

Disciplining Students With Disabilities

From [National Association of School Psychologists](#) (NASP)

by Kevin P. Dwyer, NCSP - Assistant Executive Director, NASP

A child runs, out-of-control, down the busy school hallway and punches another child who is quietly waiting in line outside her classroom. She starts to cry while the disruptive child continues down the hall, not responding to the teacher aide's commands to stop. Another adult says, "He's special ed, there's nothing that we can do. You can't send him to detention. I'll tell his teacher." The aide is frustrated and upset as she comforts the crying child.

A child, who is labeled seriously emotionally disturbed, sets a trash can on fire. When brought to the principal's office the security specialist is told that it is a manifestation of the child's disability and the usual disciplinary procedures will not be followed. The security specialist leaves muttering, "Those kids get away with murder!"

Both examples are serious, wrongful misunderstandings of the procedural safeguards of the Individuals with Disabilities Education Act. IDEA procedural safeguards were designed to assure that students with disabilities (receiving special education and related services) were not arbitrarily removed from their parent-approved program without consent and were guaranteed a free and appropriate public education (FAPE) within the least restrictive environment (LRE).

There is nothing in IDEA that restricts schools from disciplining children with disabilities. In fact, some would say that, by not addressing these dangerous behaviors, the student with special needs is not receiving an "appropriate" education. Both of the above children may need specialized services to change the disruptive and dangerous behavior and to make sure that whatever discipline is used works in preventing a reoccurrence of that behavior.

This article is designed to provide a set of practical concepts to improve the chances that positive behaviors will increase and negative behaviors will decrease among children with disabilities who warrant special education and related services under IDEA. Some of these concepts may also be applied to other troubling students. Regardless of students' classification, all interventions should be evaluated as to their effectiveness. We know, for example, that expulsion may result in a positive behavioral change for some students but may be ineffective or increase negative behavior in others. Research shows that when education is disrupted by long absences (such as expulsion), the likelihood of dropping out increases dramatically and that children with special needs are more likely to drop out and never complete a diploma, to remain unemployed and economically dependent. Expulsion may be a deterrent for many students who worry about their academic progress and who hold to a high standard of behavioral control. The threat of expulsion may be one small component of a comprehensive discipline plan. However, there is little research regarding the actual effectiveness of expulsion in improving school discipline.

The materials contained in this article are based on several resources and the author's 30 years experience as a school psychologist. Many of the steps noted below already are found in the practices of some school districts. A "best practices" example which this document follows is the policy of the Parkway School District in Missouri. (Contact person: Randy King , 314-576-8509.) These steps have been modified to conform to the author's interpretation of the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA '97).

IDEA was amended to better ensure that children with disabilities whose behavior blocks learning have those behaviors addressed within their IEP. Although this was expected practice prior to IDEA '97, it was seldom implemented; children with such needs were underserved and punished and too frequently dropped out of school. The amendments also balance intervention with safety, allowing school staff to remove children from their school for possession of a weapon or drugs (including drug sale or use). One remedy allowed by the IDEA '97 is placement in a 45-day alternative placement. Other options can be tried, including parent-supported change in placement and IEP. More complex is the removal by hearing examiner of a child when there is a preponderance of evidence that maintaining the child in the present placement is substantially likely to result in injury to the child or to others.

It is hoped that these principles will increase positive behavior conducive to learning and reduce the need to use expulsion and suspension as interventions for behavior problems. Positive interventions will also increase classroom teacher and parental support for actions taken to improve school discipline and safety.

1. Maintaining a Safe Environment Conducive to Learning

School systems have the legal responsibility to maintain safe, violence-free schools. Part of that responsibility includes the establishment of a code of conduct containing specific consequences for violations of the code. School authorities have the right and responsibility to discipline children (including the removal of children from their present school) when those children violate school rules by engaging in conduct that materially and substantially disrupts the rights of others to be physically safe and educated. When conduct endangers the student or others, temporary removal of that student may become imperative. Schools also have these rights and responsibilities when students with disabilities violate school rules, causing disruptions or danger to themselves or others.

