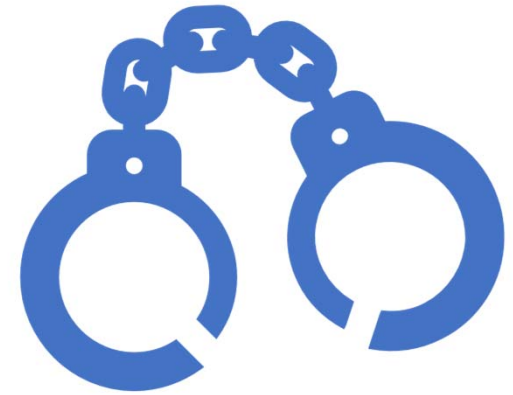


Students should feel safe, welcome, and be treated with dignity at school. Despite significant growth in our understanding of student behavior, discipline and the presence of law enforcement are still realities for students. This session will examine these concerns and discuss compliance with relevant laws and new legislation.

## School Safety: Behavior Response, Discipline, and Involvement of Law Enforcement

October 8, 2018 – Exceptional Children Conference

Rebecca Heaton Hall, Esq.  
John Valantassis, Esq.  
Moderated by: Cathy A. Skidmore, Esq.



# School Safety: Behavior Response, Discipline, and Involvement of Law Enforcement

- Behavior Response
  - Reactive vs. Preventative
  - Systems-Level Prevention/Intervention
  - Federal Laws
  - State Laws
- Discipline
  - Rethink Discipline Movement
  - Comparison of Pa to Nation
  - The Basics of Pa Special Education Discipline
- Law Enforcement
  - Relevant Terms
  - Safe Schools
  - Memorandum of Understanding
  - Mandatory/Discretionary Notification
  - Parent/Guardian Notification
  - Students with Disabilities
  - Privacy Rights
  - Act 44



School Safety:  
Behavior Response and  
Discipline

# School Safety: Behavior Response



# Reactive

- What does this word mean to you?
- Why?
  - Why are systems reactive?
- Are we born this way?
- Is this learned behavior?
- Is it effective?

(Dirsmith & Hall, 2018)

Prevention:  
An Ounce of  
Prevention is  
Worth a  
Pound  
of Cure

Reactive measures and policies are necessary, schools are urged to implement preventative measures to avoid future occurrences of incidents  
(Dirsmith, 2018).



Prevention can take many forms

## Systems-Level Prevention/Intervention

- **Defining Systems of Supports in Schools**
  - Comprehensive academic and behavioral prevention and intervention framework, often termed Multi-Tiered Systems of Support (MTSS) which encompasses Response to Intervention (RTI) and School-Wide Positive Behavioral Interventions and Supports (SWPBIS)
  - MTSS
  - RtI (RtII)
  - SWPBIS
    - Components of SWPBIS contribute to a school climate where all students feel welcomed, supported, and physically and emotionally safe (Dirsmith & Hall, 2018).
    - Walker et al. (1996) described public health model for a school-wide approach to preventing and addressing problematic behaviors (Walker, Ramsey, & Gresham, 2003).

(Dirsmith & Hall, 2018)

Systems-Level  
Prevention/Intervention,  
cont.

- Establishing effective school-wide practices
  - Crucial in ensuring social and emotional growth, safe and positive school climate, academic success
- SWPBIS-systematic implementation of a three-tiered approach to problematic behavioral prevention and intervention
- SWPBIS
  - Improve a number of important educational and school-wide outcomes
  - Decreases in problematic behavior, office discipline referrals (ODRs), suspensions, and expulsions

(Dirsmith & Hall, 2018)

8





Laws are generally enacted as a reaction to an incident. However, despite their reactive nature, laws aim to prevent future reoccurrences of the incidents they target.

