



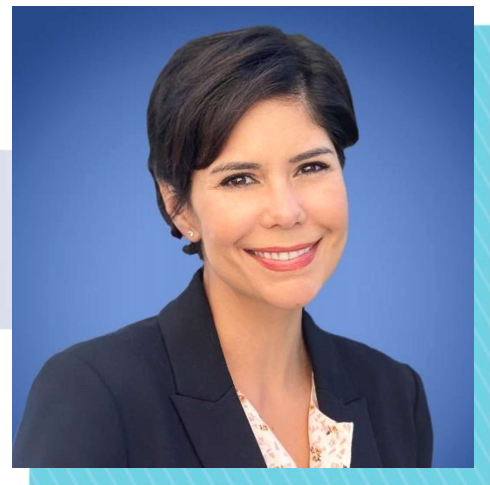
Addressing Student Discipline and Disability-Related Behavior

Presented by: Monica D. Batanero

Tulare County Office of Education
Law Seminars 2023-2024
March 14, 2024

Monica D. Batanero

Senior Counsel



Los Angeles Offices
mbatanero@lozanosmith.com
213.929.1066

Overview

Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office. Ms. Batanero advises educational institutions on student, special education and personnel issues.

Experience

Ms. Batanero is chair of the firm's Title IX Practice Area and specializes in Title IX compliance, as well as conducting complex investigations into claims of sexual misconduct and harassment (including Title IX), discrimination, bullying, retaliation, and other issues that may arise in an educational setting.

Ms. Batanero provides legal counsel to community college districts and K-12 school districts on day-to-day issues involving Title IX compliance, sexual harassment, discrimination/harassment, Section 504, IDEA, governance, Public Records Act, and student discipline. She regularly conducts workplace and school investigations involving alleged misconduct in violation of board policy and/or law, including Title IX, sexual harassment, professional standards, and code of student conduct.

Ms. Batanero has represented school districts in all phases of special education matters, including Individualized Education Plan meetings, resolution meetings, mediations, and due process hearings conducted by the Office of Administrative Hearings.

She also frequently develops and provides trainings to clients on Title IX, Section 504, IDEA, workplace and school investigations, sexual harassment prevention, student discipline, and first amendment issues.

Education

Ms. Batanero earned her Juris Doctor from the University of San Francisco, School of Law. She earned both an M.S. and B.S. in Gerontology from the University of Southern California.

Practices

Student
Special Education
Labor and Employment
Investigations

Title IX
Governance

Education

J.D., University of San Francisco, School of Law
M.S., University of Southern California
B.S., University of Southern California

Admissions

California

WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, San Luis Obispo, Los Angeles, and San Diego.

AREAS OF EXPERTISE

- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

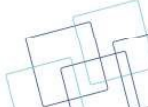
DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.

LS Lozano Smith
ATTORNEYS AT LAW

Addressing Student Discipline and Disability-Related Behavior

Presented by: Monica Batanero

Tulare County Office of Education
Law Seminar Series 2023-2024
March 14, 2024



1

Presenter

Monica D. Batanero



AT LOZANO SMITH
Monica D. Batanero is Senior Counsel in Lozano Smith's Los Angeles office and is the firm's Title IX Practice Group leader. Ms. Batanero advises educational institutions on student, special education and personnel issues. Ms. Batanero provides legal counsel to community college districts and K-12 school districts on day-to-day issues involving Title IX compliance, sexual harassment, discrimination/harassment, Section 504, IDEA, governance, Public Records Act, and student discipline. She regularly conducts workplace and school investigations involving alleged misconduct in violation of board policy and/or law, including Title IX, sexual harassment, professional standards, and code of student conduct.

CONNECT
mbatanero@lozanosmith.com
213.929.1066



2

2

Lozano Smith



Agenda

- Student Discipline: Role & Purpose
- Limits and Alternatives to Suspension and Expulsion
- Over of Special Education Discipline
- Interim Alternative Educational Setting
- Child Find
- RTI/MTSS and SSTs
- Final Considerations



3

3

Student Discipline: Role & Purpose

4

Schools Must Keep Students Safe on Campus

“All students and staff of primary, elementary, junior high, and senior high schools . . . have the inalienable right to attend campuses which are safe, secure, and peaceful.” (Cal. Const., art. I, § 28(f)(1).)

