

# **Effective Behavior Support**

## **2014 Webinar Series**

### **Part 1: Legal Foundations of Behavior**

Training & Technical Assistance Unit  
Division of Specialized Education





# Agenda

**Section 504**

**IDEA**

**Discipline Principles**

Removal

Change in Placement

Manifestation  
Determination

# Frequently Used Acronyms

<b>BIP</b>	Behavior Intervention Plan
<b>FBA</b>	Functional Behavior Assessment
<b>FAPE</b>	Free Appropriate Public Education
<b>IDEA</b>	Individuals with Disabilities Education Act
<b>IEP</b>	Individualized Education Program
<b>LEA</b>	Local Education Agency
<b>LRE</b>	Least Restrictive Environment
<b>PBIS</b>	Positive Behavior Interventions and Supports

# 1973 Rehabilitation Act: Section 504

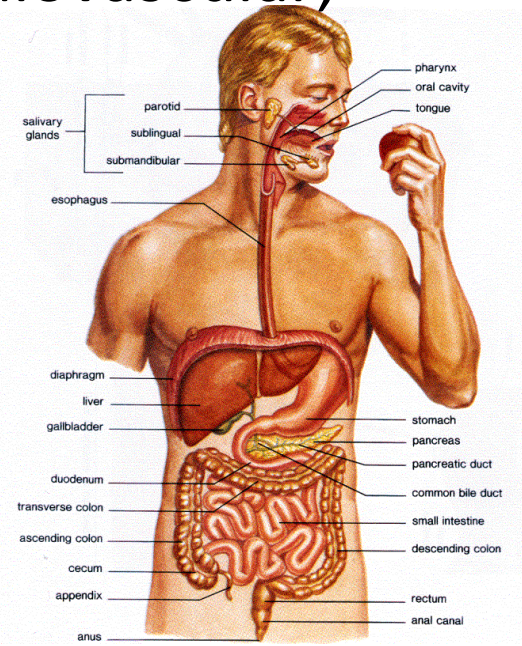
- Disability civil rights law
- Precursor to Americans with Disabilities Act (1990)
- Prohibits discrimination on basis of disability for programs receiving federal funding
- Students with qualifying disabilities have specific protections

Section 504 prohibits discrimination and requires schools to provide FAPE to qualified students who have a physical or mental impairment that **substantially limits** one or more major life activities.

# Physical Impairment

## Physiological disorders or conditions:

Cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic or lymphatic; skin; and endocrine...



# Mental Impairment

Any **mental or psychological disorder**, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.



34 C.F.R. 104.3 (j)(2)(i)

# Major Life Activities

## Examples of Major Life Activities:

- Performing manual tasks
- Communicating
- Concentrating
- Thinking
- Reading
- Hearing
- Speaking
- Learning
- Sleeping
- Standing
- Working
- Walking
- Seeing
- Eating



## Exclusion to Major Life Activities

If a child with a 504 Plan commits an infraction while under the influence of illegal substances, that child can be treated as a child without a disability.

*FAQs about Section 504 and the Education of Children with Disabilities, Office for Civil Rights*

# Determining Substantial Limitation

- Case-by-case basis
- No one measure, formula, or scale used
- Group of knowledgeable persons draw upon variety of information in making determination
- “Mitigating measures” must not be considered
  - Medication, medical supplies, etc.
  - Exception: ordinary glasses or contact lenses
- Transitory impairment:
  - Actual or expected duration of 6 months or less

34 C.F.R. 104.35 (c)

# Mitigating Measures

- Mitigating measures **must not** be considered in determining if a person is an individual with a disability.
- A non-exhaustive list of “mitigating measures”: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); etc.

# FAPE as defined by IDEA

- An obligation to provide **specialized instruction**
- Special education and related services that:
  - are provided at public expense
  - meet state standards
  - are supported with IEP

34 CFR 300.17



# FAPE as defined by IDEA (cont'd)

A district fulfills its FAPE obligations under the IDEA if it complies with the statute's procedural requirements and develops an IEP that is ***“reasonably calculated to enable the child to receive educational benefits.”***

*Board of Education of the Hendrick Hudson Central School District v. Rowley* 458 U.S. 176 (1982).

