconsistent with Congress's intent in streamlining IDEA in 2004.
>
> The Court is also unpersuaded by Plaintiffs' argument at the hearing that [the vice principal] should not have led the manifestation determination meeting because he was the one who investigated the firework incident. The Court agrees with Defendant that it made sense for [the vice principal] to lead the meeting since he was the vice principal as well as the school official most familiar with the incident."

Bland ISD; Dkt. No. 072-SE-1209 (SEA Texas 2010) (Lucius Bunton): The hearing officer concluded he did not have jurisdiction to determine whether the student in fact violated the District's Student Code of Conduct. The student engaged in a disciplinary infraction. The Principal assigned the student to the DAEP for forty-five days. The parents did not appeal the DAEP placement to school officials. The ARD committee determined that the behavior was not a manifestation of the student's Other Health Impairment due to ADHD or his Learning Disability. The Student requested a due process hearing requesting findings and an order addressing the determinations of the district in enforcing the student code of conduct. The District asserted that the Hearing Officer did not have jurisdiction over whether the student violated the code of conduct. The Hearing Officer agreed, stating that the "Individuals with Disabilities Education Act ("IDEA") cannot be used as a tool to litigate a district's determination of its own student code of conduct."

Letter to Ramirez, 60 IDELR 230 (OSEP 2012): OSEP states here that special education hearing officers have the authority to overturn the decision of local school officials that a code of conduct violation has occurred.

> Key Quote: "....there may be instances where a hearing officer, in his discretion, would address whether such a violation has occurred. The IDEA and its implementing regulations neither preclude nor require that a hearing officer determine whether a certain action by a student with a disability amounts to a violation of the school district's Student Code of Conduct."

Disciplinary Change of Placement

1. What is a disciplinary change of placement?

A disciplinary change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern—
3.
   ii. Because the series of removals total more than 10 school days in a school year;
   iii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
   iv. 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 C.F.R. §300.536.

2. Are there different kinds of disciplinary changes of placement?

Yes, the above regulation distinguishes between a consecutive day change of placement (more than 10 consecutive school days) and a short-term cumulative day change of placement (series of removals that constitute a pattern).

3. Why is the disciplinary change of placement analysis important?

The disciplinary change of placement analysis is important because school personnel have authority to remove a student without notice of procedural safeguards, a manifestation determination review, or IEP Team meeting as long as the removal does not constitute a disciplinary change of placement.

This unilateral authority to act without notice of procedural safeguards and outside of the manifestation determination review and IEP Team process is set forth in 34 C.F.R. § 300.530(b) as follows:

> School personnel under this section 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 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional

removals of not more than 10 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 § 300.536).

In contrast, a disciplinary change of placement triggers:

- Notice of procedural safeguards "on the date on which the decision is made to make a removal that constitutes a change of placement" (34 C.F.R. § 300.530(h))
- Manifestation determination review (34 C.F.R. § 300.530(e))
- Requirements concerning functional behavioral assessments and behavior intervention plans
  (34 C.F.R. § 300.530(d)(1)(ii) and 34 C.F.R. § 300.530(f)(1))
- IEP Team determination of services (34 C.F.R. § 300.530(d)(5))
- IEP Team determination of the interim alternative educational setting (IAES) (34 C.F.R. § 300.531)
- Restrictions if behavior is a manifestation of the child's disability (34 C.F.R. § 300.530(f))

Change of Placement Analysis: Cumulative Days of Removal:

1. **Who determines whether a cumulative day removal constitutes a change of placement?**

   Whether or not short-term cumulative day removals are a "change of placement" is a judgment made by the school district ("public agency").

   34 C.F.R. § 300.536(b)(1) tells us: "The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement."

2. **Is the public agency's decision final?**

   34 C.F.R. § 300.536(b)(2) states: "This determination is subject to review through due process and judicial proceedings." Therefore, the determination is final unless the parent challenges the decision through the IDEA due process procedures, and a hearing officer or court reaches a different conclusion.

3. **When must we convene an MDR after recommending a disciplinary change of placement**?

   You must convene an MDR within 10 school days of any decision to change the placement of a student with a disability because of a violation of the student code of conduct. 34 C.F.R. §300.530(e).

4. **Does the administrator have to provide the parent a copy of the Procedural Safeguards when recommending a disciplinary change of placement for a student?**

   Yes. *See* 34 C.F.R. §300.504(a)(3).

5. Does the district have to provide the parent prior written notice ("PWN") before implementing a disciplinary change of placement?

