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## THE LATEST LEGAL ISSUES IMPACTING SPECIAL EDUCATORS

*Neal Takiff*

WHITTED TAKIFF + HANSEN, LLC  
3000 Dundee Road, Suite 303  
Northbrook, Illinois 60062  
Telephone: 847-564-8662  
Facsimile: 847-564-8419  
www.wthlawfirm.com



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## Special Education Legal Updates



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## Lessons to Be Learned from Recent Legal Cases



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## TIP NUMBER 1

- **PROVIDE THE OPPORTUNITY TO DIVORCED PARENTS WITH JOINT LEGAL CUSTODY TO EACH PROVIDE MEANINGFUL INPUT DURING THE CHILD'S IEP MEETINGS, EVEN IF THERE IS A VALID ORDER OF PROTECTION (WITH SOME EXCEPTIONS)**



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### **West Des Moines Community School District, 115 LRP 24353 (IA SEA, April 7, 2015)**

The Iowa Department of Education determined that the West Des Moines Community School District did not improperly exclude a divorced father who shared joint custody of his elementary age children from their IEP meetings.

The divorced father alleged the school district violated the IDEA by not allowing him to be physically present at his children's IEP meetings or participating via live conference call. Instead, the school district permitted the father to participate via delayed telephonic relays in order to adhere to the order of protection which prohibited contact between the father and the mother.



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### **Silver Falls School District, 115 LRP 24115 (OR SEA, April 9, 2015)**

The Oregon Department of Education conducted an investigation as to whether the Silver Falls School District violated the IDEA by failing to ensure parent participation for the student's IEP meetings.

The IDEA is silent as to whether school districts must include both divorced parents of a child with a disability at an IEP meeting. The Silver Falls School District was able to overcome the father's allegation by showing that both parents were provided notice of the IEP meeting. Although the school district did not know the father's new address when notice was mailed, the school district did provide notice to the father via e-mail.



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**Sheils v. Pennsbury School District, 115 LRP 3687 (U.S. Dist. Ct, East. Dist. PA, January 26, 2015)**

The U.S. District Court, Eastern District of Pennsylvania, held (in a case of first impression) that only one parent's consent is needed to modify a student's stay-put placement.

The District Court determined that the mother's agreement with the Impartial Hearing Officer's decision to allow the school district to provide resource room instruction for reading and writing was sufficient to modify the student's pendency placement - despite the fact that the parents shared legal custody of the student. The judge indicated that the purpose of stay-put is to strip school districts of the unilateral authority to modify a student's placement. To require both parents to agree could result in "requiring a student to remain in an inappropriate placement simply because one parent opposed the view of the other parent."



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**PRACTICAL TIPS WHEN DEALING WITH DIVORCED PARENTS**

1. OBTAIN COPIES OF CUSTODY AGREEMENTS (JOINT PARENTING AGREEMENTS) AND OTHER RELEVANT COURT ORDERS (INCLUDING ORDERS OF PROTECTION) AND REVIEW THEM TO DETERMINE WHICH PARENT HAS RIGHTS AND WHETHER A PARENT'S RIGHTS ARE LIMITED
2. BEGIN WORKING WITH BOTH PARENTS WEEKS IN ADVANCE TO SCHEDULE A MUTUALLY AGREEABLE IEP MEETING DATE AND TIME (AND POSSIBLY LOCATION)
3. CONFIRM ADDRESSES, TELEPHONE NUMBERS, AND E-MAIL ADDRESSES OF EACH PARENT
4. DOCUMENT, DOCUMENT, DOCUMENT ATTEMPTS TO COMMUNICATE WITH EACH PARENT



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**ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT ("IMDMA")**

PER THE IMDMA: "EXCEPT AS OTHERWISE AGREED BY THE PARTIES IN WRITING AT THE TIME OF THE CUSTODY JUDGMENT OR AS OTHERWISE ORDERED BY THE COURT, THE CUSTODIAN MAY DETERMINE THE CHILD'S UPBRINGING, INCLUDING BUT NOT LIMITED TO, HIS EDUCATION, HEALTH CARE AND RELIGIOUS TRAINING, UNLESS THE COURT, AFTER HEARING, FINDS, UPON MOTION BY THE NONCUSTODIAL PARENT, THAT THE ABSENCE OF A SPECIFIC LIMITATION OF THE CUSTODIAN'S AUTHORITY WOULD CLEARLY BE CONTRARY TO THE BEST INTERESTS OF THE CHILD." 750 ILCS 5/608



