

# **EDUCATION LAW:**



## **TRUANCY, STUDENT DISCIPLINE & RESIDENCY**

Education Law Center  
Fall 2006

# TRAINING OVERVIEW



- Sources of Education Law in PA
- Truancy
- School Discipline
  - Behavior That Can Result in School Discipline
  - Common Forms of Discipline
    - Suspensions
    - Expulsions
    - Transfers
- Limits on School Boards' Authority to Discipline
- Residency

# SOURCES OF EDUCATION LAW IN PA

- PA's Public School Code: [24 P.S. § 1-101, et seq.](#) Available at [www.pacode.com](http://www.pacode.com)
- The regulations implementing the School Code: Title 22 (Education) of the Pa. Code.
- Discipline:
  - “Rules and Regulations,” [24 P.S. § 5-510](#)
  - “Possession of Weapons Prohibited,” (Act 26), [24 PS 13-1317.2](#)
  - “Disruptive Students Program,” [24 PS 19-1901-C](#); [24 PS 19-1901-E](#)
  - “Students,” State Board of Education Regulations, Chapter 12
    - School Rules, [22 Pa Code 12.3](#)
    - Exclusions from School, [22 Pa Code 12.6](#) (*and see* [24 P.S. § 13-1318](#))
    - Hearings, [22 Pa Code 12.8](#)
- Residency:
  - [24 P.S. § 13-1301 et seq.](#); [22 Pa. Code Ch. 11](#)

# TRUANCY



- Children in PA have the *right to attend school* from age 6 to high school graduation or until the end of the school term in which the child turns 21, whichever comes first. See [24 P.S. § 13-1301](#); [24 P.S. § 1-102\(3\)](#) (defining “school term”).
- **Compulsory school age:** age 8 (or 1st grade, if earlier) until 17th birthday. [24 P.S. § 13-1326](#).
- **EXCEPTION:** If a student is 16 and is “regularly engaged in any useful and lawful employment or service during the time the public schools are in session,” then he or she is not required to attend school. The student must hold an “employment certificate issued according to law.” [24 P.S. § 13-1330\(1\)](#). Usually school districts issue these work papers.
- Enrolling a child in a charter school, a licensed private or parochial school, or an approved homeschooling program satisfies the school attendance requirement.

# TRUANCY

- Every parent, guardian, or “person in a parental relationship” (i.e. an aunt who is caring for the child) is responsible for making sure that the child attends school regularly until the age of 17. [24 P.S. § 13-1333\(a\)\(1\)](#).
- If a child misses school for three or more days in a row without a valid excuse, the school district must provide the parent with written notice of the attendance violation three days before bringing court proceedings against a parent. If the child continues to be truant *after* the parent receives this notice, the school district does not need to send more notices. It can then file a **truancy petition** with the local municipal court. A truancy hearing is then scheduled.

# TRUANCY



- **Penalties for the parent may include:**
  - \$300 fine per violation
  - parent education program
  - community service
- **Penalties for the student may include:**
  - \$300 fine per violation (if parents show they took every reasonable step to ensure school attendance)
  - driver's license suspended for up to 90 days (if first truancy conviction); up to 6 months for any additional violation
  - adjudicated as dependent

# SCHOOL DISCIPLINE

## Schools' Authority to Impose Discipline

- Schools boards and schools can “make reasonable and necessary rules governing the conduct of students in school.”
- Schools can regulate student conduct during school hours, including time spent coming to or leaving from school.
- Case law suggests schools have the authority to regulate out of school conduct that disrupts school programs.

# BEHAVIOR THAT CAN RESULT IN SCHOOL DISCIPLINE

- Check School's Code of Student Conduct
  - Common Examples:
    - Repeat violations of Code
    - Prohibition of destruction and theft of property
    - Prohibition of bullying
    - Prohibition of assault on school personnel
- Act 26 – Possession of a Weapon

# BEHAVIOR THAT CAN RESULT IN SCHOOL DISCIPLINE

ACT 26 (24 P.S. § 13-1317.2):

## **Possession of Weapons Prohibited:**

School districts “shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or a school-sponsored activity.”