All students have the right to know the rules of conduct and to learn to master school rules. All children learn differently. Many children learn intuitively through observation, experience and encouragement. Many other children need further assistance and instruction in order to master developmentally appropriate behavior that enables them to attend, learn, share and cooperate with other children and adults. As school psychologists, we know that knowledge and

demonstrated skill are required before we can presume a rule is "learned." The level of learning also varies and it is important for schools to acknowledge marginal, minimal and developmentally standard levels of mastery.

Students with disabilities who are in need of special education and related services have, by definition, problems in learning and skill development. Unlike their nondisabled counterparts, they may, in some cases, have difficulty demonstrating socially appropriate behaviors. Unlike their nondisabled peers they also have a continued right to a free and appropriate public education within the least restrictive environment even when their behavior violates a discipline rule or code.

When any child, disabled or not, has been found to violate a code resulting in proposed disciplinary action, that child has rights to challenge the reason for the action, including the right to prove that the accusations are false, distorted, exaggerated or based upon racial, ethnic, gender or even disability bias. All students have the right to challenge the severity of the consequent disciplinary action recommended by the school authorities.

2. Responsibility to Teach Code of Discipline to All Students

Schools have the responsibility to make sure that all children attending, including those receiving special education and related services, are familiar with the discipline code and that their families also have the opportunity to know and understand the code. Parents of children with disabilities should be given the opportunity to discuss the discipline code when it is a concern for their child and to be partners in finding effective ways of assisting in maintaining the code and its intent. Parents are allies in helping predict problems related to codes of conduct and their individual child's strengths and needs. Such discussions can generate IEP goals as well as necessary exceptions that may prevent the child from meeting a requirement of the school's code.

3. The IEP as Vehicle for Effective Behavior Management

Children who have disabilities that prevent them from understanding or responding appropriately to components of a discipline code or school rule should have those exceptions incorporated and addressed in their IEP. IEPs are designed to address both traditional academic needs and to meet "each of the child's other educational needs that result from the child's disability." The law also says that schools shall consider, when needed, "strategies, including positive behavioral interventions, strategies and supports to address that behavior" that impedes learning.

Examples of IEP discipline issues: A student with Tourette's Syndrome may

repeat vulgar, obscene words or bark over and over. Obscene language may violate the discipline code, but in this case is out of the child's control. Working with the child, family and physicians, the special education and related service program should determine the best possible plan to reduce and compensate for the disruption that this syndrome causes. Another child may be extremely cognitively challenged and need very concrete examples of what the school discipline code means, just as a child who is deaf or visually impaired needs special accommodations. Children with Attention Deficit Disorder, generally, should not be suspended for inattention but their IEP should contain goals, support and specialized help to increase attention and sustained effort. The same can be true for a child who is severely depressed or withdrawn and therefore inattentive. This behavior should also be comprehensively addressed to increase learning and productivity.

A child with autism who bangs her hand on her desk over and over cannot be treated the same as a child or group of children who are doing the same thing to deliberately disrupt the class. A child who cannot speak clearly or communicate feelings or ideas can become extremely frustrated and may stomp out of the class or toss his pencil across the room. Training in finding alternative methods for communicating and for coping with frustration must be in place before the disruptive behavior becomes routine and results in disciplinary action, which may only increase the disruptive behavior.

All of the above examples require an effective individualized intervention plan documented in each child's IEP. If such a plan did not exist and a disciplinary action were taken resulting in a suspension, expulsion, an arbitrary change-in-placement or illegal removal from FAPE, it would be a violation of the child's civil rights.

4. Addressing and Preventing Behavior Problems

It is the responsibility of the IEP team to review the discipline code and determine what specialized help and instruction the child may need to understand the code and consistently demonstrate the appropriate classroom and school behaviors conducive to learning. The team should identify and address the difficulties that may occur and may be related to the child's disability, and establish plans that will reduce the chance that such infractions will occur. The team should plan to provide adaptations and compensations for those behaviors that require an intervention plan and also address those behaviors that may remain unchanged due to the complexity of the disability. Behavioral goals, like goals for reading or other elements of the general curriculum, should be incorporated into the IEP and not be developed as a separate document or plan. To design a separate "behavior plan" implies that such plans should be treated differently, apart from academic functioning. Additional distinct "behavior plans" could also cause prejudice and establish a sub-set of children within special education (those with behavior

plans). There is evidence that effective individualized academic goals and services reduce frustration and behavior problems.

