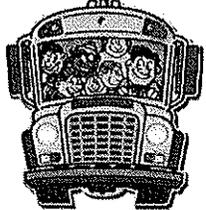


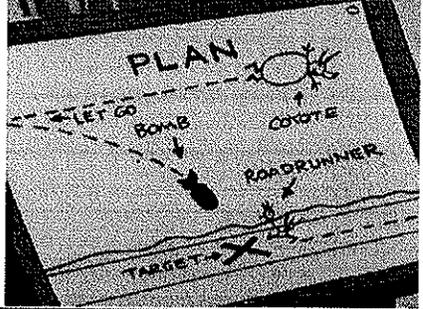
School Daze:
What Adults Working with Court-Involved
Children Need to Know About Nebraska
Education Law



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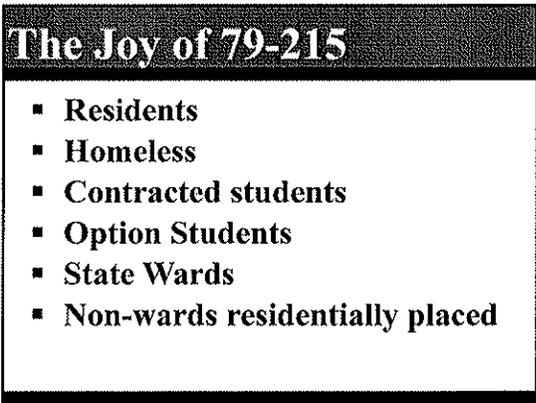
The Plan for Today



The Plan for Today

- Residency
- Attendance
- Disabled Students
- Student Discipline







Residents

- Students are residents of the district in which they reside
- Students are residents of any district where one of their biological parents reside

79-215(1) and (2)

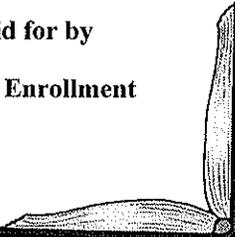
Homeless – Federal Def.

- lack a fixed, regular, and adequate nighttime residence
- Includes:
 - Living with family or in motel
 - Abandoned
 - awaiting foster care
 - Living in cars, parks, etc
 - Migratory children
 - Abused, homeless, not yet in system
 - Aged out of foster and homeless

McKinney-Vento Homeless Ass. Act

42 U.S.C. §11431 et. seq.

- Rights of Homeless students
 - Right to Remain in School of Origin
 - Transportation (paid for by district of origin)
 - Right to Immediate Enrollment (w/o Records)
 - Liaisons



L.R. v. Shecton-Highspire Sch. Dist.,
54 IDELR 155 (M.D. Pa. 2011)

- Student moved in with relatives after house fire
- School
 - refused to enroll because not a “resident”
 - Student not “homeless” because slept in a house every night
- Court: met definition of homeless in McKinney-Vento

Kid who moves during year

“A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year”

79-215(4)

Kids contracted to district

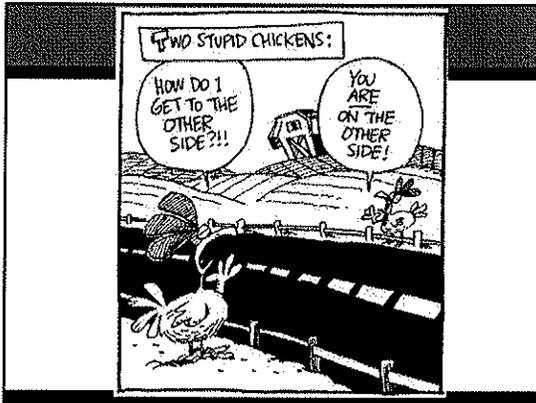
- By another district
- By parents of children who reside in a neighboring state

79-215(5) and (8)

Option Students

- Foster parents can't option
- Parents "eligible" for mileage if qualify for free lunch
- Option students placed out of district

79-215(5) and (8)
79-238
79-241



State Wards NOT in Foster

- Remains resident
- State pays if:
 - Placed in different district
 - Placed in institution with SpEd program
- Resident dist. obligated for IEP
- Resident dist. lists on NSSRS