## Safety Valve in Act 26



“The superintendent of a school district ... [or school board or hearing officer] may recommend **modifications** of such expulsion requirements for a student on a **case-by-case basis.**” 24 P.S. § 13-1317.2 (c)



## ACT 26 –WEAPONS DEFINED

“As used in this section, the term ‘weapon’ shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of causing serious bodily injury.” 24 P.S. § 13-1317.2 (g)



"You have it easy. When I went to school, we never had a day off for metal detector maintenance."

# COMMON FORMS OF DISCIPLINE AND PROCEDURAL REQUIREMENTS:

- Suspensions
- Expulsions
- Transfers

# SUSPENSIONS



- Exclusion from school for 1 - 10 consecutive school days.
- Can be imposed by principal, VP or other in charge of a school.
- Student must be informed of reasons for suspension and given opportunity to respond.
  - Exception: when health, safety or welfare of the school community is threatened. Notice and opportunity to be heard ASAP.
- Student's parents and superintendent must be informed of suspension in writing.
- In-school suspension is exclusion from classes but not from school. The regulation contains no time limit.

22 Pa. Code § 12.6(b)

22 Pa. Code § 12.7

# SUSPENSIONS



## Additional Requirements for Suspensions of 4-10 days

- Parents & student have the right to an **informal hearing** and:
  - Written notification of reasons for suspension
  - Sufficient advance notice of time and place of hearing
  - Student can question any witnesses present at the hearing
  - Student can speak and produce witnesses
  - Informal hearing must be held w/in first 5 days of suspension

22 Pa. Code §§ 12.6(b)(iv), 12.8 (c).

\*Suspensions are not appealable



# EXPULSIONS

- “Exclusion from school by the board of education for a period exceeding 10 school days and may be permanent expulsion from the school rolls.” 22 Pa. Code § 12.6(b)(2)
- All expulsions require a **formal hearing**. *Id.*
- Student remains in class unless at informal hearing school finds student is a threat to the health, morals, welfare or safety of others. 22 Pa. Code §§ 12.6 (c) (d).
- Formal hearing can be in front of board panel but must be approved by majority vote of **full board**. 22 Pa. Code § 12.8 (b).

# EXPULSIONS – Due Process

Rights at the formal hearing include:

- Prior written notice
- Right to hire counsel
- Right to present witnesses, cross examine and testify
- Hearing must be recorded
- Written adjudication containing findings and reasons
- 30 days to appeal to the local court of common pleas (no automatic stay)

22 Pa. Code § 12.8 (b) (1)

# EXPULSIONS



- Evidentiary issues at expulsion hearing:
  - School has burden of proving by a **preponderance of the evidence** that the student violated a school rule.
    - Circumstantial evidence may be used. *A.B. v. Slippery Rock Area School District*, Civ. No. 695, 2006 WL 2506068, \*3 (Pa. Commw. Ct. 2006).
  - PA administrative law cases suggest that hearsay is admissible at expulsion hearings but must have corroborating non-hearsay evidence on point.
    - Object for the record.

# EXPULSIONS

## Obligations and Rights of an Expelled Student

- If student is under 17, student must attend school.  
Can be another public school, charter school, private school, home schooling
- If none of these can be arranged, parent must state so in writing within 30 days of date of decision
- Then District must “make provision for the student’s education” [22 Pa. Code § 12.6\(e\)\(2\)](#)

# DISCIPLINARY TRANSFERS

- Transfer results from violation of school rule
  - Conduct must be prohibited by code of conduct
- Most transfers are to “disruptive student programs” 24 PS 19-1901 (C) *et seq.*
- Right to an informal hearing
  - Precedes transfer unless “student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process”
  - Chance to show why student does not meet definition of disruptive student