The Safe Place to Learn Act requires that all school districts improve student safety at schools and reduce all acts of discrimination, harassment, violence, intimidation, and bullying.

LS

5

5

Legislative Emphasis on Other Means of Correction

“It is further the intent of the Legislature that the Multi-Tiered System of Supports, which includes **restorative justice** practices, **trauma-informed** practices, **social and emotional learning**, and schoolwide **positive behavior interventions and support**, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.”


(Ed. Code, § 48900, subd. (w)(2).)

LS

6

6

Dual Duties: A Balancing Act



Rehabilitate

Safe educational environment

Proper Rules & Procedures

LS

7

7

Limits and Alternatives to Suspension and Expulsion

LS

8

8

Old World: Fast Track to Discipline



Expulsion

Disciplinable Offense

LS

9

9

New World: Step by Step, Day by Day

Teach and encourage daily civility in the classroom

Turn wrongdoing into "teachable moments"

Alternative means of correction

Disciplinary action

Expulsion

LS 10

10

New Approach to Discipline: Incorporate Other Means of Correction

Verbal Warning

Detention

Suspension

Expulsion

Other Means of Correction

LS 11

11

Education Code Emphasis on Other Means of Correction

- Use alternatives to suspensions for attendance issues. (§ 48900(w)(1))
- Replace suspensions generally with age-appropriate MTSS that are designed to address and correct the student's specific misbehavior. (§ 48900(v))
- Impose suspension only after other means of correction. (§ 48900.5)

LS 12

12

Using Alternative Means of Correction

Alternative means of correction must be used before:

- A student is suspended by a principal under 48911;
- A student is assigned to a suspension classroom under 48911.1;
- A teacher suspends a student under 48910.

Unless an exception applies:

- The student's presence causes a danger to persons;
- The student commits a 48900(a)-(e) offense; or,
- The student commits a mandatory expulsion offense.



13

Suspension Defined (48925)

▪ "Suspension" means removal of a pupil from ongoing instruction for adjustment purposes. However, "suspension" does not mean any of the following:

- Reassignment to another education program or class *at the same school* where the pupil will receive continuing instruction for the length of day prescribed by the governing board for pupils of the same grade level;
- Referral to a certificated employee designated by the principal to advise pupils; or
- Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the pupil to the principal or the principal's designee as provided in Section 48910.



14

Supervised Suspension Classroom (48911.1)

▪ A student may be placed in a supervised suspension classroom for the entire period of suspension if:

- Suspended from school for any reasons in Sections 48900 and 48900.2;
- Poses no imminent danger or threat to the campus, pupils, or staff, or if an action to expel has not been initiated; and
- Separated from other pupils at the schoolsite for the period of suspension in a separate classroom, building, or site for pupils under suspension.



15

Suspension by Teacher (48910)

- A teacher may suspend a student for the day of suspension and the day following for any acts enumerated in Section 48900.
- Teacher shall immediately report the suspension to principal and send student to principal for appropriate action.
- Student shall be under appropriate supervision.
- Teacher shall ask parent to attend a parent-teacher conference as soon as possible.
- Student shall not be placed in another regular class during period of suspension.



16

Suspensions & Expulsions – Other Means of Correction

Ed. Code § 48900.5(b)

Conference with student and parent/guardian

Referrals (counselor, psychologist, social worker, child welfare, etc.)

Intervention-related teams

Referral for a comprehensive psychosocial or psychoeducational assessment for SPED of 504



17

17

Suspensions & Expulsions – Other Means of Correction

Ed. Code § 48900.5(b)

Enroll in anger management program

Restorative justice program

Positive behavior support

After-school programs that address specific behavioral issues



18

18

But What About Detention?

- Detention after school
 - Students may be detained for disciplinary reasons up to one hour after the close of the maximum school day.
- Detention during recess
 - Recess detention not allowed.



19

AB 291 (2023) – Recess

Beginning in 2024-2025 SY, elementary school staff can no longer deny recess unless the student’s participation “poses an immediate threat to the physical safety” of the student or the student’s peers.