I don't believe so because I don't believe this is the intent of the law when read in conjunction with other laws regarding student discipline. For example, the district is not required to offer the parent a ten day recess when the student has commented an offense which may lead to a DAEP placement. TAC §89.1050(h)(1). Furthermore, remember that IDEA provides that if the student's behavior is determined not to be a manifestation of his or her disability, "school personnel may apply the relevant disciplinary procedures…in the same manner and for the same duration as the procedures that would be applied to children without disabilities." 34 C.F.R. §300.530(c). Finally, parents of disabled children have the right to request expedited due process hearings related to disciplinary removals. 34 C.F.R. §300.532. After a due process complaint is filed, students must remain in the disciplinary setting ("stay put" does not apply) unless the hearing officer determines otherwise. 34 C.F.R. §300.533.

However, see In re: Student with a Disability Wyoming State Educational Agency, 55 IDELR 299 (SEA WY 2010): The special education due process hearing officer determined the district failed to provide the parents Prior Written Notice where the school district subjected the student to a series of disciplinary removals that constituted a pattern, resulting in a disciplinary change of placement. The District failed to convene an MDR for the student, nor did the school district provide the student educational services during the student's approximately 20 days of removal. The hearing officer had to approximate removals because the district failed to monitor, or document, the number of times the student was sent home for physical aggression.

Regardless, this legal issue has not been litigated in our jurisdiction. Therefore, if you prefer to take a conservative approach, you may provide PWN prior to a disciplinary change of placement.

IDEA states that written notice must be given to a parent: A reasonable time before the public agency—

i. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
ii. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
34 C.F.R. § 300.503(a).

Remember that the principal is required to give the parent notice of a proposed change of placement "on the day" that decision is made—which is at least five school days prior to the ARD meeting. Best practice appears to be to provide two documents that would satisfy the PWN requirement—one given by the principal before the ARD and one given by the ARD to document the decisions made at the meeting.

6. **What could happen we forget to provide the parent the Procedural Safeguards document or Prior Written Notice document when procedurally required?**

   Failure to provide the Procedural Safeguards document or Prior Written Notice document may toll the one year statute of limitations period for a special education due process hearing.

What Counts as a Day of Removal?

1. **What days do we count?**

   We count "days of removal" which are characterized broadly to include removals "to an appropriate interim alternative educational setting, another setting, or suspension." 34 C.F.R. § 300.530(b).

2. **Do we count out-of-school suspension ("OSS") days?**

   The regulations specifically refer to a suspension as a removal; therefore, you always count out-of-school suspension days. 34 C.F.R. § 300.530(b).

3. **Do we count days in In-School Suspension ("ISS")?**

   It depends. The U.S. Department of Education brought forward its comments from the 1999 regulations regarding in-school suspension: "[I]t has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with non-disabled children to the extent they would have in their current placement. This continues to be our policy." 71 Fed. Reg. 46715 (August 14, 2006).

4. **Do we count days of bus suspension?**

   "Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under § 300.530. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a non-disabled child who has been suspended from the bus." 71 Fed. Reg. 46715 (August 14, 2006).

5. **Do we count removals for portions of a school day?**

   "Portions of a school day [in which] a child has been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536." 71 Fed. Reg. 46715 (August 14, 2006).

6. Do we count time-out, after school detention or lunch detention?

No. We do not think these types of actions would be considered a removal for purposes of a change of placement analysis.

The United States Supreme Court in Honig v. Doe, 559 IDELR 231 (1988), discussed what types of actions school personnel can take that would not constitute a change of placement (and therefore a violation of stay-put) when due process proceedings are underway. The Supreme Court relied on U.S. Department of Education reasoning:

> "The Department of education has observed that, "[w]hile the [child's] placement may not be changed … this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." [Citation omitted]. Such procedures may include the use of study carrels, time-outs, detention, or the restriction of privileges."

A Series of Removals that Constitute a Pattern:

1. How do we reach a disciplinary change of placement based on a series of removals that constitute a pattern?

- The series of removals must total more than 10 school days in a school year;
- The child's behavior must be substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- There must be additional factors such 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.
- *See* 34 C.F.R. § 300.536(a)(2).

2. Is there any limitation on short-term removals?

Unless limited by the child's IEP, there is no limitation on short-term removals that do not constitute a change of placement:

School personnel…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 education setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 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 §300.536). 34 C.F.R. § 300.530(b).

However, beyond 10 cumulative school days, services must be provided to the child.

3. Can you provide some examples?

East Metro Integration District #6067, 110 LRP 34370 (SEA Minn. 2010): A State Complaint Investigator concluded that the three suspensions totaling more than 10 days in a school year did not constitute a pattern because the first two suspensions (4-1/2 day OSS in October, and 3 day OSS in early December) for theft were not substantially similar to the third suspension in late December for possessing a weapon on campus (8 day OSS).