# DISCIPLINARY TRANSFERS

Definition of Disruptive Student, 24 PS 19-1901 C (5):

A student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment, or whose behavior materially interferes with the learning of other students or disrupts the overall educational process. The disruptive student exhibits to a marked degree any or all of the following conditions:

# Definition of Disruptive Student, 24 PS 19-1901 C (5) continued

- (i) Disregard for school authority, including persistent violation of school policy and rules.
- (ii) Display or use of controlled substances on school property or during school-affiliated activities.
- (iii) Violent or threatening behavior on school property or during school-affiliated activities.
- (iv) Possession of a weapon on school property, as defined under 18 Pa C.S. § 912 (relating to possession of weapon on school property).
- (v) Commission of a criminal act on school property or during school-affiliated activities.
- (vi) Misconduct that would merit suspension or expulsion under school policy.
- (vii) Habitual truancy.

No student who is eligible for special education services pursuant to the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. §1400 et seq.) shall be deemed a disruptive student for the purposes of this act, except as provided for in 22 Pa. Code § 14.35 (relating to discipline).

# Serious Consequences of Alternative School for Disruptive Youth:

- Can be as little as 15 hours per week. (v. 27.5)
- Can be in afternoon or evening
- Only 4 basic subjects required
- District has discretion to decide when student can return to regular education
- Stigma

*Compare 22 Pa. Code § 11.3 with 24 P.S. §§ 19-1901-C – 19-1905-C.*

*See <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=67371>*

# Case Study 1



Marta uses a boxcutter in her job at a market. She put the boxcutter in her jacket pocket, then by mistake failed to take it out the next morning before heading for school. She went through the metal detector at school and was caught with the boxcutter. The school had her arrested and seeks to transfer her to an alternative disciplinary school for possession of a weapon.

You represent Marta at the hearing. What arguments can you make in her favor and what might you bring to the hearing?

# GENERAL ADVICE FOR TRANSFER OR EXPULSION HEARING

- Explain the circumstances surrounding the misbehavior
- May need to address attendance, grades, previous discipline actions against the student, and the student as a member of the community.
- Helpful information to bring may include:
  - A letter from a teacher in the school stating his or her opinion that the student should not be transferred or expelled
  - A letter from someone in the community (a neighbor, a minister, an employer, etc.) in support of the student
  - A letter from a counselor or therapist expressing his or her opinion about the right school placement for the student
  - Any other information which could explain the misbehavior or explain why the student should not be transferred or expelled (witness statements, etc.)

# “DO I HAVE TO GO TO THE ALTERNATIVE SCHOOL?”

Parents may ask you for other options.

- Charter School (regular or cyber)
- Private School
- Home Schooling
- No appeal currently available; conceivably, original action challenging decision may be possible in some cases
- Find out what district’s criteria for restoration from an alternative school is

## Case Study 2



Harry went to a Saturday night party with classmates at a local club where there were illegal drugs. The police came and charged Harry with a drug offense. The school expelled Harry, citing the following provision of the district's Code of Student Conduct:

Any student who engages in any illegal behavior shall be subject to discipline by the School District.

- What arguments can you make on behalf of Harry?

# LIMITS ON SCHOOL BOARDS' BROAD AUTHORITY TO DISCIPLINE

- Prohibited behavior must be set forth in published school rules
- No corporal punishment
- No denial of diploma
- Rules must be reasonable, not arbitrary and capricious, not unconstitutionally vague (see *Fairness in School Discipline in PA*)

# LIMITS ON SCHOOL BOARDS' BROAD AUTHORITY TO DISCIPLINE

- Rules may not exceed the authority conferred on districts by state statute. See *Hoke v. Elizabethtown Area Sch. Dist.*, 833 A.2d 304, 310 (Pa. Commw. Ct. 2003), *appeal denied*, 847 A.2d 59 (Pa. 2004).
  - **X** Punishment that occurred before the student enrolled in the district (exception: weapon)
  - **?** Activity that occurs off school grounds and/or outside of school hours. (See next slide)
  - **✓** Misconduct en route to or from school

