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MOST COMMON MISTAKES..... AND HOW NOT TO MAKE THEM.

Mo-CASE

Annual Special Education Administrators'
Conference

2011

Discipline

Mistake:

Belief that a manifestation determination must be conducted after 10 days of suspensions in a school year (ROUTINELY once you reach Day 10.)

Manifestation Determination

When is this required?

Disciplinary change of placement

- Long-term suspension or expulsion
- Short-term suspensions in excess of 10 days cumulatively where a pattern of suspension has been created
- 45 school day IAES for drugs, weapons, or serious bodily injury

Discipline

Mistake:

Assuming a pattern of suspension has been created just because the student's behavior for each incident is similar or the same.

Pattern of Suspensions

What are the factors to be analyzed?

- Duration
- Frequency
- Total exclusion for school year
- Behavior/conduct

Factors Analyzed

Historical perspective:

- *Honig v Doe* – 10 day rule
- OCR and OSEP implementation
- Red flags?

Factors Analyzed

OCR Decisions- No Pattern

- Letter to Legasse (August 5, 2003) (45 days)
- Letter to Winn (July 19, 1993) (23 days)

Discipline

Mistake:

Failing to consider, and/or document that you considered continued services when short-term suspensions exceed 10 days cumulatively.

Continued Services?

Must document consideration:

- Consultation between school administrator and at least one of the student's teachers
- Determine the extent services are needed
- To enable student to continue to participate in general ed. curriculum
- To enable student to progress toward IEP goals

Discipline

Mistake:

Failure to implement IEP Placement during In-School-Suspension.

In-School-Suspension

IEP implementation

- Self-contained setting: ISS room can't have non-disabled peers for the portion specified
- Regular education setting: ISS room can't be a room with only kids with disabilities

Co-Teaching

Mistake:

Using a paraprofessional as the “co-teacher.”

Response to Intervention

Mistake:

Implementation of interventions past the trigger point of a referral for special education evaluation.

RtI

OSEP Letter (January 21, 2010):

- Parent request for special education evaluation
- Student is receiving interventions under an RtI model
- Special education evaluation process triggered, time-lines begin

RtI

Jackson v Northwest Local School District (S.D. Ohio 2010) :

- Implementation of interventions under RtI for over two years without gains or progress
- School district should have suspected had a disability
- School district's failure to evaluate led to her expulsion

Transfer Students

Mistake:

Assuming comparable services means exact same placement.

Comparable Services

A.M by Marshall v Monrovia (9th Cir. 2010):

- Multiple disabilities
- Transfer IEP provided for general education classroom placement
- New district provided homebound services

Triennial Evaluation

Mistake:

Using the Review of Existing Data process/form in order to make the decision to waive the triennial evaluation.

Triennial Evaluation

Decision that no triennial evaluation is necessary:

- Parent must agree/be consulted
- Document who from district reached agreement with parent

Initial IEP Meeting Time-line

Mistake:

Assuming that there are acceptable reasons for a delay in the 30 day time-line to develop the initial IEP.

IEP Goals

Mistake:

Writing IEP Goals that do not align with, or are not supported by, the Present level of academic achievement and functional performance (PLAAFP) (aka PLEP).

Notice of Action

Mistake:

Failure to provide a written Notice of Action proposing the category of disability.

Notice of Action

OSEP Letter to Atkins Lieberman (August 5, 2010):

- Parent must receive notice of specific category of eligibility with proposal to initiate services
- Refusal of parent request for change in category triggers written notice

Notice of Action

But if notice of “category” is so important, how do we explain:

Fort Osage R-I School District v Sims
(8th Cir. 2011)

Notice of Action

Mistake:

Providing written Notice of Initial Placement instead of providing Notice of Initial Services

Eligibility

Mistake:

Failure of evaluation team to consciously consider the eligibility criteria (of state regulations) for the category before concluding the students meets the criteria.

Eligibility

Mistake:

Deciding eligibility based on emotion rather than criteria (and overuse of professional judgment in process).

MAP Accommodations

Mistake:

Prohibit IEP team from deciding upon an accommodation that will invalidate score.

CHILD FIND

Mistake:

Requiring parent obtain a psychological evaluation of student – and in some cases conditioning attendance in school upon this.

Homebound

Mistake:

Assuming that a homebound placement for “medical reasons” is not subject to same IEP requirements and process.

Private Agency Placement

Mistake:

Assuming the private agency you have contracted with has replaced you as the “responsible public agency.”

Post-Secondary Transition

Mistake:

Failure to obtain parent consent prior to sharing confidential information with an outside agency that district invited to IEP meeting.

Post-Secondary Transition

Distinction between (?):

Parent invitee (outside agency)

And

District invitee (outside agency)

Post-Secondary Transition

IDEA regulations/comments:

- OSEP declined to delete consent requirement
- OSEP referenced FERPA

FERPA (or HIPAA)

Mistake:

Refusing parent request to observe classroom on the basis of confidentiality.

Private School Consultation

Mistake:

Failure to include home-school providers as private/non-public schools when conducting the consultation required.

IEP Meeting

Mistake:

Checking your iPhone, cell phone, blackberry or “whatever” during the IEP meeting.

Section 504

Mistake:

Assuming a student, who is found ineligible under IDEA, is eligible under Section 504 based on a medical diagnosis.

Section 504

Eligibility:

- Qualified – within age range of students served by district/resident
- Disabled – a mental or physical impairment that substantially limits a major life activity

Disclaimer

- Please note: The information provided in this training is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

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