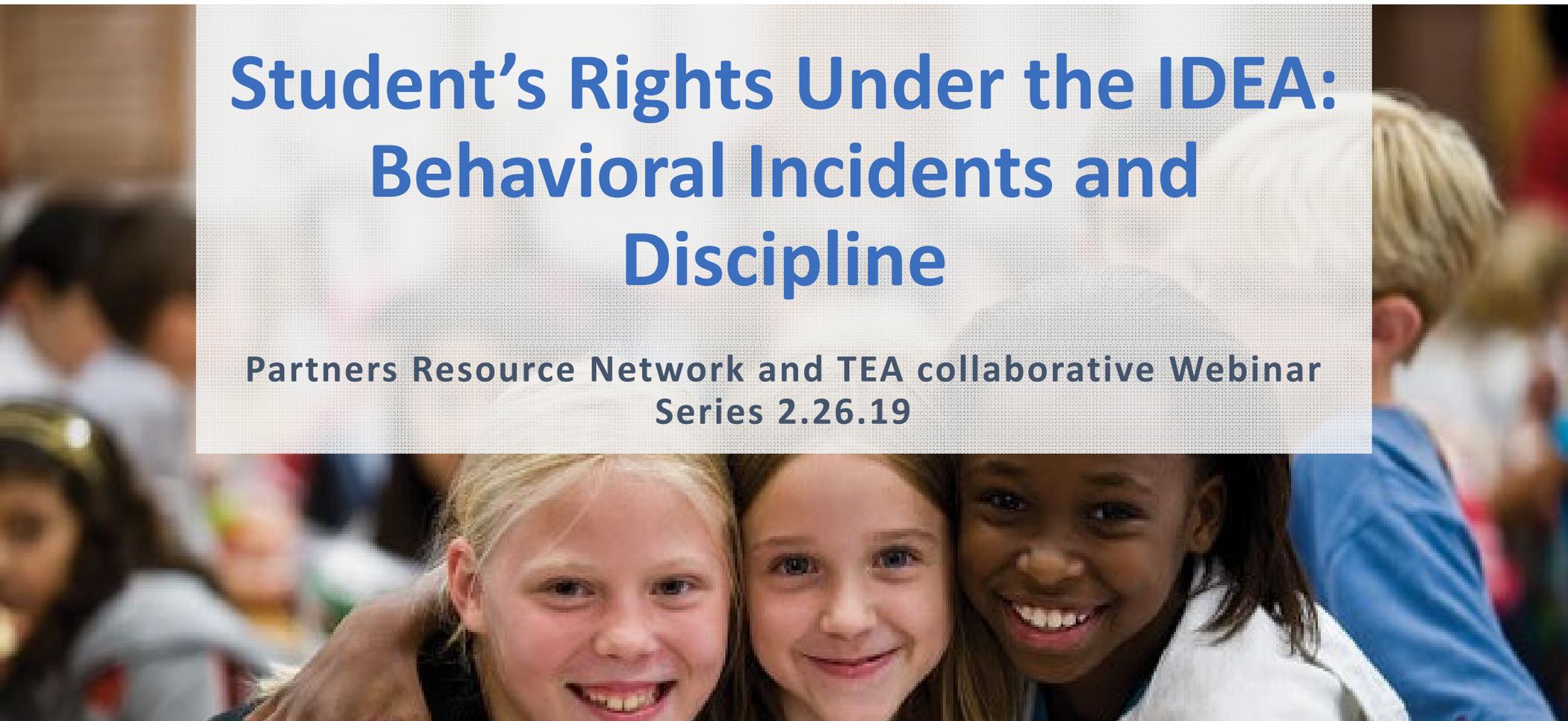




Student's Rights Under the IDEA: Behavioral Incidents and Discipline

Partners Resource Network and TEA collaborative Webinar
Series 2.26.19





Session Overview

- Disciplinary Removals
- Manifestation Determination Review
- Restraint Procedures
- Resources

Disciplinary Removals



Disciplinary Removals

- A removal is when a child who violates the student code of conduct is removed from his or her current placement and put in another setting, is suspended, or is expelled.
- Portions of the school day may be considered a removal (e.g. ½ day).
- Suspensions from the bus would be considered a removal if bus transportation is part of the student's IEP.



Disciplinary Removals: In school Suspension (ISS)

- In School Suspension is not considered a removal as long as:
 - The student is afforded the opportunity to continue to appropriately participate in the general curriculum;
 - The student continues to receive the services in his/her IEP; and,
 - The student continues to participate with non-disabled children to the extent he or she would have in the current placement.
- If these three factors are not satisfied the ISS should count as a removal.



Disciplinary Removals

- An eligible student under the IDEA who violates the student code of conduct may be removed from his or her current placement for up to 10 consecutive school days, without implementing any IDEA procedures, as long as the same discipline would be applied to children without disabilities.
- Removals of 10 consecutive school days or less are often referred to as “short-term removal”.
- A student can have multiple short-term removals in a school year as long as the cumulative days do not constitute a “change in placement”.



Disciplinary Removals- after 10 days

- After the first 10 cumulative days of removal in one school year, certain IDEA procedures apply:
 - Must consider if subsequent days of removal are a “change of placement”
 - The LEA is required to provide services during any subsequent removals, regardless of length.
 - School personnel must consult with at least one of the child’s teacher to determine the extent to which services are needed so that the child continues to participate in the general education curriculum and progress toward meeting IEP goals.



Disciplinary Removals- Change of Placement

- Removal of student from his or her current educational placement for more than 10 consecutive school days is a change of placement.
 - Often referred to as a “long term removal”
 - For example: Disciplinary alternative educational placements (DAEP) and expulsions

- Multiple short-term removals that constitute a pattern of removal are also considered a change in placement.



