

2024 MASA/MOSPRA Spring Conference

**We are Way Past KHFOOTY: Legal Issues Arising with
the Increase in Student Discipline Incidents**

Emily Omohundro and Drew Marriott



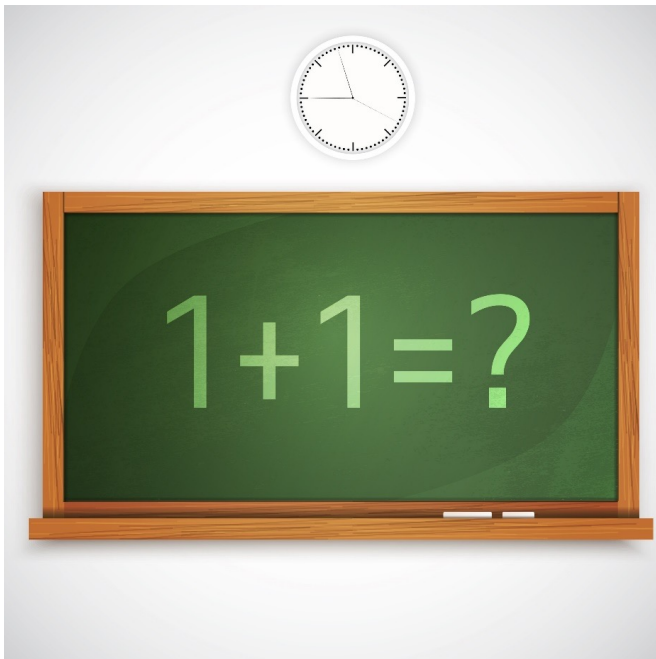
Discipline Trends

- Threats in person and on social media
- Weapons in school
- Off-campus crimes/juvenile charges
- Younger students and violent/disruptive behavior
- Increased special education components



Back to Basics

- Investigating incidents and gathering evidence
- Building-level due process
- Referral for long-term disciplinary action
- Long-term options and educating during OSS
- Expulsion



Student with Disabilities

- Underlying misconduct/behaviors
 - Younger ages
 - Reason to suspect disability?
 - Referral in process?
 - Existing IEP or 504?
- Manifestation Determination
 - A student is suspended *more than* 10 school days in a *school year* and a pattern exists; or
 - A student is suspended *more than* 10 school days for one infraction.
 - Hold within 10 school days of the decision to change placement (date you decide to suspend for more than 10 days)

Student with Disabilities

(Continued)

- Looking for:
 - Whether the behavior was caused by or has a direct and substantial link to the disability
 - Look at the Present Levels in the IEP (make sure they're updated!), and any understanding of the team members about *how* the disability manifests in this student
 - Whether the behavior was caused by a failure to implement the IEP/BIP
 - Any time we fail to implement something related to behavior (e.g., having a para, implementing interventions, etc.), it will be hard to defend in a challenge
- If the answer to either is **YES**:
 - Either:
 - Conduct a functional behavioral assessment, unless the [district] had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - If a BIP already has been developed, review the BIP and modify it, as necessary, to address the behavior.
 - And, return the child to the placement from which the child was removed, unless the parent *and* the [district] agree to a change of placement as part of the modification of the BIP.



Student with Disabilities

(Continued)

