#### **Disciplinary Removals of Students with Disabilities**

**COUNTING THE DAYS** 

**Special Education Mediation Services** 





### Disciplinary Removals of Students with Disabilities

Counting the Days

#### **Special Education Mediation Services**

Free

#### **Grant-Funded**

A Grant-Funded Initiative of the Michigan Department of Education Office of Special Education (OSE). Offer FREE mediation, IEP facilitation and collaborative communication training to schools and parents across Michigan.

#### Federally

#### Mandated

Enables the OSE to meet its obligation under the IDEA to provide statewide mediation services at no-cost to schools and parents to resolve special education disputes.

#### Caution





These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations

Future legal developments and guidance may impact these topics

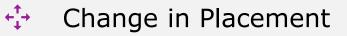


#### Today's Agenda



Q Broad look at discipline under IDEA







Short-term and Long-term removals

#### Next steps

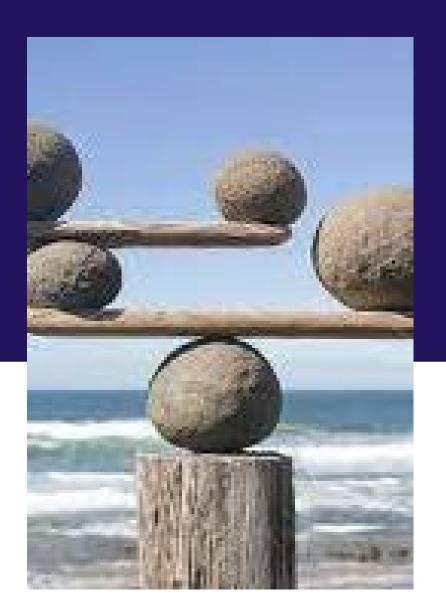
We will answer these questions: Which students are included in IDEA's disciplinary regulations?

What counts as a removal?

When does a removal become a change in placement?

How is a pattern of removals determined?

What happens if there is a change in placement?



#### Discipline under IDEA

Intent:

Balance school safety with the individual student's connection to their education and ability to receive a FAPE



#### **Behavior Intervention**

- Removal cannot be the only response to behavior
- 1<sup>st</sup> 10 days should not be looked at as "Free" days
- In the case of a student whose behavior impedes the student's learning or the learning of others, the individualized education program (IEP) team must consider and when necessary, provide a free appropriate public education (FAPE), document in the IEP the use of positive behavioral interventions and supports, and other strategies, to address the behavior (FAPE).
  - 34 CFR § 300.324(a)(b)(2)



#### Basic IDEA Discipline Principles

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- Students with disabilities can be removed for violations of a Code of Conduct with case-by-case consideration
- No additional requirements under this section for the 1<sup>st</sup> 10 school days of removal
- After 10 school days, look to see if there is a Change in Placement
- If there is a Change in Placement, then a Manifestation Determination Review (MDR) is needed
- Services must be provided after 10 school days of removal



Which students are included in IDEA's disciplinary regulations?

- Student with an IEP
- Student without an IEP, if there is a *basis of knowledge*

## What is a *basis* of knowledge?

#### 3 circumstances

Parent requested an evaluation in writing

Parent expressed a need for special education services in writing to a teacher, supervisor or administrator

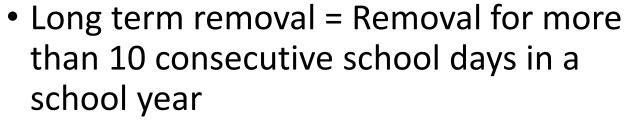
School personnel expressed specific concern about pattern of behavior to special education director or supervisor What are the 3 Exceptions to Basis of Knowledge? The parent of the child has not allowed an evaluation

The parent of the child has refused services under IDEA

The child has been evaluated and determined not eligible



#### Change in Placement



#### OR

- Series of short-term removals = Removal for more than 10 cumulative school days in a school year
  - If there is a pattern of removals

34 CFR § 300.536



### Counting Removals



#### What is a Disciplinary Removal?

A disciplinary removal occurs when a student is excluded from his or her current placement, as written in the individualized education program (IEP), due to a violation of the student code of conduct and the student is not afforded the opportunity to:

- Continue to be involved in and make progress in the general education curriculum
- Receive the instruction and services specified in the IEP and
- Participate with nondisabled students to the extent the student would have in his or her current placement

# What else is a Removal?





#### Partial Day

- A school day is any day, including a partial day that children are in attendance for instructional purposes and has the same meaning for all children in school, including those with and without disabilities. 34 CFR §300.11(c)(1)(2)
- Partial days are counted the same way the school counts for attendance
- Shorter removals during the school day that will not amount to something reportable in the Michigan Student Data System may still be a removal under IDEA if the overall impact limits the student's access to FAPE.
- What about Snap Suspensions?
- After school detention?