# Activity that occurs off school grounds and/or outside of school hours can be punished:

1. If it also involves in-school misbehavior (Agreement to make drug sale at school though sale took place off campus)
2. If it occurs at a school sponsored event (prom)
3. If it has a substantial impact on the school program  
(*Layshock v. Hermitage School Dist.*, 412 F.Supp.2d 502 (W.D. Pa. 2006))
  - Punishment for misconduct on school property outside of school hours with no substantial impact on school program has not been upheld  
(*D.O.F. v. Lewisburg Area School Dist.*, 868 A.2d 28 (Pa. Commw. Ct. 2004))
  - Punishment for misconduct that has no demonstrable connection to the school program or property has not been upheld in recent cases

# LIMITS ON SCHOOL BOARDS' BROAD AUTHORITY TO DISCIPLINE

## STUDENT EXPRESSION PROTECTIONS:

- First Amendment
  - Arm bands are protected expression. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
  - Lewd or vulgar speech is not protected. Bethel School District v. Fraser, 478 U.S. 675 (1986).
  - Speech that constitutes a “true threat” is not protected.
  - Vagueness
  - Rules may be subject to overbreadth challenge
- State Regulations:
  - “Students have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens immediate harm to the welfare of the school or community, encourages unlawful activity or interferes with another’s individual rights.” 22 Pa. Code § 12.9(b). (**Substantial Disruption Test**)
  - Students are not required to recite the Pledge or salute the flag. 22 Pa. Code § 12.10.



# DISCIPLINE—miscellaneous

- Charter Schools
  - Subject to same laws
- English Language Learners
  - Parents and students have the right to notices and procedures in a language they understand
  - Issue at hearing can be whether student's English ability was a factor in the incident

# Residency and Enrollment

24 P.S. § 13-1301 *et seq.*

22 Pa. Code Chapter 11

# The Child's Right to Attend School Where He/She Lives

- **Children in Foster care**
  - Non-resident children in foster care must be treated in the same manner as resident children
- **Children in Children's Institutions** (agency supervised or licensed shelters, group homes, maternity homes, RTFs, or other institutions for the care or training of adolescents – see 24 PS § 13-1306)
  - “Host” school districts (where facility is located) must provide or arrange to provide education services, including special education services
  - This is a separate question from who gets the bill...

# Children not living with a parent

- 24 P.S. 13-1302 / 22 Pa. Code 11.19  
Non-resident student living w/ district resident
  - Test: the resident (adult) must show **either**
    - Legal proof dependency or guardianship
    - OR**
    - Sworn statement that:
      - Fully support child without personal gain
      - Will assume all school obligations for the child
      - Intend to keep child continuously (not just during school)
  - See PDE's BEC ([www.pde.state.pa.us](http://www.pde.state.pa.us))

# Enrollment Rules



- Law requires proof of:
  - AGE
    - Birth certificate, notarized statement by the parent, etc.
  - IMMUNIZATIONS
    - Can be oral assurance from old district or a doctor with record to follow
  - RESIDENCY
    - Either show parent is district resident or the
  - STATEMENT OF DISCIPLINARY RECORD
    - Also known as “Act 26” statement

# Enrollment Rules (continued)

- School may ask for other (contact-type) information
- Schools MAY NOT require:
  - Child's social security number,
  - Visa/immigration documents,
  - Reason for child's placement or placement history
    - For example: psych. eval. by child welfare agency (*remember these records are probably confidential!*)
  - Court order: placing the child or guardianship



From: PDE's BEC on Enrollment

# Enrollment Rules (continued)

- How long should it take?
  - Must enroll child within **5 business days** of receiving required documents
  - If New School asks Old School for records, must be sent within **10 business days**



From: 22 Pa Code 11.11(b)



