Discipline Considerations

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Topics

1. Review of Selected Disability Categories
2. Special Education definition
3. FAPE
4. IEP Considerations
5. Annual Goals/Short-Term Objectives
6. LRE
7. Manifestation Determination
8. FBA, PBS
9. Other

Six Pillars of IDEA

- Nondiscriminatory Evaluation
- Individualized Education Program (IEP)
- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE) – rebuttable presumption
- Parent Participation
- Procedural Safeguards

Review of Selected Disability Categories – Part B

- Autism
- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Delay
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech Language Impairment
- Traumatic Brain Injury
- Visual Impairment including Blindness
- Developmental Delay at discretion of State

Emotional Disturbance

"emotional disturbance" means a condition exhibiting one or more of the following characteristics "over a long period of time and to a marked degree that adversely affects a child's educational performance":

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
3. Inappropriate types of behavior or feelings under normal circumstances.
4. A general pervasive mood of unhappiness or depression.
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Disability Categories

Helpful for

- Determining eligibility
- Identifying broad area(s) the IEP must address

Not Helpful for

- Determining specific learning needs
- Determining specific special education needs

Special Education Definition

§300.39 Special education -

(a) *General*. (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

IEP Considerations

- Team must consider:
  - Child's strengths
  - Parent concerns
  - Evaluation results
  - Academic, developmental, & functional needs
- Behavior
- Language
- Braille Instruction
  - State must adopt National Instructional Materials Accessibility Standards and provide instructional materials to persons with visual impairments in a timely manner
- Communication Needs
  - For child who is deaf, consider opportunities for communication with peers in child's language and communication mode
- Technology

IEP Considerations

- Related Services

  Includes parent counseling and training

- Program Modifications or Supports for School Personnel

  May include training, coaching, and other tools to appropriately address the behavioral needs of a particular child

FAPE

§ 300.17
Free appropriate public education. *Free appropriate public education* or *FAPE* means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

FAPE

- Education must be tailored to meet the unique needs of a particular child.
- IDEA does not guarantee a particular outcome.
- IDEA does not require maximization of potential.

Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 553 IDELR 656 (U.S. 1982)

FAPE

- "a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all."
- District must provide an IEP that is reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances.

Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017)

FAPE
Reasonably Calculated

- Decisions informed by school expertise, progress of child, potential of child, and parental input.
- Challenging objectives based on general education curriculum and critical functional skills if needed.
- Consider previous rate of growth, behavior, efficacy of prior interventions
- Grade advancement or Goal achievement **may not** be sufficient for determining FAPE

Annual Goals and Short-Term Objectives

- Based on Present Levels of Academic Achievement and Functional Performance
- Nearly always completed with presumption of placement in general education setting
- Annual Goals and Short-term Objectives
  - Must be specific in order to be measurable
  - Must not violate the Dead man's rule
  - Must Pass Stranger Test
  - Must Pass the So What Test

Annual Goals and Short-Term Objectives

- Must observe and carefully describe behavior
  - Description must pass "stranger test"
  - "Sheldon pushed the table over and ran around the room three times." NOT "Sheldon was disruptive"
  - "Mary spat on children" NOT "Mary was aggressive"
  - Just DESCRIBE the behavior DON'T judge it
  - Don't describe internal states (angry or frustrated)

Annual Goals and Short-Term Objectives

- When angry, Jonas will count to 10 and use the clasroom strategy before talking to peers. (nonexample)

- When on the playground, Jonas will talk with peers with no instances of hitting or cussing for 5 consecutive days. (good example)

Annual Goals and Short-Term Objectives

- Mary will not hit other students. (nonexample)

- When attempting to gain attention of a peer, Mary will say the peer's name with zero instances of touching the peer twice per day for 5 consecutive days. (example)

Annual Goals and Short-Term Objectives

- Marcus will follow teacher directions 100% of the time. (nonexample)
- Given a verbal one step direction, Marcus will complete the task without redirection on 4 of 5 opportunities per day for 5 consecutive days. (example)