5. Behavioral IEP Goals, Parent Involvement and Services

A child with a disability and the family or parent surrogate should be aware of the discipline code and the consequences for violating each component of that code. Parents can assist the school in finding effective strategies for positive behavioral interventions and strategies for the IEP. They should participate in the IEP development to help determine what exceptions to the discipline code are necessary and to help design behavioral goals that progressively address those exceptions to reduce behavioral difficulties. These plans should include the special education and related services interventions designed to assist the child in maximizing her/his social responsibility. Behavioral goals, as with academic goals, should be measurable, reviewed and modified as needed. As with other goals, services and interventions, frequent review is imperative to success.

6. Problematic Patterns of Behavior and Prevention

When children with disabilities demonstrate a new pattern of problematic behavior potentially leading to suspension, the school should initiate an IEP meeting to determine if additional interventions or modifications in the IEP are needed. Such interventions may reduce the chances of the child accumulating a series of suspensions which may, over time, constitute an inappropriate "change in placement." Any behaviors that block learning and the success of the educational program should be addressed. When the behaviors are not related to the disability, it remains important to both address the problems and to restate the pattern of code violations and the consequences for those violations to the child and parent. Schools and parents should work cooperatively to change the pattern of negative behavior. The school should support the parent in securing other resources to assist in positive behavioral change and work cooperatively with those resources.

7. Weapons and Drugs

Weapons violations require quick and deliberate administrative action. When a child with a disability violates a rule involving weapons, safety should be the priority both for the child and others. If the local school rules mandate "automatic" expulsion and notification of the police, a written notice of such action must be made available to the parents. Weapons must be clearly defined in the code of conduct. IDEA requires initiating an IEP meeting within 10 calendar days. An ordinary expulsion (lengthy removal from educational opportunity) is no longer permitted for children with disabilities who violate weapon laws. Removal

from special education services for more than ten days violates the child's right to FAPE. IDEA '97 does not use the term "expulsion" but uses the term "a change in the placement of a child with a disability."

Drug use and possession are also intolerable in schools. Drug use can endanger both the user and peers. It is also a violation of state and federal laws and may involve police action. Schools should be aware that drug use and addiction can be higher among some groups of children with disabilities. Drug use, abuse and addiction require professional intervention which frequently includes drug treatment and physical monitoring. A review of the IEP and a functional assessment may control some of the related behaviors demonstrated by a child with a disability who is a drug abuser, but drug use and addiction require assessment and intervention beyond the IEP team's skills and may require interagency involvement. Drug possession should not be dismissed as unrelated to disabilities since some youth may be cognitively unaware of what they possess.

The IEP team is now required to review and modify the IEP to address that behavior. If the behavior was not already addressed on the IEP, the IEP team should implement interventions and goals to address that behavior. The law also requires a "functional behavioral assessment" when such behaviors have not been addressed. A true functional behavioral analysis or assessment cannot be effectively carried out as proposed in the law. Such assessments require a series of observations by highly qualified professionals who already know the child in depth, including the child's strengths and needs. Such an assessment should also follow the guidelines of any review, reevaluation or assessment according to the law's requirements for reevaluation. In other words such an assessment should consider the existing IEP goals and services as well as what is needed. School psychologists should be involved in this review as the persons most qualified to address behavior and learning. They should become involved in assisting in developing the most effective disposition as soon as possible.