# Enrollment Rules (continued)

- School district can not refuse to educate the child based on disciplinary record
  - **Exception:** If child is currently expelled for a weapons offense, the district may assign that student to an *alternative assignment* or provide *alternative education services* for the duration of the expulsion

From: 24 P.S. 13-1317.2(e.1)

# Resolving Enrollment Disputes



- Person trying to enroll child can complain to:
  - School Services Unit  
Pa Department of Education  
333 Market Street  
Harrisburg, Pa 19126-0333  
(717) 787-4860 or 783-3750 *phone*  
(717) 783-6802 *fax*
- Within 5 business days, PDE will request the district's position. It must respond in 5 business days.
- If enrollment is denied, PDE's Office of Chief Counsel may choose to intervene.

# Resolving Enrollment Disputes

- Person trying to enroll child can also:
  - File a complaint for injunctive relief in the local court of common pleas
    - Can file a motion for preliminary injunction because education is a fundamental right (so loss of education is irreparable harm).
      - “[D]eprivation of educational rights can produce irreparable harm and establishes a need for prompt and immediate relief.” Oravetz v. West Allegheny School District, 74 Pa. D. & C.2d 733, 737-38 (1975).

# EDUCATION LAW CENTER

- Help Line
- Pro Bono Referral

[www.elc-pa.org](http://www.elc-pa.org)

Deborah Gordon

[dgordon@elc-pa.org](mailto:dgordon@elc-pa.org)

(215) 238 – 6970 x 313



# Special Education 101

Education Law Center  
1315 Walnut Street  
Philadelphia, PA 19107-4798  
(215) 238 – 6970  
[www.elc-pa.org](http://www.elc-pa.org)  
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# The Law

- Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et. seq.*
  - IDEIA or IDEA 2004
  - Federal Regulations, 34 CFR Part 300
  - Apply to all public schools (charters too)
- State Regulations, 22 Pa. Code Chapter 14
  - Do not apply to charter schools  
(Charters follow 22 Pa Code Ch. 711)

# The Players

- Child and the “parent”
- Local education agency (LEA)
  - School District
  - Intermediate Unit
  - Charter schools, AVTS
- State education agency (SEA)
  - Pennsylvania Department of Education (PDE)

# Definition: Parent

- Biological or adoptive
- Foster parent
- Guardian (but not “the state” if ward of state)
- Individual acting in the place of parent (like a relative with whom child lives)
- Surrogate parent

# Overview of Rights

- Evaluation
- Free Appropriate Public Education
  - Individualized Education Program (IEP)
- Placement in Least Restrictive Environment
- Procedural Safeguards
  - Notice
  - Dispute resolution mechanisms

# The Process



## ■ Step 1: Request an Evaluation

- Can be requested at any time
- Must be in writing (keep a copy)
- MUST sign a Permission to Evaluate Form
- District has **60 school days** and charter school has **60 calendar days** to issue its report
- District has CHILD FIND duty as well

# Purposes of Evaluations

- Determine eligibility for special education services:
  - Two-part test (see next slides)
- Provide recommendations to develop appropriate program for child

# The Process

## ■ Step 2: Evaluation

- Must be free, non-discriminatory and assess the child in all areas of suspected disability
  - Not just an IQ test
- Parent Involvement
- Re-evaluations:  $\geq$  every 3 years (2 years for child with MR) but not  $>$  once a year
- Independent Education Evaluation (IEE)
  - May be free to family – see our factsheets
  - Only get one free IEE per school evaluation

# Special Education Eligibility

## Part 1: Child must have a “disability”

- Mental retardation/
- developmental delays
- Hearing impairments
- Speech or language impairments
- Visual impairments
- Serious emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury
- Specific learning disabilities
- Other health impairment



# Confusing Definition #1

- “Serious Emotional Disturbance”
  - Exhibits  $\geq 1$  of following for long time:
    - Inability to learn not explained by intellectual, sensory or health factors
    - Inappropriate relationships or inappropriate behavior in normal circumstances
    - Pervasive unhappiness or depression
    - Physical symptoms or fears from school
    - But not: schizophrenia or socially maladjusted
- Key, don't just look at child's IQ or grades

# Confusing Definition #2

- “Other Health Impairment”
  - Having limited strength, vitality or alertness
  - Includes heightened alertness to environmental stimuli that reduces alertness to the educational environment
  
- ADHD?
  - May qualify \*BUT\*
  - Remember this is a two-part test...