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## IMDMA

IN ACCORD WITH THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT, "NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ACCESS TO RECORDS AND INFORMATION PERTAINING TO A CHILD, INCLUDING BUT NOT LIMITED TO MEDICAL, DENTAL, CHILD CARE AND SCHOOL RECORDS, SHALL NOT BE DENIED TO A PARENT FOR THE REASON THAT SUCH PARENT IS NOT THE CHILD'S CUSTODIAL PARENT; HOWEVER, NO PARENT SHALL HAVE ACCESS TO THE SCHOOL RECORDS OF A CHILD IF THE PARENT IS PROHIBITED BY AN ORDER OF PROTECTION FROM INSPECTING OR OBTAINING SUCH RECORDS.

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## IMDMA 2016

No Sole or Joint Custody

Instead we have "Allocation of parental responsibilities: decision making" of significant issues, which include:

1. Education
2. Health
3. Religion
4. Extra-curricular activities

Allocation can be the same or different for each significant issue.

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## IMDMA 2016

Designation of Custodian for Purposes of Other Statutes (such as the Illinois School Code)

Solely for the purposes of all State and federal statutes that require a designation or determination of custody or a custodian, a parenting plan shall designate the parent who is allocated the majority of parenting time. For purposes of Section 20.12b of the School Code only, the parent with the majority of parenting time is considered to have legal custody.

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## TIP NUMBER 2

- **INVESTIGATE BULLYING INCIDENTS, INCLUDING DISABILITY-BASED BULLYING, AND MAKE EFFORTS TO CURTAIL FURTHER INCIDENTS. CAREFULLY DOCUMENT THE INVESTIGATION AND ANY FOLLOW UP.**
- **COMPLY WITH THE ILLINOIS BULLYING PREVENTION STATUTE**



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### ***Nevills v. Mart Independent School District,*** **115 LRP 17173 (5<sup>th</sup> Cir. 2015)**

- A.N., who has Tourette Syndrome, attended school in the Mart Independent School District from K-6<sup>th</sup> grade. Parents withdrew him in mid-7<sup>th</sup> grade. A.N. was bullied by his peers, especially during his middle school years. He was called names like "retard, chickenhead, twitch, tic-toc, and spaz." There were many other more severe incidents raised by the parents as well (knocked down when on crutches, beat up in the boy's locker room). Parents raised claims under Section 504 and the ADA.
- According to the 5<sup>th</sup> Circuit, an investigation was completed regarding the incidents that were raised to the school, the Principal's notes supported her decision to punish some students and not others, and both students and teachers were trained to counter bullying. As a result, the 5<sup>th</sup> Circuit determined that the parents failed to demonstrate "deliberate indifference" to the student's disability-based harassment. The 5<sup>th</sup> Circuit heavily relied on the Principal's documentation!



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### ***Visnovits v. White Pine County School District,*** **115 LRP 17196 (U.S. Dist. Ct. NV 2015)**

- Vanessa Visnovits is a student with a visual impairment. Her freshman year of high school, a peer grabbed her from behind and yanked her head back. V.V. followed the peer into an adjacent classroom and engaged in a subsequent altercation. A teacher was present in the room when this incident occurred but V.V. never reported any prior incidents that had allegedly occurred between the same peer and herself.
- The Court ruled that V.V. was unable to prove that the peer "treated her poorly" based on her visual impairment disability and that the peer even knew of the disability. The Court determined that while school districts cannot "turn a blind eye" to harassment and bullying due to disability, they are not obligated to detect unreported incidents of bullying. Because V.V. could not show that the school knew of the bullying, she could not prove "deliberate indifference" and could not prove that the district knowingly allowed her classmate to harass her or that it failed to intervene.



