



Unit 7B-The Expulsion IEP

Special Education Advocacy Training
A Comprehensive 3-Day Seminar Presented by Rene Thomas Folse, JD, Ph. D.

Unit 1: Introduction to special education advocacy. Demographics, glossary and acronyms. Eligibility assessment criteria. Comparisons with DSM-IV diagnostic categories.	Unit 4: Identifying and understanding strength.	Unit 7: The IEP team process, goals and objective writing, and measuring success or failure. Behavior problems, special discipline rules, stay put orders, and the functional assessment of behavior
Unit 2: Free and Appropriate Public Education (FAPE), the Rowley decision. Least Restrictive Environment (LRE). Aids and Services.	Unit 5: Survey of specific psychological and educational assessment measures of ability (IQ), achievement and adaptive skills.	Unit 8: Dealing with due process litigation.
Unit 3: Life Span goals and objectives, developing the big picture for the child.	Unit 6: Forensic issues. Preparing your report. Testimony on direct and cross examination at hearings.	Unit 9: Integration with other systems. Regional center issues and the IPP. Section 504 of the Rehabilitation Act of 1973. The ADA, and more.

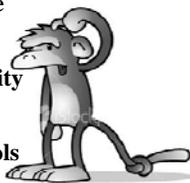
History and Background



- Immediately upon inauguration of IDEA, **discipline became a pivotal issue.**
- Children with special needs had more than usual behavioral issues, and **it was easy for schools to simply expel them**, and eliminate their obligation to provide services.
- Quickly, **the legislature built in special protection for SpEd kids** to preclude them from being expelled.
- **Thing went well until Columbine**, and as a result, **Bill Clinton allowed some erosion to these protections in IDEA 1997.**
- Schools continued to lobby for a greater ability to discipline SpEd children, and **in 2004, George Bush again watered down even more protections.**

Excessive Suspensions, or Expulsion is a “Change of Placement”

- The fundamental concept is that **the IEP Team makes placement decisions** regarding the child.
- **No administrator has this authority alone.**
- **This conflicts with standard disciplinary authority of all schools** to suspend or expel students.
- The **question becomes when, and under what circumstances may an administrative disciplinary process circumvent the IEP team process?**





If IS a Manifestation May NOT Change Placement (Expel)

- If the LEA, the parent, and relevant members of the **IEP Team make the determination that the conduct was a manifestation of the child's disability**, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in 34 CFR 300.530(g), **return the child to the placement from which the child was removed**, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. [34 CFR 300.530(f)] [20 U.S.C. 1415(k)(1)(F)]

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Expedited Due Process



- The SEA or LEA is responsible for arranging the expedited due process hearing, **which must occur within 20 school days of the date the complaint requesting the hearing is filed**. The hearing officer **must make a determination within ten school days** after the hearing. Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506:
 - A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- **Otherwise there is no longer any Stay Put.**

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Tip For Expedited Due Process



- Prior to 2004, the School had to do an evaluation prior to a manifestation determination IEP.
- Under IDEA 2004, they no longer need to do an evaluation. They often do not.
- This leaves them forensically weak at an expedited due process hearing since they do not have current information.
- They may nervously send you an assessment plan to sign so they can do their assessment plan.
- **Do not refuse to sign! But, the statute says you have "at least" fifteen days to sign in, so take your time.**

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When Do Suspensions Become a Change of Placement?



- 300.536(a) For purposes of removals of a child with a disability from the child's current educational placement under Sec. Sec. 300.530 through 300.535, a change of placement occurs if--
 - (1) The removal is for more than 10 consecutive school days; or
 - (2) **The child has been subjected to a series of removals that constitute a pattern--**
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b) (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

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FAPE During Alternate Placement



- 34 CFR 300.530 (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, **during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.**
- 34 CFR 300.530(d) Services.
 - (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--
 - (i) **Continue to receive educational services, as provided in Sec. 300.101(a), 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; and**
 - (ii) **Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.**
 - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

