Special Education Students and Their Safety

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The rules that govern the treatment of special education students create special duties and unique responsibilities. What’s your "Special Education IQ?"
Implementing safe school policies becomes more complicated when it involves students who receive special education services. SROs are understandably concerned about the rules surrounding the discipline of special education students. On one hand, educators often assure the SRO that misconduct by special education students is solely a school matter governed by federal and state education codes that do not apply to law enforcement. On the other hand, an SRO is also told that the misconduct of a special education student constitutes a crime and that law enforcement should handle such incidents.

The special education laws can create problems for interagency collaboration if the rules are not fully understood. Should the SRO become involved in the discipline of such students? If so, then what laws will apply—the ordinary criminal code (or juvenile justice code) or some other set of rules? What special training, if any, is needed by an SRO to effectively assist educators in responding to threats and disruptions from special education students?

The rules that govern the treatment of special education students create special duties and unique responsibilities. Test your “Special Education IQ” on the following scenarios.

1. A 14-year-old special education student, with an Individualized Education Plan ("IEP"), approaches a teacher’s desk, and searches through papers on the desk. The teacher tells the student to stop. The student picks up a student desk and moves toward the teacher, as if to strike her. Other educators intervene. School officials call the police and have the student arrested. The student is placed in a holding cell, where he remains for over twenty hours while juvenile proceedings begin. Do the special education laws allow this?

2. A high school student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHS) and begins taking medication. Educators are told of the student’s condition. Unfortunately, the student is often disruptive on campus. The SRO begins arresting the student after each incident.

On one occasion, the student was charged with disorderly conduct for tapping his feet and fingers and being disruptive in class. On another occasion, he was charged with disorderly conduct for hitting another student with a rubber band, leaving a welt. In yet another incident, the student was charged with assault after throwing a bottle that struck another student. The parents file a lawsuit claiming that by assisting the school officials the police interfered with the student’s educational rights in violation of federal law. Are the parents correct?

3. A special education student at a public high school started a small fire in the school cafeteria. The school notified the police, who arrest the student and a delinquency petition is filed. The student is incarcerated at a juvenile detention facility because of the incident. The student’s IEP is based on an evaluation which concludes that the he has a “significant history of aggressive behavior with peers and is prone to starting fires.” His parents file a lawsuit claiming that the arrest violated special education laws. The Parents claim that educators must conduct a manifestation determination review before notifying the authorities where a disabled child commits a crime. Are the parents correct?

4. A teacher at a high school approaches the principal to report what the teacher thought was a drug transaction. The teacher identifies two participants, one of whom is a special education student. The students are taken to the principal, who determines through questioning that the special education student was attempting to sell drugs. The principal then calls the SRO. Once the SRO arrives, the principal questions and searches the students. The special education student is found with two homemade pipes and two small packages of marijuana. The SRO arrests him and files a petition of delinquency for possession of marijuana in school. The Parents file a lawsuit claiming that the Juvenile Court proceedings constitute an illegal change in educational placement under the special education laws. Are the parents correct?

The Special Ed Student on Campus

While each state has provisions governing the rights of special education students, these rules are based upon, and look to federal law. Occupying the field is the Individuals with Disabilities Education Act, (IDEA), 20 USC § 1401 and its accompanying regulations. Of some relevance as well are the provisions of § 504 of the Rehabilitation Act of 1974 (29 USCS § 794). Together the laws provide a framework for providing special education resources to students.