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**BULLYING PREVENTION -  
105 ILCS 5/27-23.7**

No student shall be subject to bullying:

1. During school-sponsored education program or activity;
2. In school, on school property, on school buses or other vehicles, at school bus stops, or school sanctioned events;
3. Via school computers or network or other school electronics;
4. Via information *from a computer at a nonschool related location, activity, function, or program, or from the use of technology or an electronic device that is not owned or used by the school district* **if the bullying causes a substantial disruption to the educational process or orderly operation of a school.** (i.e. social media)



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**BULLYING PREVENTION -  
105 ILCS 5/27-23.7**

10 school days to complete a bullying investigation after a report of a bullying incident is received

Parents/guardians and students who are parties to bullying incident to be given opportunity to meet with the Principal or other school administrator

Victim must be provided with information regarding services that are available within the district and community, such as counseling, support services, and other programs



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**TIP NUMBER 3**

- BE CAUTIOUS WHEN DRAFTING BENCHMARKS AND GOALS TO AVOID SPECIFYING A PARTICULAR EDUCATIONAL METHODOLOY OR LIMITING YOUR CHOICE OF PERSONNEL TO BE ASSIGNED



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**F.B. and E.B. v. New York City Dept. of Educ., 115 LRP 45008  
(U.S. Dist. Ct. NY, September 21, 2015)**

- Although DIR/Floortime did not appear anywhere in the IEP developed for a second grader with Autism, the annual goals and short-term objectives used terminology that only related to the DIR/Floortime method.
- The Court held that the IEP team “embraced a particular educational methodology” by choosing the specific goals. The IEP team should have known it could not implement the goals and, at hearing, the special education teacher admitted that she neither understood nor could implement the goals. There were no teachers on staff at the district who were trained in DIR/Floortime. The Court determined that the district could not implement the IEP as written and violated the IDEA.
- The district had to pay \$92,100 for the 2<sup>nd</sup> grader’s private school placement where he received DIR/Floortime

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**TIP NUMBER 4**

- **ENSURE THAT CONSENT FOR A FUNCTIONAL BEHAVIORAL ASSESSMENT IS OBTAINED BEFORE PROCEEDING**

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**Muskegon Public Schools, 115 LRP 24863  
(MI SEA, May 12, 2015)**

- A school district violated 34 C.F.R. 300.300 by failing to obtain parental consent before conducting a functional behavioral assessment of a kindergarten.
- On 10/27/14, parents requested a CSE of their child. The Muskegon Public Schools acknowledged receipt of the CSE request the following day. Shortly thereafter, the district conducted a FBA and developed a BIP, both without parent consent. In fact, consent was not received until February 2015.
- The IHO determined that the district could use screenings not requiring parent consent consistent with 34 C.F.R. 300.302, but “instruments used to identify the child’s special education eligibility” were not allowed.
- When determining whether an evaluation requires parent consent, look at: 1) whether the purpose of the evaluation is to identify eligibility for special ed and the nature of the needs and 2) whether the administration is to an individual or group of students

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# Special Education Funding Updates



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## Overview of Special Education Funding

- Chicago District 299 (Article ID) - Chicago District 299 receives all of its state special education funds via the Educational Services Block Grant.
- Private Tuition (105 ILCS 5/14-7.02) – Provides reimbursement for a portion of the private tuition costs incurred by a school district from the previous school year.



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## Overview of Special Education Funding

- Funding for Children Requiring Special Education Services (105 ILCS 5/14-7.02b) – Replaced the special education extraordinary line item
- Personnel Reimbursement (105 ILCS 5/14-13.01) – Provides reimbursement to districts and cooperatives for a portion of the costs of necessary special education staff to serve special needs children.



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## Overview of Special Education Funding

- Special Transportation (105 ILCS 5/14-13.01(b)) – Reimburses school districts for a portion of the costs in transporting students with disabilities who has special transportation needs.
- Orphanage Tuition (105 ILCS 5/14-7.03) – Reimburses 100% of tuition costs for student with disabilities who are under the guardianship of a public agency (DCFS) or in a state residential facility.

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## ISBE State General Aid Funding Recommendation

- January 6<sup>th</sup> ISBE Meeting: Plenary packet recommends transferring the funding for children line item into the general state aid line item.
- What is the difference between MSF and MOE?
  - Maintenance of State Financial Support (MSF) refers to the State's responsibility to maintain State financial support for special education and related services from one fiscal year to the next.
  - Maintenance of Effort (MOE) refers to the responsibility of the LEA to maintain the same level of expenditures for the education of children with disabilities from one fiscal year to the next.

