

Violent or Disruptive Students with Disabilities



"I wouldn't say your son is a bad child.
He's gifted at disruptive behavior."

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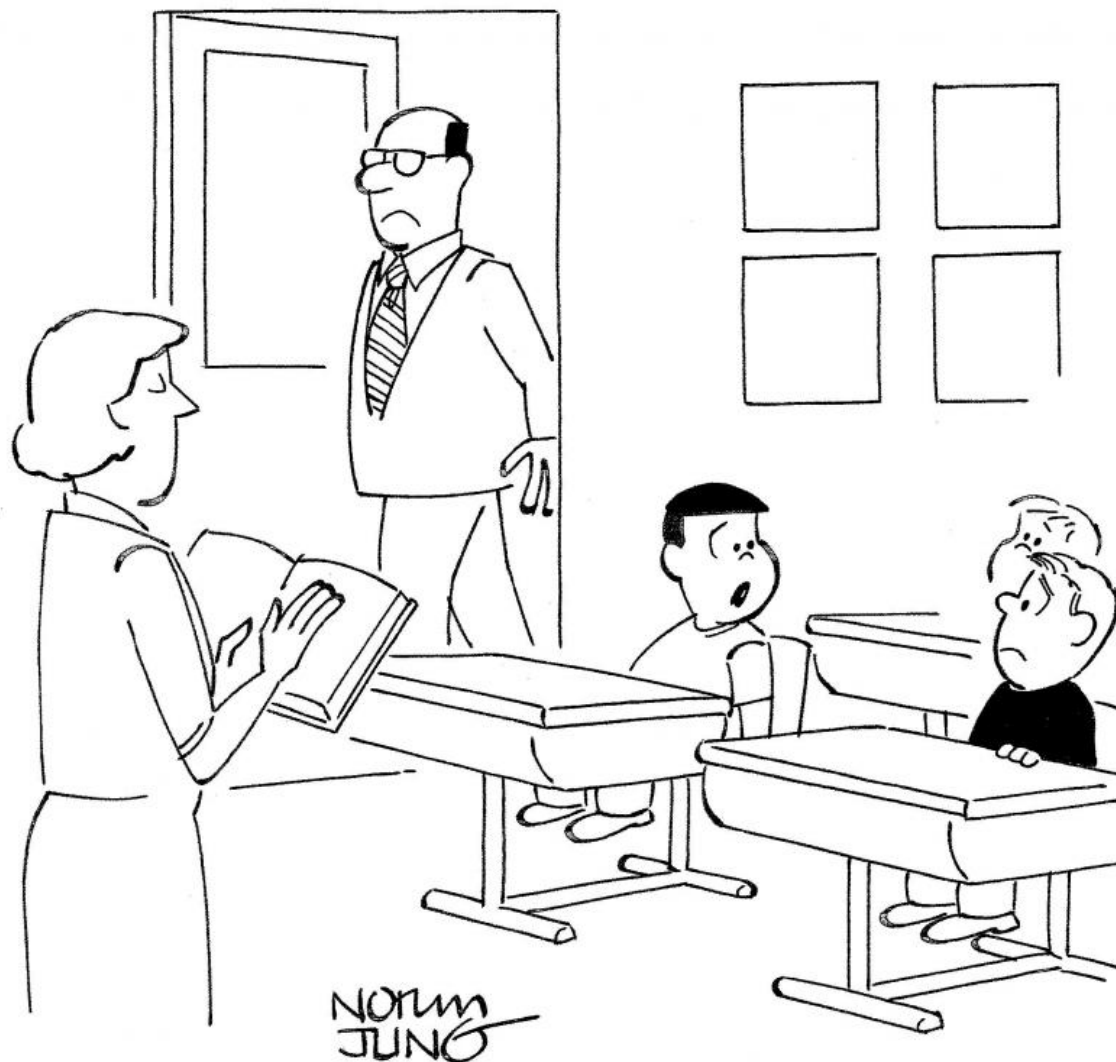


Who Are We Talking About?

- Students with mental health issues.
 - Number of children with neurological, developmental, and mental health disabilities rose 21 percent between 2001 and 2011.
 - According to the NIH, more than 1 in 5 parents reporting a child with a disability in 2009 cited ADHD as an underlying condition.
 - An additional 19 percent cited other mental, emotional, or behavioral disorders (increase of 65 percent).

Who Are We Talking About?

- Emotional/behavioral disorders.
 - A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - Inappropriate types of behavior or feelings under normal circumstances.
 - A general pervasive mood of unhappiness or depression.
 - A tendency to develop physical symptoms or fears associated with personal or school factors.



"YOU REALLY DID IT THIS TIME! THEY SENT THE
PRINCIPAL TO SEE YOU!"

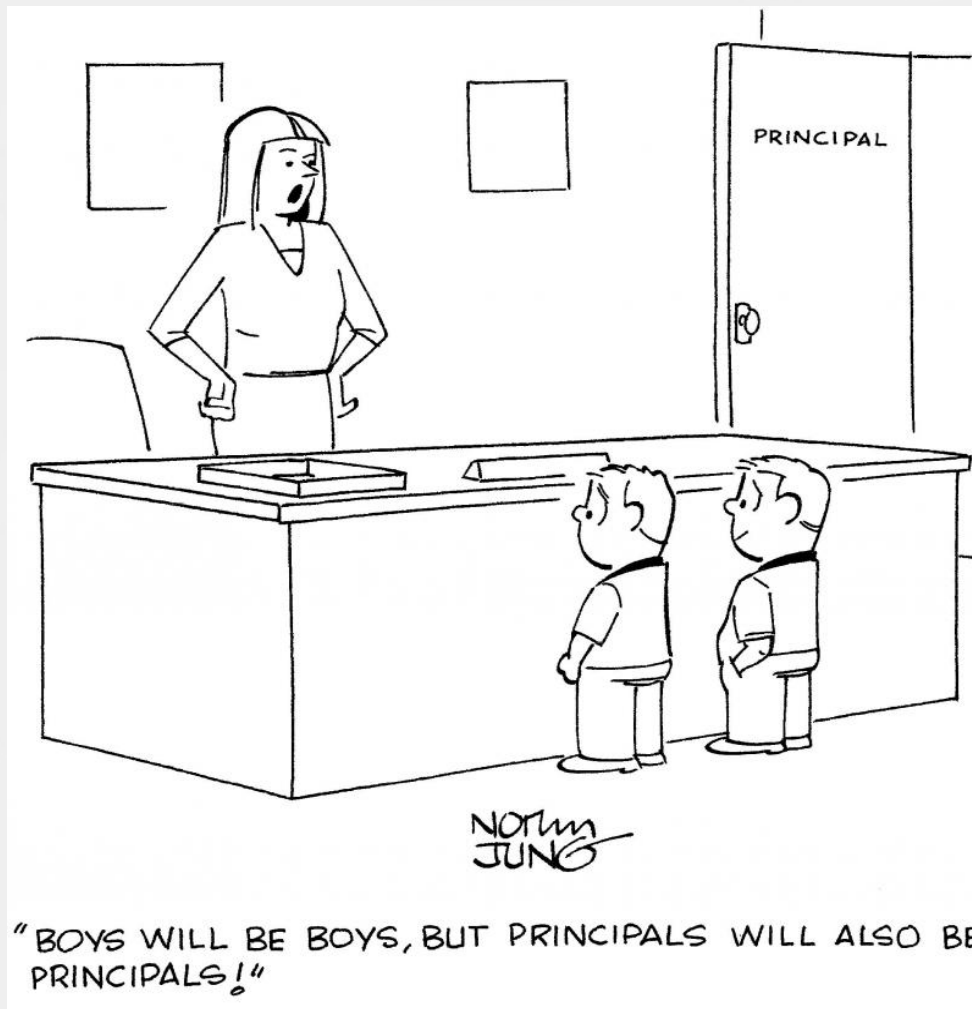
What Are The Legal Options For Dealing With These Students?

- Traditional discipline.
- Reconsider placement/least restrictive environment.
- Review BIP and educational strategies.
- Review verification options.



"Hey, Mom, remember telling Dad you just knew
you'd get a call from the principal sometime?
Hold on a sec..."

The Traditional Approach: Basic Steps In Disciplining Special Education Students



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 nondisabled 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.

34 CFR § 300.530(a)

"School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct."

"Current Educational Placement"

- What is current educational placement?
 - Includes out-of-school suspension.*
 - Could include in-school suspension (ISS).
 - Could include removal from classroom activities such as field trips.
 - Determined on a case-by-case basis.
- *Farmington (MI) Pub. Sch. Dist.*, 110 LRP 57410 (OCR 01/29/10).
 - "Generally, whether an in-school suspension should be counted depends upon whether educational and special services were provided during the in-school suspension."

Temecula Valley (CA) Unif. Sch. Dist.,

10 ECLPR 47 (OCR 2012)

- 1st-grader with cognitive and psych disorders.
- Student subjected to three lunch detentions and one in-school detention.
- Complainant alleged change in placement.
- OCR: "A small number of lunch detentions and one in-school suspension do not constitute a significant change in placement that trigger a school's responsibility to first convene a 504 or IEP meeting."

Smackover (AR) Sch. Dist.,

113 LRP 24693 (OCR 03/01/13)

- 7th-grade student with ADHD and speech deficit.
- 16 days of ISS.
 - 2/1 – 3 days (yelling, kicking peer, running away).
 - 3/14 – 5 days (accumulated more than 30 detentions).
 - 3/28 – 2 days (talking after he was asked to stop).
 - 4/2 – 3 days (argued with and pushed another student).
 - 5/1 – 3 days (pulled down his pants in class and showed his boxer shorts).
- School: 16 days in 1 year; complainant: 16 days in 3 months.

