

# School Safety, Threat Assessments and Special Education



## Balancing Student Rights and Security

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# Welcome and Objectives

- Introductions
- Objectives
  - Understand the legal intersections between school safety and special education
  - Explore how to conduct legally defensible threat assessments
  - Learn how to protect student rights while ensuring a safe school environment
  - Discuss real cases and decision-making frameworks for school leaders

# Why This Matters

- Increase in school-based threats and heightened public scrutiny
- Students with disabilities are often involved in or impacted by threat assessments
- Legal challenges can arise when safety decisions don't account for disability rights

How many of you have participated in a threat assessment involving a student with an IEP or 504 plan?

# Key Legal Foundations

- IDEA: FAPE, LRE, discipline protections
- Section 504: Equal access, nondiscrimination
- Title II of ADA: Public entities must accommodate disability while maintaining safety

**Note:** Schools must ensure due process while addressing imminent threats

# Educational Programming for IDEA Eligible Students

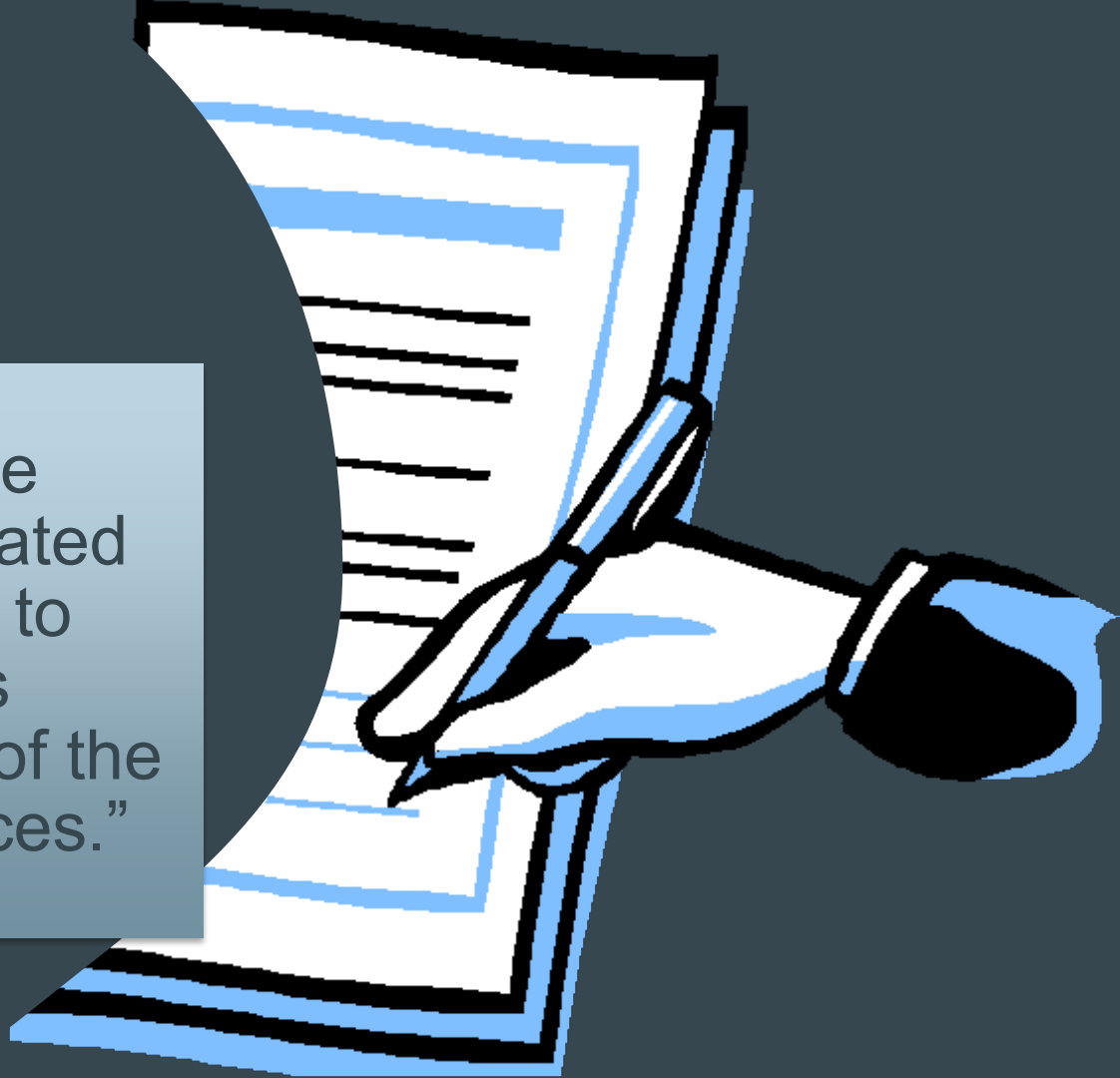
- FAPE is the provision of individualized special education and related services that permit students to receive meaningful educational benefit. The services must:
  - Be “provided at public expense, under public supervision and direction, and without charge;”
  - Meet the state standards, including the requirement of the IDEA regulations;
  - “Include an appropriate preschool, elementary school, or secondary school education in the state involved;” and
  - Be “provided in conformity with an [IEP] that meets the requirements of [IDEA regulations].”

