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**TODAY...**

Manifestation  
Determinations

- ☺ Traps
- ☺ Trends
- ☺ Trials (cases)





## Special Rules for Special Folks...

- History of treatment of students with disabilities
- Procedures to safeguard exclusion from educational environment



## Special Education Students

- Visually impaired
- Hearing impaired
- Mentally retarded
- Emotionally Disturbed
- Learning disabled
- Developmentally delayed
- Autism/PDD
- Speech impaired
- Orthopedically impaired
- Other health impaired
- TBI



## Have you heard this one?

- **ADDD** - attention deficit disorder deliberately
- **IMOM** - in mind, out mouth
- **MAH** - mean as hell
- **ATR** - adverse tress reaction (bad hair day)



## But wait...there's more

- **CCRR** - condensed coolant replacement refusal (returning an ice tray to the freezer without refilling it with water)
- **DMG** - delusion medi-graphia (writing like a Dr. when you're not really one)
- **PDD2**- posterior distress disorder (a condition associated with prolonged sitting at trainings)



## Two types of removals...

- Short term removals
- Long term removals



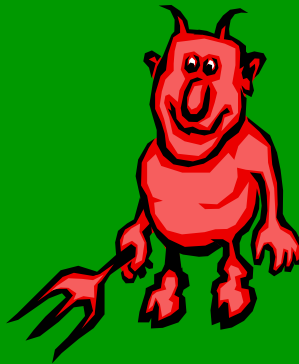
## IDEA procedures triggered....

- Change of placement
  - more than 10 consecutive days
  - series of short term removals cumulate to more than 10 + pattern of removal

## Days of removal...

- Suspension
- ISS (not in certain circumstances)
- DAEP
- Emergency removal

## The devil's in the details...



Procedural  
Requirements



## May determine not manifestation only if...

Consider all relevant information including--

- (1) Evaluation results
- (2) Observations of the student
- (3) Student's IEP and placement



## May determine not manifestation only if...

- ☺ IEP was appropriate
- ☺ Placement was appropriate
- ☺ Services, aids, and strategies were implemented

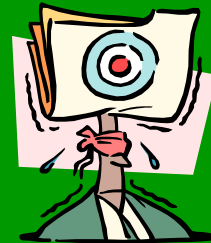
## If not...

If the IEP team...determine[s] that...standards...were not met, the behavior must be considered a manifestation of the child's disability.

34 C.F.R. § 300.523(d)

## Preparing for Manifestation ARD

- ☑ Assessments are current
- ☑ Whether conditions have changed such that further assessment is necessary
- ☑ Student has IEP for all necessary classes





## Preparing for Manifestation ARD

- ☑ Teachers/providers received IEP at beginning of school year
- ☑ Teachers/providers have implemented the IEP and BIP




## Preparing for Manifestation ARD

- ☑ Teachers/providers understand modifications
- ☑ Teachers understand BIP & strategies
- ☑ All related services have been provided



## Preparing for Manifestation ARD

- FBAs
  - Definition of the problem behavior
  - Baseline data
  - Antecedent/Consequence data
  - Structured “interview” with teachers, parent, or student
- Data Collection
  - Beware of absolute teacher reports
  - Examine them prior to ARD
  - Get clarification if necessary



Purpose is  
to find out  
why  
student  
acted that  
way...and  
what may  
help.

# At the ARD Meeting...

- Discuss each required part
- Document discussion in ARD documents



- **Remember:** The District has the burden of proof at any subsequent

# ED & AD/HD Students.

- Have an LSSP assist with the FBA and Manifestation Determination.





## Linkage Determination

*The mere fact that a student knows right from wrong did not make misconduct unrelated.*

S-1 v. Turlington, (5th Cir. 1981)



## Linkage determination

- Disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and
- Disability did not impair the ability of student to control the behavior subject to disciplinary action.

# Drugs & Weapons



- 45 calendar day placement
- Even if linked
- Don't have to haggle over appropriateness and linkage issues.