Smackover (AR) Sch. Dist.,

113 LRP 24693 (OCR 03/01/13)

- The ISS program:
 - Portable classroom separated from the school building, where students worked at individual cubicles.
 - Talking was not allowed.
 - Supervised by paraprofessional.
 - Students worked on assignments independently.
 - If a student had an academic question, para would email teacher.
 - If teachers believed that a lecture was critical, could ask for student to attend.
 - ... said no teacher ever.

Smackover (AR) Sch. Dist.,

113 LRP 24693 (OCR 03/01/13)

- School: ISS not a change in placement.
 - Related aids and services were provided.
 - Attended speech therapy.
- OCR: "Confinement in ISS significantly altered his access to regular educational services provided in his IEP."
 - Denied access to instructions
 - Confined to an area where he simply completed work on his own.
 - Removed from the school building.
 - Placed in an isolated temporary classroom with students from all grades.



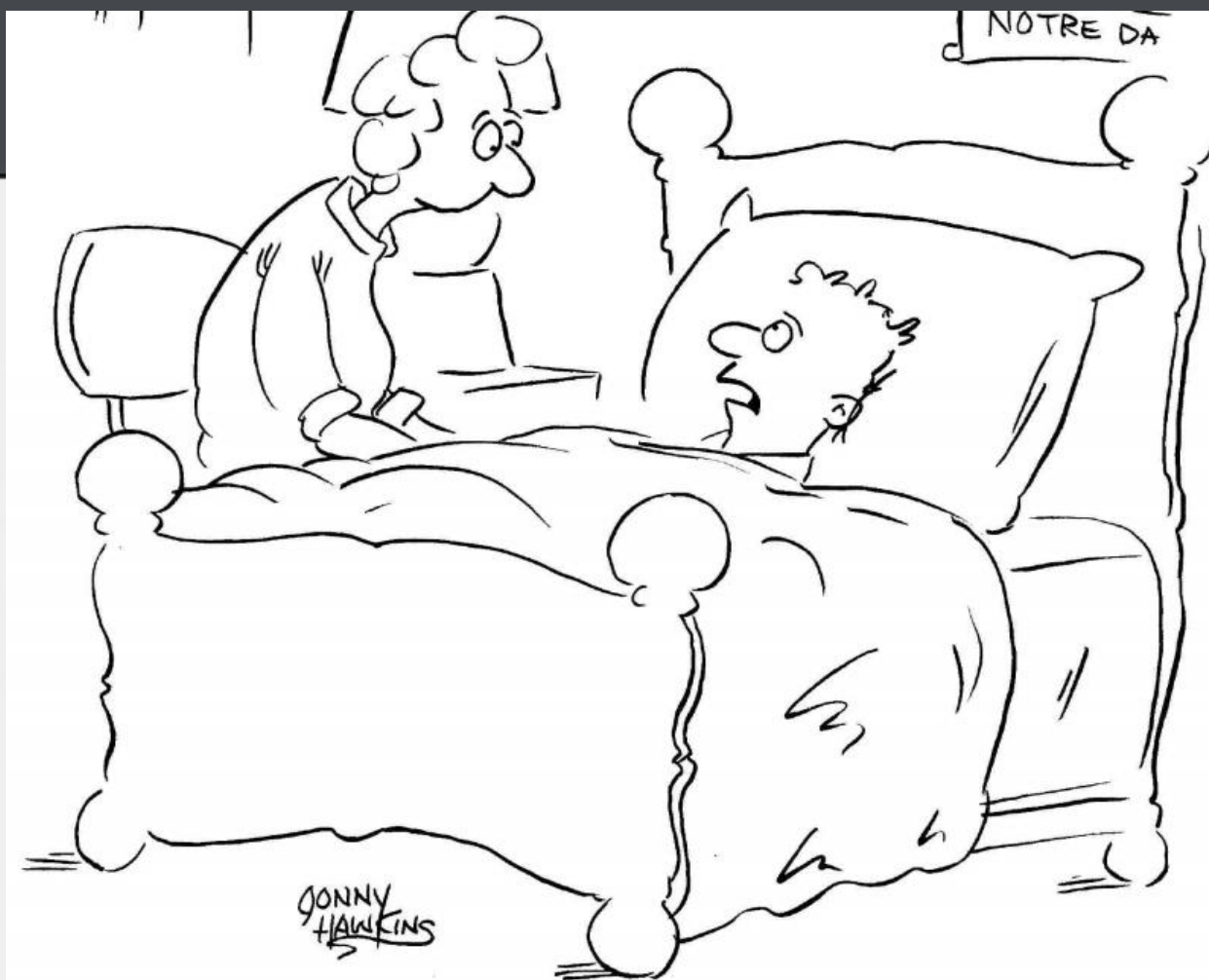
"I CAN'T TALK NOW KEVIN.
I'M UNDER HOUSE ARREST."

34 CFR § 300.530(b)

"School personnel ... may remove a child with a disability who violates a code of student conduct from his or her current placement ... for not more than 10 consecutive school days ... and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536)."

"Not more than 10 consecutive school days"

- 10 consecutive days per offense.
- Additional removals in same school year for separate incidents of misconduct allowable so long as not a "pattern of removals" constituting a "change in placement."



**“How come third graders don’t get a
personal day?”**

"Change in placement"

- Removals total more than 10 days* in the year.
- Consider factors such as:
 - Length of each removal.
 - Total amount of time the child is removed.
 - Proximity of the removals to one another.

Twinsburg (OH) City Sch. Dist., 58 IDELR 231 (OCR 2011)

- Student with unspecified disability has 504 plan.
- Suspended from school for a total of 31 days.
 - 10/20 - 1 day (disrupting class and violating dress code).
 - 10/28 - 10 days (fighting).
 - 11/15 - 1 day (insubordination, obscenities and threats).
 - 12/2 - 2 days (failing to serve detentions).
 - 1/19 - 1 day (horseplay on the bus and dress code).
 - 2/10 - 10 days out (insubordination, disrespect, repeated violations of school rules).
 - 4/15 - 6 days (disrupting class, trying to fight peer).

Twinsburg (OH) City Sch. Dist., 58 IDELR 231 (OCR 2011)

- School:

- Fighting not substantially similar to the student's other misconduct.
- Conduct not proximate in time, but occurred "throughout the school year."

- OCR:

- "Student's consecutive suspensions on October 20 (one day OSS + 1/2 day ISS), November 15 (one day OSS), December 2 (two days OSS + one day ISS), January 19 (one day OSS + one day ISS), and February 10 (ten days OSS) amounted to a pattern of exclusions."

District of Columbia Pub. Schs.,

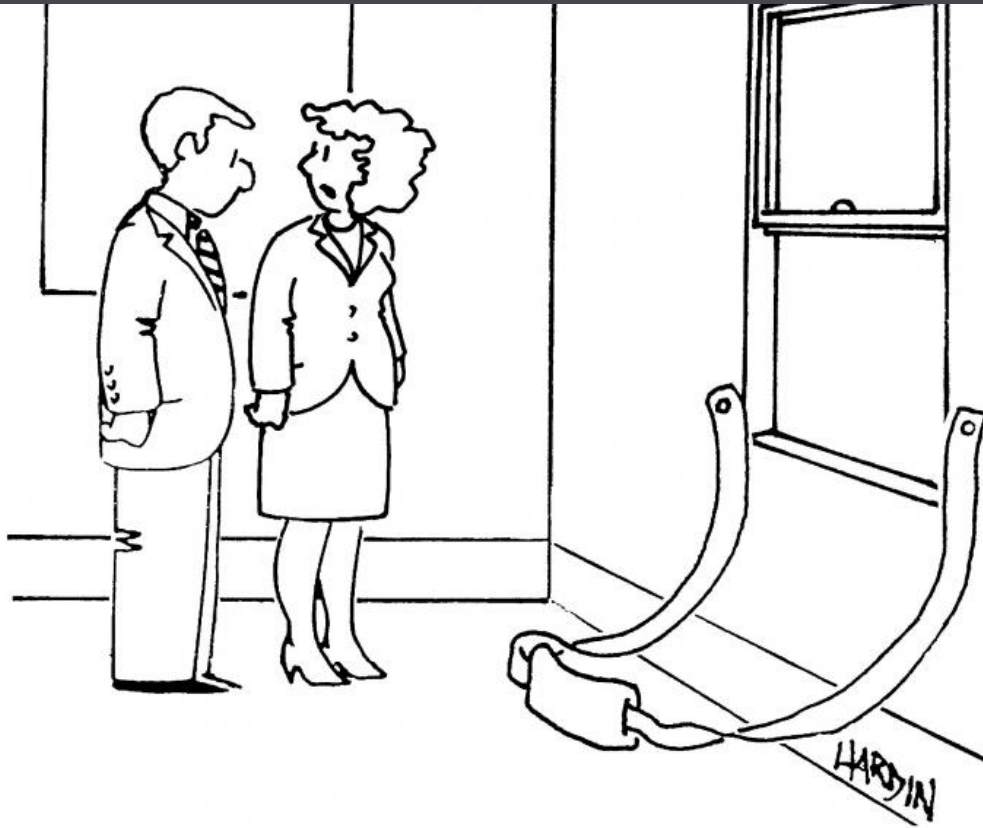
113 LRP 32357 (DC SEA 06/21/13)

- High school student OHI and SLD reading.
- Habitually late and truant.
- Given one period of ISS every day he was tardy.
- Total of 20 days spent in partial ISS.
- While in ISS, provided with make-up work, which he was to complete and hand in.
- H.O.: "Student was accordingly afforded an opportunity to continue to appropriately participate in the general curriculum despite the one period that he missed for certain days."