- If such a threat exists, staff must “make all reasonable efforts to resolve such threats and minimize exclusion from recess to the greatest extent practicable.”

Encourages the use of “other means of correction.”



20

SB 274 (2023) - The “Keep Kids in School Act”

- October 8, 2023, governor signs into law prohibition of willful defiance suspensions for students in 9-12.
- Legislative statement citing research at-risk students are more likely to be suspended for willfully defiant or disruptive conduct than their peers.
- Effective July 1, 2024, sunsets July 1, 2029.
 - Also extends sunset of prohibition on suspension of students in grades 6-8 to July 1, 2029.
- Authorizes staff to refer students to administrators for appropriate in-school intervention or supports.
 - Measures must be documented and placed in student’s record within 5 business days, or why no measures were taken.



21

AB 165 (2023) – Restorative Justice Practice

When a student commits an act of racist bullying, harassment or intimidation districts are encouraged to:

- Have both the victim and perpetrator engage in a restorative justice practice that is found to suit the needs of both the victim and the perpetrator;
- Regularly check on the victim to ensure that he or she is not in danger of suffering long-lasting mental health consequences;
- Require the perpetrator to engage in culturally sensitive programs that promote racial justice and equity and combat racism and ignorance.



22

Hypothetical – Restorative

Jordan is a 9th grade student that has a reputation for being the class clown. Most recently, his behavior has become quite disruptive as he has been intentionally making rude comments about his peers. While handing out math tests, Jordan’s math teacher asks Jordan several times to stop referring to Nathan as “nerdy Nate.” Prior to beginning the math test, Jordan’s math teacher finally sends him to the school’s “restorative room” with instructions to think about how his statements impact others. There is no instruction happening in the restorative room. Is this appropriate? What are facts are important for consideration?



23


Overview of Special Education Discipline

24

Fork in the Road:
Do Special Education and/or Section 504 Protections Apply?

Gen-Ed Discipline

Special Ed Discipline (MDR)



LS 25

25


Special Education Discipline - Who

Students Entitled to Discipline Protections		
Special education students (identified with a disability under IDEA)	Students not identified as having a disability under IDEA or Section 504 for whom District had "basis of knowledge"	Students with disabilities under Section 504

LS 26

26

Special Education Discipline



Special education student discipline protections apply whenever:

- (1) The District seeks to make a disciplinary *change in placement* for a special education student (IEP or Section 504); or
- (2) the District has "knowledge," *before* the conduct in question, that the student is a child with a disability.

LS 27

27

Ask yourself, is there a “change in placement”?

Changes in Placement

LS

28

28

Change of Placement

A change of placement occurs if:

- More than **10 consecutive school days** (recommendation for expulsion); or
- More than **10 cumulative days** of short-term removals and constitute a pattern.

LS

29

29

Change of Placement

- Bus suspensions
- On-campus suspensions
- Suspensions for less than one full school day
- Being “sent home early”

LS

30

30

Be Careful: Sending Students Home Early

Sending students home early requires due process protections.

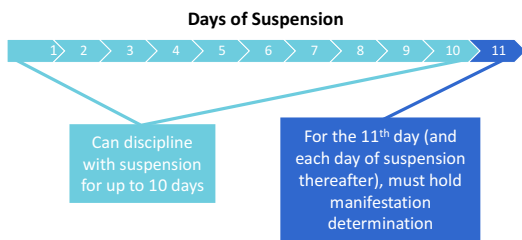
Case study *S.A. v. Hacienda La-Puente Unified School District* (C.D. Cal. 2017):

- Special education student with behavior needs is sent home around 11 or 12 each day, because his behaviors begin to escalate around that time. This occurred for ~140 school days.
- Student sues school, claiming disability discrimination affecting his right to an education under the California Constitution and Unruh Civil Rights Act.
- Each day is an Unruh Act violation, with statutory minimum of \$4,000 per violation.
- \$4,000 x 140 days = **\$560,000** in potential liability
- **But it gets worse!** School insurance carriers generally do not cover statutory damages such as in this case.