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Education Code 48915.5

- 48915.5. (a) **An individual with exceptional needs, as defined in Section 56026, may be suspended or expelled from school** in accordance with Section 1415(k) of Title 20 of the United States Code, the discipline provisions contained in Sections 300.530 to 300.537, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.
- (b) **A free appropriate public education for individuals with exceptional needs suspended or expelled from school shall be in accordance with Section 1412(a)(1) of Title 20 of the United States Code and Section 300.530(d) of Title 34 of the Code of Federal Regulations.**
- (c) **If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program.**

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School Board Hearing for All Students



- E.C. 48918(a) **The pupil shall be entitled to a hearing to determine whether the pupil should be expelled.** An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that **the pupil is entitled to at least one postponement of an expulsion hearing**, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.
- E.C. 48919. If a pupil is expelled from school, the pupil or the pupil's parent or guardian may, **within 30 days following the decision of the governing board to expel, file an appeal to the county board of education** which shall hold a hearing thereon and render its decision.

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45 Days Consequence for Drugs or Violence



- 300.530 (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days **without regard to whether the behavior is determined to be a manifestation of the child's disability**, if the child--
- (1) **Carries a weapon to or possesses a weapon at school**, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- (2) **Knowingly possesses or uses illegal drugs**, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- (3) **Has inflicted serious bodily injury upon another person** while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

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Manifestation Criteria (*This is a Forensic Issue for an IEE)



- 34 CFR 300.530(e) Manifestation determination.
- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--
 - (i) **If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**
 - (ii) **If the conduct in question was the direct result of the LEA's failure to implement the IEP.**
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

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Protection for Children Not Yet Identified



- A child who has not been determined to be eligible for special education and related services and who has violated a code of student conduct, **may assert any of the protections if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.**
- A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:
 - The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
 - The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
- [34 CFR 300.534(a) and (b)] [20 U.S.C. 1415(k)(5)(A) and (B)] 22

Grounds for Suspension – Expulsion E.C. 48900 et. seq.



- Cause or threaten physical injury
- Force or violence to another person except self defense.
- Possess any firearm, knife, explosive, or other dangerous object, or imitation firearm.
- Possess or offer to sell controlled substance or tobacco or drug paraphernalia.
- Terrorist threats.
- Robbery or extortion or stealing, or receiving stolen property.
- Damage to school or private property
- An obscene act or engaged in habitual profanity or vulgarity or act of hate violence.
- Sexual assault, harassed, threatened or intimidated a pupil, or hazing.
- Disruption of school activities or defiance.

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Where Must the Behavior Happen?

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school sponsored activity.



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504 Protections – Similar to IDEA



- Under Section 504 a suspension or disciplinary removal of a student with a disability for more than ten (10) may not be imposed *without a determination that the student's misconduct is not a manifestation of his/her disability*. See **OCR Response To Williams, 21 IDELR 73 (OCR 1994)**. If the student's misconduct is related to the disability, the student may not be suspended for more than ten (10) days. If the misconduct is not related to the disability, the school district may impose normal disciplinary measures, subject to the parents' right to request an impartial hearing.

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504 Cumulative Suspension Rules

- OCR has opined that “The permanent exclusion of a child with a handicap or exclusion for an indefinite period, or for more than ten (10) consecutive school days constitutes a ‘significant change in placement’ under Section 504.” See *OCR Memorandum re: Discipline of Students with Disabilities*, (OCR April 18, 1991).



Tips

- **Do not let the school just call you to pick up the child without counting this as a suspension** against the 10 days.
- **Start an FAA-BIP early** before a crisis, so that if it is not done correctly it will be a “failure to implement the IEP”.
- An FAA-BIP that does not comply with the Huges Bill has minimal chance of success.
- **If called to a Manifestation IEP, DO NOT AGREE that it was not a manifestation.**





The Power to Help is the Power to Hurt. Be Careful



- **Rule Number 1:** Parents and Children agree before there is any discipline problem that there are "rules and consequences" at school and in life. "Follow the rules or pay the consequences".
- Proper parenting suggests that once you make a general statement of how the world works, you should do so with credibility, and consistency in both your word and your conduct.
- Arriving in the situation after something goes wrong, and taking away the agreed upon consequence is in effect a statement that you were not serious when you articulated Rule Number 1.
- It is even worse when lawyers are involved who purposefully bend the rules, manipulate the truth, and the child gets to see first hand that **"what you do speaks so loudly, I cannot hear the words you say to the contrary"**.
- Therefore carefully weigh and balance the situation in terms of what if any intervention you desire to deploy.