“I’m so sorry I’m late. I got a late start and then I had to stop at the dry cleaners. And the traffic... Now what’s all this about Michael’s tardiness?”

Major Discipline



"Once the decision to expel a student has been made, The Administration moves quickly."

Major Discipline

- Removals for more than 10 days.
- "Expulsion" (really, removal for 45 days).

Manifestation Determination

- MD team 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?

Manteca Unif. Sch. Dist., 50 IDELR 298 (SEA CA 2008)

- 15-year-old student with TBI.
- Kicked classmate in the groin after he teased her during lunch.
- School recommended expulsion.
- Grandmother: behavior manifestation of PTSD due to prior sex assault.
- School: no direct and substantial relationship to TBI and no prior behaviors linked to PTSD.

Manteca Unif. Sch. Dist., 50 IDELR 298 (SEA CA 2008)

■ H.O.:

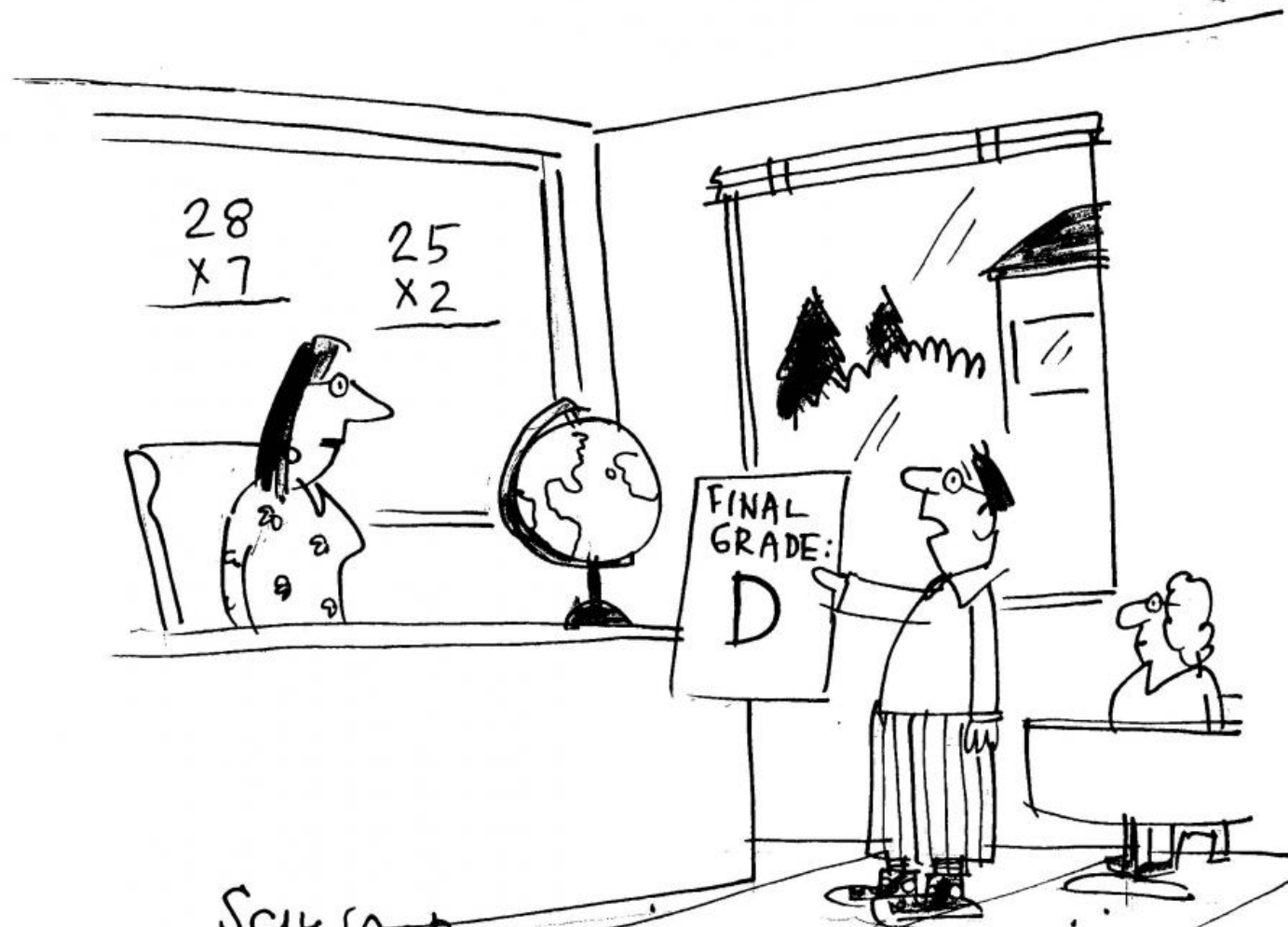
- Two prior incidents of sexualized misbehavior, which were punished.
- Family's expert re: "hypervigilance" of PTSD survivors.
- Behavior had direct and substantial relationship to PTSD.

In re Student with a Disability, 62 IDELR 217 (SEA KS 2013)

- 15-year-old student with epilepsy.
 - Additional diagnoses of mood disorder, depression, anxiety, and PTSD.
- Brought three lighters, drug paraphernalia, and marijuana to school in her backpack.
- School recommended expulsion.
- Parents:
 - Epilepsy impacted her "executive decision making."
 - Student said, "She did not know why she did this."
 - District never talked about what was best for student.

In re Student with a Disability, 62 IDELR 217 (SEA KS 2013)

- H.O.: Not a manifestation.
 - Girl hid items in backpack – shows understanding of wrongdoing.
 - Text messages taken from the girl's phone indicated that she "was interested in purchasing marijuana from the first day she began school," which demonstrated that her course of action appeared to be "thought out and planned."
 - Emailed teacher after being caught, saying it was a "relief not to have to hide things anymore."



SCHWAB

"BUT DO YOU REALIZE WHAT THIS REPORT CARD WILL DO TO MY SELF-ESTEEM?"

Manifestation Determination

- If no:
 - Child can be punished like a regular education student.
 - Sort of ...
- If yes:
 - Cannot punish.
 - Must conduct FBA, implement BIP, OR review existing BIP.
 - Must return to prior placement (unless agreement otherwise).

Functional Behavioral Analysis (FBA)

34 CFR 300.530(f)

- If student's conduct is a manifestation of the student's disability, the IEP team must:
 - Conduct a functional behavioral assessment (provided the district had not conducted such assessment prior to the conduct at issue) and implement a behavioral intervention plan for the child.
 - When a behavioral intervention plan already has been developed, review the plan and modify it as necessary to address the behavior.
 - Return the child to the placement from which he was removed, unless the parent and district agree to a change in placement as part of the modification of the behavioral intervention plan.

Functional Behavioral Analysis (FBA)

- Not required in every IEP.
 - Required if multi-disciplinary team conducts.
- Seeks to discover what triggers the student's behavior.
- Document and retain all of the analytical efforts made by the team in this process because this is probably chronic behavior.

Chicago Pub. Schs., 105 LRP 59302 (SEA IL 08/12/04)

- 15-year-old student at Chicago Military Academy.
 - Assaulted at bus stop first day of school.
 - Began having discipline and behavioral issues.
 - Eventually verified as ED.
- School recommended expulsion with assignment to alternative school.
- Parent claimed IEP, BIP, and FBA inadequate.
 - Defined the "targeted behaviors" as "inappropriate interactions" (impulsive and defiant) with adults and peers 3-5 times a week.
 - No data to support (misconduct reports sporadic and vague).
 - No indication that there has been any data collection as to the "antecedents" to the "targeted behavior."

Chicago Pub. Schs., 105 LRP 59302 (SEA IL 08/12/04)

- Parent claimed IEP, BIP, and FBA inadequate to support removal from educational placement.
 - FBA and BIP defined the "targeted behaviors" as "inappropriate interactions" with adults and peers.
- H.O: FBA and BIP insufficient.
 - FBA insufficient because targeted behaviors were not measurable.
 - No data to support (school's misconduct reports sporadic and vague, no other data in FBA).
 - No indication that there has been any data collection as to the "antecedents" to the "targeted behavior."

In re Student with a Disability, 49 IDELR 147 (SEA IN 2008)

- 6th-grader with autism.
- Disruptive in class and on the bus.
- School mainstreamed with two periods of special education support services each day.
- Student continued to engage in disruptive and aggressive behaviors.
 - The district implemented "point system" that rewarded the student for good behavior and penalized the student for misconduct.
 - Poor behavior on bus resulted in specialized transport – loss of 30 minutes of instruction per day.

In re Student with a Disability, 49 IDELR 147 (SEA IN 2008)

- Parents sued, claiming plan not providing FAPE and transportation was not in LRE.
- H.O.: No FBA to support BIP or transportation plan.
 - "Data collection remains a foreign concept to the Respondent."
 - Should have conducted FBA for both classroom and bus misconduct.
 - Data collection should include interviews with student and parent.

Special Rules For Weapons, Drugs And Serious Bodily Injury



"There's a zero tolerance policy for bringing weapons to school. Do you want to explain how this rolled up newspaper got into your locker?"