31

Special Education Discipline Timeline



32

32

CASE EXAMPLE: Failing to Provide 11th Day Services

- Student was assigned in school suspension or sent home due to behaviors more than 50 times in one school year. Most removals were for the remainder of the school day.
- IEP team found conduct was a manifestation of student's disability
- OAH determined each removal was a suspension, and the suspensions constituted a pattern such that, taken together, the student was removed for more than 10 cumulative days and was entitled to 11th day services. The district did not provide any instruction during removals from school, and student did not access educational services during in-school suspensions.
- OAH ordered 175 hours of one-to-one academic tutoring and 100 hours of mental health/social skills services to be used over two years.

If a district fails to provide 11th day services, it may be required to fund compensatory education to address any loss of educational benefit.



33

33

Is There a "Basis of Knowledge"?

What if a student is not yet eligible for special education?

Look for a **basis of knowledge** of student's potential disability.

- Parent expresses concern **in writing**
- Parent requests **evaluation**
- Teacher or other staff **expresses specific concerns** about pattern of behavior to supervisory personnel



34

34

Is There a "Basis of Knowledge"?

"Knowledge" does not exist when:

- Parent has refused to allow the District to assess the student;
- Parent refused special education services; or
- District assessed the student and found the student did not qualify for special education.



35

35

What Happens?

NO Basis of Knowledge

- No IDEA protections are available – proceed with discipline
- Parents may request an evaluation

Basis of Knowledge

- Conduct a manifestation determination if there will be a disciplinary change in placement
- Stay put



36

36

Request for Assessment When Discipline is Pending

Remember, the discipline timelines are still running while the special education assessment is pending.

Recommendation: have parent agree to pushing back discipline times, then complete assessment, and take findings into consideration accordingly.



37

Hypothetical

- 17-year-old male in 11th grade
- Suspended for fighting with another student; lost privilege to play football in homecoming game; referred for expulsion
- One day later, parent provided note to assistant principal of diagnosis of "intermittent explosive disorder"
- Student has behavioral history of aggressive outbursts, disruptiveness and defiance, and fighting with other students
- Never been assessed or referred for special education or 504 plan



38

Small Group Discussion

How should the District respond to parent?



39

Return to Hypothetical:
How Should the District Respond to Parent?

Option 1:

If no basis of knowledge, refuse to hold MD

Option 2:

- Hold MD and offer to asses in an expedited manner
- Hold IEP meeting to discuss eligibility
- If eligible for special education, hold another MD within the timeline. If not eligible, no need to hold another MD.



40

Interim Alternative Educational Setting ("IAES")

41

Unilateral Interim Alternative Educational Setting



A district may **unilaterally** remove a student to an IAES setting for no more than 45 school days when the student:

- Brings a **weapon** to school;
- Possesses or uses **illegal drugs** at school or solicited sale of a controlled substance; or
- Inflicted **serious bodily injury** to another person at school.



42

What is a “weapon?”

Weapon = a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches in length.

(34 CFR § 300.530(i).)



43

43

What are “illegal drugs” and “controlled substances”?

- Drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act
- Does not include legally possessed medication or alcohol



44

44

What constitutes “serious bodily injury”?

Any of the following constitutes serious bodily injury:

- Bodily injury which involves a substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

“Serious bodily injury” is not simply a cut or abrasion, bruise, burn, or disfigurement. Physical pain must be extreme, and any disfigurement, loss, or impairment must be protracted and obvious.



45

45

Court Approval for Interim Alternative Educational Setting

A district can file a due process complaint to request a change in placement if it believes that maintaining a student's current placement is *substantially likely* to result in *injury to the student or others*.



46

46

Issues for the ALJ to Consider

1. Is Student's placement at their home school *substantially likely* to result in *injury to the Student and/or others*?
2. Is the interim alternative educational setting proposed by the District *appropriate*?



47

47

Explanation of the Standard

Substantially Likely

- Student does not need to be "truly dangerous"
- Objective likelihood of injury
- Considers nature, extent, and frequency of student's conduct

Injury to Student or Others


- Hitting, shoving, biting, throwing, etc.
 - Does not require blood to be drawn
- Threatening
- Unwanted sexual contact
- Attempting to obtain weapon



48

48

Parental Consent to IAES



The IDEA **does not** require parental consent for placement in the IAES

The IDEA does not require that the District place a student in the IAES that parents prefer.