Least Restrictive Environment, Part B

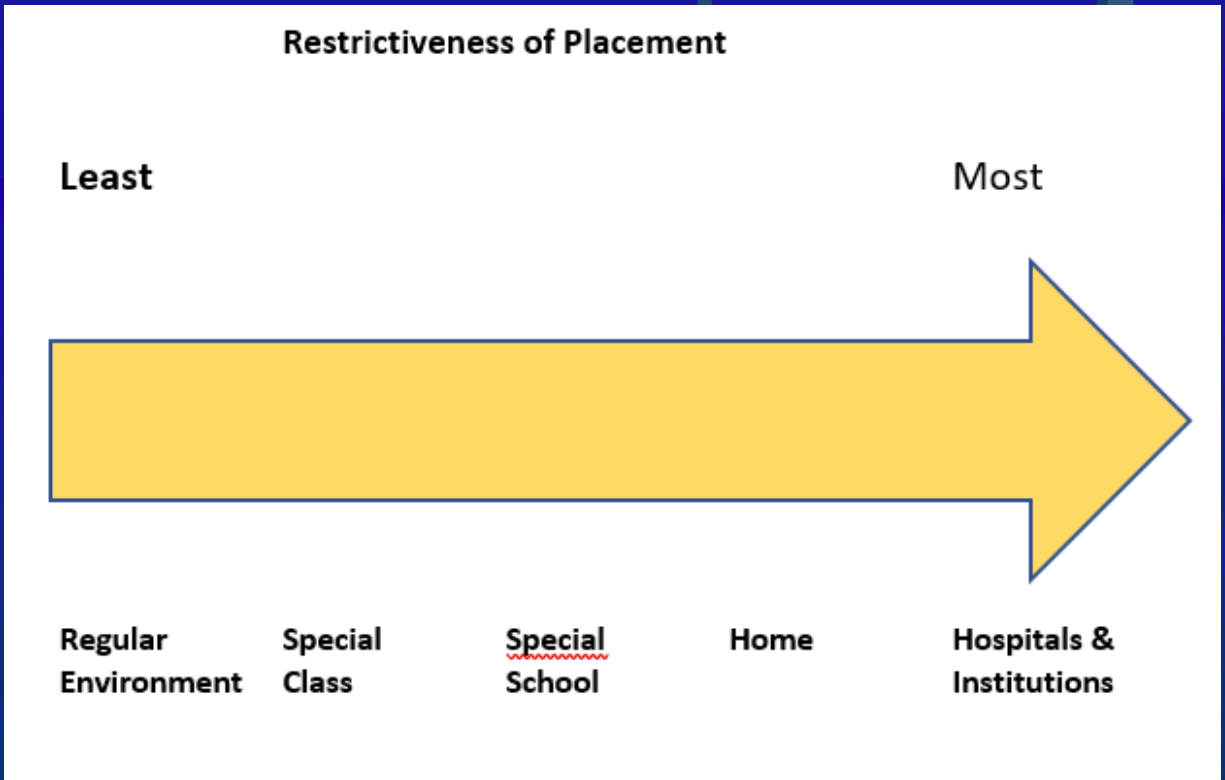
- 34 CFR Part 300.114
  - Each public agency shall ensure –

(1) That to the maximum extend appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Least Restrictive Environment, Part B

- Sec. 300.115 Continuum of alternative placements.



Least Restrictive Environment, Part B

- The failure to consider and provide for needed behavioral supports in the IEP process is likely to result in a child not receiving a meaningful educational benefit or FAPE.
- . . . failure to make behavioral supports available . . . Could result in an inappropriately restrictive placement and constitute denial of placement in the LRE.

Manifestation Determination

- Within 10 days of decision to **change placement** due to a violation of the code of student conduct, the LEA, parent, and relevant members of the IEP team (as determined by LEA and parent) shall review the student's file, IEP, teacher observations, and parent information to determine

Manifestation Determination

1. Whether the behavior in question was caused by or had a direct and substantial relationship to the child's disability, or
2. Whether the behavior in question was the direct result of the LEAs failure to implement the IEP.

- If either #1 or #2 above are applicable to the child, then the behavior must be considered a manifestation of the disability

Manifestation Determination

If the behavior is a manifestation, the IEP Team shall:

1. Conduct a Functional Behavioral Assessment (unless it had been done earlier)
2. Implement a Positive Behavior Support Plan (or review and revise current plan)
3. Return the child to the placement from which removed **unless** parent and LEA agree to a change in placement **OR** the child was removed for special circumstances (weapons, illegal drugs, inflicting serious bodily injury)

Manifestation Determination

- If behavior was not a manifestation - Disciplinary procedures used with children without disabilities may be implemented; however, the child must receive special education services after 10 days of suspension