# IDEA Disability Categories

- Autism
- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment

34 CFR 300.8

# Continuum of Services

- Every public agency must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled.
- Special schooling, special classes or other removal of children with disabilities from the general education environment should occur 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.
- In all cases, the IEP Team is responsible for determining the environment best suited for the student.



34 CFR 300.115 (b)(1)

# LRE Continuum

## Least Restrictive Environment

Full time general education setting with supports/modifications within the LEA

General education setting with supports/modifications and access to a special education setting within the LEA

Special education setting with limited access to the general education setting within the LEA

Full time special education setting with no access to the general education setting within the LEA

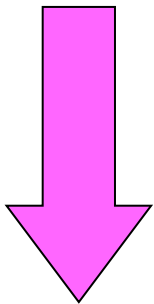
Special education day school (nonpublic school)

Home instruction/residential program

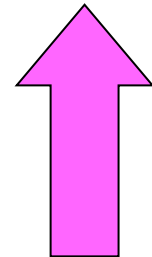
Instruction in Hospital

## Most Restrictive Environment

**Move this way only as far as necessary**



**Return this way as rapidly as appropriate**



# IDEA v. Section 504 Eligibility

IDEA Eligibility & Support	Section 504 Eligibility & Support
Student has a qualifying disability	Student has qualifying disability due to a physical or mental impairment that substantially limits one or more major life activities
Because of that disability, the student needs special education	Because of that impairment, the student needs an accommodation
Individualized instruction is delivered via an IEP	Individualized support is delivered via a 504 service plan

**Practice Standard:** If a student needs both instructional and non-instructional accommodations, the IEP should be designed to include all necessary accommodations.

# Discipline for Students with Disabilities

## Key Concepts:

- Short Term Removal
- Change of Placement
- Parent Notification
- Manifestation Determinations
- Special Circumstances
- Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs)



# Short Term Removal

May remove a student with a disability who violates a code of student conduct from his current placement to an appropriate interim alternative educational setting, another setting, or suspension for ***not more than 10 consecutive school days***, provided the **same** change of placement would be made in the case of a ***student without a disability***.

34 CFR 300.530 (b)

# Change of Placement

A disciplinary removal of a child from the current educational placement constitutes a change of placement if:

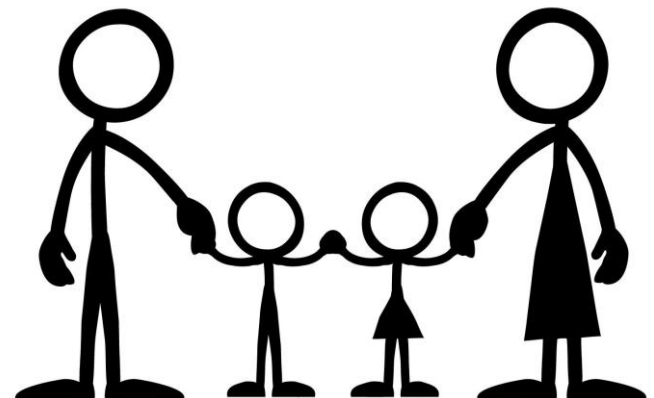
- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a ***pattern*** because the series of removals total more than 10 school days in a school year; because the child's behavior is substantially similar to the child's behavior in previous incidents; and because of such additional factors as the length of each removal, total amount of time of removal, and the proximity of removals to one another.

34 CFR §300.536

# Parent Notification

On the date that a decision is made to make a removal that constitutes a **change of placement** because of a violation of a code of conduct, the LEA **must** notify the parents of that decision and provide the parents the procedural safeguards.

34 CFR § 300.530(h)



# Manifestation Determinations

Within 10 school days of decision to change placement, the IEP Team must review all relevant information in student's file 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)

# Manifestation Determinations (cont'd)

If the IEP Team determines that the conduct was a manifestation of the child's disability, they must:

– Either:

- Conduct FBA (unless the LEA conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the child); or
- Review existing BIP and modify as needed; and

– Return child to original placement,\* unless parent and LEA agree to change in placement as part of BIP.