Lewiston Public Schools, 110 LRP 17745 (Me. SEA 2009): The Hearing Officer found a pattern existed based on the "frequency and similarity of the behaviors" and reasoned as follows:

> "Although none of the Student's suspensions in the instant case were for greater than 10 school days in a row, the Student's series of removals, totaling 58 days in his [ ] grade year, constituted a pattern, both with respect to the frequency and types of infractions that lead to the disciplinary actions. The discipline log prepared by the District confirms that these removals were in close proximity to each another and for behavior substantially similar to the Student's behavior in previous incidents. Incidents ranged from refusing to walk with the rest of the class, inappropriate comments to refusing to listen to staff, refusing to do what the Assistant Principal tells him, and refusing to go to ISS and special ed testing."

4. What about students eligible as Section 504 and possible OCR complaints?

Students eligible for Section 504 also have manifestation determine review protections prior to a disciplinary change of placement. OCR considers more than 10 consecutive days of removals a disciplinary change of placement, as well as a series of removals that constitute a pattern.

Manifestation Determination Review ("MDR"):

1. What must the ARD committee consider when conducting a MDR?

The committee must "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents…" 34 C.F.R. §300.530(e)(1). The committee will then answer one manifestation determination question about the school and one about the student.

Student v. Township High Sch. Dist. 214, 54 IDELR 107 (SEA IL 2010): The hearing officer determined the District failed to fully consider information from Student's private psychologist, failed to fully understand the nature of Student's disability and the impact of his disability on his behavior, and incorrectly concluded Student's behavior was not a manifestation of his disability as a result. Student was eligible for special education services as a student with a LD and OHI, based on ADHD and bipolar disorder. Student experienced an altercation with another student and subsequently posted on facebook to the other student "When I come back to school I'm going to look for u and kill you." The MDR meeting lasted only 30 minutes. Student's private psychologist

presented recent evaluation information to the IEP Team regarding her conclusion Student was unable to plan the act and that the behavior was a manifestation of his disability. The District staff did not ask the private evaluator questions regarding her conclusions and instead determined Student's conduct was not an impulsive act related to Student's disability. District staff found Student's conduct was planned since the student had to log onto facebook, find the other student on facebook, and then select to send a message to the other student. During the due process hearing, several staff members testified Student presents with planning deficits. Additionally, Student's IEP noted in several places that he reacts impulsively and reacts irrationally in response to demands and peers at school.

> Key Quotes: "He exhibits poor executive functioning, which includes difficulty with or an inability to plan. The members of the MDR team that evaluated whether or not Student's behavior was a manifestation of his disability failed to fully comprehend the nature of his disabilities, as testified to at hearing. Further, they ignored the credible information provided by Dr. Grandt, his treating psychologist, who actually knew and treated student, and had the most insight into his disabilities. Finally, District's testimony at hearing that Student thought this event out, planned it and executed it from beginning to end is simply unsupportable. District witnesses all testified to the fact that student has difficulty with or an inability to plan as a result of his disabilities. Dr. Grandt testified that difficulties with planning are one of the characteristics related to executive functioning deficits as well as student's other disabilities."

Comment: The information in the student's evaluation data and IEP should be consistent with the district's basis for a determination regarding whether the conduct in question was a manifestation of the student's disability.

Student v. Flour Bluff ISD, 109 LRP 74053 (SEA TX 2008): A Student with an emotional disturbance threatened to bring a gun to school and shoot the campus police officer. Student's received his special education services in a behavioral self-contained classroom and presented with significant emotional/behavioral problems at school and home. The District convened a MDR and concluded Student's behavior was not a manifestation of his disability. The hearing officer concluded it was based on the expert testimony of Student's private evaluators. The hearing officer noted that the ARD document failed to state a basis for the District's determination that the conduct was not a manifestation of Student's emotional disturbance.

> Key Quotes: "The November 16, 2007 ARD Committee Report fails to document the underlying rationale for the manifestation determination. Although the ARD Supplement form contains a box for explanations, none was provided. Instead, the ARD Committee simply restated its conclusion. The ARD Committee's justification for its manifestation determination was not adequately explained."

2. **Question #1 – Did the District implement the IEP?**

   Was the conduct in question "the direct result of the Local Educational Agency's ("LEA's") failure to implement the IEP? 34 C.F.R. §300.53(e)(1)(ii).

3. **Question #2 –Was the conduct caused by the student's disability?**

   Was the conduct in question "caused by, or had a direct and substantial relationship to, the child's disability"? 34 C.F.R. §300.530(e)(1)(i). [Emphasis added].

