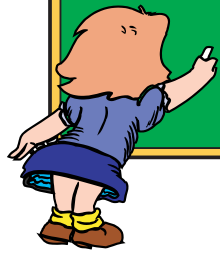


Nine Things Every Parent Advocate Should Know About the "Ten Day" Rule and the Eleventh Day of Suspension From School



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Sometimes, a little knowledge is a dangerous thing. Consider, for example, the widespread belief that there is a ten-day limit on the number of days that a child with disabilities can be suspended from school. As with many widespread beliefs, the common version of the rule is only partially true.

Here are nine things that every parent advocate should know about the so-called "ten-day" rule and the laws governing the suspension of children with disabilities who are entitled to services under the Individuals with Disabilities Education Act (IDEA):

As with many widespread beliefs, the common version of the rule is only partially true.

1. There is no such rule. At least since the 1997 amendments to the IDEA, the "ten day" rule is not a rule at all. Provided that school districts are not discriminating on the basis of disability, they have the right to suspend IDEA-entitled children with disabilities for more than ten days in the course of a school year.

2. There are steps the school must take if the suspension is for more than ten consecutive days. If a school district suspends an IDEA-entitled child for more than ten consecutive school days, there are certain procedural steps that it must take. It must treat the suspension as a change of placement, it must give notice to the parents, and it must convene a manifestation conference to determine if the conduct giving rise to the suspension was a manifestation of the child's disability.

3. If the eleventh day of suspension is not consecutive, there is a question, not a rule. If a school district suspends an IDEA-entitled child for less than ten days, but does so more than once so that the total number of days of suspension during the school year exceeds ten, there may or may not be a change of placement requiring notice to the parents and a man-

ifestation conference. The answer to this question depends upon whether or not a judge will determine that the series of suspensions "constitute a pattern" based on "factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another." This is a subjective rule, meaning that how it will be applied depends upon who is applying it.

4. If the eleventh day of suspension is not consecutive, parent advocates need a better answer. In the case of non-consecutive suspensions, one Iowa Administrative Law Judge has recently commented that the subjectivity of the 10-day rule creates a "Catch-22" for school district personnel, who will not know if the eleventh day of suspension has triggered the parental notice and manifestation determination requirements until after a judge has decided the question. The Legal Center would answer that it also creates a "Catch-22" for parents. If school districts charge ahead without notice, parents are not protected against the eleventh day of suspension; they are merely given the opportunity to try the issue before a judge. We suggest that a better answer must be found.

5. A BETTER ANSWER: Focus on the needs of your child. The so-called 10-day rule triggers certain procedural protections for parents. Pursuing those procedural protections, however, can put technicalities ahead of your child's interests. A better answer is to focus on the needs of your child in one or more of the following ways:

6. Request a new evaluation. Parents do not need to wait three years for a re-evaluation of their child. They can request a new evaluation any time there is good reason to do so. The Legal Center suggests that, if your child is being repeat-

edly suspended from school, there is "good reason" to request a new evaluation. The evaluation questions should include: (1) Is the conduct giving rise to the suspensions a manifestation of my child's disability? (2) Is the current educational program appropriate to my child's behavioral needs?

7. Call for an IEP Meeting. If your IDEA-eligible child is being suspended from school on a repeated basis, the IEP team should meet to consider whether the program for that child is appropriate. This is true whether or not the suspensions constitute a change in placement.

8. Insist upon education from and after the eleventh day. Parent advocates should respond to the eleventh day of suspension by advocating for (and insisting upon) the continued provision of educational services. The reason is that, while the law permits an eleventh day of removal from the child's educational environment, it also mandates the continued provision of services. According to the U.S. Office of Special Education Programs, "For a child who has been removed from his or her current placement for more than 10 school days in a school year, the [school district] must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP."

9. Better yet, don't wait until the eleventh day. If the parent advocate is focused on the needs of the child, there is no need to wait until the eleventh day to request a new evaluation. There is no need to wait to call an IEP meeting. As soon as it reasonably appears that your child's program is not meeting your child's needs, you can act.

The Legal Center for Special Education is a non-profit corporation created to provide effective, low-cost, and readily available legal and advocacy services to parents of children with disabilities in educational and related issues.

TLC promotes non-adversarial methods of conflict resolution and encourages parents to build constructive working relationships with educators. TLC's activities are partially funded through a grant from the Governor's DD Council, and through the collection of reduced-rate fees from parents.