# Drugs & Weapons

- Drug = Controlled Substance or Illegal Drug
- Dangerous weapon = Weapon, Device, Instrument, Material used for or capable of Death or Serious Bodily Injury.
- Except: pocket knife ( Blade less than 2 1/2") 18 U.S.C. 930 (g)(2)

# “Up to” 45-days

Purpose: to give  
administration  
opportunity to remove  
student long enough to  
get situation under  
control



# Cases: Trends

## Major offenses - okay

- weapons
- drugs,  
especially  
selling
- some assaults


## Minor - not okay

- persistent  
misbehavior
- disrespectful  
behavior
- language/threats




## Hearing Officer Decisions

[http://www.tea.state.tx.  
us/special.ed/hearings](http://www.tea.state.tx.us/special.ed/hearings)




## Jonathan R. v. Socorro ISD

- 6th grade, OHI (ADD) & LD
- Discipline referrals
  - 10/11/01 had 17 referrals
  - 4/2/02 had 45 referrals
  - 5/7/02 had 65 referrals



## Jonathan R. v. Socorro ISD

- Discipline referrals
  - physical & verbal aggression
  - defiance
  - conduct interfering with instruction
- Removal to AEP - ARD 4/2/02



## Jonathan R. v. Socorro ISD

- LSSP & Sped Counselor analysis
  - 10% ADD (If impulsiveness, inattentiveness, or distractibility may have contributed to incident → related)
  - 90% ODD (refusing to comply with requests, persistently repeated a behavior after being asked to stop → ODD)




## Jonathan R. v. Socorro ISD

- MD Form - incorrectly stated the criteria

*In the present case, the ARD reported its manifestation determination on a pre-printed form that states the standards in the following manner:*

- 1. In relationship to the behavior subject to discipline, the student has the ability to understand the impact and consequences of the behavior despite his/her disability;*
- 2. In relationship to the behavior subject to discipline, the student has the ability to control his/her behavior despite his/her disability.*

*When one compares the standards on the pre-printed form with the standards in the statute, one finds that the pre-printed form requires lower standards than the statute requires. In effect, the lower standards facilitate a finding that a child's behavior was not a manifestation of the child's disability.*



## Jonathan R. v. Socorro ISD

- Nonetheless, the District applied correct analysis

*– whether the student's disability adversely affected his ability to control his behavior*

- Order: can remove for remainder of school year

*– May 22, 2002*



## Michael M. v. El Paso ISD

- 7th grader, ED, OHI, LD
- 12/01 - Toy gun in back pack
- Displayed to other students
- Asst. principal proposed AEP for remainder of school year
- ARDC notice - “discipline”




## Michael M. v. El Paso ISD

- ARDC “voted” 3:2 - linked
- Asst. Principal & Resource Math teacher disagreed
- AP - “sending anyway”
  - toy gun  $\neq$  dangerous weapon under IDEA




## Michael M. v. El Paso ISD

- Moved student out of resource math
- Placement/program  $\neq$  Notice
- Defective notice - procedural violation
  - Significant denial of parent's ability to meaningfully participate



## Nicholas H. v. North East ISD

- Failure to identify case
- 6th grader
- Not eligible
- Expelled for selling prescription medication
- Prior concerns not enough



## Nicholas H. v. North East ISD

- Parent had never
  - expressed concern in writing about need for special education
  - requested an evaluation
- Student's performance did not demonstrate a need for special ed




## T.N. v. Bridge City

- 15 year old, ED
- One-time behavior (knife to school)
- District's LSSP most credible
- LSSP attended meeting
- LSSP's analysis
- Not linked



## Ross G. v. Texas City ISD

- 17 year old, LD
- Marijuana seeds in car
- ARDC presumed guilt



## Trevor C. v. North East ISD

- 7th grader, ED, OHI
- 3-day SRC placements in BIP
- 20 days
- Pattern of Removals
- Can't bypass MD review by putting in the IEP

## Brandon F. v. Bruceville-Eddy ISD

- MD failed
- Counseling services
- Failed to have BIP in place
- No AEP
- Compensatory counseling 1,080 minutes

## Martin M. v. Deer Park ISD


- Students in referral process
- Can't speculate or hypothesize in a MDR





## Rudy F. v. Poteet ISD

- No 10-day recess
- Stay-put for drugs/weapons
- No challenge of administrative discipline decisions



## But Tex. Educ. Code says we have to remove...

- IDEA trumps Chapter 37
- Supremacy Clause - U.S. Constitution
- Implement Ch. 37 Tex. Educ. Code only when consistent with IDEA

## Preparation is key...

- Do your homework before the ARD
- Identify over-reaction
- Enlist the help of experts



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