Disciplinary Removals- Change of Placement

- Consider the following five factors in determining if multiple short-term removals constitute a pattern of removal:
 - whether the child has been subjected to a series of removals that total more than 10 school days in a school year;
 - whether the behavior is similar or substantially similar to the previous incident(s) that resulted in removal;
 - the length of each removal;
 - the total amount of time the child has been removed; and,
 - the proximity of the removals to each other.



Disciplinary Removals- Change of Placement Procedures

- The district must notify the parent of the recommended discipline on the date on which the decision is made for a discipline removal that constitutes a change in placement.
 - Must provide parents with procedural safeguards notice
- Before any disciplinary action may be taken regarding a student protected by the IDEA that constitutes a change of placement, a manifestation determination review (MDR) must be conducted.

Manifestation Determination Review



Manifestation Determination Review

SpedTex Parent Video series- Manifestation Determinations:

<https://www.spedtex.org/index.cfm/parent-resources/video-gallery/>

Manifestation Determination Review

- Schools must hold a manifestation determination **within 10 school days** of any decision to change a student's placement as a result of a disciplinary action. A manifestation determination asks two questions:
 - Was the behavior caused by, or did it have a direct and substantial relationship to, the student's disability?
 - Was the behavior a direct result of the school's failure to implement the student's IEP?

Manifestation Determination Review

- If the answer to either question is “yes,” the school must:
 - Conduct a functional behavioral assessment, unless one has already been conducted, and implement a behavioral intervention plan (BIP) for the student; or
 - If the student already has a BIP, the school must review and revise it in order to address the behavior.
 - Return the student to his/her previous placement unless there is a special circumstance.



Manifestation Determination Review- Special Circumstances

If the behavior in question is determined to be a manifestation the student returns to his or her placement **unless:**

- The behavior in questions involves **weapons, drugs, or serious bodily injury**. In which case, school personnel may remove the student to an interim alternate education setting (e.g. DAEP) for up to 45 school days without regard to whether the behavior is a manifestation of the student's disability.
- The parent and school agree to the change of placement as a part of the modification of the BIP.

Manifestation Determination Review

- If the answer to **both** questions is “No”:
 - The relevant disciplinary procedures applicable to students without disabilities may be applied.
 - Student may be disciplined in same manner and same duration as a child without a disability.
 - The ARD committee determines the discipline setting and must determine that a free appropriate public education (FAPE) can be provide in that setting.

- The student must:
 - be able to continue to participate in the general education curriculum although in a different setting, and
 - progress toward meeting the goals set out in the student's IEP
- The student does not have to receive the exact same services in the same setting as before the discipline.
- The ARD committee should adjust the student's IEP to reflect what will be provided in the discipline setting.
- Even if the student is properly expelled for misbehavior that is not a manifestation, the obligation to provide FAPE continues.

Manifestation Determination Review- Disagreements

- If the ARD committee does not reach mutual agreement:
 - The district implements the decision of the school-based members of the ARD committee and provides prior written notice to the parent.
 - Parents may request a due process hearing to challenge the MDR decision and/or placement.
 - Requests for due process in the discipline context result in an expedited hearing.
 - The student remains in the discipline setting pending the decision of the hearing officer or until the expiration of the assigned discipline, unless the parent and district agree otherwise.

Restraint Procedures



Restraint- Definition and Use

- Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a child's body.
- Restraint may be used in an emergency:
 - A situation in which a child's behavior poses a threat of imminent, serious physical harm to the child or others; or property destruction
- Restraint must be:
 - Limited to the use of such reasonable force as is necessary to address the emergency
 - Discontinued at the point at which the emergency no longer exists
 - Implemented in such a way as to protect the health and safety of the child and others; and
 - Not deprive the child of basic human necessities



Restraint: Documentation requirements

- On the day the restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
- On the day the restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
- Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.



Restraint: Documentation requirements

- Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior intervention plan (BIP).
- Data regarding the use of restraint must be electronically reported to the Texas Education Agency.



Restraint: Written Notification

- Written notification to the parent and documentation to the child's special education eligibility folder must include:
 - Name of the child
 - Name of the staff member(s) administering the restraint
 - Date of the restraint and the time the restraint began and ended
 - Location of the restraint
 - Nature of the restraint
 - Description of the activity in which the child was engaged immediately preceding the use of restraint
 - The behavior that prompted the restraint
 - The efforts made to de-escalate the situation and alternatives to restrain that were attempted
 - Information documenting parent contact and notification



Thank You
TEA

Appendix

- ESC 19 Interactive Discipline Flowchart:
 - <https://www.esc19.net/cms/lib/TX01933775/Centricity/Domain/73/electronic%20discipline%20flowchart2.ppt>
- Legal Framework:
 - <https://framework.esc18.net/display/Webforms/LandingPage.aspx>
- TEA Discipline and School Removals:
 - <https://tea.texas.gov/index2.aspx?id=2147497414>

- Discipline Flowchart:
 - https://www.esc20.net/page/open/56181/0/discipline_flowchart%202007.pdf
- Parents Guide to the ARD Process and Procedural Safeguards:
 - <http://framework.esc18.net/display/Webforms/LandingPage.aspx>
- TEA Summary of Restraint Sample Form:
 - [https://tea.texas.gov/Academics/Special Student Populations/Special Education/Programs and Services/State Guidance/Written Summary of Restraint Use Sample Form/](https://tea.texas.gov/Academics/Special_Student_Populations/Special_Education/Programs_and_Services/State_Guidance/Written_Summary_of_Restraint_Use_Sample_Form/)