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Hughes Bill (Another Forensic Area)



- In 1990, the California Legislature enacted Assembly Bill 2586 (Hughes) EC 56520-25. This bill, and especially its accompanying regulations at Title 5, California Code of Regulations (5 Cal. Code Regs.) Sections 3001 and 3052, have substantially changed the way school districts must serve *special education students with serious behavior problems*. The provisions of this law are quite specific and in many instances are mandatory since the term "shall" is prominently used throughout the law.
- It would be prudent to read the entire Hughes Bill and regulations if you have not done so before. **A copy is on the download page.**

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When Does Hughes Apply?

- (f) **"Behavioral intervention plan"** is a written document which is developed **when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP.**
- (aa) **"Serious behavior problems"** means the individual's behaviors which are self-injurious, assaultive, or cause serious property damage and **other severe behavior problems that are pervasive and maladaptive for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective.**

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You Will Not See This

- 5CCR 3052(a)(3)..Such interventions **shall only be used to replace specified maladaptive behavior(s) with alternative acceptable behavior(s) and shall never be used solely to eliminate maladaptive behavior(s).**
- (3) Behavioral intervention plans **shall be based upon a functional analysis assessment,**
- Functional analysis assessment personnel **shall gather information from three sources:** direct observation, **interviews with significant others,** and review of available data such as assessment reports prepared by other professionals

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FAA shall include...



- **5CCR 3052 (b)(1)** A functional analysis assessment procedure **shall include all of the following:**
- (A) Systematic **observation of the occurrence of the targeted behavior** for an accurate definition and description of the frequency, duration, and intensity;
- (B) Systematic **observation of the immediate antecedent events** associated with each instance of the display of the targeted inappropriate behavior;
- (C) Systematic **observation and analysis of the consequences** following the display of the behavior
- (D) **Ecological analysis** of the settings in which the behavior occurs most frequently. Factors to consider should include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the individual and staff and other students, the degree of independence, the degree of participation, the amount and quality of social interaction, the degree of choice, and the variety of activities;

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Reports Shall Include....

- **The report shall include all of the following:**
- (A) A description of the **nature and severity** of the targeted behavior(s) in **objective and measurable terms;**
- (B) A description of the targeted behavior(s) that includes **baseline data** and an analysis of the antecedents and consequences that maintain the targeted behavior, and a functional analysis of the behavior across all appropriate settings in which it occurs;
- (C) A description of the **rate of alternative behaviors,** their antecedents and consequences; and
- The behavioral intervention plan shall become a part of the IEP and **shall be written with sufficient detail so as to direct the implementation of the plan.**

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Plan Evaluation

- (f) **Evaluation of the Behavioral Intervention Plan Effectiveness.** Evaluation of the effectiveness of the behavioral intervention plan **shall** be determined through the following procedures:
 - (1) **Baseline measure of the frequency, duration, and intensity of the targeted behavior,** taken during the functional analysis assessment. Baseline data shall be taken across activities, settings, people, and times of the day. The baseline data shall be used as a standard against which to evaluate intervention effectiveness;
 - (2) **Measures of the frequency, duration, and intensity of the targeted behavior** shall be taken **after** the behavioral intervention plan is implemented **at scheduled intervals** determined by the IEP team. These measures shall also be taken across activities, settings, people, and times of the day, and may record the data in terms of time spent acting appropriately rather than time spent₄ engaging in the inappropriate behavior;

Plan Modification

- (4) Measures of program effectiveness will be **reviewed** by the teacher, the behavioral intervention case manager, parent or care provider, and others as appropriate **at scheduled intervals** determined by the IEP team. This review may be conducted in meetings, by telephone conference, or by other means, as agreed upon by the IEP team.

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Tips to Enhance Behavior Plans

- There are few professionals that are interested in learning behavior strategies for children. This is a great opportunity for therapists.
- There are two approaches that I favor.
 - Classical behavior interventions.
 - Collaborative Problem Solving by Ross Greene Ph.d.