79-215(9)

State Wards who ARE Foster

- Remains resident of home dist.
- NOT resident of foster district
- Should continue attending original school building unless “best interest determination”
- Schools should NOT enroll foster kids as a matter of course

79-215(9)

Fostering Connections to Success and Increasing Adoptions Act of 2008

- Amend Title IV (Parts B and E) of the Social Security Act
- Provisions promoting education stability and enrollment for youth in foster care
- Required states to change child welfare laws



Presumption: Same School

- The child’s case plan must include: “an assurance that the state has coordinated with appropriate local education agencies ... to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement”

42 U.S.C.A. 675(I)(G)(ii).

Presumption: Same School

▪ If remaining in the same school is not in the best interest of the child, the child's case plan must include "assurances by the State agency and the local education agencies to provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school."

42 U.S.C.A. 675(1)(G)(ii).

Comparing McKinney-Vento to Fostering Connections

- **McKinney-Vento Act (Education Law: NCLB)**
 - Best Interest Decision – SCHOOL BASED
- **Fostering Connections (Child Welfare: Title IV-E)**
 - Best Interest Decision – CHILD WELFARE-BASED



Foster Care Law Changes

- **Uninterrupted Scholars Act (fed)**
 - Allows schools to release ed records without parental consent to child welfare agencies
 - Schools can disclose records under court order without notifying parents

Non Wards Residentially Placed

- **If facility doesn't have ed. program**
 - resident dist. "shall contract" with facility dist.
 - IEP, etc. transfers to facility dist.
 - Unless agreement otherwise
 - If wrong district pays, correct district has to reimburse 110%
 - NDE appeal process

79-215(10)(a)

Non Wards Residentially Placed

- **If facility does have ed. program**
 - NDE pays
 - Resident dist. still responsible for IEP, NSSRS, etc.

79-215(10)(c)

Kid in Detention Facility

- State Pays
- Statute silent re “residency”
- Assume resident dist. still responsible for IEP, NSSRS, etc.

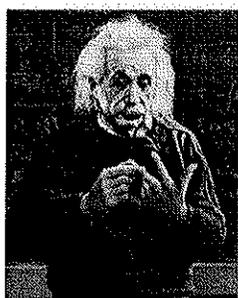
79-215(11)

Attendance



Attendance Law Changes

- Must review attendance policy with county attorney annually
- “May” report after 20 absences
- Collaborative plan to remove “barriers to attendance”
- Council on School Attendance



Student Attendance and NeSA Scale Scores Grade 4			
	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	105	110	103
Students absent greater than 20 days	84	89	80
Students absent less than 10 days	106	111	105
Students absent greater than 10 days	95	101	93

Student Attendance and NeSA Scale Scores Grade 8			
	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	104	108	100
Students absent greater than 20 days	83	82	68
Students absent less than 10 days	107	110	103
Students absent greater than 10 days	93	96	85

Student Attendance and NeSA Scale Scores Grade 11			
	Reading		Math
	2009-10	2010-11	2010-11
Students absent less than 20 days	102	104	98
Students absent greater than 20 days	72	72	58
Students absent less than 10 days	107	107	103
Students absent greater than 10 days	90	87	75

Absenteeism Policy

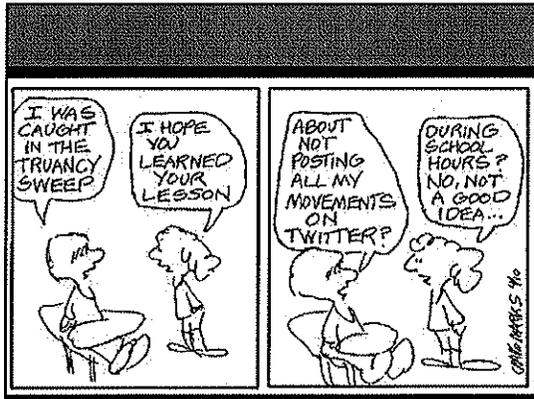
- Policy must include
 - Annual review with county attorney
 - How district will handle “excessive absences due to illness”
 - Circumstances and number of absences (or hourly equivalent) upon which district will render services “to address barriers to attendance

Services

- Communication with parent/guardian
- Meeting with “at least”
 - School attendance officer
 - School social worker
 - Parent/guardian
 - Administrator or designee
 - The child, if appropriate
- Collaborative Plan

Collaborative Plan

- “Shall consider, but not limited to”
 - Illness of the child (mental and physical);
 - Educational counseling;
 - Referral to community agencies for economic services;
 - Family or individual counseling; AND
 - Assisting the family in working with other community services.