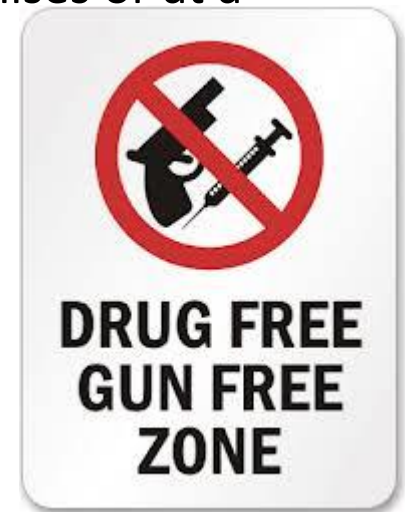
\*Except in special circumstances

34 CFR §300.530(f)

# Special Circumstances

An LEA 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 disability if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or at a school function;
- 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; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.



34 CFR § 300.530(g)

# Serious Bodily Injury Defined

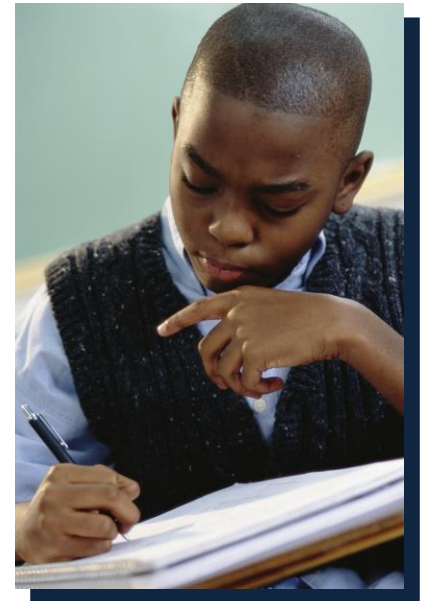
Serious bodily injury means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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

# Summary of Discipline & Safeguards

- Removal may be a change of placement if more than 10 consecutive days or a series of removals that constitute a pattern
- Notice and procedural safeguards must be provided upon change of placement decision
- Manifestation determination held within 10 days of change of placement decision
- Provision of services during a removal
- Revision/development of a BIP following a change of placement
- Special circumstances



# Important Resources

- TITLE 34 EDUCATION, SUBTITLE B REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION, CHAPTER I -- OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, **PART 104 -- NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**  
<http://ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#S3>
- Protecting Students With Disabilities: **Frequently Asked Questions About Section 504 and the Education of Children with Disabilities**  
<http://www2.ed.gov/about/offices/list/ocr/504faq.html>
- OSSE Guidance Related to Prohibitions on Discrimination Against Children with Disabilities Issued March, 2009  
<http://osse.dc.gov/publication/prohibitions-discrimination-against-children-disabilities-charter-school-application>
- US Department of Education IDEA 2004: <http://idea.ed.gov/>

# Determining Pattern of Removals

- Series of removals total more than 10 school days in a school year
- Child's behavior is substantially similar to the child's behavior in previous incidents
- Additional factors:
  - Length of each removal
  - Total amount of time of removal
  - Proximity of removals to one another.

# Case Example 1 – Pattern of Removals

- Key Question: Is this substantially similar?
  - Student suspended for theft – 4 days (October)
  - Student suspended for theft – 3 days (December)
  - Student suspended for weapon – 8 days (December)
  - NOT SUBSTANTIALLY SIMILAR
- Student was not removed for more than 10 consecutive school days. Student's first two suspensions were for alleged theft; the final removal for allegedly having a weapon. Although these removals totaled more than 10 school days in a school year, the Student's behavior was not substantially similar in all three incidents. Therefore, the removals did not constitute a disciplinary change of placement.