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Classical Interventions



- Classical behavioral psychology works best in non-meltdown situations.
- These are typically when you want to increase the frequency of a desired behavior, or decrease the frequency of an undesired behavior.
- During a full blown meltdown, the adrenalin flow is so pervasive there is little hope that any contingent reinforcement plan will work. The Ross Greene Ph.d. methods work best with meltdowns.

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Functional Assessment



- All behavior is purposeful. Generally the point is to get something you want or avoid something you do not want. This is the “function” of a behavior. All behavior plans need to first learn what the function of any behavior that is the target of an intervention.
- There is nothing wrong with seeking this function so long as it is done in a socially acceptable way.
- The point of a behavior plan is to teach the child a socially acceptable way to get their needs met.

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Typical Functions of Behavior

- **To Gain Attention.** There are many socially acceptable ways to do this.
- **To Gain a Tangible Consequence**
- **To Self Regulate** (especially with children with sensory integration issues).
- **To Escape** from or Avoid an Undesirable Situation. Occurs during task demands.
- **To Make a Comment** or Declaration. (Express in words not behavior).
- To Fill a **Habitual Need.**

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Pick The Differential Reinforcement



- A behaviorist must then create a Differential Reinforcement contingency plan, but there are many ways to design this. It makes a difference which one you choose.
 - DRA Differential Reinforcement of Alternative Behavior. This tool differs from the other DR tools in that a specific, desirable behavior or behaviors are taught and reinforced
 - DRI Differential Reinforcement of Incompatible Behavior.
 - DRO Differential Reinforcement of Other Behavior
 - DRH Differential Reinforcement of Higher Rates of Responding
 - DRL Differential Reinforcement of Low Rates of Responding

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Tips 1 to 6



1. The **therapy of choice for children with behavior problems is a positive behavior intervention plan.**
2. A **negative** behavior intervention plan (which is used by many schools and parents) is scientifically **less efficient.**
3. **Ecological changes bring about the fastest, almost immediate effect (Assuming the behaviorist has done an ecological study)**
4. Behavior plans **must include all caregivers**, school, and at home. A common reason why behavior plans do not work is lack of consistency between caregivers.
5. A good behavior plan should **shape only one behavior at a time.**
6. The behavior to be shaped should be **clearly defined**, or broken down into understandable tasks. The goal of “being good” or “getting good grades” is too vague and uncertain.

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Tips 7 to 11



7. **Expect a negative reaction** for a brief period when a plan is first implemented.
8. The **threshold for success** should initially be set so that **positive reinforcement should occur quickly.**
9. The **threshold must be easily attainable**, and then raised over time.
10. When the first targeted behavior is shaped to an acceptable behavior, then move the plan to shape the next targeted behavior.
11. **When the plan does not work**, adjust the definition of the targeted behavior, the threshold for success, and/or the reward. For example, a reinforcer that is not enough will not motivate behavior. One that is too much produces a satiation effect. Reinforcers that are not individualized to the child’s uniqueness are less effective. Some rewards are based upon a mistaken belief that the child values the reward.

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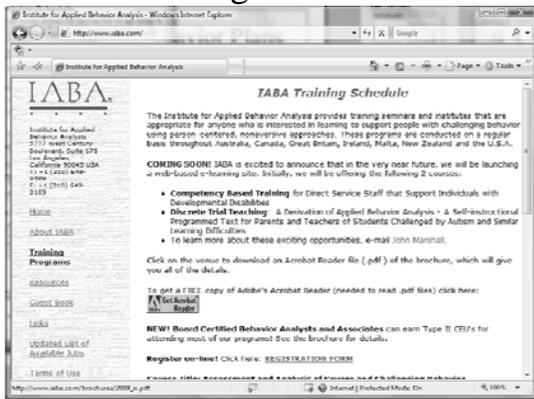
Reinforcers Must be...



- **Meaningful** to the child
- **Contingent.** It is of no value to use a reinforcer that is already available.
- **Well timed.** Avoid long periods of time between the task and reward.
- **Sufficient in Amount**
- **High Quality**
- **Appropriate** for the Amount of Work Demanded.
- **Novel**
- Given in a state of **Deprivation (most kids already have everything)**

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Local Training - www.iaba.com



The Explosive Child



- 3rd Edition is \$11.16 at Amazon
- Concept of “becoming the surrogate frontal lobe” for the child. Two tenets
- First, that social, emotional, and behavioral challenges in kids are best understood as the **byproduct of lagging cognitive skills** (rather than, for example, as attention-seeking, manipulative, limit-testing, or a sign of poor motivation)
- Second, that **these challenges are best addressed by resolving the problems that are setting the stage for challenging behavior in a collaborative manner** (rather than through reward and punishment programs and intensive imposition of adult will).