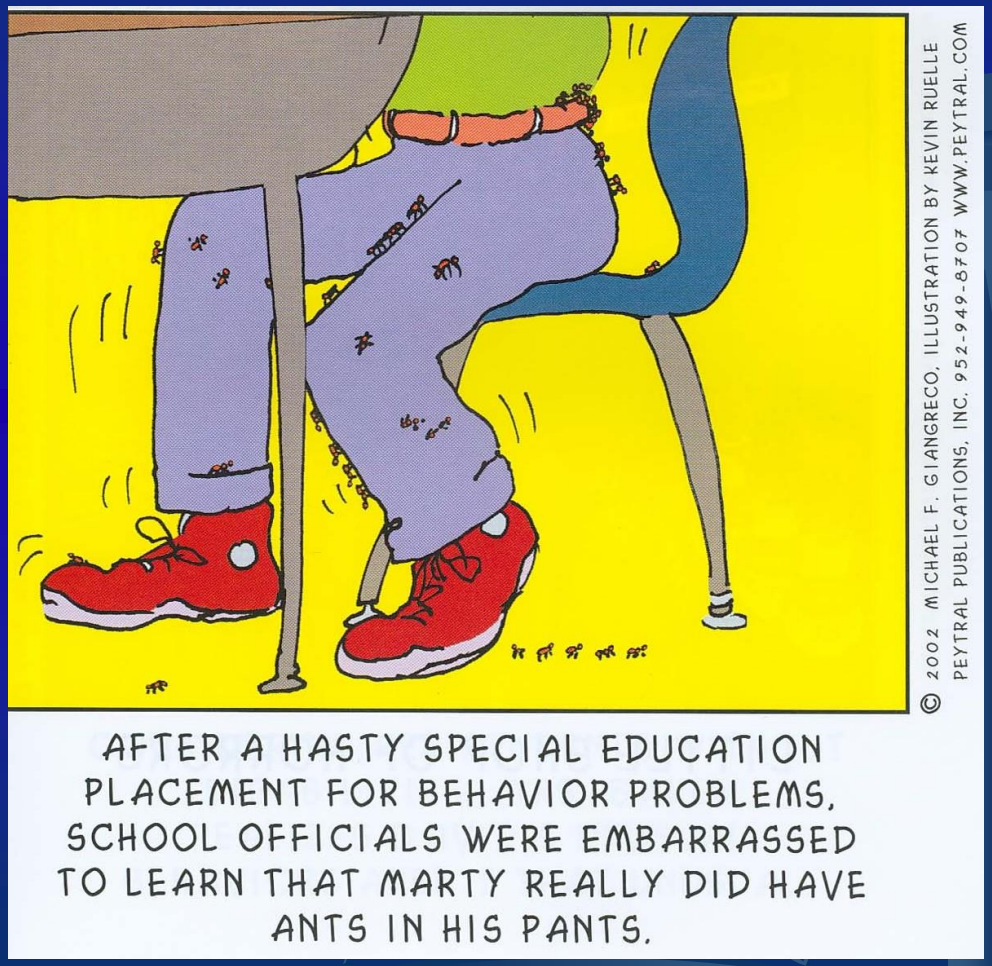
Manifestation Determination

- Students not yet eligible
- If the child was not yet eligible, but the school thought he was a child with a disability, these protections
  - **Considered**: parent expressed concern in writing, requested an evaluation, or school personnel expressed concern about behavior pattern
  - **Not Considered:** parent refused eligibility evaluation, refused services, or child was evaluated and found ineligible

Functional Behavior Assessment (FBA)

- Not defined in IDEA
- Generally includes:
  - Definition of problem behavior that is clear and measurable
  - Observation and collection of data
  - Identification of setting events, antecedents, and maintaining consequences
- IF the FBA is is an evaluation/reevaluation and triggers procedural safeguards

Functional Behavior Assessment (FBA)



Positive Behavior Support Plans

1. Conduct Competing Behavior Analysis (complete chart)(Horner & Billingsley, 1988; Horner, et al., 1993; O'Neill et al., 1997)

   A. Summarize FBA information to construct a hypothesis statement for each response class of problem behaviors

   B. Identify appropriate desired behavior (behavior you want) and alternative replacement behaviors (acceptable short-term alternative) that would result in same consequence as target behavior

   C. Identify potential intervention procedures, across 4 support categories (setting event, antecedent, behavior, consequence)

   D. Select strategies from proposed options that are technically sound and likely to result in behavior change and are a good contextual fit

Other

- In-School Suspensions
  - May or may not count as a suspension under the 10-day rule
  - Not counted if:
    - 1. Student has access to gen ed curriculum
    - 2. Makes progress to IEP goals/objectives
    - 3. Student has access to students without disabilities to the same extent as before in-school suspension

Other

- Informal Suspensions – often abused
  - Homebound
  - Shortened school days
  - Having parents pick up their children
  - Requiring parents attend school with their children
  - Bus suspension
- Restraint and Seclusion
  - No evidence that they are effective in reducing problem behaviors.

References

Book:

- Hyatt, K. J., & Filler, J. W. (2020). Developing Meaningful IEPs: The Complete Guide to Educationally Meaningful Individualized Educational Programs for Students with Disabilities (3rd ed.). Dubuque, IA: Kendall Hunt Publishing Company.

Websites:

- IRIS Center at Peabody College of Vanderbilt University. Contains user-friendly and evidence-based modules on a wide range of special education topics. https://iris.peabody.vanderbilt.edu/
- Beach Center on Disability at the University of Kansas. Excellent resource for information on Positive Behavior Supports, Self-determination, and other services for individuals with disabilities. https://beachcenter.lsi.ku.edu/beach-research
- National Disability Rights Network. Information on Protections and Advocacy for people with disabilities. https://www.ndrn.org/
- U.S. Department of Education, Restraint and Seclusion: Resource Document, Washington, D.C., 2012. Document reviewing the use of seclusion and restraint.