Reports to County Attorney

- "May" report when
 - Collaborative Plan has not worked, and
 - Child has been absent more than 20 days
- Must notify child's family in writing before referring to county attorney
- "Illness that makes attendance impossible or impracticable shall not be the basis for referral"

Council on Student Attendance

- State Board Appointees
 - A member of a school board
 - Two unrelated parents of school children
 - A superintendent or designee
 - A student
 - A community or advocacy rep
 - A county attorney
- Appointees serve 3-year terms

Council on Student Attendance

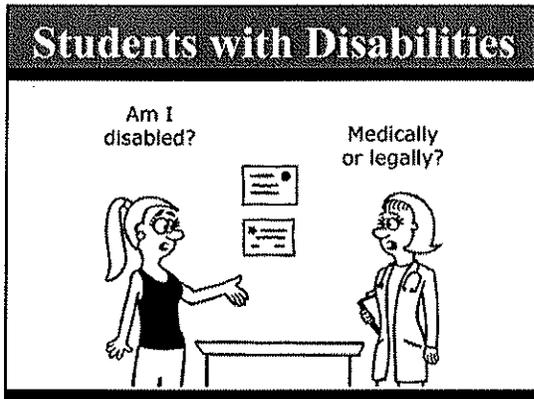
- **Other Members**
 - Probation administrator or designee
 - Commissioner of Education or designee
 - CEO of DHHS or designee

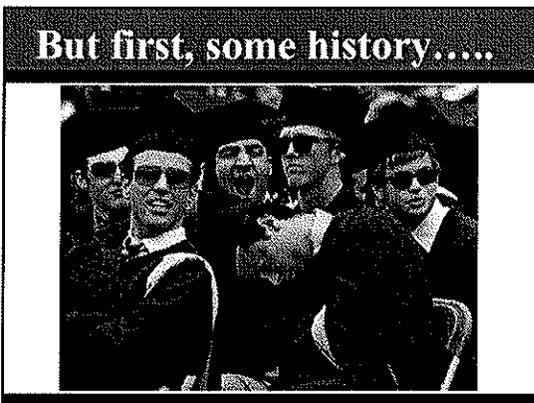
Duties of the Council

- **The Council “shall”:**
 - Study 79-527 data
 - Develop recommendations to reduce absenteeism
 - Consider whether district’s absenteeism policies are working
 - “Review all school district policies” and make recommendations

Syracuse City Sch. Dist.
37 IDELR 232 (SEA NY 2002)

- 7th grader refusing to attend school
- 45 school days: tardy 11, absent 21
- Grandma called guidance counselor when student refused to get out of bed
- Grandma claimed violation of school’s obligation to identify disabled students
- Hearing officer: absenteeism warning sign of emotional impairment, triggered “child find”





History of SpEd Laws

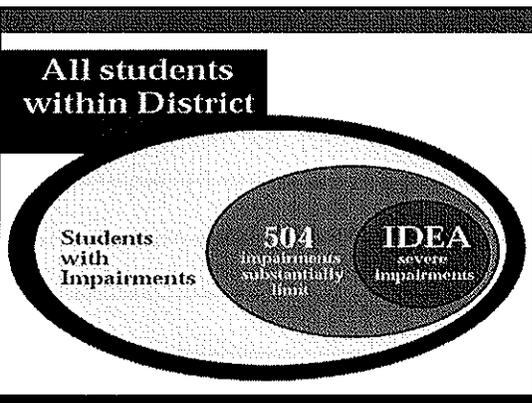
- 1965 – federal Office for Special Education Programs (OSEP) created
- 1973 - Section 504 of Rehabilitation Act enacted
- 1975 – Education for all Handicapped Children Act (EAHCA) enacted
- 1990 – Americans with Disabilities Act enacted
- 1990 – EAHCA amended, now called Individuals with Disabilities in Education Act
- 1997 – IDEA reauthorized
- 2001 – No Child Left Behind enacted
- 2004 – IDEA reauthorized