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Signs and Symptoms

- Meltdowns with screaming, swearing, defying, hitting, spitting, throwing things, breaking things, crying, withdrawing and so forth.
- Missing cognitive and other skills shown on the Assessment of Lagging Skills and Unsolved Problems



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Triggers and Early Warning Signs

- A “Meltdown Avoidance Plan starts with the early signs of trouble.
- All parents, and most teachers (after a few meltdown) know that the signs look like a few minutes before a full blown meltdown.
- Each child is different, but things like red face, getting quiet, pouting, agitation, clenched fists, dropping things on the floor, verbal protests are precursors. I make a list of these and make sure everyone knows this is your “early” warning and first clear chance to avoid a meltdown.



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Things that work in Precursor Stage

- Ross Greene proclaims that **most meltdowns are avoidable**. I agree provided that you have a strategy.
- **Make a list of strategies that work** in the early warning or precursor stage.
- **Ecological Intervention:** Offer time away, ability to leave room, take a break or change tasks, move away or toward child, change caregiver to different person.
- **Never Do List:** List things that are certain to cause a meltdown, **and never do them.** (ie. Never insist on having the child do what you say, do not threaten, do not raise your voice etc.)
- **Always Do List:** List things proven to calm the child down such as offering comfort, reassurance etc.
- Collaborative problem solving per Greene.



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Things that Work in Escalation or Meltdown Stage



- Identify the signs of an escalation so that everyone knows that we are past the precursor stage and that a full blown meltdown is eminent.
 - Make a list of strategies that work in the escalation stage.
 - Ecological Intervention: Mostly remove the child from the situation as soon as possible.
 - Never Do List: List things that are certain to cause a meltdown, **and never do them.** Always Do List:
- **Full Blown Meltdown.** At this stage the adrenalin is flowing so profusely that the child's cognitive skills are markedly impaired.
- Make a list of what to do in a full meltdown. **Mostly these are safety strategies, to keep others, caregivers and the child safe.** And what not to do, such as things that make it worse.
- Adrenalin is quickly dissipated, and energy draining. Waiting⁴⁹ in safety is a typical strategy.

Aftermath of Meltdown

- Every failure produces an opportunity to learn more about the child.
- The Meltdown Plan is always in the process of development.
- It should be reviewed regularly by all caregivers.
 - Strategies that no longer work need to be removed.
 - New strategies need to be added.
 - Meetings with caregivers to go over the document are productive.



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Collaborative Problem Solving

- Healthy people avoid meltdowns by being able to solve their problems with others in a collaborative way. Some children lack the cognitive skills to solve their problems causing them ultimately to meltdown out of frustration.
- Until they learn these skills, you must the child's "cognitive frontal lobe" and work with the child to collaboratively solve problems.
- **This is a therapy done by professionals trained by Ross Greene Ph.D. and done in an office setting. It is a short term therapy.**



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Three Buckets



- In situations where there are meltdowns, caregivers typically resolve problems with either a Bucket One or Bucket Three Solution.
 - Bucket One Solution: “It is not worth it, have it your way I cannot take it any more, you win I lose”.
 - Bucket Two Solution: Both caregiver and child walk away feeling like winners.
 - Bucket Three Solution: “You are going to do what I say or.....” I win you lose.
- The point of Collaborative Problem Solving training is to teach parents (and at some point children) how to obtain a Bucket Two Solution.

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Examples



- A parent on the way to Dr. Greene’s office with her child in the back seat who says “I’m hungry and I want to stop and get a hamburger now!” Mother tells the child they will be late so they cannot do that. Child enters the premonitory phase.
- Televised example of family who always had a meltdown at dinner time getting their child to eat. (problems with sensory integration and shifting cognitive set)
- Many, many more examples given by Dr. Greene during his courses.

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