## Case Example 2 – Pattern of Removals

- 5<sup>th</sup> Grade student's incidents:
  - Hitting other students on bus (separate occasions) – 5 separate days (October)
  - Yelling on bus – 1 day (November)
  - Yelling and swearing on bus – 2 days (November)
  - Yelling and swearing on bus – 1 day (January)
  - Fighting and swearing on bus – 1 day (April)
  - Physical/verbal altercation – 2 days (April)
  - Physical/verbal altercation – 3 days (May)
  - Physical/verbal altercation – 4 days (May)
- Key Question: Is this substantially similar?
  - All incidents were physical or verbal altercations, therefore the nature of the incidents that gave rise to suspensions involved substantially similar behavior

# Case Examples – Pattern of Removals

- What about length and timing of each of the suspensions?
  - Suspensions ranged from 1 day to 4 days, gradually increasing in length over the school year
  - Occurred mostly in Oct-Nov and Apr-May
- Court Determined:
  - Similarity in the nature of incidents and close proximity of April and May suspensions
  - Should have conducted manifestation determination
  - It matters little whether the infraction occurred in school or on the bus

# Manifestation Determinations (cont'd)

- Schedule the MDR in a timely manner
- Ensure that proper parties attend the MDR
- Examine information from a variety of sources
- Provide parents with notice of procedural safeguards

# Manifestation Determinations (cont'd)

- If the IEP Team determines that the conduct was NOT a manifestation of the child's disability:
  - Apply the relevant disciplinary procedures to the student with disabilities in the same manner and for the same duration as the procedures would be applied to a child without disabilities
  - EXCEPT for whatever special education and related services the school system is required to provide the student

# Services Provided During Removal

- Not required to be exactly the same services in exactly the same setting
- Special education and related services must enable the child to continue to participate in the general curriculum, and to progress toward meeting IEP goals

# Case Example 3 – Manifestation Determination

- Key question: Whether the child's conduct was caused by or had a direct or substantial relationship to his disability?
- Facts of the case:
  - Student diagnosed with ADHD and ODD -- "once his emotions are triggered...he has far more difficulty maintaining appropriate levels of self-control"; "quick escalation of anger"; "reacts defensively"
  - Eating in class; asked to put it away; threatened to "head-butt" teacher
  - Student sent to office; then home. While student in hallway called parent on cell phone; upset and shouting on phone
  - Assistant Principal sent back to office due to shouting on phone
  - Student "lunged" at Assistant Principal and prevented her from leaving; Police called
  - Student suspended for 10 days

# Case Example 3 – Manifestation Determination

- Key question: Whether the child's conduct was caused by or had a direct or substantial relationship to his disability?
- Court's Holding: There was a direct and substantial relationship between Student's disabilities and his subsequent threatening and potentially dangerous behavior towards Assistant Principal. I reach this conclusion because Assistant Principal's confrontation of Student while he was in a highly agitated, even hysterical condition caused Student to lose all ability to self-regulate

# Case Example 4 – Manifestation Determination

- Key question: Whether the child's conduct was caused by or had a direct or substantial relationship to his disability
  - During class, student engaged in an inappropriate conversation with another student about the sexuality and race of two teachers
  - Teacher asked student to leave class and student failed to do so; Teacher grabbed student's hat and coat and student began calling teacher inappropriate names; Teacher pushed student out of class and shut the door.
  - Student suspended for 44 days; MDR determined not a manifestation of disability (ED)
- What do you think?

# Case Examples – Manifestation Determination

- From Student's IEP – Student's disability causes:
  - Quick reactions without thinking when angry
  - Verbal defiance; often yells out
  - Easily angered
  - Difficulty calming down
- Student's conduct easily falls within the realm of Student's disability, as described in Student's IEP
  - Direct and substantial relationship to his disability
- DCPS took the position that Student's behavior was not a manifestation of his disability because he knew right from wrong.
- Court held: Student may very well know right from wrong, but his disability interferes with his ability to exhibit appropriate behavior when he is angry or agitated by the words or actions of others.

# Questions

Please email any questions to:

[osse.tta@dc.gov](mailto:osse.tta@dc.gov)