34 CFR 300.530 (g)

- May remove a student to IAES for 45 days (regardless of manifestation) if student:
 - Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency.
 - Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.
 - Has inflicted serious bodily injury upon another person while at school.

California Montessori Project,

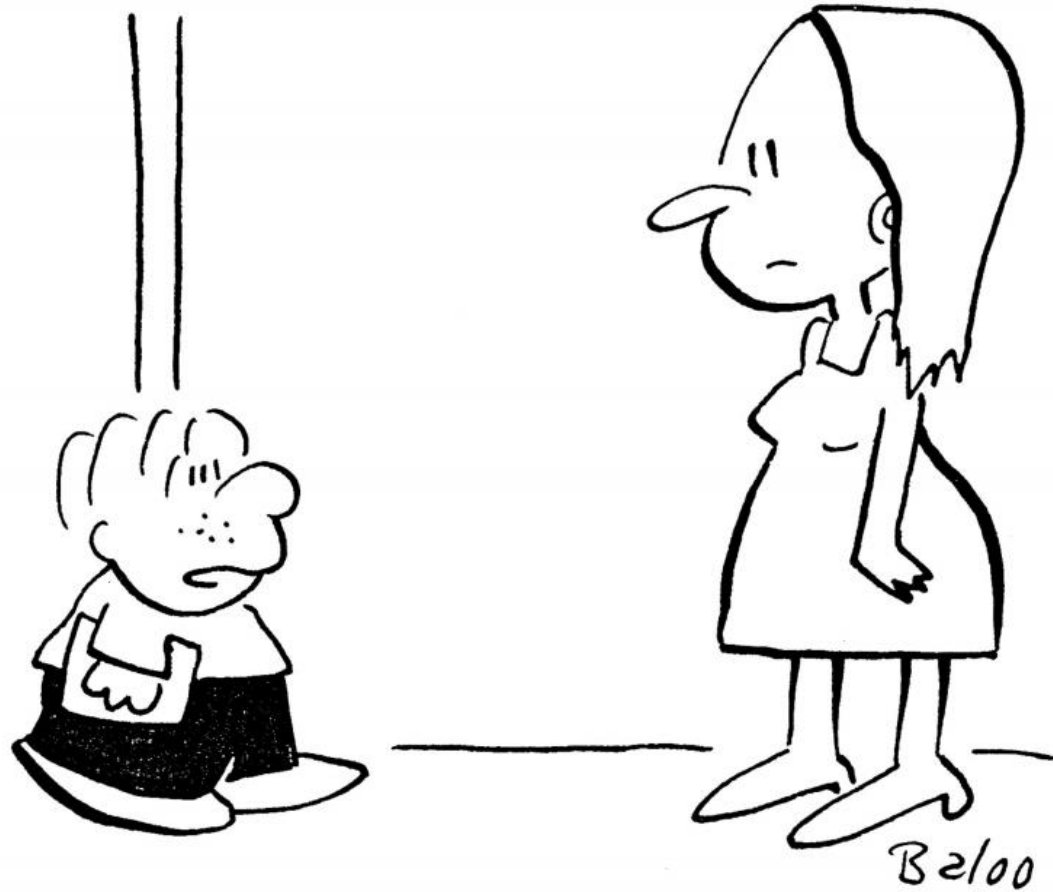
56 IDELR 308 (SEA CA 2011)

- 8-year-old boy with ED.
- Class cutting hearts out for Valentine's Day project.
- Student has history of behavioral outbursts.
- Student became angry with peer.
 - Menaced with scissors.
 - Teacher intervened, student threw down scissors and began lunging at teacher, then chased other students.
 - Eventually had to be physically restrained; student was repeatedly saying that Z had "lied on" him.

California Montessori Project,

56 IDELR 308 (SEA CA 2011)

- School removed student to an IAES on the grounds that he possessed a weapon.
- Family challenged.
- ALJ: Not a weapon.
 - However, an instrument or device qualifies as a "weapon" only if it is used for or capable of causing death or serious bodily injury.
 - Fiskars scissors did not meet that standard.
 - "Even if [the student] had made contact with [his classmate's] body using [the scissors], the scissors were only capable of causing cuts or some physical pain."

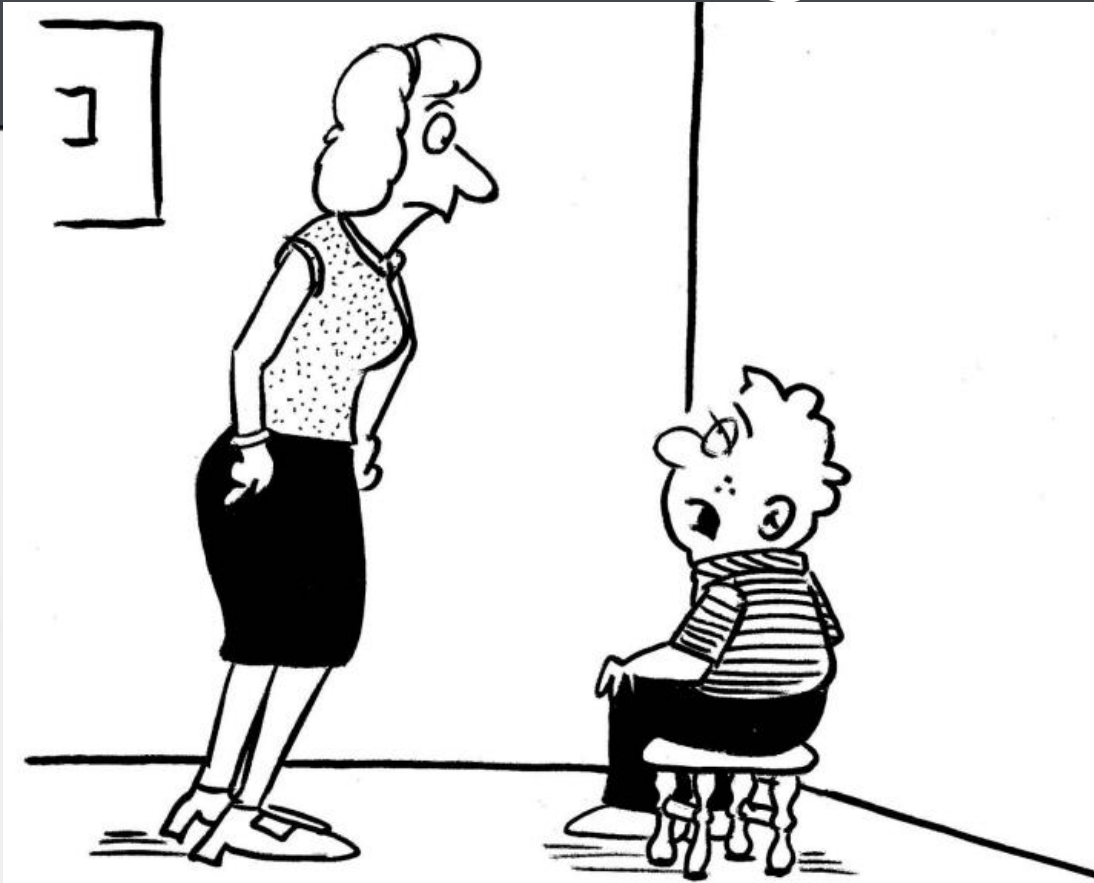


"The party at school was awful! —
The teacher didn't like the
Valentine underwear I got for her."

Serious Bodily Injury

- ***Pocono Mountain Sch. Dist.***, 109 LRP 26432 (SEA PA 12/12/08).
 - "A broken nose does not fit within the [IDEA's] narrow definition of the infliction of 'serious bodily injury.'"
- ***Bisbee Unified Sch. Dist. No. 2***, 54 IDELR 39 (SEA AZ 2010).
 - Swollen knee requiring cortisone injection not serious bodily injury.
- ***In re: Student with a Disability***, 54 IDELR 139 (SEA KS 2010).
 - Pain paraprofessional suffered that she rated at "seven" on a scale of 1 to 10 after being hit by a student not serious bodily injury.

Services During Discipline



**“When will I be eligible for
parole?”**

Interim Alternative Educational Setting

- Only necessary if:
 - Not a manifestation.
 - Over 10 days, but not a change in placement.
 - Drugs, weapons, or serious bodily injury.
- Must have followed applicable state laws regarding student discipline.

Reconsider Placement



" At least you know I'm not cheating. "

Least Restrictive Environment (LRE)

- Special education students must be placed in the least restrictive environment.
- Determined by IEP team.
- Restrictions are permitted to meet:
 - Disabled child's needs.
 - Needs of child's peers.*
- No entitlement to regular school day or week.
- Restrictive placement is not **discipline**.

Placement vs. Discipline



"I'm afraid my brain is full and I can't learn any more. I'll need a few days off to dumb down."

Lancaster Co. Sch. Dist 001,

110 LRP 51715 (SEA NE 09/10/10)

- Student aggressive, autistic 3rd-grader.
- As school year progressed, behavior deteriorated.
- Student spent less time in general education classroom and more time in the calm-down room, away from general education peers.
- Parents sued, asserting that this constituted a disciplinary removal that required the school to make a manifestation determination.