## *Endrew F. v. Douglas County School District*

Endrew was diagnosed  
with autism and  
received annual IEPs

His IEP goals were  
carried over year by  
year without  
significant  
improvement

The IEP must be  
“reasonably calculated  
to enable a child to  
make progress  
appropriate in light of the  
child’s circumstances.”



Obligation to Provide Parents an  
Adequate Opportunity to Meaningfully  
Participate in the IEP Process

Least Restrictive Environment  
Requirement

# Child Find



IDENTIFY



LOCATE



EVALUATE

# Threat Assessment Basics

- Purpose: Prevent harm through multidisciplinary evaluation
- NOT discipline - it's a decision-making and intervention process
- Common models:
  - National Threat Assessment Center (“NTAC”)
    - 11 open-ended key questions
  - Comprehensive Student Threat Assessment Guidelines (“CSTAG”)
    - 5 step decision tree
  - Salem-Keizer Cascade (“SK”)
    - Sliding scale with anecdotal questions similar to NTAC but more guided support like CSTAG

# Procedural Safeguards

- Consider all required factors when determining a direct threat
- Implementation of safety measures
- Use Functional Behavioral Assessments (“FBA”) to inform safety supports
- Consider both the safety of others and the rights of the student
- Notice to parent/guardian

# Implementing an Effective Threat Assessment



Identifying any concerning behaviors of the individual and any changes in those behaviors.



Assessing the individual's behavior to determine the level of concern.



Implementing and managing intervention strategies for individuals to be directed towards the appropriate support services for case management, before the individual commits an act of violence.

# Components of a Legally Sound Threat Assessment

- Timely response to threat
- Multidisciplinary team including SPED representation
- Focus on behavior, not traits
- Written documentation of decision-making
- Develop and monitor safety plan
- Identify and address underlying causes of concerning behavior
- Comply with student privacy rights
- Engage families early and maintain open communication
- Establish check-ins and follow-up protocols
- Alignment with IDEA/504 requirements (e.g. behavior, supports, manifestation)

Do your current threat assessment teams include a special education staff member?

# Discipline vs. Disability - Where It Gets Risky

- Students with disabilities cannot be disciplined more harshly than their nondisabled peers
- Protections for students not identified as having a disability
  - Does the district have “knowledge” of a disability?
  - Impact of knowledge
  - Parental request for evaluation

# Discipline vs. Disability - Where It Gets Risky Cont.

- Removal beyond 10 days = potential change of placement
- Manifestation Determination Review (“MDR”) required for IDEA students
- 504 students also have protections from discriminatory discipline

A student with an emotional disturbance threatens another student. What are your legal steps?

# Removals from School Due to Threats



EMERGENCY  
REMOVALS



MANIFESTATION  
DETERMINATION  
REVIEWS



INTERIM ALTERNATIVE  
EDUCATIONAL  
SETTINGS



*HONIG* INJUNCTIONS

When do removals constitute a change in placement?

# MDR and Threat Cases

- Must determine if conduct was caused by or had a direct/substantial relationship to disability
- If yes → cannot discipline as general ed; must revise plan
- If no → apply discipline, but provide services per IEP/504

# Interim Alternative Educational Setting (Unilateral Placement)

- Use interim alternative educational settings (“IAES”) when needed for safety
- Carries or possesses a weapon
  - Weapons for IDEA purposes must be used for, or readily capable of, inflicting death or serious bodily injury
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance
- Inflicts “serious bodily injury” upon another person
  - Serious bodily injury is a high standard

## OCR and Legal Trends - *In re: Student with a Disability*, 117 LRP 20580 (SEA IL 04/06/17)

- Six-year-old first grade student
- Eligible for special education with a hearing impairment, other health impairment (ADHD and mixed developmental disorder), and emotional disturbance
- Student placement was in the general education classroom with an aide
- BIP targeted aggression, property destruction, and noncompliance
- Student had a crisis plan including physical restraint

# OCR and Legal Trends - *In re: Student with a Disability*, 117 LRP 20580 (SEA IL 04/06/17)

- Behaviors included:
  - Told peers “if you tell on me I will hurt you,” “if you don't play with me tomorrow I will hurt you,” “better watch it or I will hit you again”
  - Kicking, punching, biting, pinching, pushing, and gun gestures staff
  - Kicking, yelling, and spitting at students
  - Picking at her skin, picking her nose until it bleeds, and biting her own arm
- District filed a due process hearing asserting that maintaining the student's current placement in the district was substantially likely to result in injury to the student or others
- IAES granted as the district showed the student posed a danger to herself or others

# OCR and Legal Trends - *Z.H. v. Lewisville Indep. Sch. Dist.*, 65 IDELR 147 (E.D. Tex. 2015)

- Sixth grade student created a list of schoolmates he wanted to shoot
- The student developed the list over several days
- District determined that the creation of the list was not a manifestation of his recently diagnosed pervasive developmental disorder (“PDD”) or a result of the student’s ADHD
- MDR team discussed the PDD diagnosis
- District Court adopted the magistrate judge’s opinion holding that the district did not violate IDEA

# Best Practices for SD School Leaders

- Include special education staff on threat teams
- Never skip MDR or parent communication
- Use trauma-informed, disability-informed practices
- Keep documentation of every step

# Q&A/Discussion

- What cases are you seeing in your schools?
- How do you balance safety and compliance

Resources and Tools???