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IDEA 2004 Close Up: Disciplining Students with Disabilities

The Individuals with Disabilities Education Act (IDEA 2004) — and the newly released federal regulations that provide guidance to states on how to implement the Act — contain important changes to the way schools can discipline students with disabilities. Since students with specific learning disabilities (SLD) make up roughly half of all students receiving special education services, understanding these changes is an important part of being your child's best advocate.

In school year 2001-2002 students with specific learning disabilities represented:

- 52 percent of all special education students who were suspended for 10 school days or less
- 48 percent of all special education students who were suspended for more than 10 school days or expelled
- 60 percent of all special education students who were removed from their school placement due to possession of drugs or weapons

Source: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, 26th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, Washington, D.C., 2006.

Like all students, those with disabilities can be suspended or expelled for violating the school's code of conduct. However, IDEA provides some additional procedures that schools must follow when disciplining students with disabilities. These procedures were put into IDEA to prevent schools from suspending or expelling students without considering the effects of the child's disability. These procedures are different depending on:

- the length and type of disciplinary action the school proposes to take;

- the nature of the conduct that led to the disciplinary action; and
- whether the conduct is found to be connected to the student's disability.

This article offers an overview of the discipline provisions of IDEA, including information on some of the important changes from the previous version of the law.

Know Your Child's Code of Student Conduct

Schools have a responsibility to make sure that all students, including those receiving special education, are familiar with the school's code of student conduct. Parents also have a responsibility to understand their child's school code of conduct and help their child understand the expectations and consequences involved with violating the code. Your child's Individualized Education Program (IEP) team should determine any specialized help and instruction the child may need to understand the code and consistently demonstrate the appropriate classroom and school behaviors, including a functional behavioral assessment and a behavior intervention plan.

Schools Can Now Make Case-by-Case Determinations

IDEA 2004 now provides school personnel with the authority to consider any unique circumstances on a case-by-case basis when making a determination to discipline a student with a disability. This provision provides new flexibility for school personnel who are often operating within a district's "zero-tolerance" policy. A zero-tolerance policy usually requires school personnel to follow a suspension or expulsion policy for any student who violates the code of conduct, regardless of the circumstances. Now, school personnel may choose not to suspend a student with a disability, if the unique circumstances lead school personnel to decide that suspension is not appropriate. Factors such as a student's disciplinary history, ability to understand consequences, expression of remorse and supports provided to the student prior to the violation of a school code of conduct could be unique circumstances considered by school personnel. In all cases, the disciplinary action considered for students with disabilities must be the same as for students without disabilities. In other words, school personnel may not increase a student's suspension because of the student's disability.

Disciplinary action generally involves removing students from their current educational placement and placing them in some other setting, such as:

- In-school suspension
- Out-of-school suspension
- An interim alternative educational setting (IAES)

Whenever school personnel decide to discipline a student with a disability by removing the student from the current educational placement, the school must notify the parents on the same day the decision is made and provide the parents with a written copy of the district's Procedural Safeguards Notice.

IDEA 2004 Discipline Rules

For disciplinary actions lasting 10 school days or less:

- A student with a disability who has an IEP in effect can be disciplined like any other student who violates the school code of conduct.
- During the time the student is in the disciplinary setting, the school is not required to provide any educational services (including special education) to the student, unless the school district provides educational services to non-disabled students in the same circumstances.
- Parents may request that the school continue educational services for the student during the time of the disciplinary action or somehow allow the parent to facilitate the student's completion of school work. While the school is not required to grant such requests, many will agree so that the student doesn't fall behind.

For Disciplinary actions resulting in removal of more than 10 school days in the same year (whether or not the days are consecutive):

- The school must provide special education services that allow the student to:
 - continue to participate in the general education curriculum, although in another setting; and
 - progress toward meeting the goals outlined in the student's IEP.
- If the action **does not result in exclusion** from school for more than 10 consecutive school days **and** does not constitute a change of placement (i.e., when there is evidence that there is a pattern of exclusions that do not exceed 10 school days), school personnel, in consultation, must determine what services the student should be provided.

