


Crisis-Based & Traumatic Exclusions



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Today's Topics

- Student Discipline Act
- Emergency Exclusion
- How different circumstances require different responses
 - On campus vs. off campus/social media
 - Gen ed vs. special ed
 - Dangerous crimes off campus

Hypo #1 Bomb Threat

- "I'm going to blow up the school tomorrow"
 - Written on a bathroom wall at school
 - Security footage shows two students going into bathroom around time when threat was written
 - One student admits to making the threat
 - Principal calls parents to pick kid up
- Student is gen ed, and you believe he's just being an idiot

Initial Steps

▪Call in crimes

• 79-293: *The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities, of the county or city in which the school is located, of any act of the student described in section 79-267 which the principal or designee **knows or suspects is a violation of the Nebraska Criminal Code***

Initial Steps

▪Call in abuse

• 28-711: *When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person **has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect**, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section.*

Initial Steps

▪Assemble the crisis team

- Follow school policy on team requirements and composition
- This can occur simultaneously with other steps in the process

▪Important for liability reasons, because your policy and practices (*i.e.*, I Love U Guys) set response standard

Student Discipline Act

NEB. REV. STAT §§ 79-254 to 79-294

Discipline Definitions

- Short-term (S-T) suspension – exclusion of student from attendance in all schools within system for a period not to exceed 5 school days
- Long-term (L-T) suspension – 6 to 20 school days
- Expulsion – remainder of semester; remainder of semester plus following semester; or one calendar year (depends on timing and offense)

Discipline Definitions

- Mandatory reassignment – the involuntary transfer of a student to another school in connection with any disciplinary action
- Emergency exclusion – not allowing a student to attend school due to a communicable disease or the student poses an imminent threat to others

Other Authorized Actions

Administrators and teachers may take actions not in the SDA that are "reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process."

Back to Hypo

79-267: 11 reasons for LTS, expulsion, MR

- (1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes
- (10) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes

Communication, Notification, and Timelines

79-268: (1) On the date of the decision, a written charge and a summary of the evidence supporting such charge shall be filed with the superintendent. The school shall, within two school days after the decision, send written notice by registered or certified mail to the student and his or her parent or guardian informing them of the rights established under the Student Discipline Act;

- Letter to Superintendent: **date of decision**
- Letter to parents: **send within 2 school days**

Hypo Timeline

- SDA Compliant Timeline (79-268):
 - Student sent home the day of the threat (day 1)
 - Letter to Supt. (day 1)
 - Letter to parents/student (sent day 3)
 - Notice received (day 4-5)
- How was the student excluded day 1-5?

Communication and Notification to school and student

(3) When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the superintendent, the student may be suspended by the principal until the date the long-term suspension, expulsion, or mandatory reassignment takes effect if no hearing is requested or, if a hearing is requested, the date the hearing examiner makes the report of his or her findings and a recommendation of the action to be taken to the superintendent, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of (a) interference with an educational function or school purpose or (b) a personal injury to the student himself or herself, other students, school employees, or school volunteers.

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Recommendations

- Recommendations when using SDA
 - "Suspension pending expulsion" solves the "go home" without notice problem
 - When the discipline is clear, get the notice documents out quickly**
 - No extension/exception for investigation in the SDA, so be sure you understand how LEO's want to handle crimes you call in

Emergency Exclusion

- If student has dangerous **communicable disease** transmissible through normal school contacts and poses an **imminent threat** to the health or safety of the school community; or
- If S's conduct presents **clear threat to physical safety of himself, herself, or others,**
or is **so extremely disruptive** as to make temporary removal necessary to preserve the rights of other students to pursue an education

Emergency Exclusion

- Limited to 5 days initially
 - Follow same procedure as short-term suspension
- Beyond 5 days
 - School board must adopt hearing procedure
 - Final determination must be made within 10 school days after initial date of exclusion
 - Follow SDA pre-hearing and hearing procedures; may modify to meet shortened time period

Emergency Exclusion Summary

- Overused and misused
- When facts are clear, it isn't necessary
- Use Student Discipline Act notice procedures
- Don't use without talking to your lawyer
- Consider Child Find obligation