Interesting SpEd Trends

- Starting in 1973, students identified as disabled steadily increased every year
- Population of students with disabilities peaked in 2004-05 at 6.72 million, comprising 13.8 percent of the nation's student population
- In 2005-06 special-education participation numbers began to decline
- Currently 13.1 percent of all students nationwide are identified as disabled

Interesting SpEd Trends

- Categories of disabled students also shifting:
 - SLD declined from 6.1 to 4.9 percent of all students nationwide
 - Mental retardation dropped from 1.3 to 0.9 percent of students
 - Autism quadrupled from 93,000 to 378,000
 - OHI more than doubled from 303,000 to 689,000



IDEA Overview

- Eligibility
- Identification and Evaluation
- Individualized Education Plan
- Free Appropriate Public Education
- Least Restrictive Environment
- Parental Rights
- Discipline



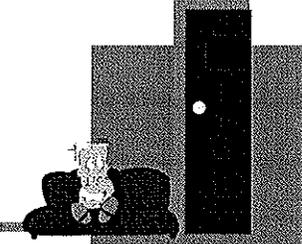
Eligibility

In order to receive special education services, a child must have a qualifying disability which affects education.



Identification and Evaluation

- Child find
- Evaluations
- Verification performed by "MDT"



IEP

What?

**Individual
Education
Plan**

IEP Team Members

- **Parents**
 - Bio/adoptive parents' rights
 - **Who is a Parent?**
 - Fosters
 - Guardian
 - Surrogate Parent
 - *In loco parentis*
 - **NOT HHS caseworker**

IEP Team Members

- **Parents**
- **Regular Ed. Teacher**
- **SpEd Teacher**
- **District Rep.**
- **Eval. Interpreter**
- **The student**
- **Private Sch. rep.**
- **Service Agency rep.**
- **Others who have knowledge or expertise**

IEP Team Meetings

- **How Often**
 - Upon verification
 - Before change in placement and
 - Annual Review
- **Scheduling**
 - Parents must be notified and schedule reasonably accommodated
 - May be held without parents

IEP Team Meetings (con't)

- **Developing Plan**
 - School can't "predetermine"
 - Can have draft plan
 - Parent input must be considered
 - Parents don't have veto power
- **Limits Permitted**
 - To length
 - To discussion of items already covered

IEP Contents

- **PLEP**
- **Measurable Annual Goals**
- **BIP**
- **Statement of SpEd & related services**
- **Extent of inclusion**
- **Postsecondary goals (16 and older)**
- **Transportation**
- **ESY**

FAPE

- Free Appropriate Public Education
- IEP must be reasonably calculated provide “some education benefit.”
 - does not require school to “maximize the potential”
 - not entitled to the “best education that money can buy”
 - Must be more than *de minimus*

LRE

- Least Restrictive Environment
- Determined by IEP team
- Preference is for inclusion
- Continuum analysis
- Restrictions permitted to meet
 - Disabled child’s needs
 - Needs of child’s peers

Parental Rights

- To be consent to or refuse evaluation and/or verification
- To be notified of and be present at IEP meetings
- To Participate in Making Decisions
- To bring an advocate to any meeting
- To challenge proposed decisions through a due process hearing

Transferring districts

- If before eval:
 - Old district must work with new
 - New must complete eval. w/i 60 days
- If after eval:
 - Old district must transfer files
 - New district must provide “comparable services” until new IEP
 - May adopt old IEP or create new

Student Discipline Primer



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

Definitions



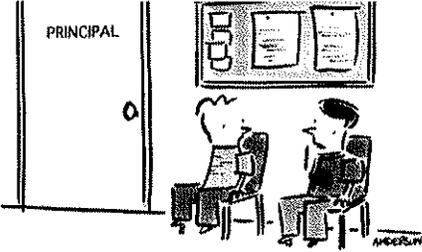
Definitions

- **Student Discipline Act – §§ 79-254-294**
(governs suspension, expulsion, emergency exclusion and mandatory reassignment of students)
- **Short-term suspension – exclusion from attendance in all schools in the system for up to 5 school days.**
- **Long-term suspension – exclusion from attendance in all schools in the system for 6 to 19 school days**