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## Special Education Discipline Updates

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**Discipline 2.0: Rebooting Illinois' Discipline Laws**

**Has the Pendulum Finally Swung Back?**



3000 DUNDEE ROAD, SUITE 303  
NORTHBROOK, ILLINOIS 60062  
OFFICE: (847) 564-8662  
FAX: (847) 564-8419  
WWW.WTLAWFIRM.COM

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**HYPOTHETICAL**

TOMMY IS A 15-YEAR-OLD SPECIAL EDUCATION STUDENT WHO IS ELIGIBLE UNDER THE OTHER HEALTH IMPAIRMENT CATEGORY. THIS MORNING, TOMMY WAS WALKING INTO THE MAIN ENTRANCE OF THE SCHOOL AND WAS STOPPED BY THE PRINCIPAL AND THE DEAN. BOTH THE PRINCIPAL AND THE DEAN SUSPECT THAT FIVE OTHER STUDENTS, WHO THEY ALSO STOPPED WERE USING DRUGS BEFORE SCHOOL BEGAN, AS TOMMY ENTERED THE BUILDING AT THE SAME TIME AS THESE 5 OTHER STUDENTS, HE WAS STOPPED AS WELL.

DURING A SUBSEQUENT SEARCH OF TOMMY'S BACKPACK THE ADMINISTRATION FOUND A KNIFE.

1. CAN TOMMY BE EXCLUDED FROM SCHOOL TOMORROW? IF SO IS HE ENTITLED TO SPECIAL EDUCATION SERVICES?
2. CAN TOMMY BE UNILATERALLY REMOVED FROM HIS PLACEMENT ON A TEMPORARY OR PERMANENT BASIS?
3. DOES THE SIZE OF THE KNIFE MATTER?
4. WHAT SHOULD THE SCHOOL DO NEXT?
5. DOES YOUR ANSWER TO QUESTION NO. 3 CHANGE IF DRUGS WERE ALSO FOUND IN TOMMY'S BACKPACK?



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**Public Act 99-0456**

- Districts must limit the use of suspensions and expulsion "to the greatest extent practicable."
- Recommends that, "school officials consider forms of non-exclusionary discipline prior to using out-of-school suspensions or expulsions".
- Amends 105 ILCS 5/10-20.14 (Student Discipline Policies), 105 ILCS 5/10-22.6 (Suspensions and Expulsions), and 105 ILCS 5/27A-5 (Charter School Act)
- Focus is on out-of-school suspensions and expulsions.



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## Public Act 99-0456

- All statutes concern “regular education.”
- No amendments to 105 ILCS 5/14 (special education).
- So why am I up here?
- Rights afforded under The Illinois School Code outside of Section 14 have always been applied to special education students, otherwise allegation of disparate treatment on the basis of a disability.



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DURING A SUBSEQUENT SEARCH OF TOMMY'S BACKPACK THE ADMINISTRATION FOUND A KNIFE.

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## Special Education Discipline

- HONIG V. DOE, 484 U.S. 305 (1988)
- ONLY TWO WAYS TO EXCLUDE/CHANGE PLACEMENT:
  - PARENT PERMISSION
  - COURT ORDER



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## What is a Change of Placement

- 300.536 Change of placement because of disciplinary removals
- (a) For purposes of removals of a child with a disability from the child's current educational placement under § 300.530 through 300.535, a change of placement occurs if—
- (1) **The removal is for more than 10 consecutive school days;** or
- (2) **The child has been subjected to a series of removals that constitute a pattern—**
- (i) **Because the series of removals total more than 10 school days in a school year;**
- (ii) **Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and**
- (iii) **Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.**
- (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings. (Authority: 20 U.S.C. 1415(k))



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## Case Law

- Once a school district removes a student from his classroom for more than 10 days, it raises the possibility that the removals constitute a change of placement in violation of special education law. In Wyoming, a school district was found to have violated the IDEA when it repeatedly sent home a student with cognitive impairments due to physical and verbal aggression. While the school kept no record of the number of times it had done so, the evidence at hearing indicated the student was removed on at least 20 occasions. The IHO determined this pattern constituted a change in placement and ordered that the district stop the practice and provide the student with compensatory education.