# Special Education (IEP) Eligibility :

**Part 2:** As a result of the disability, the child requires special education & related services

*for example:* special instruction methods, modified curriculum, speech therapy



If the child does not meet Part 2 but has a disability that substantially impairs a major life activity, the child is protected by **Section 504 / Chapter 15**

– Non-discrimination, equal access law

# The Process



## ■ STEP 3: Develop the IEP

*(If student is found eligible)*

- IEP Team
- Meet within **30 calendar days** of evaluation
  - After first IEP, must meet at least **annually**
  - Can meet more often (must if parent requests)
  - If fail to meet, the IEP does NOT expire!
- IEP is the “Contract” of services and supports
  - FAPE (free *appropriate* public education)

# What is in an IEP?

- **Measurable Annual Goals**
- **Specially designed instruction** in academics Phys Ed, travel & vocational training
- **Related Services:** transportation, speech therapy, physical therapy, counseling, etc.
- **Transition Services:** starting with IEP in effect at age 16 (can plan for this earlier)
- **Assistive Technology:** (devices/services): to increase functional capabilities of the child
  - Ex: wheelchair, communication devices, etc.

# The Process



## ■ Step 4: Placement Decision

- After IEP written
  - So, it is backwards to start with placement and then write an IEP that fits the placement
- Key: **Least Restrictive Environment**
  - Supplementary Aids and Services
- Parents must be given prior written notice (NOREP) of IEP & Placement before it starts
  - Parents can disagree with the IEP / placement
  - If parent's disagree, child remains in last-agreed-to placement pending resolution of the dispute process

# What is the Least Restrictive Environment?

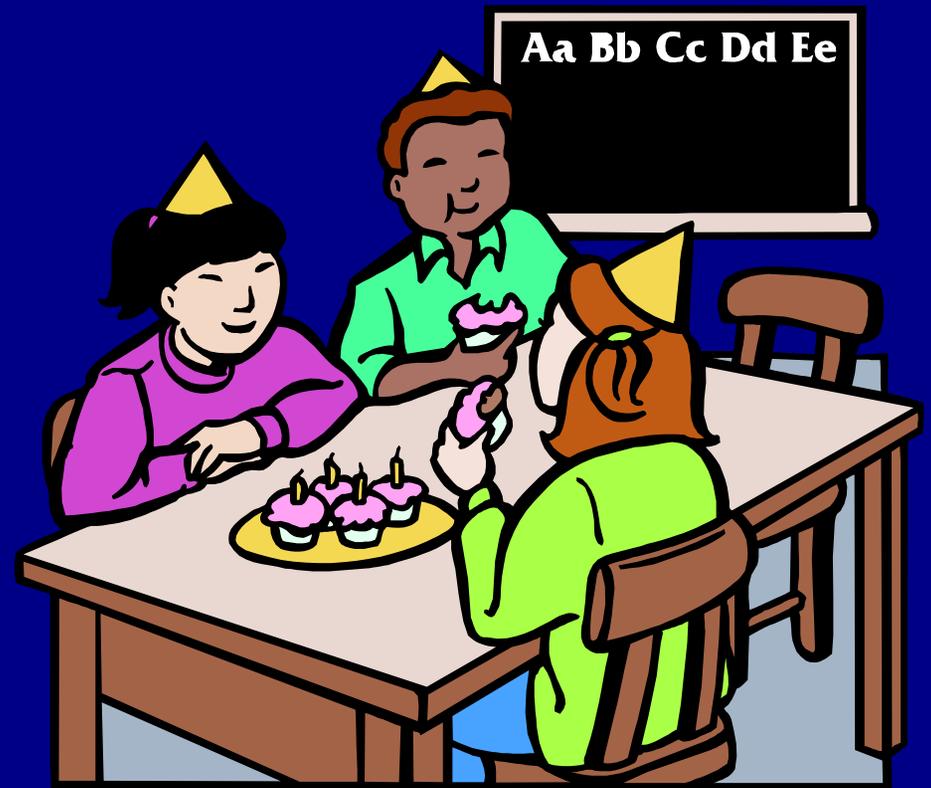
- Children with disabilities are educated with children who are not disabled to the **maximum extent appropriate**
  - Special classes, separate schooling, or other removal of children with disabilities from [the regular classroom] occurs **only when** the nature and severity of the disability is such that education in regular classes **with the use of supplementary aids and services** cannot be achieved satisfactorily.