4. **Do we have any guidance on answering the question regarding whether the student's disability caused the conduct?**

   Yes. The USDE endorsed language indicating that the MDR team should "analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability." Comment to 34 C.F.R. §300.530(e).

   North East ISD; Dkt. No. 054-SE-1109 (SEA Texas 2009) (Steven Aleman): The hearing officer concluded the student's behavior was a manifestation of his disability based in part on the district's documentation of the student's past physical aggression. The student received special education services as a student with an Emotional Disturbance who was diagnosed with mood disorder, anxiety disorder and oppositional defiant disorder. The student's IEP indicated that the student demonstrated three behaviors that affected educational programming and placement: 1) physical and verbal aggression, 2) makes negative comments about self, and 3) low self-esteem. The student was taken off a medication that was used for mood stabilization and anger difficulties. The next day someone confiscated an item from the student. The Assistant Principal arrived and told the student to put his backpack on the table and walked away from the student to address other students. The Student lifted up something and slammed it down. The student picked up his backpack and started to walk past the Assistant Principal. The Assistant Principal put out her arm and asked the student to remain in the area. The student passed the Assistant Principal and together they took a few steps side-by-side with the Assistant Principal attempting to detain the student by grasping the student. The student slung the backpack off his shoulder and onto a ____. The action was characterized as aggression toward the Assistant Principal. The ARD committee found that the aggression was not a manifestation of the student's disability, and the student filed a request for a due process hearing.

   The Hearing Officer stated that "In determining whether the Petitioner's misbehavior was caused by the Petitioner's disability, or whether the Petitioner's misbehavior had a direct and substantial relationship to the Petitioner's disability, the Petitioner's disability must first be understood. The regulations require the ARD committee to consider the child's behavior as demonstrated across settings and across time in making a manifestation determination." Comment to 34 C.F.R. §300.530(e). The Hearing Officer stated that the District had acknowledged the student's mood disorder, irritability and physical aggression since 2007 in a variety of settings. The Hearing Officer concluded that the conduct was caused by, or had a direct and substantial relationship, to the student's disability.

McAllen ISD; Dkt. No. 168-SE-0309 (SEA Texas 2009) (Stephen Webb): The hearing officer concluded Student's behavior was not a manifestation of his disability based in part of his ability to control his behavior at the DAEP placement. The student received special education services as a student with an Emotional Disturbance and Other Health Impairment, apparently based on Tourette's Syndrome. The student's Functional Behavior Assessment ("FBA") targeted three behaviors: disruption of classroom, refusal to follow adult directions, and verbal aggression. The ARD committee developed a Behavior Intervention Plan ("BIP") designed to ameliorate these targeted behaviors.

The Hearing Officer found that "In those instances where Student was referred for vulgar language, classroom disruption or refusal to follow directives, the elements of premeditation, confrontation and a negative exchange between Student and another person were observed. Therefore, Tourette's or any other disability was ruled out as the producing cause of the behavior." Interestingly, the Hearing Officer found that the student's sudden and sustained drop in misbehavior following his placement in the DAEP cast doubt on the parents' position that Tourette's Syndrome is largely responsible for the student's classroom misbehavior. The Hearing Officer concluded that "Based on the marked improvement in Student's behavior in the DAEP and Student's increase in academic productivity, the ARD Committee's placement decision is supported by the results…" Finally, the Hearing Officer found that the ARD committee properly considered and discussed the student's physician's written admonition against placement in the DAEP before ultimately placing the Student at the DAEP.

5. What if the ARD committee answers "yes" to either manifestation determination question?

"The conduct must be determined to be a manifestation of the child's disability." 34 C.F.R. §300.530(e)(2).

6. What must the ARD committee do if the conduct is a manifestation of the child's disability?

(f) Determination that behavior was a manifestation. 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

(1) Either—

i. 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

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

(2) Except as provided in ["special circumstances" exceptions] 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 C.F.R. 300.530

7. What happens if the behavior is not a manifestation of the student's disability?

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 that the student must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. 34 C.F.R. §300.530(c).

8. Who determines the alternative setting?

The ARDC determines the appropriate alternative educational setting in which the services during the students removal may be implemented. 34 C.F.R. §300.530(d)

Student v. China Spring ISD, 110 LRP 36343 (SEA TX 2010): The school district prevailed were the District concluded Student's behavior was not a manifestation of her disability. The District recommended a disciplinary change of placement for Student in the on-campus ISS so that the student's emotional/behavioral support services in her IEP could be implemented, as opposed to an off campus DAEP. The hearing officer concluded the student received a FAPE during the disciplinary removal where her IEP was implemented in the ISS room. Additionally, the hearing officer found the district adequately addressed the student's emotional and behavioral needs in the IEP; including goals and supports in the areas of behavioral skills, emotional/coping skills, social skills, and organizational skills.