Laws are a  
Hybrid of  
Reactive and  
Preventative  
Measures

# United States: Federal Commission on School Safety



- On March 12, 2018, the President created the Federal Commission on School Safety
  - Goal of the Commission: Provide actionable and meaningful recommendations to keep kids safe at school
  - Why was the Commission formed: The United States has seen a rise in school violence including school shootings.
  - The Commission will explore:
    - *Social emotional support,*
    - Recommendation on effective school safety infrastructure,
    - Discussion on minimum age for firearms purchases, and
    - The impact that videogames and the media have on violence
- 83 FR 26040

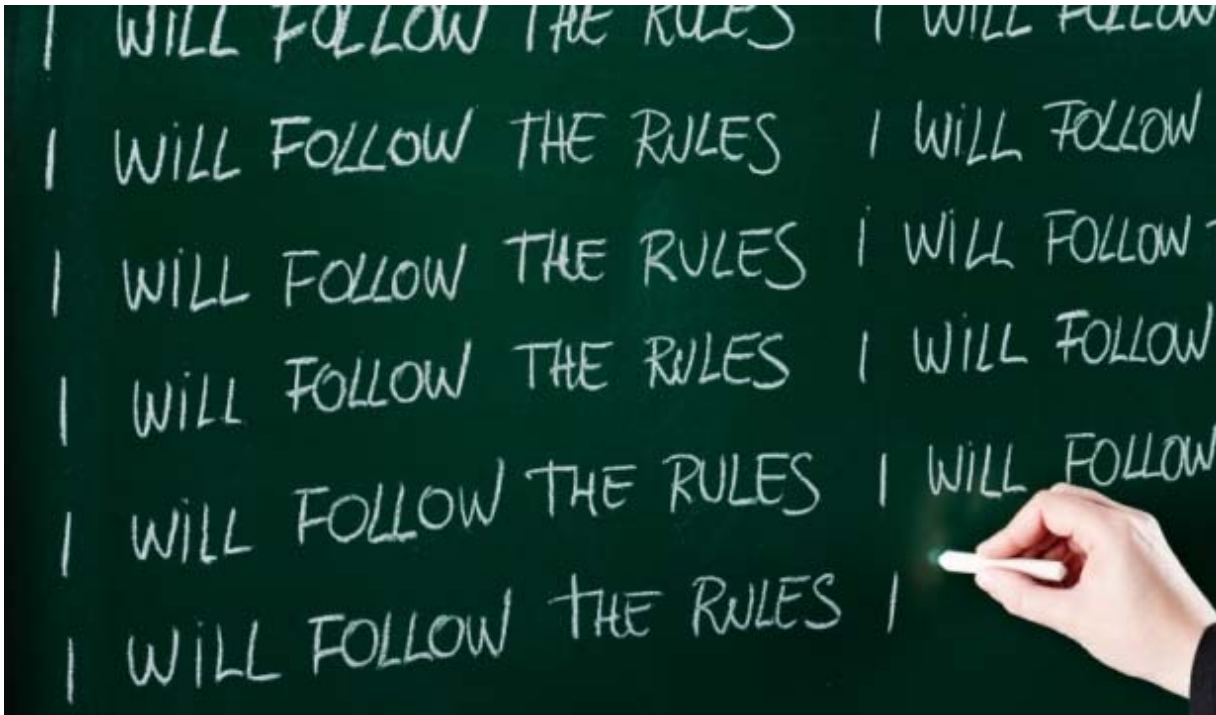
(Dirsmith & Hall, 2018)

## Selected Pa Laws Related to Safety and Behavior at School

- Bullying (24 P.S. 13-1303.1-A)
- Office for Safe Schools (24 P.S. § 1302-A)
  - Of note, is that 24 P.S. § 1302-A permitted the Office for Safe Schools to establish grants to “[f]und programs that address school violence” such as “school-wide positive behavior support that includes primary or universal, secondary and tertiary supports and interventions in school entities.”
- Response and Handling of a Student with a Disability (22 Pa. Code § 10.23)
- Background Checks (24 P.S. § 111)

## Selected Recent Legislation Passed in Pa

- Safe2Say (2018 Act 44)
  - Modeled after Safe2Tell created in Colorado in 1999 after the Columbine school shooting
  - Anonymous reporting of any threat to school safety
- Senate Bill 1142
  - Intergovernmental agreements for school security and safety



## School Safety: Behavior Response of School Administrators - Discipline

- Within the framework and confines of federal and Pennsylvania law, schools are empowered to implement methods of behavior prevention (See 24 P.S. § 5-510; 24 P.S. § 2-211).
- School discipline is a reactive approach to an incident that has occurred.
- The Million Dollar Question: Does discipline drive/shape behavior?