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## Public Act 99-0456

- An out-of-school suspension of 3 days or less may be used only if the student's continuing presence in school would pose a threat to school safety or a disruption to other students' learning opportunities.
- This determination must be made on a "case by case basis."



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## Public Act 99-0456

- A out-of school suspension longer than 3 days may be used only if other appropriate and available behavioral and disciplinary interventions have been exhausted and the student's continuing presence in school would either (i) pose a threat to safety of other students, staff, or members of the school community or (ii) substantially disrupt, impede, or interfere with the operation of the school.
- These determinations must be made on a "case by case basis."

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## HYPOTHETICAL

1. TOMMY BE EXCLUDED FROM SCHOOL TOMORROW?

**ANSWER: ALMOST CERTAINLY UNDER THE IDEA!**

**BUT UNDER PUBLIC ACT 99-456 ONLY IF "THE STUDENT'S CONTINUED PRESENCE IN SCHOOL WOULD POSE A THREAT TO SCHOOL SAFETY OR A DISRUPTION TO OTHER STUDENTS' LEARNING OPPORTUNITIES."**

**IF THE EXCLUSION IS FOR MORE THAN 3 DAYS, THEN TOMMY CAN ONLY BE EXCLUDED IF, "OTHER APPROPRIATE AND AVAILABLE BEHAVIORAL AND DISCIPLINARY INTERVENTIONS HAVE BEEN EXHAUSTED" AND THE STUDENT'S CONTINUING PRESENCE IN SCHOOL WOULD EITHER (I) POSE A THREAT TO THE SAFETY OF OTHER STUDENTS, STAFF, OR MEMBERS OF THE SCHOOL COMMUNITY OR (II) SUBSTANTIALLY DISRUPT, IMPEDE, OR INTERFERE WITH THE OPERATIONS OF THE SCHOOL.**

**THESE DETERMINATIONS MUST BE MADE ON A "CASE BY CASE BASIS"**

**IF SO, IS HE ENTITLED TO SPECIAL EDUCATION SERVICES?**

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## Public Act 99-0456

- Any student who is suspended for more than 3 days must be "provided appropriate and available support services during the period of their suspension."
- It should be noted that Public Act 99-0456 will permit school officials to determine that there are no such appropriate and available services; however, it is hard to envision how this could be the case for students with IEPs.
- I believe that this provision would apply to students with disabilities, thus requiring at least some IEP supports anytime a student with disabilities is suspended for four days or more.

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### HYPOTHETICAL

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DURING A SUBSEQUENT SEARCH OF TOMMY'S BACKPACK, THE ADMINISTRATION FOUND A KNIFE.

1. IF SO, IS HE ENTITLED TO SPECIAL EDUCATION SERVICES?

**ANSWER: IF THEN EXCLUSION IS FOR LESS THAN 4 DAYS, NO. HOWEVER, IF THE SUSPENSION IS FOR 4 DAYS OR MORE, THEN TOMMY IS LIKELY ELIGIBLE FOR APPROPRIATE AND AVAILABLE SUPPORT SERVICES, PROBABLY SOME FORM OF IEP SERVICES.**



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### Public Act 99-0456

- Public Act 99-0456 includes additional requirements when determining whether to issue out-of-school suspensions.
  - School officials must document whether other interventions were attempted prior to the removal of the student or whether it was determined that there were no other appropriate and available interventions.



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### Public Act 99-0456

- If a student is suspended for more than 3 days, then the board of education, as opposed to a school official, is required to issue a written suspension decision.
- It appears that this requires that the board would likely have to hold a special meeting.



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## Public Act 99-0456

Public Act 99-0456 all schools to develop a policy stating that all suspended students, including those students who are suspended from the school bus and have no alternative transportation to school, will have the opportunity to make up work for equivalent academic credit.

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## In School Suspension

### QUESTION:

So why don't I just give Tommy an in-school suspension and avoid the uncertainty of what is required under Senate Bill 100?