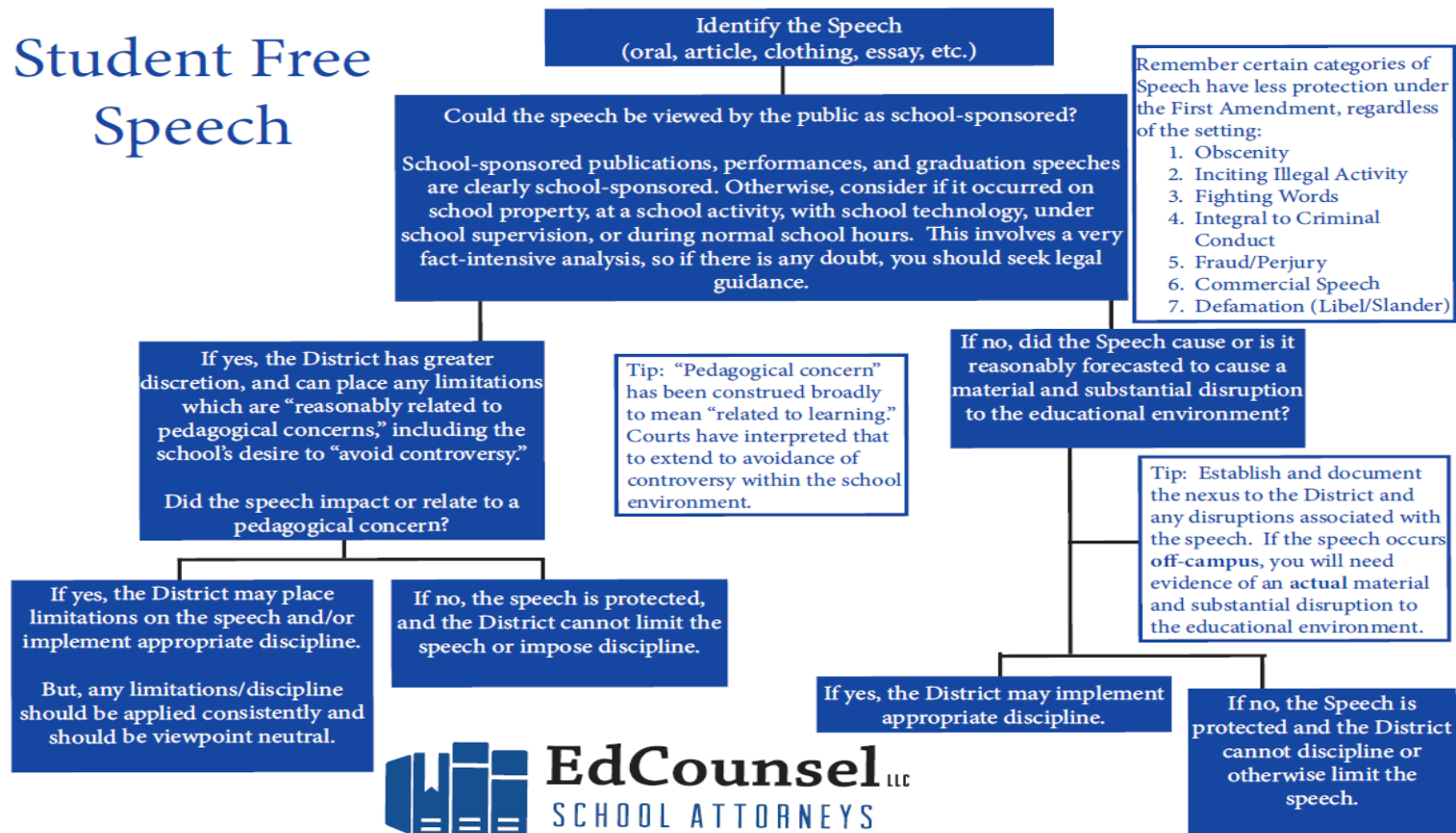
- If the answer to BOTH is NO:
 - Then the child is subject to the same sanctions for misconduct as a child without a disability. However, the child must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, **and** to progress toward meeting the goals set out in the child's IEP.
 - *i.e.*, access to regular education and special education instruction/services.
- MDs must occur *even if* the student's conduct carries a mandatory suspension (*i.e.*, weapons).

True Threats

- As a general rule, the First Amendment prohibits government actors from regulating or disciplining persons based solely on their speech.
- However, protections do not extend to “true threats of violence”.
- A “true threat of violence” is a statement that a reasonable recipient would have interpreted as a serious expression of intent to harm or cause injury to another.
- Will also look at whether the speech creates a material and substantial disruption to the educational environment.
- Nuances:
 - First Amendment protections
 - Social media and off campus conduct
 - Speech vs. Conduct
 - Communications: Victims (Parents); Perpetrator (Parents); Law Enforcement; Public/Media



Student Free Speech



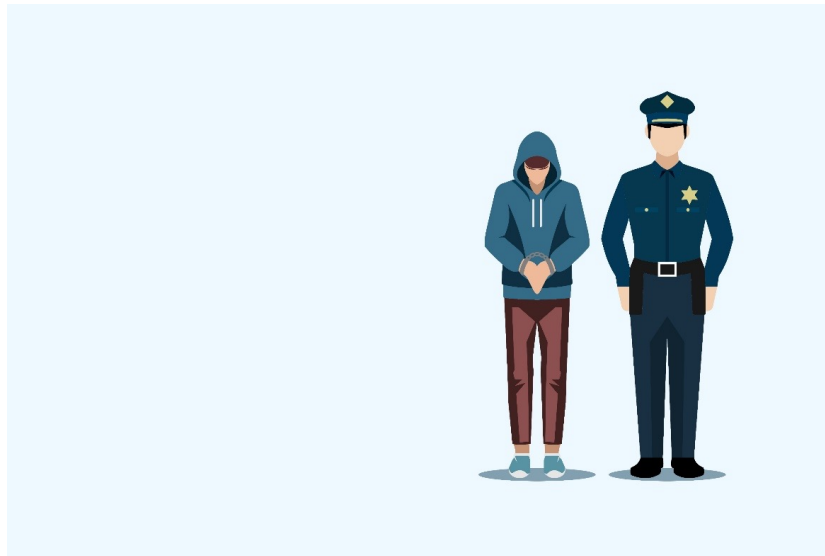
Weapons in School

- Safe Schools Act vs. Discipline Policy
- Policy language regarding suspensions
- How/when the Board is involved and due process
- Public relations regarding incidents



Crimes Committed Off Campus

- Acts of School Violence vs. Do not readmit or enroll v. Reporting requirements



Discipline Incoming!

- Enrolling students with criminal background
- Enrolling students while on suspension from another school



Litigation Trends

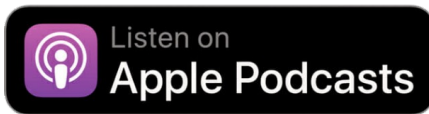
- Increase in student due process complaints with connections to discipline or perceived discipline.
- Student off-campus speech litigation
 - Student social media posts evidencing prohibited conduct
 - Student statements off campus relating to threats of school violence
- Transgender Restrooms, discipline for not following established plans for restroom accommodations
- Recent Appellate Cases

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