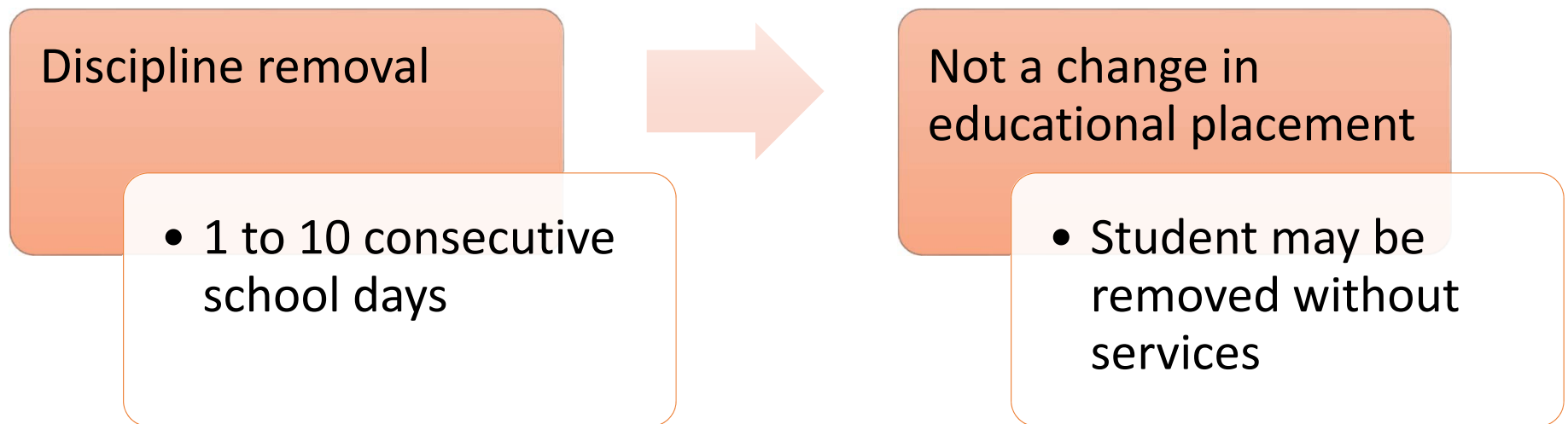
# Rethink Discipline

- Within recent years, a shift in mindset has occurred of many lawmakers, school administrators, parents, and community members regarding the lack of effectiveness of punitive school discipline.
- Former President O’Bama began the “Rethink Discipline” program with a goal “[t]o support all students and promote a welcome and safe climate in schools.”
  - Goals:
    - Eliminate exclusionary discipline in early education programs
    - Placed disproportionate disciplinary practices at the forefront