Lancaster Co. Sch. Dist. 001,

110 LRP 51715 (SEA NE 09/10/10)

■ H.O:

- School was not ***punishing*** bad behavior.
- "Clearly behavioral problems at school were caused by and had a direct and substantial relationship to autism ... However it is equally clear that [the student] was not disciplined for those behaviors, and that there was not a change in placement as described by [Section 16 of Rule 51].
- Time in "calm down room" was in IEP, therefore not a change in placement.
- Since not discipline, no requirement for manifestation.

Ogallala (NE) Pub. Sch.,

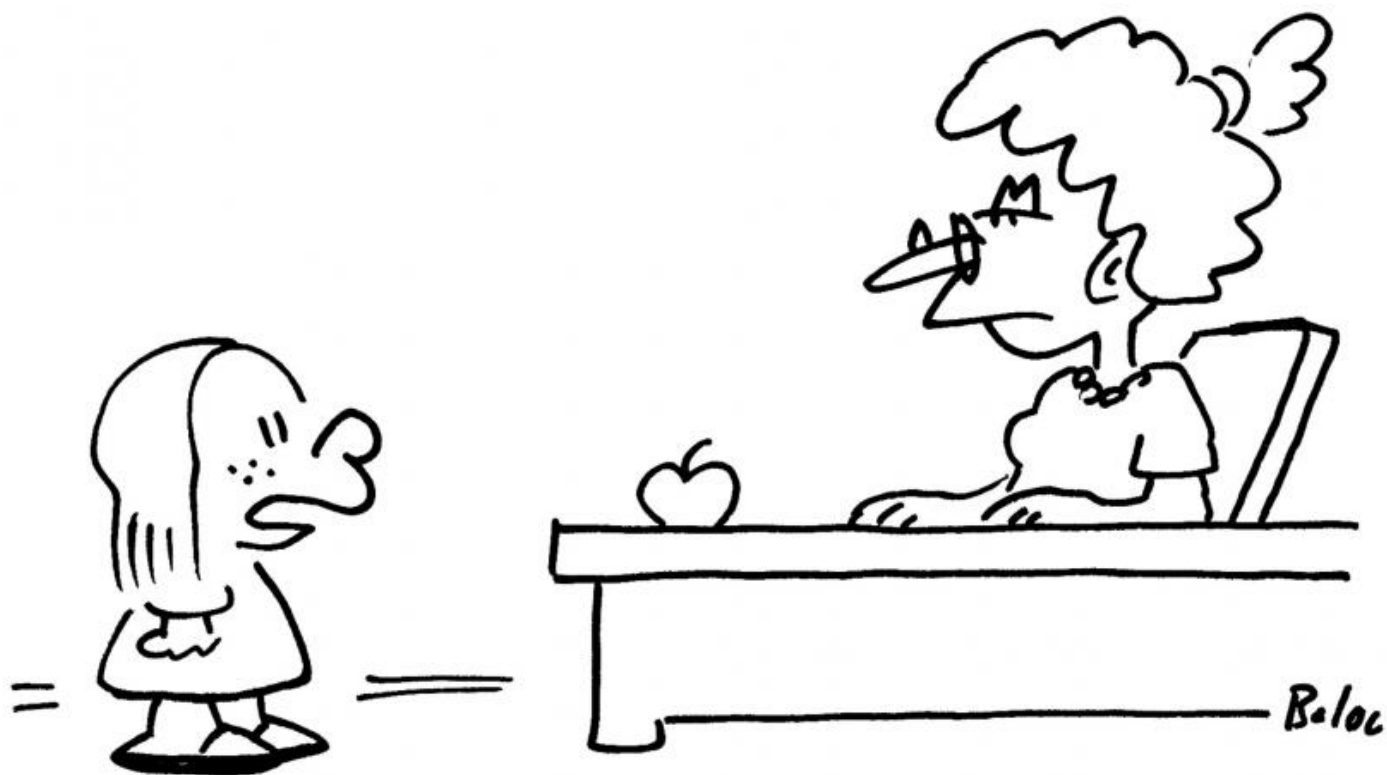
106 LRP 913 (SEA NE 12/15/05)

- Student with Down syndrome transitioning from elementary to middle school.
- Parents disagreed with program and methods.
- Some sexualized misbehavior.
 - Suspended for two days in September.
 - Suspended for three days in October.
 - Team determined that the misbehavior was a manifestation.
 - Placed student in intensive social skills program.

Ogallala (NE) Pub. Sch.,

106 LRP 913 (SEA NE 12/15/05)

- Parents sued claiming that the social skills program was a punitive removal.
- School argued it was serving educational needs.
- H.O.: placement, not disciplinary.
 - "A plan needed to be put in place to deal with that behavior before it seriously interfered with [the student's] educational progress. That plan was put into place, [the student's] behavior improved, [the student] met the required goals, and the Respondent returned [the student] to the regular education classroom."



"I didn't do my homework because my attorney advised me never to put anything in writing."

The LRE Continuum

- Schools are required to begin with a presumption that a student will be in the regular classroom in his neighborhood school. 34 CFR § 300.115 (a).
- Team can then move a student along a range of increasingly restrictive placements until they discover the one that is appropriate for the child.
- Should include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300.§ 115 (a); and 34 CFR § 300.39.

The LRE Continuum

- When determining the appropriateness of inclusion, public agencies should consider both academic and nonacademic benefits. *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. by Holland*, 20 IDELR 812 (9th Cir. 1994), *cert. denied*, 109 LRP 34833, 512 U.S. 1207 (1994).

L.F. v. Houston Indep. Sch. Dist., 53 IDELR 116 (S.D. Tex. 2009), *aff'd*, 58 IDELR 63 (5th Cir. 2012)

- 5th-grade student with ODD and ADHD.
 - Significant behavior issues.
 - ARD developed BIP and IEP with behavior goals.
- Student continued to struggle. ARD placed student in behavior classroom for 25 hours per week.
- Parent sued claiming behavior classroom was not LRE.
- H.O. found no violation; parent appealed.

L.F. v. Houston Indep. Sch. Dist., 53 IDELR 116 (S.D. Tex. 2009), *aff'd*, 58 IDELR 63 (5th Cir. 2012)

■ Court:

- School psych found that student was "defiant, impulsive, easily distracted, aggressive and had poor social skills."
- Needs specialized attention and constant discipline.
- School met LRE continuum by placing her in the behavior room for "some but not all of the instructional time."

Tracy N. v. Department of Ed., State of Hawaii, 54 IDELR 216 (D. Hawaii 2010)

- 16-year-old student verified as ED.
 - Began extremely aggressive conduct at age 6.
 - Assaulted a teacher in 2nd grade.
 - Hospitalized for attacking family in 3rd grade.
 - Placed in therapeutic day school for elementary children.
 - Aged out of that program. School proposed placement in day school for adolescents.

Tracy N. v. Department of Ed., State of Hawaii, 54 IDELR 216 (D. Hawaii 2010)

- School: day treatment needed, then offered to consider later transition back to neighborhood school.
- Mother filed for due process claiming continued day treatment was not LRE.
 - Student has spent several years out of neighborhood school.
 - Moving to second day school and then transition to neighborhood school will involve two moves rather than just one.
 - Student has been placed in an environment where "punishment is the norm."

Tracy N. v. Department of Ed., State of Hawaii, 54 IDELR 216 (D. Hawaii 2010)

- H.O. found that day treatment was LRE, parent appealed.
- Court:
 - Student needs to be gradually transitioned from a more restrictive environment back to the home school campus.
 - Number of placements not dispositive of LRE.
 - Timeouts and isolation strategies weren't punishment: "strategies designed to help control his anger."

Geffre v. Leola Sch. Dist. 44-2, 53 IDELR 156 (D.S.D. 2009)

- High school student.
 - Verified in elementary school, parents withdrew consent prior to starting high school.
 - In May, student got into argument with peers, wrote on blackboard "RIP 4/20/98," spoke admiringly of Columbine shooters.
 - Said he was going to go to Aberdeen and get a paintball gun.
 - Fought with a peer in parking lot, chased him into school, "bumped shoulders" with principal.
- School: expelled for upcoming year.
- Parents: asked for verification.

Geffre v. Leola Sch. Dist. 44-2, 53 IDELR 156 (D.S.D. 2009)

- Student verified, placed in "Dakota School."
- Dakota House 30-day assessment: Dakota school not LRE, should begin transition.
- Local school and parents agreed to leave student in Dakota school for remainder of year.
- Spring and summer: Parents and school negotiated over transition back.
- School proposed attending neighborhood school half-days for entire school year.
- Parents filed due process.

Geffre v. Leola Sch. Dist. 44-2, 53 IDELR 156 (D.S.D. 2009)

- Timeline:
 - Threat in May 2005.
 - 2005-06 school year – Dakota school.
 - 2006-07 school year – Dakota school (due process hearing held in October).
 - 2007-08 school year – Dakota school (student graduates).
- H.O. found that Dakota House was LRE.
- Parents appealed.

Geffre v. Leola Sch. Dist. 44-2, 53 IDELR 156 (D.S.D. 2009)

- District Court: Dakota school not LRE.
 - No question that placement in Dakota was appropriate at the beginning of 2005-06 school year.
 - District failed to prove that Dakota was appropriate after first 30-day evaluation.
 - No teachers testified that student posed a substantial risk either in 2005 or after.
 - Teachers from Dakota testified that he could successfully be returned to mainstream environment.
 - "District made no good-faith effort to negotiate with [the family] regarding [student]'s return to the district."