LS

49

49

Child Find

50

Locating Those Who Need Help

CHILD FIND: Affirmative and **ongoing obligation to identify, locate, and evaluate** all children with disabilities residing within the jurisdiction who are in need of special education and related services.

LS

51

51

Child Find: Do Not Neglect the Duty to Assess and Identify!

- Affirmative and ongoing
- Identify, locate, and evaluate
- Residing in your jurisdiction

Why is Child Find required?

When does your child find obligation end?



LS

52

52

Child Find v. Eligibility



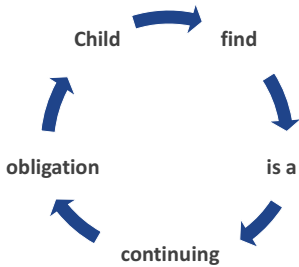
- Child find \neq eligibility.
- Child find is only meant to locate, screen and identify children who may need services.
- Child find does not guarantee that a student will be eligible for special education and related services.

LS

53

53

Child Find



The diagram consists of four words arranged in a circle: 'Child' at the top, 'find' at the right, 'is a' at the bottom, and 'obligation' at the left. Blue arrows connect them in a clockwise cycle: from 'Child' to 'find', from 'find' to 'is a', from 'is a' to 'obligation', and from 'obligation' back to 'Child'.

LS

54

54

Parent Request Triggers Child Find



- Required to help Parent put the request in writing.
- Shall assess.
- SST process cannot be used to delay timelines under IDEA.



55

55

Medical Information Triggers Child Find

- Medical diagnosis should equal a suspicion of disability.
- Medical diagnosis does not equal eligibility.
- Assess.



56

56

Child Find: Triggers

Clear signs that trigger the “child find” duty include:

- a pupil who is performing poorly or is below grade average in basic academic functions such as reading;
- failing grades;
- behavior and discipline problems;
- a significant amount of absences from school;
- concerns expressed by parents and teachers;



57

57

Child Find: Triggers

Clear signs that trigger the “child find” duty include (cont.):

- signs of substance abuse;
- a medical diagnosis of a recognized disability;
- psychiatric hospitalizations;
- suicide attempts; and,
- a request for an evaluation from the parents.



58

Child Find: Hypothetical

Did the District violate their child find obligation?

- 10th grade student excelled in school and maintained “A” grades in all classes, and mostly took advanced placement courses.
- Student’s anxiety and self-harm caused parents to consider inpatient mental health treatment programs.
- In May 2020, parent informed teachers and counselor that their teen was suffering severely from mental health issues and asked to excuse her from assignments.
- Teachers excused student but made no SPED referral.
- Student stopped attending classes and parents placed her in residential program.
- In October 2020, District began assessing student.



59

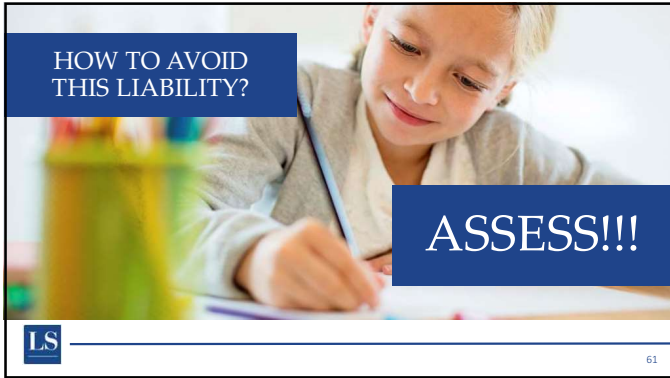
Child Find: Other Examples

What about?

- Student was absent > 20% of instructional days, and parents received only email notifications of absences — i.e., the District did **not** proactively communicate with parents.
- Student was absent > 20% of instructional days, and the district **did** proactively communicate with parents.
- Student demonstrates academic regression.
- Student demonstrates anxiety, depression, and/or physical aggression at home.