8. Behavior "Likely to Result in Injury"

A child with a disability who causes injury to self or others cannot be placed in a different program without parental consent. If the parent does not consent, a hearing officer can be requested to determine if a change is required, when there is a preponderance of evidence presented "that maintaining the current placement of such child is substantially likely to result in injury to the child or to others." The hearing officer is required to examine the evidence to determine the above as well as the "appropriateness" of current placement, including the reasonableness of the school's services, interventions, aides and other efforts to minimize the risk of harm related to behavior within the current placement. The hearing office must also determine that the interim alternative 45-day placement provides effective IEP services to ensure FAPE, including participation in the general curriculum.

9. **Manifestation Review**

When the IEP has already addressed problem behavior, the team has valuable information about the relationship between the child's disability, the behavioral concerns, the components of the IEP and classroom, including the services provided. When a suspension or 45-day alternative placement is recommended, the IEP team, assisted by qualified professionals, should determine if the student's behavior (misconduct as defined) is related to the disability and whether the current placement is appropriate by evaluating all factors related to the students' behavior and IEP. This should include review of the interventions tried and services provided to prevent the presenting problem. Such a review should be comprehensive and focus on multiple factors, not merely the behavioral goals of the child's IEP.

The determination that a behavior is a manifestation of the child's disability can be a complex process. It must be determined by qualified professionals, on an individual, case-by-case basis. It cannot be determined by the child's label or category. For example, a label of "emotionally disturbed" does not by itself imply a manifestation of the disability. A behavioral goal or its absence does not determine manifestation. It is not decided by the "ability of the child to determine right from wrong." Under IDEA, a manifestation determination must include an analysis of the child's program as well as the child's physical, cognitive, developmental, mental and emotional challenges. The child's behavior may be considered unrelated to the disability if the disability did not impair the child's understanding of the impact of the serious consequences of the behavior and if the disability did not impair the ability of the child to control the behavior. These factors must be viewed in the context of ecological variables and IEP services and goals.

It is best practice that the school psychologist assisting in such a determination knows the child and the child's program. School, classroom and external factors can result in additional inappropriate and dangerous, reactive behaviors from a child with disabilities. Ecological factors that can be addressed within the LRE should be considered in a manifestation review to prevent inappropriate recommendations of changes in placement.

10. **When Behavior is a Manifestation of the Child's Disability**

When the dangerous behavior is the result of the disability, expulsion is an inappropriate action. The child cannot be expelled for that behavior. However, this does not mean that the child must remain in the present placement. When it is determined that the placement or the IEP is not meeting the child's behavioral needs, modifications should be made to IEP and, if necessary, to the placement and needed services, to assure that the behavior will be addressed and to prevent

its reoccurrence. When dangerous behavior such as weapons violations continue, a controlled, secure placement may be necessary. Any placement should continue FAPE as well as addressing the behaviors of concern. When parents have been involved in the development of the IEP, including the behavioral goals and services, agreement is more likely to occur between school and family regarding modifications in the program and changes in placement.

11. When Behavior is Not a Manifestation of the Child's Disability

A child with a disability, whose dangerous misconduct is found to be unrelated to his/her disability and whose IEP, program and services are appropriate to address the child's needs, may be subject to the regular discipline code of consequences, provided that the child continues to receive FAPE. The parent continues to have the right to appeal this decision and any decision regarding placement. Even when the behavior remains a perceived threat or danger to the child and/or others, FAPE should continue but may need to be provided within a more restrictive alternative center where control reduces danger. Restrictive alternatives may include, for example, a juvenile detention center, residential treatment center or other secure facility. It is not in the child's, the school's, community's or family's interest to maintain a child using an existing IEP and placement when the weapons or dangerous behavior cannot be effectively addressed within that placement. It is in no one's interest to terminate FAPE to a child with a disability who is in need of special education and related services.

From the NASP Communique, October 1997 (vol. 26-2)

Kevin P. Dwyer, NCSP, is NASP's Assistant Executive Director. Keep updated on the latest developments in the writing of regulations for IDEA '97 by joining SPAN (School Psychologists Action Network). You can receive weekly Legislative Updates from the SPAN Listserv! For information, contact Kevin at (301) 657-0270 or e-mail to KDwyer@naspweb.org

Original source on the web: <http://www.nasponline.org/publications/cq262discipline.html>