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## Case Law: ISS

- The Office of Civil Rights indicated that, for purposes of determining whether a "change in placement" has occurred for students with disabilities, it may count the days a student is given an in-school suspension (ISS). In cases in which an ISS results in "exclusion from the regular education environment and from access to the district's educational programs and activities," it is more likely that the OCR will count ISS days for determining whether a significant change of placement had occurred.
- Factors:
  - Is there an opportunity to continue to appropriately participate in the general education curriculum?
  - Does the student continue to receive services specified on the child's IEP?
  - Does the student participate with nondisabled children to the extent that they would have in their current placement?

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## EXCEPTIONS to HONIG:

- ❖ WEAPONS
- ❖ DRUGS
- ❖ SERIOUS BODILY INJURY
- ❖ "SUBSTANTIALLY LIKELY" TO CAUSE INJURY TO SELF OR OTHERS

SCHOOL CAN PLACE STUDENT UNILATERALLY IN AN INTERIM ALTERNATE EDUCATIONAL SETTING (IAES) FOR 45 SCHOOL DAYS



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## SOME DEFINITIONS

### "WEAPON"

WEAPON, DEVICE, INSTRUMENT, MATERIAL, OR SUBSTANCE, ANIMATE OR INANIMATE, USED FOR, OR READILY CAPABLE OF, CAUSING DEATH OR SERIOUS BODILY INJURY, **BUT DOES NOT INCLUDE A POCKET KNIFE WITH A BLADE UNDER 2.5"**

### "DRUGS"

A CONTROLLED SUBSTANCE, UNLESS LEGALLY POSSESSED AND UNDER THE SUPERVISION OF A LICENSED HEALTH CARE PROFESSIONAL

### "SERIOUS BODILY INJURY"

SUBSTANTIAL RISK OF DEATH, EXTREME PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT, OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER, ORGAN OR MENTAL FACULTY



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**SCHOOL DISTRICT REQUESTS AN EXPEDITED HEARING TO SHOW:**

1. PRE-IAES PLACEMENT SUBSTANTIALLY LIKELY TO RESULT IN INJURY TO PUPIL OR OTHERS
2. THE IAES PLACEMENT IS APPROPRIATE
3. DISTRICT HAS MADE REASONABLE EFFORTS TO MINIMIZE THE RISK
4. THE IAES ALLOWS THE STUDENT TO
  - A. PARTICIPATE IN THE GENERAL CURRICULUM
  - B. CONTINUE TO RECEIVE ALL IEP SERVICES INCLUDING MODIFICATIONS TO ADDRESS THE BEHAVIOR IN QUESTION



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**Case Law: Substantially Likely to Result in Injury**

- Finding that an eight-year-old student's behavior (physical aggression to children and District personnel, and eloping behavior) put the student at-risk in the classroom, on the playground and in the school parking lot, the hearing officer in this case determined that continuing the current placement was substantially likely to result in injury. The hearing officer noted that the behaviors continued to escalate despite the district reviewing and revising of the student's goals, conducting a FBA and providing a BIP, adding additional aides and support staff to supervise and assigning a trained analyst to observe and assist the aide.



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**Case Law: Substantially Likely to Result in Injury**

- Finding that the student's anger and violent emotions were unpredictable and not remediated by the District's interventions including reviewing and revising the behavior goals, creating a FBA and BIP, adding highly skilled staff to support the student and placing the student in a separate isolated classroom, the hearing officer determined that the student was substantially likely to injure himself or others in his current placement.



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## Special Education Discipline

- Does the offense involve drugs or weapons?
- Did the student inflict serious bodily injury?
- Are there behaviors that are dangerous to self or others?

**IF THE ANSWER TO ALL THESE QUESTIONS IS NO, AND SCHOOL IS SEEKING AN EXPULSION, THEN NEED TO HOLD MDR**



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## MDR – FBA – BIP REFRESHER

### MDR REQUIRES:

- ✓ TEAM OF PEOPLE
- ✓ KNOWLEDGEABLE ABOUT STUDENT
- ✓ PLUS PARENTS
- ✓ MUST MEET AND CONSIDER ALL RELEVANT INFORMATION
- ✓ TO DETERMINE “RELATEDNESS”



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## REQUIREMENTS FOR “RELATEDNESS”

- ✓ CAUSED BY THE DISABILITY – or
  - ✓ DIRECT & SUBSTANTIAL RELATIONSHIP TO IT
- OR-**
- ✓ CONDUCT WAS “DIRECT RESULT” OF THE DISTRICT’S FAILURE TO IMPLEMENT THE IEP