First, educators must educate students with disabilities in the least restrictive environment (LRE). 34 C.F.R. s 300.551. The phrase used to characterize this climate is a "free appropriate public education" ("FAPE"). 20 U.S.C. § 1412 (a) (1) (A). An education is deemed "appropriate" if it offers a child the opportunity to achieve his/her full potential commensurate with opportunities provided to other children, handicapped and non-handicapped. The main tool for delivering services is the Individualized Education Plan ("IEP"). The IEP consists of a summary of the child’s special needs, arrived at by a multi-disciplinary team. The IEP declares the objectives for the child’s education and specifies the services the child will receive. Most educators, in response to these rules, attempt to "mainstream" a special education student. "Mainstreaming" is an educational term that refers to the practice of placing students with disabilities in regular education classes with appropriate instructional support. Second, removal from the regular education classroom should occur only when absolutely necessary. An educator is justified in making such a decision if the result of including the student with disabilities in regular education is detrimental to the education of other students, or when there is conclusive evidence that mainstreaming will not be successful. For the educator, even when a lawful decision is made to separate a disruptive special education student from regular classes, some level of appropriate instructional support will be required.
Third, when misconduct is traceable to a special education student, educators cannot apply the code of conduct in the ordinary way. Generally, if the misconduct arises out of the disability or special needs of a student, the student must "stay put." Responses to the misconduct must be channeled through the IEP. The stay-put provision states:

Except as provided in subsection 20 U.S.C. § 1415(k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardians otherwise agree, the child shall remain in the then-current educational placement of such child, or if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed. 20 U.S.C. § 1415(j).

Linked closely to the stay-put rules is the manifestation hearing. Educators are required to conduct a manifestation hearing to determine whether the conduct for which the child is being disciplined was a result of the student’s disability. If school authorities decide to remove a child from the classroom, the IEP team must conduct a manifestation determination review within ten days of that decision. 20 U.S.C. § 1415(k)(4). If the school determines that the behavior was not a manifestation of the child’s disability, then the school may proceed to discipline the child as it would any other non-disabled student. 20 U.S.C. § 1415(k)(5). If the school determines that the behavior was connected to the child's disability, then the discipline imposed must comply with other IDEA rules and regulations. 20 U.S.C. § 1415(k)(1)-(2).

In 1997, Congress amended the special education laws to clarify the role of law enforcement and to give educators an exception to the stay-put rules. These clarifications are most important to the SRO. The changes state that:

1. Educators may, without triggering a change in a child’s educational placement, suspend a child with a disability for up to ten days without having to provide for an alternative educational setting. 20 U.S.C. § 1415(k)(1)(A).

2. Educators are not exempt from reporting criminal conduct by a child with a disability to the appropriate authorities. 20 U.S.C. § 1415(k)(9)(A).

“Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability” 20 U.S.C. § 1415(k)(9)(A). See also 34 C.F.R. § 300.529.

School officials should consider placing in every IEP language that acknowledges the possibility of referrals of criminal behavior to the police. This will give notice to all that complying with special education regulations does not alter the standards by which disruptive behavior will be investigated or addressed by the juvenile justice system.

In the I.Q. test, the answer is “Yes” to Question One. The answer is “No” to Questions Two through Four. In Question One, educators are required to report crimes to law enforcement and cannot claim an exemption using the special education laws. Valentino C. v. School District of Philadelphia, 2004 U.S. Dist. LEXIS 21114 (E.D.PA. 2004) (“reporting a child with a disability to the appropriate authorities pursuant to § 1415(k)(9)(A) does not constitute a change in educational placement and the provision does not require an administrative hearing before reporting a disabled child to the police.”).

In Question Two, the enforcement of the law does not unlawfully interfere with special education laws. S.A.S. v. Hibbing Public Schools, 2005 U.S. Dist. LEXIS 46649 (D. Minn. 2005) (“the fact that school officials may not have followed the agreed upon procedures before referring incidents to a police officer, does not bear on whether the officer acted appropriately.”).

In Question Three, the juvenile justice system is exempt from the special education laws. Joseph M. v. Southeast Delco School District, 2001 U.S. Dist. LEXIS 2994, 2001 WL 283154 (E.D.PA. 2001) (“Section 1415 (k) (9) (A) clearly places no requirement on schools to conduct a manifestation determination review before notifying the authorities where a disabled child commits a crime.”).

In Question Four, juvenile court proceedings are not a change in placement under special education laws. Commonwealth vs. Nathaniel N., 764 N.E.2d 883, 886-87 (Mass. App. Ct. 2002) (“Whatever merits there may be in the juvenile’s complaints about his school’s response to his claimed disability, this is not one of those rare cases that warrants overriding a District Attorney’s authority to decide whether to prosecute a case.”).

**NASRO 2009 Conference Keynote Speaker:**

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