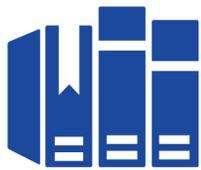


EdCounsel LLC
SCHOOL ATTORNEYS

**MAESP
Leadership Conference**

**Navigating Discipline
for Students with
Disabilities**

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Emily Omohundro

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As a member of the EdCounsel team, Emily defends public schools in a variety of legal matters ranging from discrimination claims to complex contract disputes.

Emily is an experienced advocate who uses her background in general defense litigation to represent her school clients in state and federal court, as well as before state administrative bodies.

Every morning, Emily starts her day with a solid game plan for the anticipated work projects ahead of her (just don't ask her to start the operation of this plan before six a.m.). Due to the nature of schools and the education business, it's difficult to actually know what lies ahead each day. This, as well as her clients drive to do what is best for kids, fuels Emily's love for what she does. She enjoys collaborating with her clients, problem-solving and consulting with colleagues to help do what is most valuable in this important field. At the end of the day, a lot of good work is done, but not necessarily what she thought when her feet hit the floor in the morning.

Areas of Emphasis:

Board Operations, Policy and Procedure, Compliance, Discrimination Claims, Teacher Tenure Act, Student Rights

Growing up, many amazing teachers touched Emily's life. Whether at Fulton High School, Missouri State University, or University of Missouri School of Law, the teachers who made the biggest impression and inspired her the most were the teachers who injected passion and humor into the subject matter. Those experiences are part of the reason why Emily is a committed supporter of public schools.



Emily and her husband, Matt, live in Fulton with their children, Lila, Max, and Moses.



Rachel Meystedt

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As the granddaughter, daughter and sister of public school educators and having received all of her academic degrees from public schools, Rachel has always been a strong supporter of public education. After graduating from Scott City High School in southeast Missouri, Rachel moved to Columbia, Missouri to attend Mizzou to obtain both her undergraduate degree in journalism and her law degree.

Prior to joining the EdCounsel team, Rachel worked as legal counsel for the Office of Special Education within the Missouri Department of Elementary and Secondary Education, where she became well-versed in school and special education law, advising the Office's compliance and dispute resolution team and acting as general counsel for the three state-operated schools. She also worked with the U.S. Department of Education on many issues affecting Missouri school districts, fighting for better outcomes for Missouri students. Rachel now uses this experience to provide counsel to school leaders on the variety of complex legal matters districts face every day.

Areas of Emphasis:

General Counsel Work, Policy and Procedure, Compliance, Discrimination Claims

In her free time, Rachel enjoys spending time with her husband, Jason, and their families, traveling, cheering on the Mizzou Tigers and hiking with their black lab, Tucker.



Navigating Discipline for Students with Disabilities

Monday, March 2, 2020



Roadmap

- Disciplining Students who have IEPs or 504 Plans
 - Manifestation Determination Meetings
 - Functional Behavioral Assessments and Behavioral Intervention Plans
- Confidentiality Concerns
- Working with Parents when Advocates and Attorneys are Involved
- Holding Contentious Meetings
- Independent Educational Evaluations
- Addressing Parent Requests for Changes in Placement



Scenario

Justin is a fourth grade student in the District with an IEP who is eligible under the category of Other Health Impairment due to an ADHD diagnosis.

Justin and another student get into a fight in the cafeteria. When the fight is broken up, Josh curses at the paraprofessional who broke up the fight and pushes her.

Justin is given 12 days of OSS for the fight, using profanity, and pushing a staff member.

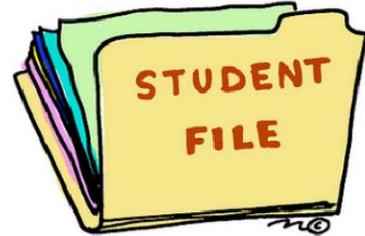
Manifestation Determination Meetings



- Manifestation determination meetings are required when there is a “change of placement” for a student with a disability as a result of a disciplinary action.
- This applies to both students with disabilities who are eligible under the IDEA and students with disabilities who are eligible under Section 504.
- (This can also apply to students who haven't yet been found eligible if we have *knowledge* under the law that they are a student with a disability.

MD Meetings – When do we hold them?

- A change in placement occurs when:
 - A student is removed for *more than 10* school days in a row;
 - A student has been removed multiple times from school for disciplinary reasons which constitutes a pattern.
- A pattern exists when:
 - The student has been removed for *more than 10* school days in a school year; and the student's behavior is substantially similar in this incident to the student's behavior in the prior incidents that resulted in removals from school; and other factors point to this being a pattern of removals



MD Meetings – What are we deciding?



- The Team has to decide whether the student's behavior was caused by or had a direct and substantial relationship to, his or her IDEA or 504 disability; or
- If the student's IEP and/or BIP were being implemented correctly at the time of the infraction and whether the failure to implement directly caused the student's conduct.
- The Team has to consider all relevant information when making the determination.
- The Team has to come to a consensus – this isn't a vote!

What happens if the Team determines the behavior is NOT a manifestation?