S.P. v. Fairview Sch. Dist., 64 IDELR 99 (W.D. Pa. 2014)

- Student has a history of refractory migraines.
- Verification issues.
 - IDEA:
 - No cognitive impairment.
 - No emotional disturbance.
 - No OHI mental health.
 - No OHI migraines because no adverse educational impact.
 - Section 504:
 - Dad declined plans.
 - School provided reasonable accommodations.

S.P. v. Fairview Sch. Dist., 64 IDELR 99 (W.D. Pa. 2014)

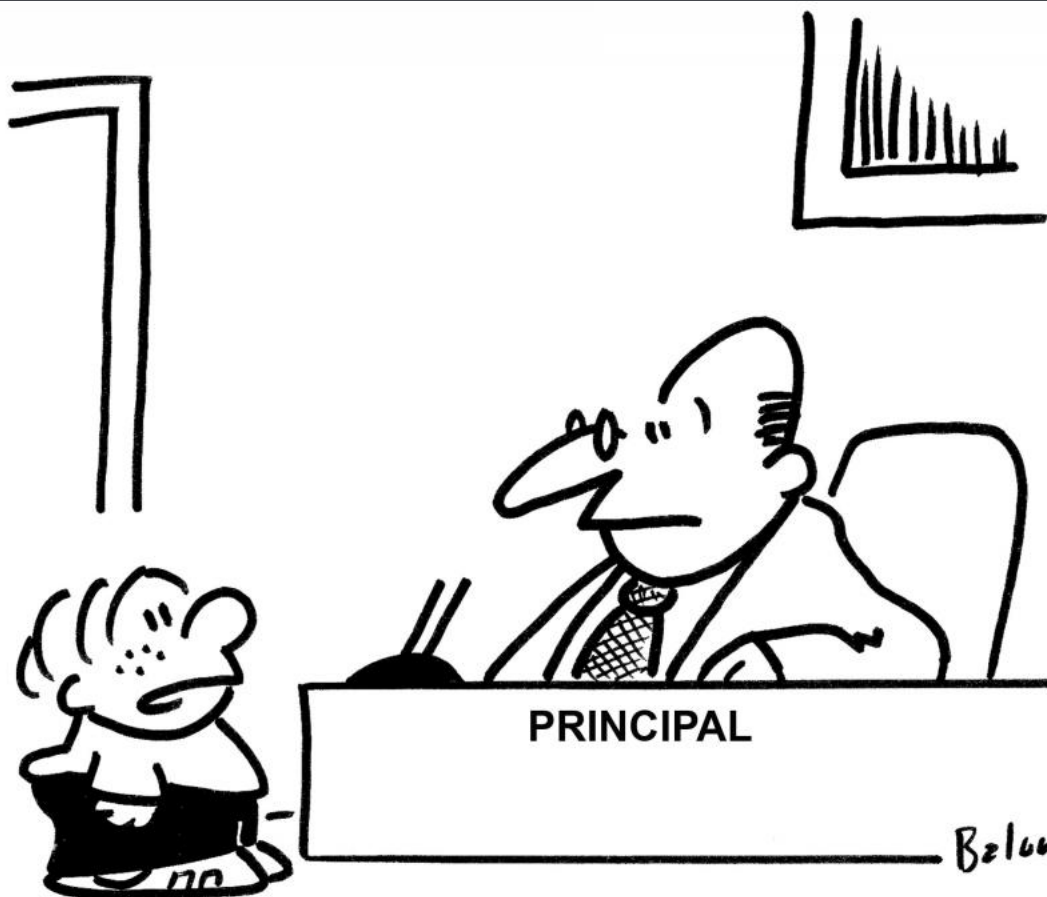
- Middle school almost entirely in "cyber school."
- Family enrolled in mainstream high school, declined service plan.
 - Missed 15 days before September 22.
 - No medical documentation provided.
- Accommodations:
 - Missing work sent home.
 - Two periods a day in "refocus room."
 - Shortened school day as needed.
 - Eventually reassigned to cyber school full time.

S.P. v. Fairview Sch. Dist., 64 IDELR 99 (W.D. Pa. 2014)

- Father filed for due process.
 - Refocus room punitive.
 - Failure to verify under IDEA and 504 as OHI and ED.
 - Cyber school not LRE.
- H.O. found for school district on all claims, father appealed.

S.P. v. Fairview Sch. Dist., 64 IDELR 99 (W.D. Pa. 2014)

- Court found for school.
 - "School went to extraordinary lengths to accommodate."
 - Presence of ISS students in refocus room does not make it disciplinary for this student.
 - "[T]he record weighs heavily that the student has a robust intellect that requires no specially designed instruction."
 - Section 504 plan was appropriate way to serve.
 - Cyber school most restrictive placement possible, but here it is the LRE.



"I wasn't playing hooky — I was fleeing the deteriorating public school system."

Review Services And BIP

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"Instead of calling my mom, how would you feel about exploring a more positive and preventive strategy."

Behavior Intervention Plan (BIP)

- Back to "change in placement" analysis.
- "In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior."
- NOTE: Reciting this standard is not a BIP.

Behavior Intervention Plan (BIP)

- MD team uses FBA to give IEP team tools to create a BIP.
- Plan for intervening with student's bad behavior.
- Document:
 - The plan.
 - Parents' agreement and/or input into the plan.
 - Implementation of the plan.

Behavior Intervention Plan (BIP)

- BIP is required if removing the child from his placement for discipline.
 - Receive, as appropriate, a functional behavioral assessment, behavior intervention services, and modifications that are designed to address the behavior violation so that it does not recur.
 - Doesn't have to be a free-standing BIP (but it can be).

Pennsbury Sch. Dist. v. C.E.,

59 IDELR 13 (Pa. Commw. Ct. 2012)

- Student with SLD and severe attentional difficulties.
- 2nd-grade reevaluation; problems with inattention and distractibility seriously impacted his ability to learn.
- 3rd-grade IEP indicated that the student's behaviors did not impede his education.
- Student struggled behaviorally and academically.

Pennsbury Sch. Dist. v. C.E.,

59 IDELR 13 (Pa. Commw. Ct. 2012)

- Mom placed student in private school and sued for tuition reimbursement.
- School: No BIP, but interventions in place adequate to meet the student's behavioral needs.
 - Preferential seating.
 - Repetition of instructions.
 - Pre-teaching.

Pennsbury Sch. Dist. v. C.E.,

59 IDELR 13 (Pa. Commw. Ct. 1996)

- Court: "Although these interventions and supports were already being used, the school district's supervisor of elementary special education admitted that, with respect to writing, [the student] 'was not making meaningful progress.'"
- Awarded tuition reimbursement and compensatory education.

Overton (NE) Pub. Sch. Dist.,

112 LRP 7488 (OCR 11/23/11)

- Parent concerned that daughter was inattentive.
- School tested; student didn't verify.
- School determined that inattention was not adversely affecting her academics, and thus, she was ineligible for special education and related services under the IDEA at that time.

Overton (NE) Pub. Sch. Dist.,

112 LRP 7488 (OCR 11/23/11)

- Following school year, school verified OHI.
- Teachers provided:
 - Flip sheets to assist in organization.
 - Communication notebook
 - Sensory breaks in the form of time to work in the hall.
 - Shortened assignments.
 - Preferential seating.
 - Sticker chart.
 - Para-assistance planner.

Overton (NE) Pub. Sch. Dist.,

112 LRP 7488 (OCR 11/23/11)

- Parent filed complaint alleging failure to provide BIP.
- Special education teacher believed implementing the IEP functioned as a BIP.
- Classroom teacher working on inattention.
- Special education teacher working on social interactions.

Overton (NE) Pub. Sch. Dist.

112 LRP 7488 (OCR 11/23/11)

■OCR:

- There is no requirement that the district provide a BIP.
- District's actions in addressing behaviors were taken as part of the IEP process.
- Decision to provide accommodations rather than BIP was an educational determination.
- Student not denied FAPE by failure to provide BIP.

Council Rock Sch. Dist. v. M.W.,

59 IDELR 132 (E.D. Pa. 2012)

- Student had 22Q Deletion syndrome.
 - Characterized by multiple brain and physical atypicalities.
 - Caused behavioral issues.
- Began demonstrating new behaviors.
 - Stealing to attract attention to himself.
 - Hostility toward peers.
 - Inappropriate interest in female student.
- Parents privately placed and sued for reimbursement.

Council Rock Sch. Dist. v. M.W., 59 IDELR 132 (E.D. Pa. 2012)

■ Court:

- Teachers were aware of and concerned about the behavior when it surfaced.
- One teacher described the behavior as "worrisome" and urged parents to seek psychiatric help for the student.
- "Despite this, the IEP ... did not address these issues and there was no behavior management plan in place ... nor was one recommended by his teachers."

Council Rock Sch. Dist. v. M.W., 59 IDELR 132 (E.D. Pa. 2012)

- Failure to address behavioral needs resulted in denial of FAPE.
- Tuition reimbursement, compensatory education, attorney's fees awarded.

Appoquinimink Sch. Dist.,

61 IDELR 178 (SEA DE 2013)

- 8-year-old with ADHD and ODD.
- Threatening and aggressive to staff, meltdowns when forced to perform non-favored tasks.
- BIP:
 - Started school day in separate room with para.
 - Behavior chart and reward system.
 - Student was removed to a quiet room with adult supervision when he became dangerous or disruptive.
- Parents: filed state complaint arguing that seclusion in quiet room was disciplinary change in placement.

Appoquinimink Sch. Dist.,

61 IDELR 178 (SEA DE 2013)

- Education Department: not a change in placement.
- School implemented BIP with fidelity.
- Removals helped the student manage his behavior during less structured activities, which in turn allowed him to spend more time with nondisabled peers.
- Student did not lose any educational opportunities as a result of the removals.