CHANGE OF PLACEMENT TO A MORE RESTRICTIVE ENVIRONMENT

1. Is there any special considerations when changing a student's placement to a more restrictive environment?

Yes, the Fifth Circuit provides Five factors for determining a student's Least Restrictive Environment ("LRE"):

1) Has the district taken steps to accommodate the child with a disability in regular education?
2) Are the efforts sufficient or token?
3) Will the child receive an educational benefit from regular education?
4) What will be the child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education?
5) What effect does the presence of the child with a disability have on the regular classroom environment?

Daniel R.R. v. SBOE, 874 F.2d 1036 (5th Cir. 1989).

PARENTAL AGREEMENT

1. **When the parent(s) of a child and the school personnel are in agreement about the child's change of placement after the child has violated a code of student conduct, is it considered to be a removal under the discipline provisions?**

   This question was addressed in a Question and Answer document by the U.S. Department of Education, as follows:

   > No, if the parent(s) of a child and the school district agree to a specific change in the current educational placement of the child. Questions and Answers on Discipline Procedures, Q/A A-1 (Revised June 2009).

Expedited Due Process Hearing

§ 89.1191. Special Rule for Expedited Due Process Hearings. An expedited due process hearing requested by a party under 34 Code of Federal Regulations , §300.532, shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

Special Circumstances

1. **What is the "special circumstances" exception?**

   (g) Special circumstances. 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—

   (1) Carries a weapon to or possessed a weapon at school, on school premises, or to or at a School function under the jurisdiction of the SEA or an LEA;
   (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
   (3) 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 an LEA.

   34 C.F.R. §300.530

   The federal definition of serious bodily injury defines serious bodily injury as bodily injury which involves 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. 71 Fed. Reg. 46,722 (2006).

Injuries which draw blood and necessitate an emergency room visit alone are insufficient to establish serious bodily injury under the definition. Light v. Parkway C-2 Sch. Dist., 21 IDELR 933 (8th Cir. 1994).

A broken nose was insufficient to establish serious bodily injury. Pocono Mountain Sch. Dist., 109 LRP 26432 (SEA PA 2008).

Swelling in the knee of a staff member after being kicked in the knee by a student did not establish serious bodily injury. Bisbee Unified Sch. District. No. 2, 54 IDELR 39 (SEA AZ 2010).

Suffering pain, disorientation, and discomfort after being hit by a student did not establish serious bodily injury where the staff member did not receive pain medication and was functioning normally the next day. In re: Student with a Disability, 54 IDELR 139 (SEA KS 2010).

Serious bodily injury was established where a student head-butted a teacher in the chest. The teacher suffered from internal chest contusions, she described the pain as the worst pain of her life, and was prescribed medications that failed to alleviate the pain. The hearing officer concluded the teacher suffered extreme physical pain as a result of the injury. Westminister Sch. Dist., 56 IDELR 85 (SEA CA 2011).

Physical Restraint

1. What do I need to know about the use of Restraint and Time-Out?

The Texas Education Code § 89.1053, provides the following procedures for Use of Restraint and Time-Out:

a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

b) Definitions:
   1) Emergency means a situation in which a student's behavior poses a threat of:
      A. imminent, serious physical harm to the student or others; or
      B. imminent, serious property destruction.
   2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
   3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
      A. that is not locked; and

B. from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations:
   1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
   2) Restraint shall be discontinued at the point at which the emergency no longer exists.
   3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
   4) Restraint shall not deprive the student of basic human necessities.

d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements:
   1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
   2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
   3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
   4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements:
   1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
   2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
   3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
   4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
   5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:
      a) name of the student;
      b) name of the staff member(s) administering the restraint;
      c) date of the restraint and the time the restraint began and ended;
      d) location of the restraint;

e) nature of the restraint;
f) a description of the activity in which the student was engaged immediately preceding the use of restraint;
g) the behavior that prompted the restraint;
h) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
i) information documenting parent contact and notification.

f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:
1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) and (c) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
4) seat belts and other safety equipment used to secure students during transportation.

g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations:
1) Physical force or threat of physical force shall not be used to place a student in time-out.
2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior. Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the

use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the agency.

l) The provisions adopted under this section do not apply to:
1) a peace officer while performing law enforcement duties;
2) juvenile probation, detention, or corrections personnel; or
3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

2. What do I need to know about the use of seclusion?

A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion.