

Legal issues regarding the discipline of students education essay



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Discipline is a major issue in the field of special education. It is the procedures that teachers use to keep a climate in the classroom that is proper for learning (Walker, Colvin, & Ramsey, 1995). Many educators look at discipline as a goody in their classroom management bag that they can use to adjust the misbehavior of the students in their classes (Curwin & Mendler, 1988; Walker, 1995). However, discipline is more than just the steps that teachers take to manage student behavior. Discipline can also be used as a tool to educate students about how their behavior can impact their peers. In addition to this, it should not just be used to manage behavior, but also used to help students learn how manage their own behavior. A productive classroom environment and student responsibility and protection should the main goals of discipline in the classroom. .

Discipline is one issue that along with educating is a major topic for parents, teachers, and administrators. It is due to this that the courts have had a major role in defining what discipline looks like and consist of for students with special needs. In the past 20 years much legislation has addressed the procedures that schools could take in disciplinary procedures and the students in the public schools. The law has outlined how discipline can and cannot be used in schools and because of this parents, students and educators should understand the legalities of disciplining students with special needs.

Literature Review

Public School Discipline

Throughout the history of public education in the United States, there have been court rulings that have outlined the law in terms of disciplining students. These rulings have laid out the shared responsibilities of teachers and students (Alexander & Alexander, 1992). The disciplinary practices of public schools stem from the English ideal of *loco parentis* or in the place of the parent. This English ideal states that parents to some extent give protective control of their children when they put them in the care of the school staff and faculty (Alexander & Alexander, 1992).

In loco parentis does not say that that the school is the parent in replace of the parent, instead it is stating that the school must act within the law and their code of conduct to keep an appropriate school environment (Yell, 1998). This English educational rhetoric basically entails that the school has the responsibility to keep the school environment in order by having student expectations. This obligation has within it the ability to attempt to regulate student conduct by creating rules, procedures, and disciplinary sanctions. The school's powers are expansive in terms of developing consequences for misbehavior, however they are not absolute. Various court rulings have made it clear that schools have vast authority when students are in their care, however the procedures that they have in place to ensure a positive learning environment have to be reasonable and humane (Valente, 2000).

The rules and disciplinary actions of public schools must be aligned with requirements that the courts have outlined over time. For example, schools must continue due-process protections for the students that they serve when various discipline actions are used. Schools must also make sure that

disciplinary actions are applied in a nondiscriminatory manner to all students
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regardless of socio-economic status gender, sexual orientation, ethnicity, religion or linguistic background. The school's code of conduct consequences for misbehavior cannot include punishments which are unequal to the infraction or excessive (Hartwig & Ruesch, 2000).

IDEA and School Discipline

There are many educators who argue that IDEA keeps schools from applying school discipline procedures to students with special needs, especially suspensions and expulsions. Students in public schools who have been diagnosed as having special needs are also under the school's code of conduct (Gorn, 1999). The issue however is that policy must be adjusted if it falls under certain characteristics. For example, if the action keeps the student from receiving special education and related services such as long-term suspensions or expulsions without providing educational services. Steps must also be taken if the disciplinary actions change a student's placement without making that change in their individualized education program. Finally, a school disciplinary actions cannot impede on a student's individualized education program, behavior intervention plan (BIP), or Section 504 accommodation plan.

Disciplinary actions such as suspensions and expulsions result in students being deprived of their education and therefore should be subjected to the standards of due process (Yell & Dragsow, 2000). Due process is an idea that stems from the Fifth and Fourteenth Amendments and basically states that procedures have to be in place that will ensure the equitable enforcement of the law (Huefner, 2000). This must be applied to the

educational setting as well and means that due process procedures in schools are there to be sure that school decisions are fair and just.

In *Goss v. Lopez* (1975; hereafter, *Goss*), the U. S. Supreme Court ruled that if schools remove students for up to 10 days that the suspended student must be given due-process protections. For example, the Supreme Court ruled that in the issue of short-term suspensions students should first get an verbal or written notice of the charges. This student must also be given an explanation of the charges and evidence supporting the allegations against them. Finally, the student should be given the opportunity to defend themselves. The Supreme Court also stated that more due process steps would need to be taken for suspensions or expulsions that were longer than 10 days. The due-process protections listed in *Goss* are for all students. IDEA does not have more strenuous protections for students with special needs than the minimal protections in *Goss* (Gore, 1999). The procedural protections from IDEA do not apply unless the suspension is more than 10 consecutive school days or results in a change of placement. Due process protections do not block students with special needs from receiving the proper consequences for their actions. Instead, due process is a part of education to protect students from unfair and even opportunistic suspensions.

Congress confronted several educational problems that were centered on discipline in IDEA. IDEA states that all students have the right to safe, well-disciplined schools and orderly learning environments. They also stated that schools should have necessary resources to help prevent behavioral issues and to address them appropriately when and if they occur. In addition, IDEA

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also claims that the approach to discipline must be equitable and in accordance with free and appropriate public education (FAPE). Finally students have the right to an IEP that is well developed and followed and if necessary created with behavior intervention strategies.