# Gaskin Settlement – Brief Overview

- Lawsuit claimed that the state (PDE) was not enforcing the LRE requirement
- Settlement
  - Lasts from September 19, 2005 through 2010
  - PDE agreed to provide **technical assistance, monitoring, support and oversight** to enable districts to provide students with disabilities an appropriate education (FAPE) in the least restrictive environment (LRE).
  - Why care? More focus on LRE by schools

# Goal of the Settlement Agreement

- Ensure that IEP teams consider the regular classroom with supplementary aids and services before considering removing the student with a disability to a more restrictive placement.



# What to do if there is a disagreement with the school



## ■ Division of Compliance (DOC)

### Complaint:

- **When:** school isn't following the IEP or a clear legal rule (ex: timelines, procedures, etc.)
- **Who:** A parent or organization may file a complaint on behalf of a student
- **How:** Call 800-879-2301 to get the form or visit our website for the form
  - Must send form to the state and a copy to school

# What to do if there is a disagreement with the school

## ■ Mediation:

- Free & voluntary
- No lawyers allowed
- Discussions are confidential
- New: Legally binding agreement (in court)
- How? call Office of Dispute Resolution at 800-992-4334



# What to do if there is a disagreement with the school

## ■ Special Education Hearing

- How? Request by sending “complaint” letter to the school and to the state
  - See our fact sheet for rules on how to write it
- New: Resolution Session
- Appeal to state panel and then to court
- Attorneys’ fees
  - Parents may get fees back from school if they win – but no longer can get expert fees paid by school
  - But school can make parents or lawyers pay school’s fees if frivolous or harassing suit

# Schaffer v. Weast

- Schaffer v. Weast, 126 S.Ct. 528 (2005)
  - Justice O'Connor writing for the majority ruled that the burden of proof in a due process hearing rests with the party who files for due process.
  - In Pennsylvania, this changed the nature of due process hearings where it was always the School District's burden to prove that it had provided the child with an appropriate education in the least restrictive environment.

# School Discipline for Children with Disabilities

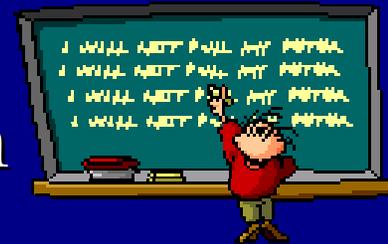
20 U.S.C. § 1415

34 C.F.R. §§ 300.530 - .537

22 Pa. Code § 14.143

# School Discipline for Children with Disabilities

- In general, students with disabilities may be disciplined under the same rules – and same protections – as regular education students
  - Includes: in-school suspension
  - out-of-school suspension
  - alternative school
- Exception: Schools have to take extra measures if the misbehavior is a result of the child's disability, and if the disciplinary sanction counts as a “change in placement”



# What is a change in placement?

- Any removal from school for a child with mental retardation.
  - Unless it is an “Exceptional Circumstance” (See later slides)
- A transfer to an alternative educational setting.
- A school exclusion for:
  - > 10 school days in a row
  - > 15 total school days in a year (*except public charters*)

## **OR (most important for public charters)**

The child has already been excluded from school for at least 10 schools days, and the proposed additional exclusion constitutes a pattern. Factors relevant to determining whether there is a pattern are, for example, the similarity of the behavior that has resulted in a sanction, and the number, length, and proximity of the suspensions.