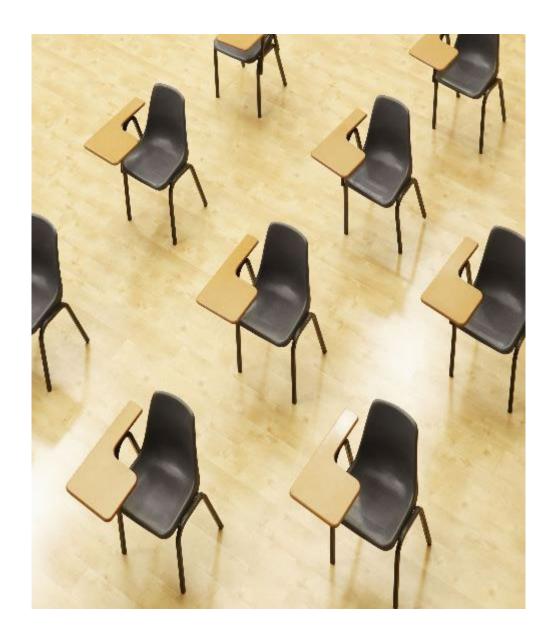


#### In School Suspension (ISS)

OSE Guidance states:

In-school suspensions are not counted as disciplinary removals when students:

- 1. Are provided the opportunity to continue to be involved in and make progress in the general education curriculum **AND**
- 2. Receive instruction and services specified in the IEP **AND**
- 3. Participate with nondisabled students **AND**
- 4. Have instruction provided by a certified teacher



#### In School Suspension (ISS) (cont'd.)

- For MSDS reporting purposes, schools must report all In-School Suspensions that are <sup>1</sup>/<sub>2</sub> day or more as a removal
- ISS that does meet the criteria should still be included on the pattern of removals worksheet, but would not be counted as removals toward the 10 days





#### **Bus Suspension**

- Is transportation part of the student's IEP?
  - ➢ If YES, then the bus suspension counts as a removal, unless the school district provides the transportation in another way.



#### **Behavior Plans**

• Removals under a behavior intervention plan are counted when determining if there is a pattern of removal.



#### "Come pick up your child"

Counted as a removal

#### What is a Pattern of Removal?

The short removals total more than 10 school days in a school year

AND

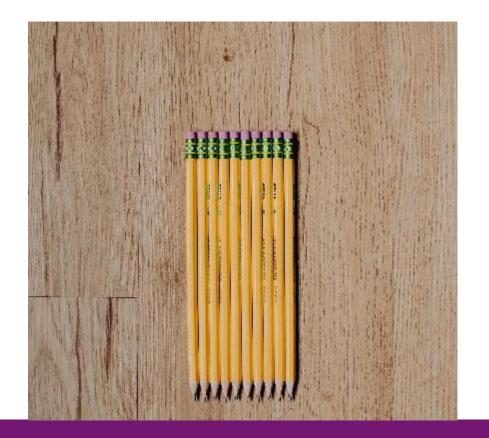
The behavior is substantially similar to behavior that resulted in previous removals AND  Length of each removal, total amount of time removed and the proximity of removals to one another is factored in

#### Pattern of Removal: Let's look at an example

- September 21<sup>st</sup> Tardy 3 day after school detention
- September 28<sup>th</sup>
  Profanity in class
  1 class period Snap Suspension
- October 15<sup>th</sup>
  Insubordination
  3 day ISS
- October 20<sup>th</sup>
  Out of seat on bus
  3 day bus suspension
- December 3<sup>rd</sup>
  Fighting with peer
  10 day OSS
- January 6<sup>th</sup>
  Profanity to teacher 3 day OSS
- January 19<sup>th</sup>
  Profanity in hallway
  3 day OSS



#### What about this?



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- A High School student with a disability has been removed from History class for 25 of the last 55 school days for failing to follow direction, cell phone violation, making noise, and insubordination.
- Removals under IDEA?
- Pattern/change in placement?



## What happens if there is a Change in Placement?

- Must convene a Manifestation Determination Review (MDR) within 10 school days of the decision to change the placement
- Must provide the parent a copy of the Notice of Procedural Safeguards on the date the decision is made to make the change of placement



# Services if Removed more than 10 Days

Short term removal that is not a pattern (no change in placement):

✓ District determines services by consulting with at least one of the student's teachers

Long term removal or short-term removal that is a pattern:

✓ IEP team determines services

Services must enable student to:

- ✓ Continue to participate in the general education curriculum and
- ✓ Progress toward their IEP goals

#### Resources

#### MDE OSE Guidance: Responding to and Counting Disciplinary Removals

MDE OSE Individuals With Disabilities Education Act (IDEA) Discipline Requirements (October 2022)

MDE OSE Guidance: Determining a Change in Placement

MDE OSE Conducting a Manifestation Determination Review

MDE OSE MDR Model Form

MDE OSE Guidance: Shortened School Day

OSERS Questions and Answers on Discipline Procedures (June 2009)

OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities (August 1, 2016)

OSERS Q & A on Discipline Procedures (July 2022)

OSERS Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders (July 2022)

OSEP Dear Colleague Letter on Implementation of IDEA Discipline Provisions (July 2022)

Positive Behavioral Intervention Supports



#### QUESTIONS?







#### THANK YOU!

- Laura Zangara, Intake Coordinator
- www.MiKids1st.org
- 833-Kids-1<sup>st</sup> (833-543-7178)

#### We are here to support you!

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### **Michigan Alliance for Families**

Michigan Alliance for Families is an IDEA Grant Funded Initiative of the Michigan Department of Education, Office of Special Education, and Michigan's federal Parent-Training and Information Center (PTIC) funded by U.S. Department of Education, Office of Special Education Programs (OSEP).

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