## Where Does Pa Stand in School Discipline?

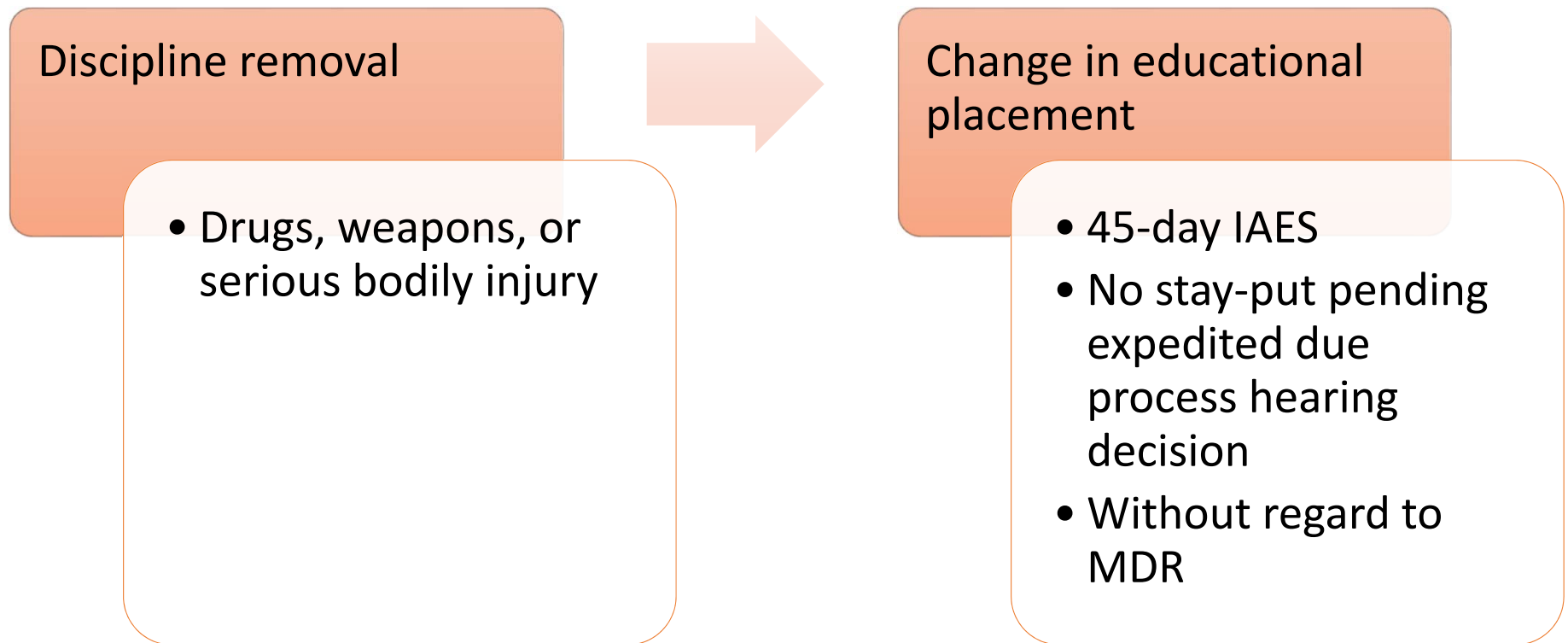
<b>TYPE OF DISCIPLINE</b>	<b>AMOUNT ISSUED</b>	<b>PA'S NATIONAL RANK</b>
Single-day out-of-school suspension	14,780	5 <sup>th</sup> highest
Multiple-day out-of-school suspension	97,711	9 <sup>th</sup> highest
Expulsion without educational services	36	18 <sup>th</sup> highest
Expulsion due to zero tolerance policies	111	9 <sup>th</sup> highest
School-related arrests	1,317	2 <sup>nd</sup> highest
In-school suspensions	18,902	9 <sup>th</sup> highest
Expulsions with educational services	399	9 <sup>th</sup> highest
Referrals to law enforcement	4,036	3 <sup>rd</sup> highest