Communication and Notification to non-affected community members

- Can:
 - Share records with LEOs if actual threat exists (otherwise, need subpoena/warrant)
 - Acknowledge threat in statements to stakeholders
 - State that school is working with law enforcement
 - Give current threat status
 - Tell parents they can keep kids home and school will excuse their absences

Communication and Notification to non-affected community members

- Can't:
 - Disclose student records or contents to public
 - Disclose disciplinary consequences
- Shouldn't:
 - Disclose directory information (name, picture, etc.)
 - Cancel school, unless absolutely necessary

Hypo #2: Bomb threat from special education student

- Same facts:
- "I'm going to blow up the school tomorrow"
 - Written on a bathroom wall
 - Security footage shows two students going into bathroom around time when threat was written
 - One student admits to making the threat
- Student has an IEP or 504

Same Initial Steps?

- Call law enforcement?
- Assemble the crisis team?
 - Follow school policy
- Apply Student Discipline Act?
- Consider emergency exclusion?

Special Ed In Theory....

- IDEA 2004: disciplinary measures are to be applied to children with disabilities to the same extent they are applied to children without disabilities 34 C.F.R. § 300.530(b)(1)
- Administrators may remove a student with disabilities from school by using the same procedures that are used for non-disabled students

In Reality....

- Discipline of special education students is highly regulated and legally complicated
- Regulations apply to all kinds of discipline – not just removals from school
- Discipline of special education students is not impossible, but it takes time and effort
- **Never send expulsion letters until you have asked: Is the S covered by IDEA or 504?**

IDEA's Application to State Reporting Statutes

"Nothing in [Part B] shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability."

20 USC 1415(k)(6), 34 CFR 300.535 (a)

Criminal Code Violations are Generally Not an IDEA Issue

- Criminal code usually a function of state law
- School staff need to know reporting obligations and issues for their state and position
- NEB. REV. STAT. § 79-293:
The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities, of the county or city in which the school is located, of any act of the student described in section 79-267 which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

34 CFR 300.535 (b)(1)

- An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- However, an agency reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that FERPA permits the transmission. 34 CFR 300.535 (b).

Menominee Area Pub. Schs.,
114 LRP 34039 (SEA MI 2014)

- Student with undisclosed disability admitted to writing a bomb threat on a desk
- Principal reported the threat to police, who arrested the student
- Parents filed a complaint with SEA ED charging that the district violated the IDEA by failing to explain the student's disabilities to the arresting officer

Menominee Area Pub. Schs.,
114 LRP 34039 (SEA MI 2014)

- IDEA requires a district reporting a crime by a student with a disability to ensure that copies of the student's special education and disciplinary records are transmitted for consideration to the appropriate authorities. 34 CFR 300.535 (b)(1).
- SEA
 - school did not provide authorities with records
 - School did not seek the parents' consent do so
 - SEA did not address whether the incident involved a health or safety emergency, (which would have rendered consent unnecessary)

Pikes Peak BOCES,
66 LDELR 56 (SEA CO 2014)

- Student with undisclosed disability with marijuana pipe, lighter and porn in backpack
- School reported to SRO, who then reported to Sheriff's office
- School did not inform law enforcement of student's disability, did not provide records, did not ask grandma for permission

Pikes Peak BOCES,

66 LDELR 56 (SEA CO 2014)

- SEA found a violation of IDEA
- Ordered corrective action plan
 - Revisions to policies
 - Staff training

Disclosing Verification to Crisis Team

- Can disclose special education information to Crisis Team members as school officials
 - Serving school/statutory purpose

Special Education/504

- Receiving OR entitled to verification
- "change in placement"
- 10 "FAPE free" days
- 45 day IAES for
 - Weapons
 - Controlled substances
 - Serious bodily injury (not really.....)

Manifestation Determination

- MDT convenes to ask "was this misbehavior caused by the student's disability?"
- Was conduct in question caused by or did it have a direct and substantial relationship to the child's disability?
- Was the misconduct a direct result of the district's failure to implement the IEP?
- *(Implied 4th Question: was the behavior caused by a disability we haven't identified or evaluated?)* **

Results of Manifestation

- If "no": apply SDA and determine IAES
- If "yes":
 - Conduct FBA
 - Develop BIP
 - If already in place, reevaluate BIP
 - Return to return current placement
- "Regardless": consider benefits of changing placement versus discipline and future discipline

"No, he's not SPED. He's really smart and gets good grades."