# What if the school wants to change the child's placement?

## ■ Schools proposing the discipline must:

- Give parents notice of the discipline
- Inform parents of their rights
- Hold a “manifestation determination meeting” within 10 school days



# Manifestation Determination



- The misbehavior **IS** a manifestation of the disability if it:
  - *Was caused by* the disability
  - Had a *direct & substantial relationship* to the child's disability
  - **OR** Was the *direct result* of the school's failure to implement the IEP

# When School agrees the Conduct IS a Manifestation:

- The school may NOT change the child's placement without parent consent
  - Unless it is an "Exceptional Circumstance" (See later slides)
- The school must hold an IEP meeting within 10 school days and:
  - If the school district has not already done so, conduct a functional behavioral assessment
  - Develop, review, or revise a behavior plan



# When the Conduct is NOT a Manifestation :

- The school district may discipline the child
  - Should decide punishment on a case-by-case basis
  - Can't be more severe punishment than non-disabled peers
- If the school wants to expel the child
  - Requires a formal hearing (22 Pa. Code 12.8)
  - If expelled, school must provide services for child:
    - To participate in general curriculum &
    - To progress toward IEP goals (20 USC § 1415(k))

*NOTE: this is more than regular education students  
(they only get "provision" for their education)*

# When parties disagree whether the conduct is a manifestation

- The family can ask for a hearing to challenge the team's determination
  - In the meantime,
    - School can impose the discipline it would impose on non-disabled students (includes transfer to alternative schools, suspensions, expulsions)
    - Child must receive enough services to participate in the general curriculum and make progress towards IEP goals
- Expedited Hearing process
  - If family wins, child must be returned to previous educational setting (unless its an exceptional circumstance)

# Children Not Yet Found Eligible for Special Education

- The protections apply if, **prior to** the incident:
  - Parent stated in writing to a supervisor, administrator or a teacher that child might need special education, or
  - Parent requested an evaluation, or
  - Teacher / staff expressed *specific concerns about child's pattern of behavior directly* to director of special ed. or other supervisory person
- Exceptions:
  - If child previously evaluated & found ineligible or
  - Parent refused special education/evaluation in past

# Automatic Exceptions— Regardless of Manifestation Decision



- The school may move the child to an alternative education setting for **up to 45 days** without parent permission if:
  - Child carried a weapon to school /function
  - Child knowingly possessed, used or sold illegal drugs while at school/ function (or if the child sold Rx drugs)
  - Child “inflicted serious bodily injury” upon another person while at school/function

# Exceptions requiring a hearing:



- School may ask a hearing officer to place the child in an alternative setting for up to **45 days**
  - School must show that maintaining child in the current placement is “substantially likely to result in injury to child or others”
- After any of these 45-day placements, child must be returned to the previous placement
  - Unless a hearing officer orders a new 45-day stay in the alternative school based on dangerousness (above)

# Special Education Resources

- Federal special education law
  - Individuals with Disabilities Education Improvement Act 2004 (July 1, 2005) 20 U.S.C. § 1400, *et seq.*
  - 34 C.F.R. Chapter 300 (October 13, 2006)
- State Special Education Law
  - 22 Pa. Code Chapter 14 -for public school students
  - 22 Pa. Code Chapter 711 - for charter school students
- Education Law Center: Children with Disabilities
  - <http://www.elc-pa.org/disabilities/disabilities.html>
  - Manual on special education + many factsheets