# Special Education Discipline: 10-Day Rule

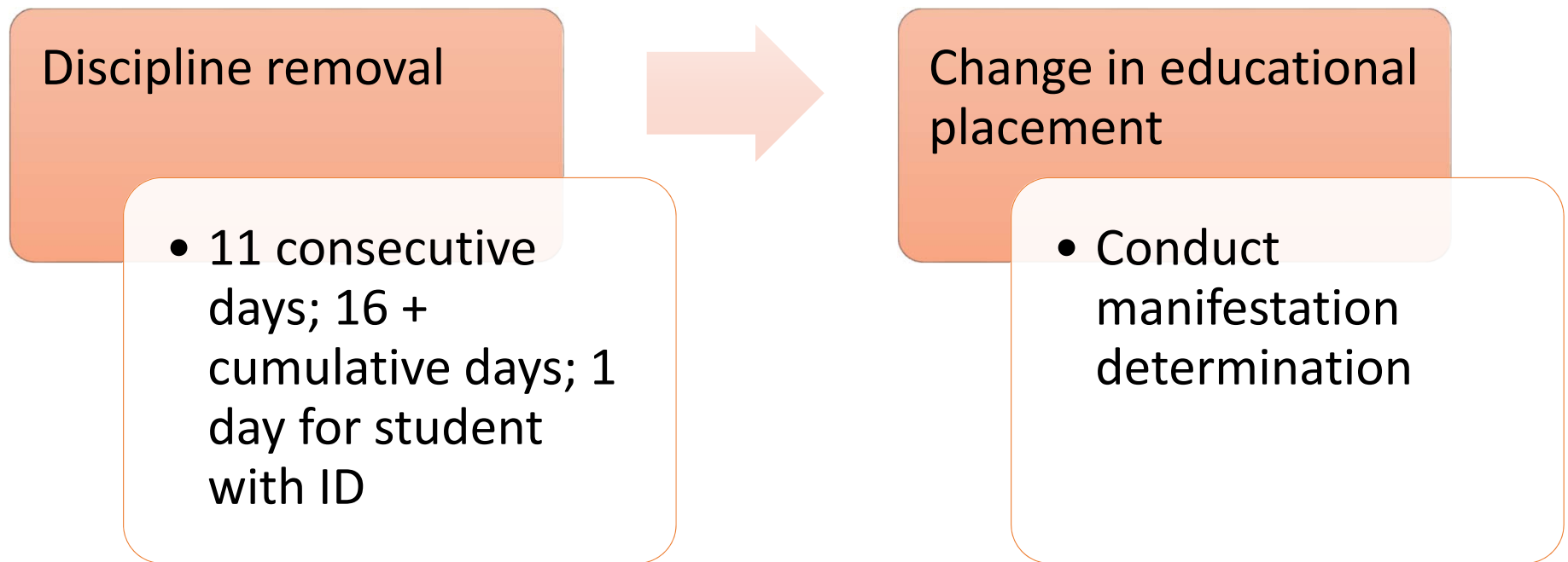




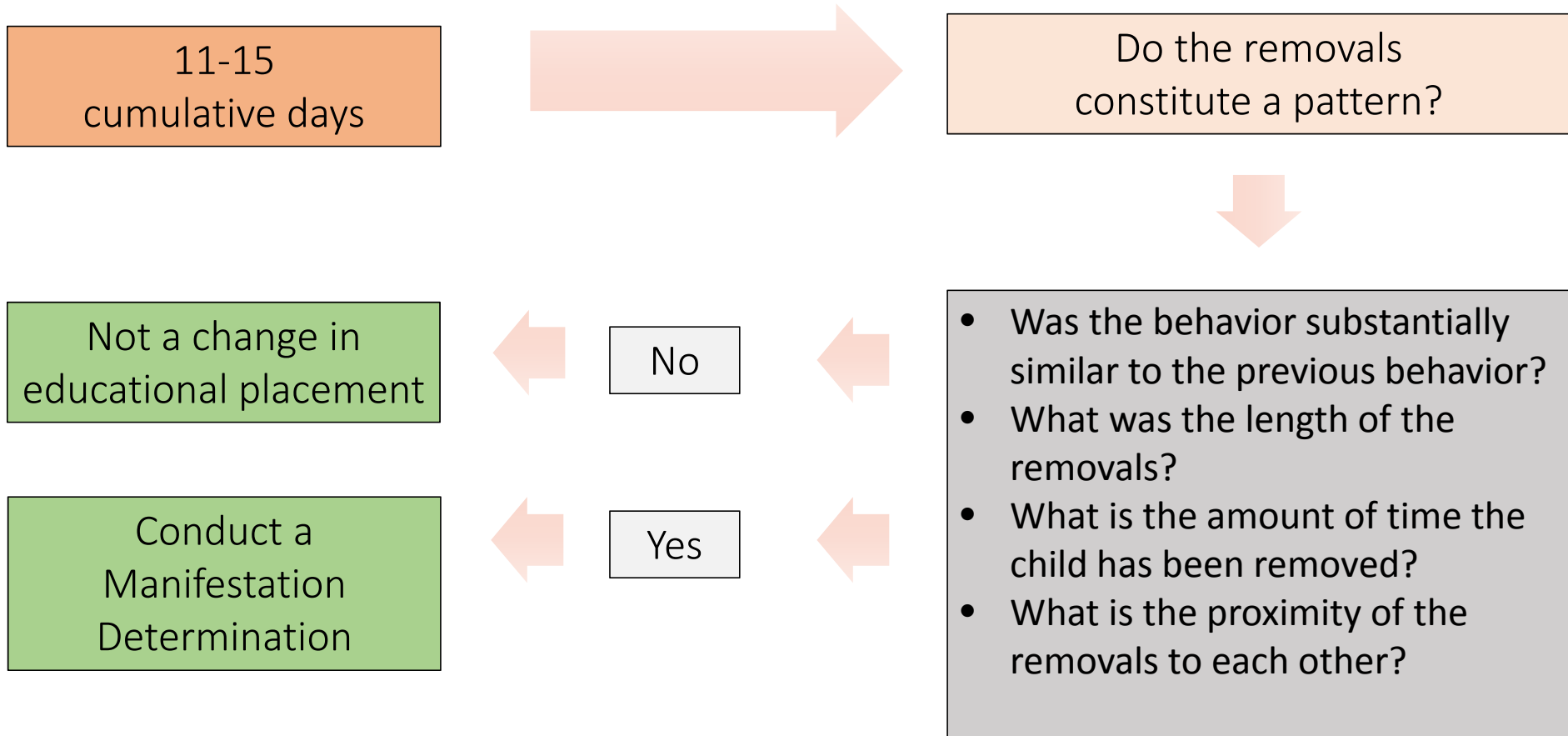
# Special Education Discipline: The Big Three



# Special Education Discipline: Change in Placement



# Special Education Discipline: 11-15 Days





School Safety:  
Involvement of Law  
Enforcement

# Relevant Terms

## School Police Officer (SPO)

- Law enforcement officer employed by a school district

## School Resource Officer (SRO)

- Law enforcement officer assigned to a school by local law enforcement

## School Security Guard (SSG)

- Employed by school district for routine safety and security duties

# Law Enforcement and Disability: Statistics

## National

- Students with disabilities under IDEA represent about 12% of all students, yet also represent 28% of total referrals to law enforcement or school-related arrests in 2015-2016
- U.S. Dep't of Educ. data shows 5.8 students per 1,000 referred to law enforcement, yet 10.9 students with disabilities per 1,000 referred to law enforcement

## Pennsylvania

- In 2013-2014, students with disabilities represented 15.4% of all students, yet they represented 29% of students with school-related arrests (1,317 out of 4,517) and 34% of referrals to law enforcement (4,036 out of 11,840)

## Safe Schools Act: 22 PA Code Chapter 10

Regulations promulgated by the State Board of Education related to Act 104 of 2010, which amended the Safe Schools Act, are found at 22 Pa. Code Chapter 10.

PDE issued guidelines to explain relevant portions of Chapter 10 related to students with disabilities, which can be found by searching PDE's website.