Definitions

- **Mandatory reassignment – involuntary transfer to another school in connection with disciplinary action**
- **Expulsion – exclusion from attending all schools in the system**
 - Typically for remainder of semester
 - Can be for 2 semesters
 - Can be for calendar year (firearms)

Minor Problems



"I wish we hadn't learned probability 'cause I don't think our odds are good."

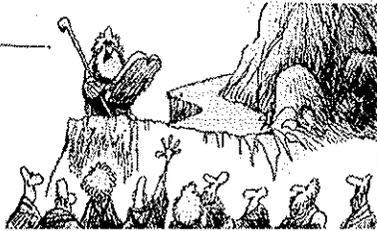
Minor Discipline

Actions that do not require special procedures under the Act (regular ed)

- Counseling of students
- Parent conferences
- Rearrangement of schedules
- Keeping student after school
- Restricting extracurricular activity (check board policy)
- Requiring student to get counseling or evaluation

The Rules

I DON'T CARE WHAT YOUR LAWYER SAID, THEY'RE NOT CALLED THE TEN RECOMMENDATIONS



Adopting School Rules

- Board and administration may adopt rules reasonably necessary to prevent interference with any educational function
- Teachers may adopt classroom rules (must not conflict with board policy)
- Rules must provide "clear notice" to students and parents

Distributing School Rules

- Rules must be distributed to students and parents at the beginning of the year and upon mid-year enrollment
- Rules must be "posted in conspicuous place" during the school year
- Rules can be changed mid-year; must be communicated to students and parents before implementation

Short-Term Suspension



"The Principal suspended me — School is the only place in the world where you can get time off for bad behavior."

Short-Term Suspension

- A short-term suspension is:
- Suspension from attendance at school for up to 5 school days
 - Suspension may include attendance at school functions at school and away from school

Basis for Short Term

Principal may impose a short-term suspension for:

- Conduct constituting grounds for expulsion in Student Discipline Act
- Any other violation of the school's rules regarding behavior

What Short-Term is Not

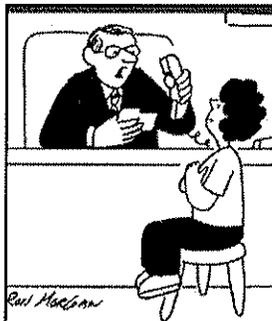
- NOT limited to misbehavior on school grounds, at a school event off school grounds, or in a school vehicle
- NO statutory appeal procedure to court
 - However, appeal is possible
 - *Walker v. Bradley*

Principal Investigates

- Principal must give the student:
 - Notice of charges
 - Explanation of evidence
 - An opportunity for student to present his or her version
- Principal determines suspension is necessary to:
 - Help the student
 - Further school purposes, or
 - Prevent interference w/ school

Principal Notifies

- Parents of suspension w/in 24 hours
- At time of suspension, notifies student and parents of school policy or practice on grading of makeup work



Basis for Long-Term Suspension or Expulsion

"You're being extradited to your Parents."

Long-Term Suspension/Expulsion

- Use of violence, force, coercion, threat, intimidation
- Damage or theft of property
- Causing personal injury
- Extortion
- Weapons
- Controlled substances, imitations, alcohol

Long-Term Suspension/Expulsion

- Public indecency
- Sexual assault. May expel for sexual assault off school grounds if prosecutor files charges of 1st or 2nd degree sexual assault
- Bullying
- Other Illegal Activities

Long-Term Suspension/Expulsion

- Repeated violation of rules
- NOTE: truancy and tardies are not supposed to warrant expulsion