- The student may be disciplined just as any other student is disciplined under the code of conduct...
 - BUT – we still have to provide services.
- This discipline should be consistent with other discipline and be reasonable.
- If the student does have behavioral issues that don't constitute a pattern, but do disrupt the student's or other students' learning, then the team should still consider whether to conduct a functional behavioral assessment and whether to develop a behavioral intervention plan.



What happens if the Team determines the behavior IS a manifestation?



- The Team must either:
 - Conduct a functional behavioral assessment and implement a behavioral intervention plan (unless a functional behavioral assessment has already been completed before the disciplinary behavior occurred);
or
 - If a behavioral intervention plan has already been developed, review the plan and modify it, as necessary, to address the behavior.
- AND
 - Return the student to his or her previous placement, unless the student's parents and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Scenario

Justin's IEP Team meets and reviews all of the data regarding the incident and his disability and determines that his behavior was not a manifestation of his disability. (The Team noted that Justin's discipline data shows that he is sent to the office frequently for bothering others in class.)

Justin's mom, Mrs. Bieber, comes to the meeting and brings an advocate, Scooter. Scooter and Mrs. Bieber argue during the meeting that Justin's behavior was a manifestation of his disability and that the consequences were too harsh.

After the meeting, the District receives a letter from Mrs. Bieber's attorney, Ms. Kardashian-West, demanding an FBA.

Confidentiality

- The IDEA incorporates FERPA provisions, including exceptions to signed, written consent.
- There are no exceptions for attorneys specifically, so in order to speak with an attorney or advocate regarding personally-identifiable information about a student, we need to have a FERPA release on file.
- Anytime an attorney is involved, we recommend involving your own legal counsel.
- The District still needs to communicate with parents regarding their student.



There was no manifestation... why do we need to do an FBA?

Behavior Intervention Plan

Student: _____ Date: _____
Duration of Intervention: _____ Grade: _____

Goals:

1. _____
2. _____
3. _____

Target Replacement Behaviors:

1. _____
2. _____
3. _____

Student Feedback:

1. _____
2. _____
3. _____

- Behavioral Intervention Plans ("BIP") are appropriate for students with disabilities when their behavior impedes their own or others' learning.
 - This should happen *even if* the disability is not what is causing the behavior.
- In order to develop a BIP, a Functional Behavioral Assessment needs to be completed, which is a reevaluation under the law.

Attorneys and/or Advocates in Meetings

- Each side has the ability to invite individuals who have "knowledge or special expertise" regarding the student.
 - The party inviting the person gets to decide if the person has knowledge or expertise.
- This means individuals parents invite to meetings are essential meeting members, as are individuals the District invites.
- This can include advocates and attorneys.



Scenario

The District's counsel and Ms. Kardashian-West trade letters, and a Functional Behavioral Assessment is completed. Ms. Kardashian-West decides not to attend the IEP meeting when the Behavioral Intervention Plan is developed, but stated that Scooter will be in attendance and will be bringing a list of things they believe are appropriate behavior interventions for Justin.

Contentious IEP Meetings

- Tips for navigating tough meetings:
 - Ask who the parent is bringing with them.
 - Ask if the parent has any updated documentation they'll share with the group.
 - Prepare for the meeting and write an agenda.
 - Ensure a welcoming tone.
 - Don't predetermine the outcome.
 - Listen to the parent and/or advocate and ask questions.
 - Consider their input.
 - Keep thorough notes and document their contributions.

Contentious IEP Meetings

- IEP Facilitation
 - DESE offers this service for IEP students (not for Section 504).
 - Both the District and the parent have to agree.
 - Facilitator is neutral and helps the Team stay on track during meetings.
- Attorney Involvement
 - Last resort!



Scenario

After the meeting, Mrs. Bieber submits a request for an Independent Educational Evaluation because she doesn't agree with the Functional Behavioral Assessment completed by the District.

Independent Educational Evaluations

- Parent has a right to request one IEE after any District evaluation he or she doesn't agree with.
- Two options in response:
 - Pay for it, *or*
 - File for Due Process.
- We can limit the IEE in cost, location, and qualifications.
 - Criteria are listed in Board Policy: PR 6255 // IGBA and IGBA-AP(2)
- Once the IEE is completed, we have to consider the results of the IEE to determine whether we need to modify the IEP, including the BIP.



Scenario

The IEP Team met and modified Justin's BIP as a result of the data within the IEE, which Mrs. Bieber and Scooter were satisfied with. Justin continues to get in trouble at school, although the District is implementing his BIP as written.

As a result, Mrs. Bieber states that Justin's teachers are "out to get him," and has requested that he be moved to homebound.

Changing Placement at Parent Request



- Parents can't choose placement all by themselves.
- Placement is an IEP Team decision.
- OCR and/or DESE will not consider placement "at parent request" to be an adequate reason to change a student's placement.
- Ensure that the continuum of placements is considered and that the reasons why a certain placement are appropriate are clearly documented.
 - Parent request can be a reason listed in the NOA, but should not be the *only* reason.

Recap

- Ensure Manifestation Determination meetings are held when necessary.
- BIPs can be used as tools to address behavior, even if it isn't a manifestation of the student's disability.
- FERPA releases need to be signed before information is shared with advocates or attorneys.
- Parents can invite third parties to meetings.
- Contentious meetings require additional preparation.
- Parent placement requests require adequate consideration.
- Use outside resources if you need to!