(Note: A "change of placement" occurs when the student is excluded from his/her current placement for more than 10 consecutive school days in a school year or upon the 11th school day that a child is excluded from his current placement when there is evidence of a pattern of a "series of removals.")

- If the disciplinary action **results in an exclusion** from school that is a change of placement, the student's IEP team must meet to determine the exact educational services needed while the student is assigned to the interim alternative education setting.
- Within 10 days from the beginning of a disciplinary action **that results in an exclusion that exceeds 10 school days**, the school district, the parents, and relevant members of the student's IEP team must meet to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability.

The team must also determine if the conduct was the direct result of the school's failure to implement the student's IEP, including a behavior intervention plan. If the group decides that the student's behavior was a direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies and **return the student to his/her original placement.**

A Series of Short Removals Can Constitute a "Pattern" and a "Change of Placement"

When frequent disciplinary actions add up to more than 10 school days in a school year, such removals may constitute a "pattern." A pattern is indicated when the student's behavior and the length of removal is the same or similar to previous incidents, and the incidents are in close proximity to one another. A pattern of removals of 10 days or less, once they total more than 10 school days, carries the same requirements as a removal of more than 10 days and is considered a change of placement for the student. While the school has the responsibility for making a determination about whether a pattern constitutes a change of placement on a case-by-case basis, parents should be alert to a possible pattern developing when their child's misconduct is resulting in a series of disciplinary actions.

"Manifestation Determination" — How Is Behavior Related to Disability?

IDEA 2004 has made some significant changes to the manner in which a determination is made about the relationship between the student's behavior that leads to the disciplinary action, and the student's disability. These changes will make it more difficult than was previously the case to establish a connection between disability and behavior, and to reach a conclusion that the behavior resulted from the disability. The decision reached in the manifestation determination is important because it will influence what can happen to the student's continued services and placement.

In making the manifestation determination, the team (comprised of school personnel, the student's parents, and other relevant members of the student's IEP team) will review:

- The student's IEP
- The student's behavior intervention plan
- Any teacher observations
- Any relevant information provided by the parents

Under IDEA 2004, the presumption of a connection between behavior and disability no longer exists. Now, the team is required to answer these questions:

1. Considering the behavior subject to discipline, review the student's behavior to determine if it was caused by, or had a direct and substantial relationship to, the student's disability. For example, a student's low self-esteem, while possibly a by-product of a learning disability, is not alone

sufficient to be considered a basis for finding a direct relationship between the student's disability and behavior.

2. Did the school fail to follow a portion of the IEP including a behavior intervention plan in a manner that directly caused the misconduct?

Finding of Manifestation

If the behavior is found to be directly related to the student's disability, the IEP team must plan for a functional behavioral assessment and the development of a behavior intervention plan based on the results of that assessment. If the student already had a behavior intervention plan in place, the IEP team must review if the plan was being followed and revise it as needed to address the problem behavior that led to this disciplinary action.

If the team finds that the student's behavior was related to the disability or an improperly implemented IEP, the student is returned to the original education setting unless the parents agree to a new placement as part of the behavior intervention plan.

Finding of No Manifestation

For students whose behavior was not directly related to the disability, the same disciplinary actions can be imposed as those imposed on a non-disabled student. Such action could include expulsion. However, if the student is expelled from school, the student must continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals set out in the IEP.

For students whose behavior is not determined to be directly associated with their disability, the IEP team should nonetheless consider the need for a functional behavioral assessment and behavior intervention plan.