60



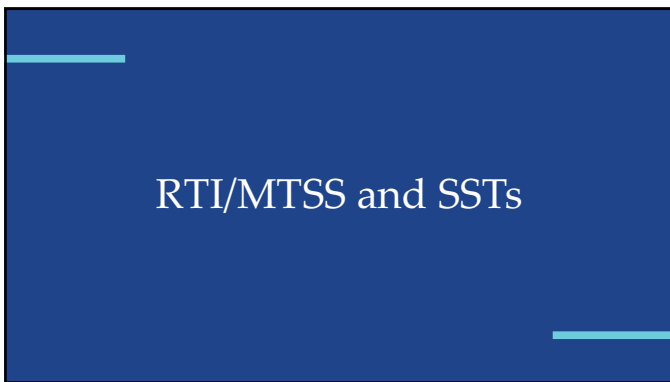
HOW TO AVOID THIS LIABILITY?

ASSESS!!!

LS

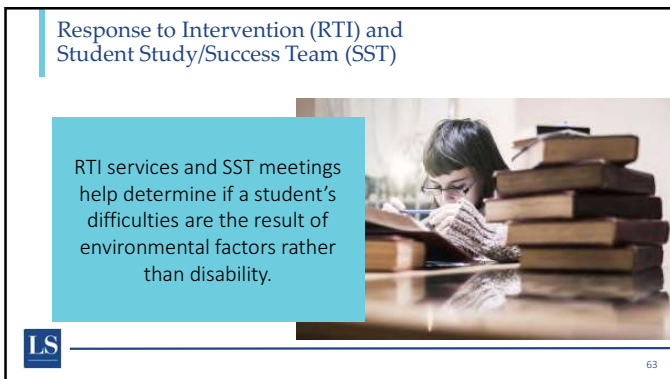
61

61



RTI/MTSS and SSTs

62



Response to Intervention (RTI) and Student Study/Success Team (SST)

RTI services and SST meetings help determine if a student's difficulties are the result of environmental factors rather than disability.

LS

63

63

Student Study/Success Team (SST)

The SST is an advanced step from a parent-teacher conference and usually consists of a parent, teacher, administrator, and support personnel from the school.

The SST provides everyone with an opportunity to share concerns and agree on family and school-focused interventions

(e.g. for attendance issues, the SST could agree to have the parents agree to setting an alarm clock or establish an earlier bedtime, while the school agrees to give awards or chart attendance on graphs to encourage attendance).



64

SSTs Do Not Replace/Toll 504/IDEA Requirements

- The SST process does not protect you from “child find” obligations.
- Cannot force a parent to attend an SST.
- Cannot force a parent to use the SST process before assessing.



65

Student Study Team (“SST”) Overview



- Early intervention tool.
- Referral may be made to use SST when a student is exhibiting difficulties with academics, participation, attendance, mental health, or behavior.
- Referral to SST may result in general education interventions, referral to assess for Section 504, or referral for a special education evaluation.



66

SSTs Per the Education Code

Generally, a pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. However.....



67

67

Evaluation and Response to Intervention ("RTI")

A school may delay evaluation/assessments while trying RTI ONLY if the school does not suspect the student will qualify and if the school informs the parent(s):

- That implementing the RTI will delay making an eligibility determination;
- Of the expected length of RTI trial period; and
- The conclusion reached at end of RTI period.

(Acalanes Union High Sch. Dist. (OCR 2009) 109 LRP 32284.)



68

68

Takeaways

- The District has an affirmative obligation to assess when a disability is suspected (behavior, social and/or academic).
- You can use the SST process concurrently with the 504/IEP assessment process so long as timelines are met.
- SSTs are not a replacement for a 504/IEP and do not toll 504/IEP timelines.