Francis Howell (MO) Sch. Dist., 18 IDELR 78 (OCR 1991)

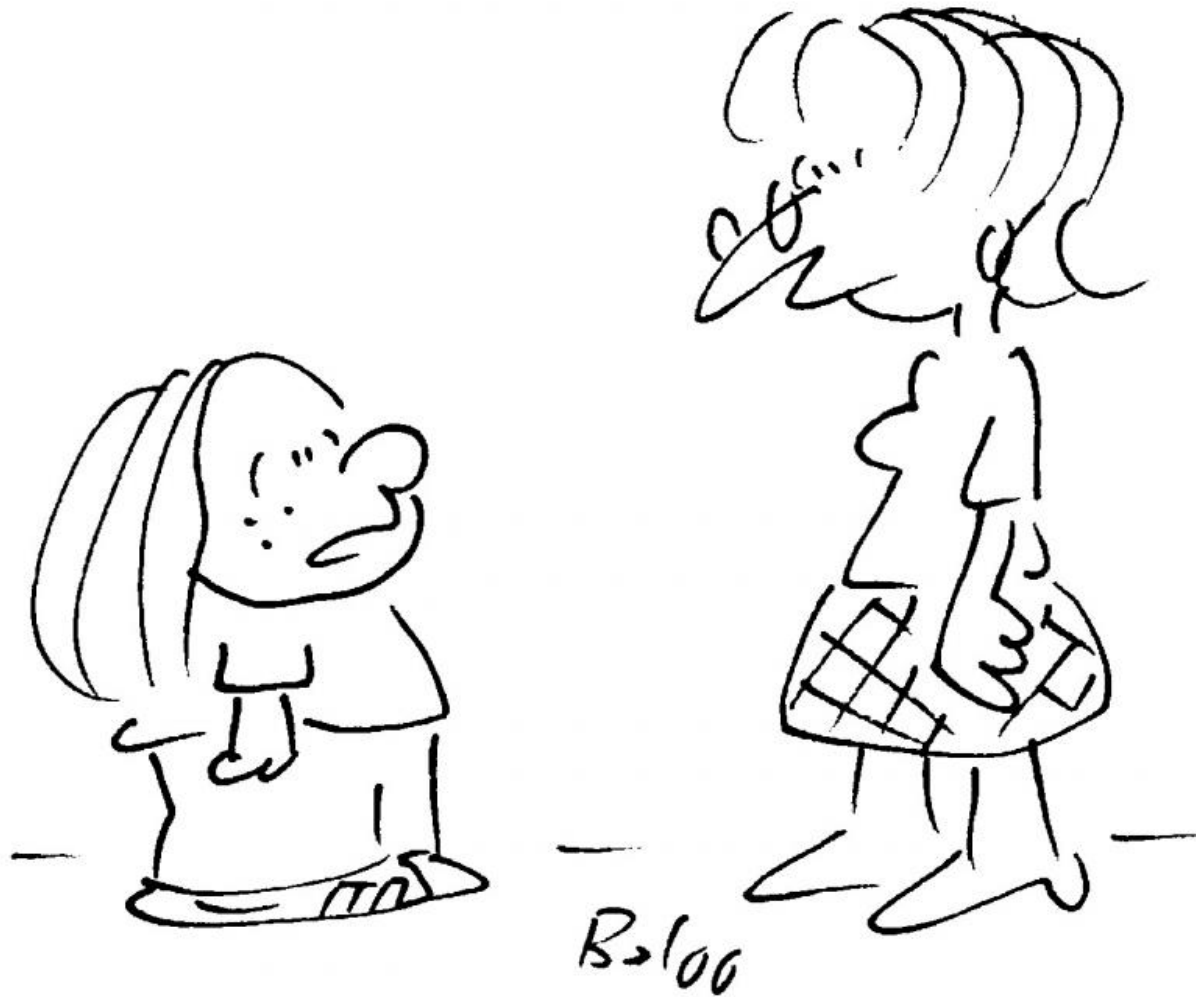
- High school student with behavioral disorder, SLD.
- IEP goal:
 - "Will improve behavior to a level required for success in regular class, special service class and the general school setting."
 - The first objective: "Will participate in at least one extracurricular activity throughout the school year."
 - The second objective: "Will follow code of conduct."
- IEP goal: Student will participate in one extracurricular.
 - Was on wrestling team.

Francis Howell (MO) Sch. Dist., 18 IDELR 78 (OCR 1991)

- In December, student swore at teacher.
 - Given 3 days ISS (could have been kicked off team).
 - While in ISS, again directed profanity at a teacher and refused to move when instructed to do so.
 - Suspended from wrestling for two weeks (could have been suspended).
- Parent: Suspension discriminatory and contrary to IEP.
- Filed complaint with OCR.

Francis Howell (MO) Sch. Dist., 18 IDELR 78 (OCR 1991)

- OCR: No violation.
 - Participation in an extracurricular activity and his adherence to the code of conduct are specifically related to the annual goal in his IEP of improving his behavior.
 - District was implementing his IEP when it suspended him from wrestling.
 - "Statement that student 'will participate in at least one extracurricular activity throughout the school year' does not prevent the District from withholding this activity to discipline him."



"Yeah, but what if I study hard and get good grades and I don't like it?"

Things We Suggest For BIPs

- Don't forget this is a plan for "positive behavioral supports," not a code of conduct.
- Review possible menu of supports (e.g. Intervention Central, Autism Speaks).
- Be leery of "schoolwide behavior" programs.
- Time in ISS as accommodation (not change in placement).
- Distinguish between seclusion and cool-down.
 - "Refocus room."
 - "Place of privacy."
 - "Time out room."

Things We Suggest For BIPs

- Day at home to regain emotional control as placement, not suspension.
- Review wording for summoning parents.
- Send the school psychologist to observe at home or in community.
- Involvement of law enforcement.

Don't Verify: Social Maladjustment



"It's a good citizen's responsibility to question authority. Not *my* authority, of course."

Social Maladjustment

- "Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section." ³⁴
C.F.R. §300.8(c)(4)(ii).
- "ED vs. BAD."
- DOE refused to define the term, concluding that "there is no consensus" on a definition. 71 Fed. Reg. 46,550 (2006).

Springer v. Fairfax County Sch. Bd.,

27 IDELR 367 (4th Cir. 1998)

- 11th-grade student.
- Prior to 11th-grade year:
 - Progressed from grade to grade.
 - Had successful relationships with teachers and peers.
 - Participated in extracurriculars.
- In 11th grade:
 - Began stealing, sneaking out of house.
 - Using drugs and alcohol.
 - Grades suffered due to skipping class.
- Parents privately placed, sued for reimbursement.

Springer v. Fairfax County Sch. Bd.,

27 IDELR 367 (4th Cir. 1998)

- Psychological evidence: "conduct disorder."
 - "A disregard for social demands or expectations. It appears that Ed understands these expectations but that his behavior is not always guided by them."
 - Marked by a pattern of violating societal norms and "is often associated with ... drinking, smoking, use of illegal substances, and reckless and risk-taking acts."

Springer v. Fairfax County Sch. Bd., 27 IDELR 367 (4th Cir. 1998)

■ H.O:

- Found that student suffered from a conduct disorder and a dysthymic disorder (a moderate depressive disorder).
- Student's "inability to get along with his teachers and fellow students and to abide by school rules" was deemed consistent with these diagnoses.
- Concluded that student "should be considered 'seriously emotionally disturbed' rather than merely 'socially maladjusted.'"
- Ordered reimbursement.

Springer v. Fairfax County Sch. Bd.,

27 IDELR 367 (4th Cir. 1998)

- School appealed, SRO reversed.
 - Student socially maladjusted.
 - Therefore not entitled to reimbursement under IDEA.
- Parents appealed to District Court; it affirmed SRO's decision.
- Appeal to 4th Circuit.

Springer v. Fairfax County Sch. Bd., 27 IDELR 367 (4th Cir. 1998)

■ 4th Circuit: socially maladjusted.

[T]he regulatory framework under IDEA pointedly carves out "socially maladjusted" behavior from the definition of serious emotional disturbance. This exclusion makes perfect sense when one considers the population targeted by the statute. Teenagers, for instance, can be a wild and unruly bunch. Adolescence is, almost by definition, a time of social maladjustment for many people. Thus a "bad conduct" definition of serious emotional disturbance might include almost as many people in special education as it excluded. Any definition that equated simple bad behavior with serious emotional disturbance would exponentially enlarge the burden IDEA places on state and local education authorities. Among other things, such a definition would require the schools to dispense criminal justice rather than special education.

In re Student with a Disability,

112 LRP 5256 (NM SEA 01/17/12)

- 8th-grade student, academically gifted, dx ADHD.
- Parents requested evaluation; MD team determined ADHD did not impact his education.
 - Neither parent nor school considered ED as qualifying condition.
- Student struggled academically and socially.
 - Several threats of suicide.
 - Reported being bullied.
 - Anxiety resulting from parents' divorce.
 - 181 visits to nurse's office over 3 years.

In re Student with a Disability,

112 LRP 5256 (NM SEA 01/17/12)

- School:
 - Not OHI due to ADHD. Poor grades due to missing class.
 - Socially maladjusted.
- Family witnesses: "not socially maladjusted."
- H.O.: School violated child find by not evaluating student for ED.