Be on the Alert for the "Special Circumstances"

Certain offenses can lead to a student being moved to an interim alternative educational setting for up to 45 school days even if the conduct is determined to be related to the student's disability. Removing a student for these offenses does not require parent permission or agreement, nor does it require any involvement by a hearing officer or other impartial third party. These offenses are:

- **Weapons**

If a student carries or possesses a weapon:

- On the way to or at school
- On school premises
- At a school function

- **Drugs**

If the student knowingly possesses or uses illegal drugs or sells or solicits the sale of illegal drugs:

- While at school
- At a school function

- **Serious bodily injury**

If a student has inflicted serious bodily injury upon another person:

- While at school
- On school premises
- At a school function

An additional provision allows a school to seek to remove a student for up to 45 school days if the school believes that returning the student to the same educational placement is substantially likely to result in injury to the student or other students. The school must do this by making a request to a hearing officer, who, among other requirements, is not employed by the state education agency or local school district involved in educating the child; has specialized knowledge and skills related to IDEA; and has no interests that conflict with his objectivity in the hearing process.

Parent Right to Appeal

Parents have the right to challenge any decisions made regarding the interim alternative educational setting or the determination regarding the “manifestation determination” by asking for a due process hearing. Schools can also request a hearing if school personnel feel that returning a student to the original educational setting is highly likely to result in injury to the student or to others.

In either case, the hearing must be “expedited” by:

- holding the hearing within 20 school days of the date requested; and
- issuing a decision by the hearing officer within 10 school days after the hearing.

IDEA 2004 made an important change to the placement of students during this appeal process. Before, a student was to remain in his or her current educational placement during the appeal process – often referred to as “stay put.” Now, under IDEA 2004, the student remains in the interim alternative educational setting, unless the parent and the state agree otherwise or the time period for the infraction (e.g., 45 school days for special circumstances or duration applied to non-disabled students) has expired.

Students Not Yet Eligible for IDEA

Under certain circumstances, the protections available to a student with a disability who is already eligible for special education services may also be available to a student who does not have an IEP in effect. These circumstances may apply to any student:

- If the child's parent had expressed concern in writing to school personnel, including the teacher, that their child may be in need of special education prior to the behavior that resulted in the disciplinary action
- If the child's parent had requested an evaluation, preferably in writing, as provided for by IDEA
- If the child's teacher or other school personnel had expressed concerns about a pattern of behavior that might call for a referral for evaluation, such concerns would need to have been made directly to supervisory personnel at the school building or school district level. For example, a teacher expressing his or her concerns to a parent would not be considered an adequate basis of knowledge.

Certain exceptions apply to the above circumstances. They include:

- If the child's parent had not allowed an evaluation of the child or had refused special education services that had been offered as required by IDEA
- If the child had been evaluated as required by IDEA and was not found eligible for special education

If a request is made to evaluate a student during the time period of the disciplinary action, the school must complete the evaluation as quickly as possible. During the evaluation, the student remains in the interim alternative educational setting.

Special Note:

New provisions in IDEA 2004 allow schools to provide early intervening services to students who are considered "at risk." At-risk students are those who show a need for additional academic or behavioral support to succeed in general education, but who are not identified as needing special education. In addition, IDEA 2004 allows schools to use a "response-to-intervention" (RTI) process as part of its procedures for identifying students as having specific learning disabilities and needing special education. A child in either the "at risk" or "RTI" circumstances may not be considered to possibly need special education services unless at least one of the first three bulleted conditions in the section above has been met.

IDEA's provisions regarding the discipline of students with disabilities are complex and often confusing. If your child becomes the focus of a disciplinary action, you should seek information and guidance from expert resources such as

your state's Parent Training and Information Center (PTIC). For your state's PTIC contact information, go to: <http://www.taalliance.org/Centers/index.htm>

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Other Resources

Websites

Center for Effective Collaboration and Practice
IEP Team's Introduction to Functional Behavioral Assessment and Behavior
Intervention Plans
<http://cecp.air.org/fba/default.asp>

National Center for Learning Disabilities
IDEA Parent Guide
<http://www.nclld.org/content/view/900/456084/>