Duration

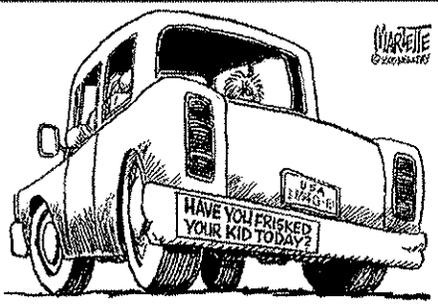
- Long-Term - 6 to 19 school days
- Expulsion - end of current semester
- 2 semesters if misconduct was w/in last 10 school days of semester
- Modification - school district may modify or terminate at any time

Basis for Two-Semester

- Using force to cause or attempt to cause personal injury
- Knowing, intentional use, possession or transmission of dangerous weapon other than firearm”
- Automatic review over summer



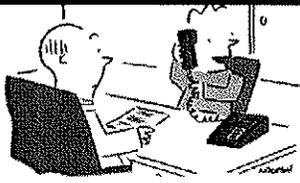
Firearm Offenses



Firearms

- Policy must require calendar year expulsion for possession use, or transmission of a firearm
- The superintendent or board may modify expulsion on individual basis
- School must report to NDE annually

Notice and Procedural Requirements for Long-Term Suspension or Expulsion



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

Notice to Student & Parents

- Description of misbehavior
- Rule that was violated
- Summary of the evidence
- Recommended consequence
- Other applicable consequence(s)
- Right to request a hearing
- Form to request a hearing

Notice to Student & Parents

- Description of hearing & appeal procedures
- Statement of right to:
 - Inspect student's academic and disciplinary records
 - Inspect any written statements
 - Know the names of administration's witnesses and substance of testimony

Hearing Rights

Student & parents have the right to:

- A hearing if timely requested
- Be represented at hearing
- An impartial hearing officer
- Cross-examine witnesses
- Present own evidence
- Appeal to board and district court

When is student expelled?

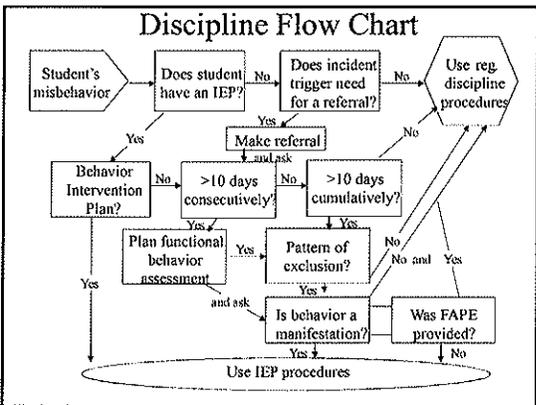
- The superintendent is limited by the hearing officer's recommendation
- A student is not expelled until:
 - Student and parents do not request a hearing within 5 days and the superintendent expels the student
 - The hearing officer recommends expulsion and the superintendent expels the student

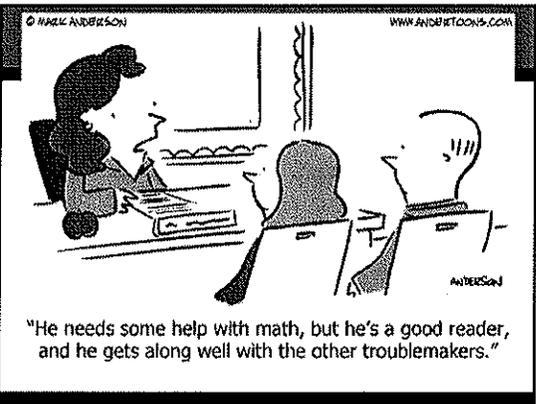
Special Ed. Discipline

- SpEd students may be disciplined
- First 10 days "free"
- After 10 days, must make "manifestation determination"
 - MDT team makes decision
 - Was misconduct "caused by, or had a direct and substantial relationship to, the student's disability"

Discipline (con't)

- **If misconduct IS manifestation**
 - no discipline
 - but IEP may be changed to address
- **If misconduct IS NOT manifestation**
 - may be punished like regular ed.
 - but “interim alternative educational setting”
- **Drugs, weapons, serious injury**





Through the Eyes of the Child Initiative
2014 Spring Lecture Series

School Daze:
What Adults Working with Court-Involved
Children Need to Know About Nebraska
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