

## Discipline and the Special Ed Student

By Maureen Hook, Ph.D.

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A Justice Department report indicates that while special education students represent 12 percent of the nation's students, they comprise 19 percent of those suspended or expelled from school. The rights of students with disabilities are protected by both IDEA (Individuals with Disabilities Education Act) and Title II of ADA (Americans with Disabilities Act), and they cannot legally be subjected to long suspensions or expulsions for behaviors that are manifestations of their disabilities. Research indicates that "reprimands, detentions and exclusion" are ineffective means of modifying student behavior and that long absences from school increase dropout rates, especially for students with special needs. This, in turn, increases the likelihood of unemployment and continuing economic dependence.

Students with special needs face a wide range of behavioral challenges. A child with severe intellectual disabilities may require concrete illustrations in order to understand a school's discipline code. A young person with ADHD may be prone to outbursts. A child with autism may repeatedly bang on her desk.

As students with special needs have moved from self-contained classes into mainstream learning environments, they have often faced pressures that exacerbate problem behaviors. The transition from elementary to middle and high school can be particularly fraught. Through grade six, a child is likely to have only one or two teachers throughout the day, offering an opportunity to develop relationships and coping strategies. In the upper grades, though, students are faced with an array of instructors charged with evaluating them for credit-bearing coursework. They have tight schedules throughout the school day, and the flexibility of grade school has disappeared.

While there are many documented benefits to being taught—as required by law—in the least restrictive environment possible, a child with ADHD may find it excruciating to sit through a 90-minute algebra class, which can occur with block scheduling. With the introduction of national "core standards" and increased focus on test results, teachers sometimes find it difficult to provide the individualized attention that many students with disabilities require.

Funding cuts - at a time when the number of special ed students is ballooning -

## **Discipline and the Special Ed Student – Cont'd.**

Aggravating the situation. Affecting everything from teacher-student ratios to educator training to the number of school counselors on staff, tight budgets are making it more difficult to provide children with special needs with the supports they need in order to flourish.

### **Preventing and Coping**

Far from being ignored, disruptive conduct by a student with special needs should be actively addressed in the Individualized Education Plan (IEP), which is meant to encompass social and life skills, as well as academic objectives. Strategies for preventing, altering and compensating for disruptive behavior may be as important to a student's development as learning fractions.

Ideally, a "functional behavioral assessment" should be conducted to predict problem situations and develop interventions that will foster positive changes in conduct. Here, a parent's insights can be particularly valuable. The disciplinary approach should be highly individualized, and teachers must be prepared to provide the adaptations required by the student.

But what happens when "the plan" fails? It's important for parents to maintain ongoing relationships with educators, especially the school counselor, and they have the right to call an IEP meeting at any time. Progress towards meeting behavioral objectives should be reviewed often and modifications made, as necessary.

There are significant procedural requirements in place to safeguard a child with special needs from inappropriate disciplinary action while adjustments are being made, but schools do have the right to suspend a student for up to 10 consecutive days or 10 cumulative school days in a school year. During such periods, the district need not provide any educational services. Additional short-term removals may occur for "separate incidents of misconduct as long as the removals do not constitute a pattern." (8VAC 20-81-160) Removals beyond 10 days, however, require educational services to be provided. The type of service is determined by the IEP team which includes the parent. Frequently, homebound instruction is provided while other long-term options are explored.. If the special education student's behavior is dangerous (carrying a gun, possessing illegal drugs, or severely injuring another on school property), school personnel may place the student in another educational setting for up to 45 days. Educational services continue to be provided. . Although a student cannot be expelled for behavior that is caused by their disability, establishing that link can be complicated, requiring an assessment by qualified professionals. Consult your particular state's special education regulations for specifics. Ultimately, there is an appeal process should the parent disagree with the school's actions.

These protections only apply to students who participate in special education programs. Parents sometimes avoid reporting that a child has ADHD, fearing stigma, and it may not be apparent to educators that behavioral problems are related to a disability. If parents believe that their child has a disability that affects their learning, they should request an evaluation in order to begin the process of collaborating with the school to address the child's special needs.

New guidelines from the Departments of Justice and Education stress the importance of having schools regularly consult students and families with regard to their disciplinary practices. They encourage the establishment of "discipline teams" with diverse membership and the periodic conducting of needs assessments to evaluate their performance and identify needed changes. Such appraisals should be partly based on data collected on disciplinary incidents and attempts to prevent them. The guidelines also call for educator training in how to identify individualized alternatives for managing disruptive behavior.

This advice is excellent, but in a tight budgetary environment, fleshing out the framework can prove challenging. When I was working for the public school system a decade ago, we had a discipline team, but it wasn't available on a daily basis. Many schools have already adopted the approaches suggested by these guidelines, but they often lack the resources to optimize their effectiveness.

It will require much collaboration between schools, students, families and communities to realize the aspirations that educators and parents share for these vulnerable students. Recognizing and respecting the complexity of our task is a good beginning.

*Maureen Hook was a special education teacher and administrator in Virginia's public schools for 30 years and is now a legal assistant with [Hook Law Center](#). She holds a Ph.D in administration from Old Dominion University, Norfolk.*



## **Opossums – America's Marsupial – Part 2**

**Hook Law Center:** Kit Kat, I really enjoyed your last segment on the opossum. Can you tell us any more about them?

**Kit Kat:** Yes, there is certainly more to tell. For example, we all know the expression "playing possum." However, this is not a game for the opossum. When they resort to that behavior, they are really scared. Normally, when someone or something is threatening them, they will first try hissing or showing their teeth. It is only when those strategies don't work, that they resort to "playing possum." What is really going on is that they have fainted from the stress. If fainting doesn't work to ward off the intruder, they next excrete a greenish, stinky

substance from their anal glands and drool from their mouths to give the impression that they are dead. So I guess you could say the opossum is a superb actor! This subterfuge works some of the time.

Another interesting thing about the opossum is that they are very resistant to contracting rabies. They do so much less frequently than, say, raccoons or skunks do. There really isn't enough known at present why this is so. Also, the opossum does not hibernate, so if you are awake at night and have a spotlight on your house turned on, you just may see one ambling along in your backyard. My family has seen them in just this way, especially when the weather is warm. They are found in North America all the way from Mexico to Canada. What a fascinating creature!

([http://cityroom.blogs.nytimes.com/2014/01/24/opossums-are-loved-yet-hard-to-resist/?\\_php=tr...](http://cityroom.blogs.nytimes.com/2014/01/24/opossums-are-loved-yet-hard-to-resist/?_php=tr...))

## Upcoming Events

- Andrew H. Hook, will begin his series of speeches at The Ballentine with *Long Term Care Planning Part I (Estate Planning)* on **February 17, 2014**. This will be included as part of their family night, so dinner will be from 5:00-6:00PM and the presentation will be from 6:00PM-7:30PM. The address to the facility is 7211 Granby Street, Norfolk, VA 23505.
- United Way of South Hampton Roads is where Shannon Laymon-Pecoraro will be presenting some benefits and strategies for Estate Planning on **March 3, 2014**. This presentation starts at 6:00pm and the address is, 2515 Walmer Road, Norfolk, VA.
- Hook Law Center is a sponsor of the American Heart Association Ball which will take place on **March 8, 2014** at the Norfolk Botanical Gardens. For event information, contact Stephanie Phipps at 757-628-2608
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on **April 12, 2014**.

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