69


69

Final Considerations

70

Leading Staff to the "New World"

- A "whole school" approach
 - Social-emotional learning
 - Daily/weekly class morale-building activities
 - Visible parent inclusion and education
 - Early Direct Intervention
- Rehabilitation
 - Behavior contracts
 - Psychological and mental health supports
- Preventative Measures
 - Classroom climate
 - Efforts to build inclusivity




71

71

Preventative Measures

- Hold more SST meetings regarding behavior to include parents and identify behavior as an issue for them to help address.
- Facilitate community resources and partnerships to hold anti-bullying activities and events on campus.
- Provide instruction for students on civil discourse.
- Hold stakeholder meetings to discuss changes to student discipline.
- Hold meetings with teachers about students with disabilities and the law regarding providing the least restrictive environment.



72

72

Address School Climate

- Facilitate creation of and participation in student clubs.
- Emphasize anti-bullying in curriculum updates.
- Provide therapeutic and inclusive after-school programs.
- Teach students warning signs of bullying and sexual harassment, and how to tell an adult about it when it happens.
- Continue contact with students who have suffered trauma.
- Implement “classroom climate” teachings into the classroom and incorporate as part of a teacher’s evaluation.



73

73

Best Practices During Discipline Process



- Every student has the right to a high-quality education free from discrimination, harassment, violence, and bullying.
- Implementation of disciplinary strategies should be done fairly, consistently, developmentally appropriate, and equitably.
- Positive rehabilitative, not punitive discipline.



74

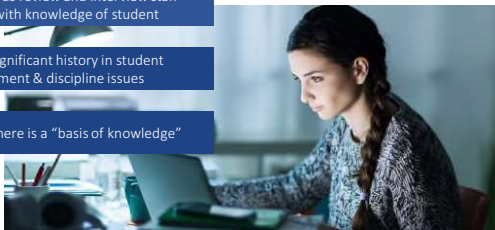
74

Role of District Administrators

Conduct records review and interview staff members with knowledge of student

Check for significant history in student management & discipline issues

Determine if there is a “basis of knowledge”



75

75

Putting This Into Practice

76

What Would You Do?


A 6th grade foster student with a limited discipline history is accused of taking and flushing down the toilet a WWII medallion that another student's great-grandfather was awarded. She brought the item to school as part of a classroom project on the conflict.

- The victim's parents notified the media and the community is outraged and calling for the student to be expelled.
- District is considering discipline under Ed. Code § 48900(g) - stole or attempted to steal school property or private property.
- The Superintendent asks you to handle the situation.

LS 77

77

What Would You Do?



- What additional information might you want to know?
- What might you recommend if this were a first violation of the Code of Student Conduct?
- What if student's discipline history also included stealing another student's cell phone?
- How does his being a foster student factor in?
- What if the female student previously teased the student for being homeless?
- What if the student has a disability, is eligible under OHI for ADHD with impulsivity?

LS 78

78

What Would You Do?

An 8th grade student on an IEP for ED, with no previous violent behavior, has lashed out and attacked her aide. Injuries include a black eye and pulled out hair. The student recently transferred to the school with one suspension for giving away her prescription medication, with no documented other means of correction.

- The aide is threatening to quit and her union is demanding the student be disciplined.
- District is considering discipline under Ed. Code § 48900(a)(1) - caused, attempted to cause, or threatened to cause physical injury to another person and 48915(a)(1)(e) assault or battery of a school employee.



79

79

What Would You Do?



- What additional information might you want to know?
- Do special education protections apply?
- Can the district suspend if this were her first offense?
- Is expulsion a possibility?
- Would suspension or expulsion be effective?
- Is a manifestation determination required?
- Should the student be reassessed?
- What if the student had a BIP that the aide did not implement leading up to the incident?



80

80

Questions



81

81



Thank you from Lozano Smith.

Together with you, we're impacting communities and lives through:

- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships

#BlueHatProject
#LozanoSmithFoundation



82

82



Subscribe on your favorite app or device.



Stay informed on your time.

Lozano Smith Podcast

lozanosmith.com/podcast

83

For more information, questions and comments about the presentation, please feel free to contact:

Monica Batanero
Senior Counsel

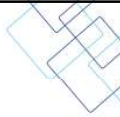
Tel: 213.929.1066
mbatanero@lozanosmith.com

Or any of the attorneys in one of our 8 offices.




84

84



@LozanoSmith

Disclaimer: These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2024 Lozano Smith. All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.



Disclaimer:

These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2024 Lozano Smith

All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.