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**IF THE ANSWER TO EITHER QUESTION IS YES**

- ✓ STUDENT CANNOT BE EXPELLED;
- ✓ FUNCTIONAL BEHAVIORAL ASSESSMENT MUST BE GENERATED, or, if one exists,
- ✓ THE BEHAVIORAL INTERVENTION PLAN MUST BE REVIEWED AND MODIFIED ACCORDINGLY

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**HYPOTHETICAL**

2. CAN TOMMY BE UNILATERALLY REMOVED FROM HIS PLACEMENT ON A TEMPORARY OR PERMANENT BASIS?

**ANSWER: UNDER THE IDEA, IF THE SCHOOL CAN MEET ONE OF THE EXCEPTIONS TO HONIG.**

**UNDER PUBLIC ACT 99-0456, THERE IS A TWO PRONG ANALYSIS AS TO WHETHER A SCHOOL CAN MAKE A DISCIPLINARY REMOVAL TO AN ALTERNATIVE SCHOOL.**

**DOES AN IAES MEET DEFINITION OF AN "ALTERNATIVE SCHOOL?"**

**IF SO, THEN 99-0456 CREATES AN ADDITIONAL REQUIREMENT FOR AN IAES PLACEMENT, SPECIFICALLY THAT, OTHER APPROPRIATE AND AVAILABLE BEHAVIORAL AND DISCIPLINARY INTERVENTIONS MUST HAVE BEEN EXHAUSTED PRIOR TO PLACEMENT.**

3. DOES THE SIZE OF THE KNIFE MATTER?

**ANSWER: YES UNDER THE IDEA, IN ORDER TO TEMPORARILY REMOVE TO AN IAES FOR 45 DAYS THE BLADE OF THE KNIFE MUST BE AT LEAST 2.5 INCHES IN LENGTH.**

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**HYPOTHETICAL**

TOMMY IS A 15-YEAR-OLD SPECIAL EDUCATION STUDENT WHO IS ELIGIBLE UNDER THE OTHER HEALTH IMPAIRMENT CATEGORY. THIS MORNING TOMMY WAS WALKING INTO THE MAIN ENTRANCE OF THE SCHOOL AND WAS STOPPED BY THE PRINCIPAL AND THE DEAN. BOTH THE PRINCIPAL AND THE DEAN SUSPECT THAT FIVE OTHER STUDENTS, WHO THEY ALSO STOPPED, WERE USING DRUGS BEFORE SCHOOL BEGAN. AS TOMMY ENTERED THE BUILDING AT THE SAME TIME AS THESE 5 OTHER STUDENTS, HE WAS STOPPED AS WELL.

DURING A SUBSEQUENT SEARCH OF TOMMY'S BACKPACK, THE ADMINISTRATION FOUND A KNIFE.

2. CAN TOMMY BE UNILATERALLY REMOVED FROM HIS PLACEMENT ON A TEMPORARY OR PERMANENT BASIS?

**ANSWER: IF THERE IS NO RELATEDNESS TO THE DISABILITY (AFTER MDR), SCHOOL CAN UTILIZE REGULAR EDUCATION DISCIPLINE, SUCH AS EXCLUSION. BUT, REMEMBER SENATE BILL 100 WILL APPLY!**

**ALSO IF STUDENT IS EXPELLED, STILL OBLIGATED TO PROVIDE FAPE.**

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## Public Act 99-0456

- An expulsion may be used only if other appropriate and available behavioral and disciplinary interventions have been exhausted and the student's continuing presence in school would either (i) pose a threat to safety of other students, staff, or members of the school community or (ii) substantially disrupt, impede, or interfere with the operation of the school.
- These determinations must be made on a "case by case basis."



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## Public Act 99-0456

- Public Act 99-0456 forbids school boards from instituting a "Zero Tolerance" policy that requires school officials to suspend or expel students for particular behaviors, unless otherwise required by federal or State law. Consequently, all school disciplinary cases must be reviewed on a case-by-case basis unless there is an existing statute stating otherwise. For the vast majority of school discipline cases (maybe all of them), this means that school districts may not apply zero tolerance policies.



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