# Memorandum of Understanding

- School entities and local law enforcement authority must enter into MOU
  - MOU to be submitted to Office of Safe Schools
- State Board of Ed. developed a model MOU
  - To the extent school entity/law enforcement MOU differs from model MOU, must provide reasons for differences



# Model MOU

## Priorities of the Law Enforcement Authority:

Help school prevent delinquent acts via preventive measures, including referrals to support services, diversionary programs, restorative practices, school-wide positive behavior supports, education and deterrence

Investigate incidents, including identifying those responsible for incident

Investigation and apprehension procedures shall involve as little disruption to the school environment as is practicable

Establish and maintain a cooperative relationship with the School Entity

## Priorities of the School Entity:

Create a safe learning environment

Give law enforcement copy of school's behavior support services procedures and invite law enforcement reps to behavior support trainings

Provide law enforcement with all relevant info and required assistance in the event of a reported incident

Establish and maintain a cooperative relationship with law enforcement

# Mandatory vs. Discretionary Notification

Mandatory: must immediately notify police of offense listed in § 1303-A(b)(4.1) of SSA

Possession of a weapon; aggravated assault; indecent assault; possession, use, or sale of controlled substance or drug paraphernalia

Notification **must include** whether incident involves a student with a disability, the type of disability, and impact on student's behavior

Notification **may include** recommendation that police intervention not required and that school will address student's behavioral needs (police may consider recommendation, but it maintains sole discretion to investigate and file charges)

Discretionary: may notify police of offense listed in § 1303-A(b)(4.2) of SSA

Simple assault; terroristic threats; harassment; indecent exposure; theft; disorderly conduct; use of tobacco/alcohol

In making determination, school may consider: seriousness of situation; school's ability to resolve situation; child's intent; child's age; **whether student has disability, type of disability, and impact on behavior**

Notification **must include** whether incident involves student with disability, type of disability, and its impact on the student's behavior

School may consider addressing behavior through diversion programs and positive behavior supports

As law enforcement maintains all discretion once notified, PDE cautions to consider whether notification can be avoided/is necessary

## Parent/Guardian Notification

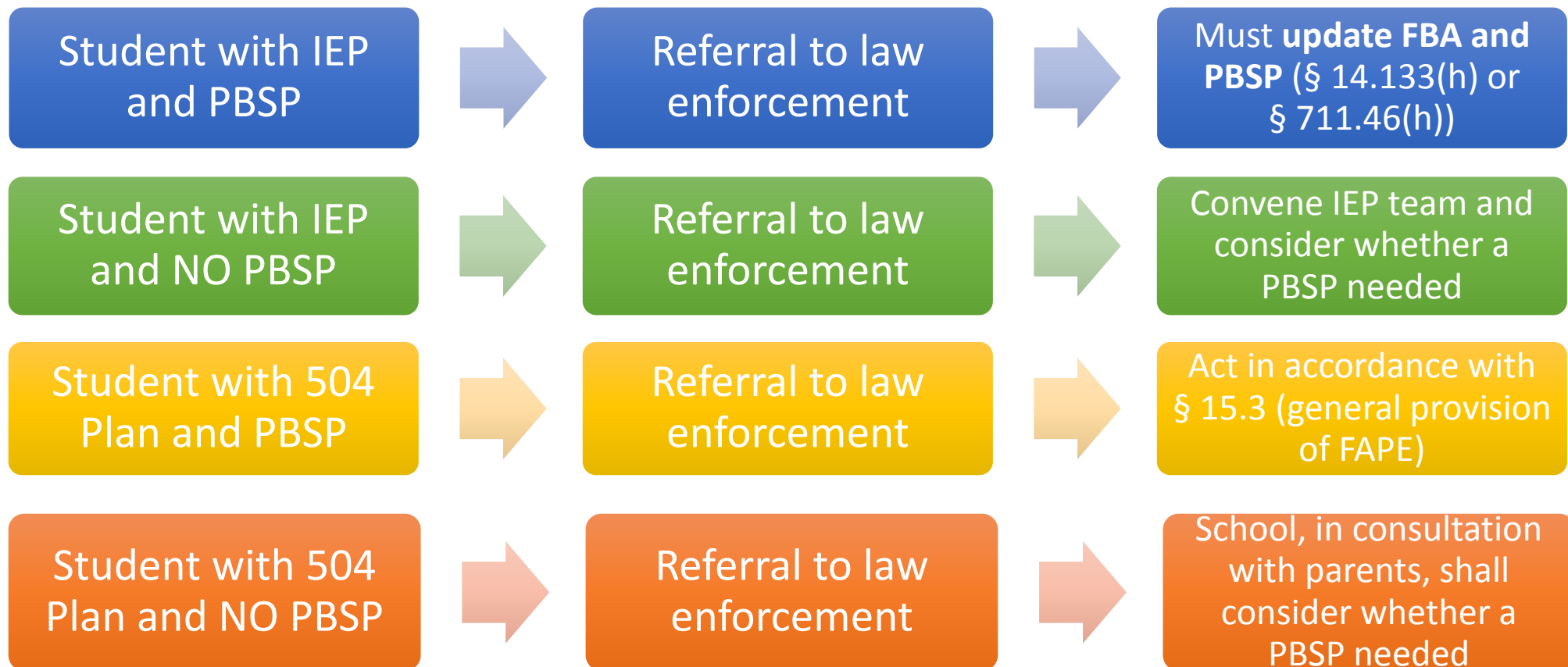
School shall immediately notify, as soon as practicable, the parent or guardian of a victim or suspect directly involved in an incident listed in section 1303-A(b)(4.1) or (4.2) of the SSA. School shall inform the parent or guardian as to whether the local police has been, or may be, notified of the incident.



