

**PRESENTED AT****32<sup>nd</sup> Annual School Law Conference**February 23-24, 2017  
Austin, TX**There Is No Escaping Special Education:  
Issues for the School District Attorney****JIM WALSH**Jim Walsh, Attorney/Shareholder  
WALSH GALLEGOS TREVÍÑO RUSSO & KYLE, P.C.  
P.O. Box 2156  
Austin, TX 78768-2156  
Phone: (512) 454-6864  
Email: [jwalsh@wabsa.com](mailto:jwalsh@wabsa.com)

# There Is No Escaping Special Education: Issues For the School District Attorney

Presented by:  
JIM WALSH



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## Here's Where We're Headed

- Discipline
- Houston Chronicle story and the fallout
- Role of the attorney
- Due process hearings



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## Discipline: Who Does What?

- Determining that a student violated the Code of Conduct is done by campus administrators, after appropriate due process. They also determine length of removal, as per Code of Conduct.
- Code of Conduct applies to all students, including those who have a BIP (Behavior Improvement Plan).
- BIPs are about services FOR the student. Code of Conduct is about what happens TO the student.



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### Is it a Change of Placement?

- If the removal is a “change of placement” an ARDC meeting is needed to make “manifestation determination.”
- This is so even if the removal is “mandatory.” No such thing as “mandatory” in special education.
- Manifestation is designed to prevent discrimination. Was the behavior directly caused by the disability? Or by the failure of the district to implement the IEP?



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### Going to DAEP?

- If the student is going to the DAEP or JJAEP, ARDC must make sure student will continue to receive appropriate services.
- This may require modifications, tweaks, supplements.
  - General rule: fit the DAEP to the kid; not the kid to the DAEP
- If you don't have a JJAEP, you still have to figure out a way to serve the student. No expulsion to the street—ever.



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### When is it a Change of Placement?

- It's a COP if the removal is for more than 10 consecutive days.
- Or if there is a “pattern” of removals.
- Pattern: removals are
  - 1) for more than 10 cumulative days;
  - 2) for similar behaviors; and
  - 3) with some degree of proximity.
- District officials decide if there is a “pattern.”



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"There Is No Escaping Special Education Issues for the School District Attorney"