W.G. and M.G. v. New York City Dep't of Educ., 56 IDELR 260 (S.D.N.Y 2011)

- High school student.
 - No significant issues until 10th grade.
 - 10th grade: major conflict with hockey coach.
 - Quit sports, began drinking, smoking pot, skipping school, criminal behavior.
- Family placed student in residential treatment, sued for reimbursement.
- H.O.: socially maladjusted, so school wins.
- SRO: emotionally disturbed, so parents win.

W.G. and M.G. v. New York City Dep't of Educ., 56 IDELR 260 (S.D.N.Y 2011)

■ Court:

- "Social or behavioral problems are insufficient but do not preclude an emotional disturbance classification," even if those problems adversely affect a student's grades."
- Academic problems a result of skipping school.
- Skipped school because of conduct disorder, narcissistic personality tendencies, and substance abuse.
- No problems forming social relationships – they were just with the wrong people.

Eschenasy v. New York City Dep't of Educ., 52 IDELR 66 (S.D.N.Y. 2009)

- High school girl not verified.
 - Developed a pattern of stealing at age 8.
 - In middle school, dressed inappropriately and engaged in sexual misconduct by touching boys.
 - In high school, she "stole, broke school rules, obtained a tattoo and body piercings, made inappropriate friends on the internet, began using drugs, and ran away from home."
- Parents eventually placed student in a boarding school and sued for verification and reimbursement.
- H.O.: socially maladjusted **and** ED, parents win.
- SRO: socially maladjusted, school wins.

Eschenasy v. New York City Dep't of Educ., 52 IDELR 66 (S.D.N.Y. 2009)

- District Court: ED, parents win.
 - Student exhibited inappropriate types of behavior or feelings under normal circumstances.
 - Hair pulling, self-cutting, and suicide attempts are inappropriate behavior under otherwise normal circumstances.
 - Distinguished from ***Springer***.
 - These behaviors more severe.
 - This behavior has existed since she was 8 years old
 - prior to adolescence and drug use.

Social Maladjustment And Section 504



"I know my rights! I want my phone call!"

Irvine (CA) Unif. Sch. Dist., 353 IDELR 192 (OCR 1989)

- Family asked for evaluation of 15-year-old due to truancy and law violations.
- School declined, citing recent "informal screen"
- School asserted that student's "social maladjustment" would not qualify him as seriously emotionally disturbed.
- Parents complained to OCR.

Irvine (CA) Unif. Sch. Dist., 353 IDELR 192 (OCR 1989)

■ OCR:

- Found procedural violation.
- "While it does not affect the outcome of this case it should be pointed out the determination of the presence of that 'social maladjustment' ... is not dispositive as to whether one is ... entitled to services under Section 504. Under Section 504 one is considered handicapped whenever he/she has a physical or mental impairment which substantially limits a major life activity such as the ability to learn or attend school."

New Mexico Pub. Educ. Dep't,

105 LRP 44545 (NM SEA 08/18/04)

- 8th-grade student began struggling for the first time in his academic career.
 - Failed several subjects.
 - Discipline problems and problems with peers.
 - Disciplined for writing obscenities on the blackboard, urinating on another student's pant leg, viewing porn, and pulling a fire alarm.

New Mexico Pub. Educ. Dep't,

105 LRP 44545 (NM SEA 08/18/04)

■ Teacher:

- "He is obsessed with violent images and actions, and recently his obsession(s) have taken on a definite sexual overtone. He is sneaky and tries to cover up his failure to do assigned work by either lying or stalling, saying he's done it at home. He makes his fellow classmates uncomfortable with his inappropriate behaviors, and those students who sit next to him often complain about his inappropriate comments and behaviors."
- "I believe Stephen would benefit greatly from intense psychological/psychiatric care/counseling."

New Mexico Pub. Educ. Dep't,

105 LRP 44545 (NM SEA 08/18/04)

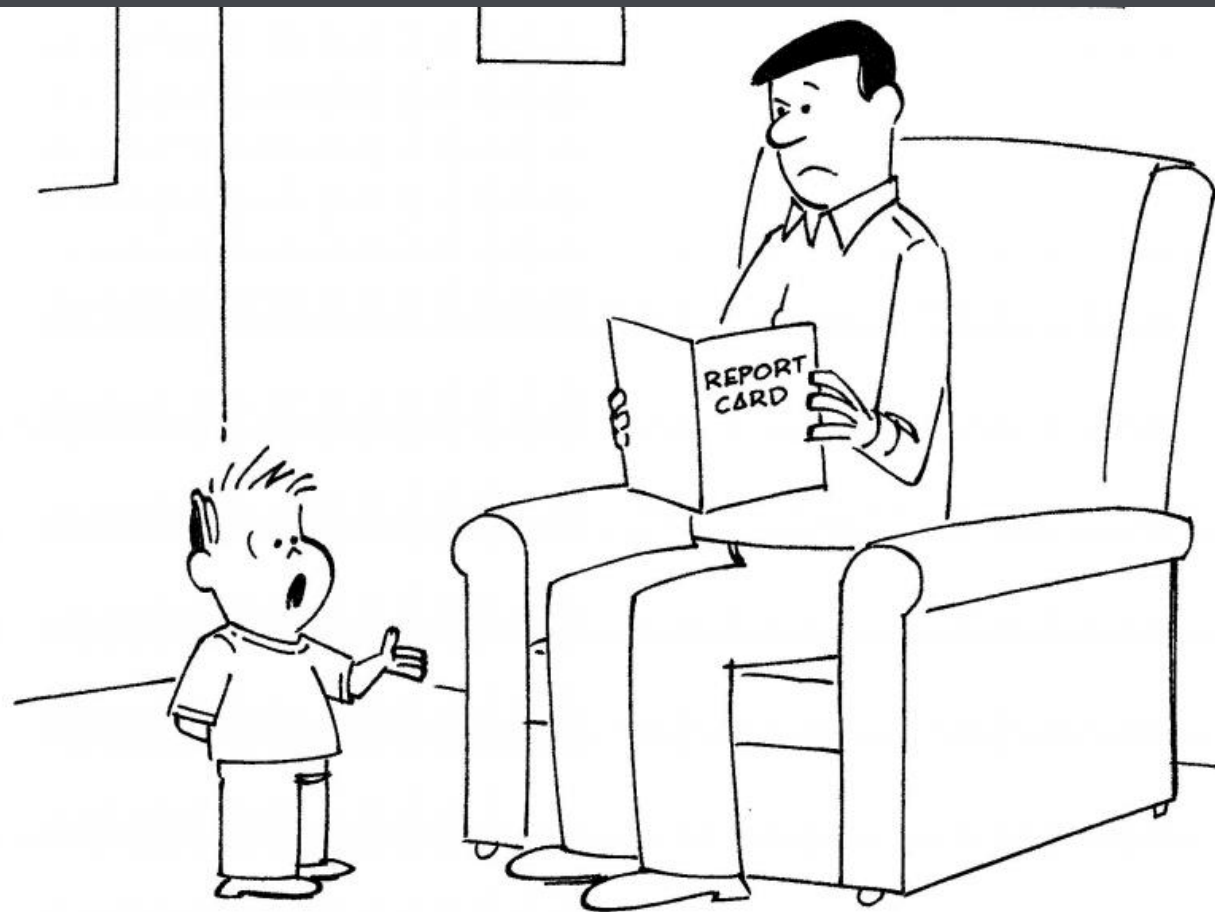
- Team evaluated, student did not verify.
- School: Even if ED or OHI, student suffered no adverse educational impact as required by IDEA.
 - Failing grades explained by student's conduct, absent any disability, as well as his toxic relationship with a teacher who flunked him in two of the three failed classes.
 - Only concern with student's educational performance during one semester.

New Mexico Pub. Educ. Dep't,

105 LRP 44545 (NM SEA 08/18/04)

■ H.O.:

- There is no doubt that missing 30 or so days of school in one semester will impact grades, as will toxic relationships with teachers, failure to turn in assignments, failure to do schoolwork at all, and serious discipline problems in general, all of which factor into this case. It is a leap, however, to infer from student's suspensions and discipline problems that he is special education-eligible under the IDEA.
- Re: Section 504: No showing of substantial limitation in major life activity since no adverse educational impact.



NORM
JUNG

"THAT ONE FAILING GRADE IS FOR THE COURSE
WHERE YOU DID MOST OF MY HOMEWORK."

J.H. v. Bernalillo County,

114 LRP 50850 (D.N.M. 11/19/14)

- 6th-grader with behavior disorder attacks peer, then teacher.
- "Crisis team" summoned; SRO headed over to see what was going on.
- SRO saw child kicking, biting, scratching teacher.
- Student arrested, handcuffed, taken to juvenile detention center.
- Student eventually found incompetent to stand trial.

J.H. v. Bernalillo County,

114 LRP 50850 (D.N.M. 11/19/14)

- Mom sued cop under Section 1983.
 - Should have known she was disabled.
 - Should have been familiar with interventions in BIP.
 - Violated 4th and 14th Amendment.
- Court:
 - Cop did not know and should not have known of disability or IEP.
 - IDEA procedural safeguards do not apply to law enforcement (citing 20 U.S.C. §1415(K)(6)(A)).
 - Great language defending law enforcement involvement with out-of-control kids.



"I'm thinking of changing my centers to Sit Quietly, Behave Yourself, and Just Stop That."

Violent or Disruptive Students with Disabilities



"I wouldn't say your son is a bad child.
He's gifted at disruptive behavior."

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