## Response and Handling of a Student with a Disability (22 Pa. Code § 10.23)

- School shall provide to local police a copy of its procedures on behavior support services (i.e. special education plan)
- School shall invite each local police to participate in **trainings** in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention
- When a student with a disability commits an incident listed in SSA, school shall respond in a manner consistent with training provided and, if applicable, with student's PBSP
- When a protected handicapped student commits an incident listed in SSA, school shall respond in a manner that is consistent with the student's service agreement
- Although not listed in this code, schools making referrals to law enforcement should consider whether incident in question triggers ongoing Child Find obligations

# Response and Handling of a Student with a Disability



# Privacy Rights

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## Searches

School officials generally only need reasonable suspicion to search student's belongings

SPO and SSG generally considered school officials

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SROs (and other police) typically require probable cause and a warrant to conduct search

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## Communication with law enforcement

If SRO or law enforcement try to question student, student may ask for lawyer present or remain silent

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Does not apply for school officials

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# Privacy Rights: Student Records



- Generally, personally identifiable information and student records can only be released to law enforcement with parental consent
  - This includes whether student has an IEP/504 and the student's IEP/504 Plan and/or PBSP
- IDEA regulation 34 CFR § 300.535:
  - § 300.535(a): IDEA does not prohibit LEA from reporting a crime by a child with a disability, and it does not prevent law enforcement from exercising its responsibilities related to crimes committed by a child with disability
  - § 300.535(b)(1): LEA reporting a crime committed by a child with a disability must ensure that copies of child's special ed. and disciplinary records are transmitted for consideration
  - § 300.535(b)(2): LEA may transmit copies of the child's special ed. and disciplinary records only to the extent permitted by FERPA (also found in Model MOU and Pa. Code Ch. 10)

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# Privacy Rights: Student Records (cont.)



- Relevant FERPA exceptions to parental consent (34 CFR § 99.31):
  - Provision of ed. records to school officials, limited to those records in which official has legitimate educational interest
    - School official can include SRO if certain conditions are met
    - School officials cannot redisclose the educational records absent consent or through one of the FERPA exceptions
  - Disclosure permitted to comply with lawful subpoena
  - Disclosure permitted in connection with a health or safety emergency, as described in 34 CFR § 99.36
- Violations of IDEA confidentiality regulations, including incorporated FERPA requirements, may be actionable. *See, e.g., C.M. v. Bd. of Educ. of Union Cnty. Reg'l High Sch. Dist.*, 128 F. App'x 50 876, 880 (3d Cir. 2005)



## Act 44

- Signed into law June 22, 2018
- Each school shall designate a school safety and security coordinator
  - Among other responsibilities, coordinator oversees SPOs, SROs, and SSGs
- Establishes standards for SPOs, SROs, and SSGs
- Provides for cooperative police service agreements with municipal or state police

Thank you