Child Find Trigger and Protections if Not Verified

▪Rule 51 § 016.06A

- A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge... that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

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Child Find Trigger and Protections if Not Verified

▪Rule 51 § 016.06B: school **"has knowledge"** if:

- Parent expressed concern in writing to teacher or admin
- Parent requested an evaluation
- Teacher or other personnel "expressed specific concerns" about behavior demonstrated by the child to up-line admins

Child Find Trigger and Protections if Not Verified

- Rule 51 § 016.06C: sch. "has no knowledge" if:
 - Parent has refused evaluation
 - Parent has refused services
 - Child has been evaluation and did not qualify

Child Find Trigger and Protections if Not Verified

- Rule 51 § 016.06D
 - If "no knowledge," child may be disciplined
 - If a request for evaluation is made:
 - Expedited evaluation
 - Child remains in educational placement "determined by school authorities," which can be suspension/expulsion
 - If child verifies, school must comply with Rule 51 requirements

Hypo #3: Social Media Threat

- Snapchat post
 - "I'm going to burn that bitch to the ground"



- Posted at 9:45 PM from home
- Screenshot sent to principal at 7:00 am next day

Initial Steps

- Call law enforcement
- Assemble the crisis team
- Expel? (probably not...)

79-267.
 Student conduct constituting grounds for long-term suspension, expulsion, or mandatory reassignment, enumerated; alternatives for truant or tardy students.

The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event.

Jurisdiction and Authority Generally

- If you want STS, expulsion, MR
 - Did the incident occur on school grounds, in a school vehicle, or at a school activity?
 - Did the incident occur on district "property" (such as a 1:1 iPad) even if off school grounds and outside of school/activity time?
- If you want a STS
 - Did it violate a school rule or otherwise constitute grounds for STS/expulsion?

Jurisdiction and Authority: Off-campus Speech

- If the incident occurred outside school grounds, vehicles, activities, and not on any other district property:
 - Did the incident cause you to "reasonably forecast" a material and substantial disruption of school functions?
 - Did the incident actually cause a material and substantial disruption of school functions?
 - Did the incident reasonably cause another student to miss school functions or school activities?

Back to the Hypo

- Are we limited to a 5-day suspension?
- How does disruption of school play into this analysis?
- What other disciplinary options do we have?
 - Extracurriculars, detentions, etc.
- What if it was posted using a district device?

Emergency Exclusion

- No jurisdictional requirement
- Must still meet 1 of the reasons (illness, threat, extreme disruption)
- Can ask for letter from LMHP before readmitting
- Must afford due process of STS for 1st 5 days and LTS after 5 days
- *Still constitutes a "change in placement"*

Off-campus Crimes

Hypo #4: Off-campus Assault

- Students get into a fight on Saturday night
- Caught on camera outside convenience store
- Off school grounds
- LEOs considering charging one student with assault
- Parents of victim show up Monday morning, wanting "something to be done"

Jurisdiction and Authority

- If you want STS, expulsion, MR
 - Did the incident occur on school grounds, in a school vehicle, or at a school activity?
 - Did the incident occur on district "property" (such as a 1:1 iPad) even if off school grounds and outside of school/activity time?
- If you want a STS
 - Did it violate a school rule or otherwise constitute grounds for STS/expulsion?

Other Considerations

- What if the student is taken into custody?
 - Move forward with discipline in case released?
 - Conduct manifestation determination even if S is not attending by court order?
 - Emergency exclusion, knowing they won't want to testify under oath?
- If Student is detained or sent to YRTC for extended time, should you impose the discipline when he/she returns?

Hypo #5: Off-campus Assault

- Student sexually assaults another student from a neighboring town on Saturday night
- Off campus
- LEOs considering charges
- Parents of other students show up Monday morning saying "do something or we'll keep our kids home"

Jurisdiction and Authority for Sex Assaults

▪ STS, expulsion, MR available:

Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

Jurisdiction and Authority for Sex Assaults

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Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

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Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

Other Considerations

- Consider obligations under Title IX
 - Investigation/process, even for off-campus activity if it disrupts access to education
 - Services to perpetrator and victim
- Can you use emergency exclusion if no charges are filed?
 - Steve’s fancy Latin phrases apply (exclusio unis)

Questions


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