The Ten Day Rule

What Parents Should Know About the 11th Day of Suspension

You may have heard about something called the "ten day" rule and been told that it limits the number of days that a child with disabilities can be suspended from school. While there is some truth to that, the whole truth is far more complicated. Here are nine things that are important to know about the so-called "ten day" rule and the laws governing the suspension of students who are eligible for Individualized Education Program (IEP) services under the Individuals with Disabilities Education Act (IDEA).

There really is no such rule. As long as school districts are not discriminating on the basis of disability, they have the right to suspend students entitled to IDEA services for more than ten days during a school year. There is no rule that provides absolute protection against long-term suspension for behaviors that violate school disciplinary policies, but the IDEA does provide some important procedural safeguards for students with disabilities.

There are procedural steps the school must take if a suspension is for more than ten consecutive days. If a school district suspends a student with an IEP for more than ten consecutive days, it must treat the suspension as a change of placement. Before a change of placement is made, certain procedural steps have to be followed: 1) Prior notice must be given to the parents, and 2) there must be a manifestation conference (sometimes called a manifestation determination) held to determine if the conduct that the student is being suspended for was a manifestation of the child's disability.

If the eleventh day of suspension is not consecutive, there is a question – not a rule. If an IDEA-entitled student is suspended for less than ten days, but more than once during the school year, so that the total number of days of suspension exceeds ten, there may or may not be a change of placement that would trigger parental notice and a manifestation conference. So is the suspension a change of placement? The answer to that question depends on whether or not 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 (in time) of the removals to one another." This is a subjective determination and parents and schools may not agree on how the factors apply. Then what?

If the eleventh day of suspension is not consecutive, parents need a better answer. If you don't see eye to eye with the school on whether or not the suspension is a change of placement, you have several options. One is to request a due process hearing and present the facts to an Administrative Law Judge to make a ruling. The biggest drawback to pursing a hearing is that the process that takes time and the ruling happens after the student has been out of school. This creates a "Catch-22" for the school district, because they will not know if the eleventh day of suspension has triggered the need for parental notice and a manifestation conference until after a judge has decided the question. It also creates a "Catch-22" for parents because if the school district takes the position there is no change in placement and proceeds without notice, parents are not afforded the protection of the manifestation determination. Meanwhile, the student is out of school.

A better answer is to focus on the needs of the student in one of the following ways:

Request a new evaluation. You do not have to wait three years for a re-evaluation of your child. You can request a new evaluation any time there is a good reason to do so. If your child is being repeatedly suspended from school, there is a good reason to request a new evaluation. The evaluation questions should include: 1) is the conduct that is getting my child suspended a manifestation of my child's disability? In other words, can a clear link between some aspect of the child's disability and the cause of the behavior be identified?, and 2) Is the current educational program (IEP) appropriate to my child's behavioral needs? In other words, can the behavior be attributed to a need for

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services or supports that are not currently included in the child's IEP but should have been?

Call for an IEP meeting. If your child has been suspended several times, request that the IEP team meet to consider whether the educational program and behavioral supports are appropriate. Whether or not the suspensions constitute a change in placement, it is a good idea to review the IEP and determine if it should be revised to better support your child's behavioral needs.

If your child is suspended, insist on educational services from and after the eleventh day. While the IDEA permits removal of the child from his or her usual educational environment for more than ten days, it also mandates the continuation of educational 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 ten (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." Even if the child is not allowed to return to his or her previous placement (classroom or school), the school district must offer educational services at home or in another alternative setting that implement the child's IEP. As a parent, you can work with the IEP team to make that happen.

Don't wait, intervene early. Take steps to address behavioral issues as soon as you recognize them. You don't have to wait until the eleventh day of suspension to request a new evaluation or call for an IEP meeting. Keep focused on your child's needs and how you can continue to work with the school district to best meet those needs. You have an opportunity to identify the issues that are leading to suspensions or other disciplinary actions and work with the other members of the IEP team to address them as soon as you recognize that they exist.

Not all behavior is found to be linked to the student's disability. You should also know that if a manifestation conference results in a finding that the student's behavior was not a result (or manifestation) of his or her disability, the student can be suspended for more than ten days or even expelled. If a student is removed from school (or the usual educational placement) for more than ten days, the IDEA requires that the IEP team complete a functional behavioral assessment and implement a behavior plan. There are also special provisions for IDEA-entitled students if the discipline involves weapons or drugs. "A special education student who brings a weapon to school or possesses, uses, sells or solicits the sale of drugs at school or during a school function can be removed for up to 45 days without parental agreement." A student who is removed under these circumstances is entitled to an alternative educational placement during the 45 days. The IDEA also requires that the IEP team develops a behavior plan for a student whose behavior interferes with his or her learning or the learning of others.

Remember, the IDEA provides a variety of tools for parents to utilize in advocating for their child. The manifestation determination is one tool that provides important protections when behavioral issues lead to educational suspension. By the time the student has been suspended, however, the stakes (and the stress level for everyone) are pretty high. As soon as you recognize an issue that might lead to disciplinary action, you can use some of your other IDEA tools to problem-solve with your IEP team, request new evaluation information, or review and revise your child's IEP to provide more behavioral support. By acting early, you may be able to solve the problem and avoid suspensions.

Related Resources

Look for the following information sheet on www.askresource.org

- Manifestation Determinations

And view information about Functional Behavior Assessment from www.pacer.org.

ASK Essential Questions

- Does my child's behavior plan address the behaviors resulting in suspension?
- Are the school staff trained on how to use my child's behavior plan?
- Has the IEP team consulted with the Challenging Behavior Team?

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