There are a few exceptions to schools not being able to discipline students with special needs in the same way that students without disabilities are disciplined. The school's general discipline procedures may be utilized with students with special needs as long if they are used with nondisabled students and students with disabilities. This basically means that the procedures that the school follows are not discriminatory against students with disabilities. They can also use their general procedures if they do not result in a change in a student's placement, such as suspensions longer than 10 cumulative school days. The IEP process should outline behavioral modifications and accommodations.

Yell et al. (2000) made the assumption that schools will more than likely go against the disciplinary provisions of IDEA by failing to approach behavior concerns during the IEP process. Yell et al. (2000) continued to explain that schools may also violate IDEA by not only dis-regarding behavioral plans that were placed in the IEP but actually even disregarding the plans all together. All concerns however are not because the school does not follow the IEP; at times the IEP does not meet the need of the student. If an IEP team does not address a student's behavior concerns in the IEP, that failure would deprive the student of a free and appropriate public education (Drasgow et al. 1999). IDEA can require IEP teams to perform functional behavioral assessments

(FBAs) and create education programming by analyzing the data results of the assessments (Drasgow & Yell, in press).

Behavior Intervention Plans

Based on the FBA results, the IEP team should develop behavioral intervention plans. IDEA states that the BIP must be individualized to the needs of that individual student. It may be assumed that Congress and the Department of Education believed that the “ behavioral intervention plans” have a universal understood meaning in the special education field (Gorn, 1999). Some would argue that this assumption is one of the reasons that diagnosing and labeling behavioral disorders is so difficult.

Behavior intervention plans should not be reactive and nor should they be single tiered in their approach to helping students meet their goals. Basically the IEP team has the responsibility to implement several BIP strategies. The strategies that they place in the IEP should be focused on the prevention of behavior concerns before suspensions or expulsions are even spoken of (Drasgow et al., 1999; Gorn, 1999; Yell et al., 2000). BIPs cannot and should not just list behavior concerns and the consequences that will precede them; one could argue that such BIPs are illegal because they are reactive in nature (Gorn, 1999). The BIP should have multiple strategies that include teaching appropriate social behaviors and not focusing on consequences but instead using multiple positive behavioral interventions to help in motivating behavior change (Dunlap & Koegel, 1999).

Manifest Determination

When a school district proposes a disciplinary action that could result in a change of placement a manifestation determination must be conducted. This is merely a review of the relationship between a student's disability and the misconduct. A school cannot use long-term suspension or expulsion if it finds that the misconduct that led to the disciplinary removal was related to the student's disability. This review is held when the school is trying to make a change of placement, including suspension or expulsion, for more than 10 consecutive school days. If the student is suspended more than 10 days, the review should take place no later than 10 days after they are suspended. According to IDEA a manifestation determination is not required for disciplinary removals less than 10 days (IDEA Regulations, 34 C. F. R. Section 300. 523(a)).

The IEP team and any other qualified personnel meet for the manifestation determination review and they first gather all relevant documentation. This can include the evaluation and diagnostic results, informal assessments, direct observations, interviews, and school records. The team evaluates the data to see if the student understood the consequences of the misbehavior and if so were they also able to control it. The team should then look over the student's IEP and placement. At times a student's placement was inappropriate for their disability and led to their adverse actions. The IEP team then decides if the individualized program is appropriate, and if the IEP is being implemented as written. If not, then this must be corrected (IDEA Regulations, 34 C. F. R. Section 300. 523(f)). Finally the team reviews the evaluation data to decide if the student's disability and behaviors are related. This part of the manifestation determination has been referred to as

the relationship test (Hartwig & Reusch 1995; Kubick, Bard, & Perry, 2000; Yell et al., 2000). The relationship test is centered on the evaluation of a student, their disability, and the adverse action. The relationship test cannot make the manifestation determination based on a student's disability or categorical label (Hartwig & Reusch 2000; Kubick, Bard, & Perry, 2000). It also does not matter if the student knew right from wrong in determining if their behavior is related to their disability (Doe v. Maher, 1986).

Educational Implications

IEP teams must be proactive when addressing the behavioral needs of students and the evaluations that are used need to be appropriate for the behaviors being assessed. Once students are assessed the IEP team must work together to be sure that an effective plan is not implemented but followed. This plan should be based on positive behavioral interventions and supports to meet student needs. If this is going to happen, then staff must be available to school districts that are competent in their fields and can employ functional behavioral assessments and develop positive behavior intervention plans to include in student IEPs.

Another major implication involves data collection, observation and re-evaluations. IEP teams must become more diligent in determining student progress in behavioral goals and instructional decisions can then be based on the data collected. This is important because as Smith (2000) states, we must have these skills otherwise “ the legal and financial repercussions of our inability to consistently deliver in the behavioral domain may be high” (p. 411). Basically the public school systems across America must prepare

themselves for massive law suits if they refuse to proactive in their approach to students with disabilities and disciplinary actions.