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Discipline: Suspension and Expulsion

Suspension and expulsion of students is always a concern for parents and schools and it is important for parents to be familiar with the school's discipline handbook and policies. All students are entitled to certain rights. Children with disabilities are subject to the same consequences and punishments as their nondisabled peers, but they are guaranteed certain protections under the Individuals with Disabilities Education Act (IDEA).

School personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension for not more than 10 school days, to the extent such alternatives are applied to students without disabilities, and no services need to be provided during this time. After the child with a disability has been removed from his or her current placement for more than 10 school days in a given school year, during any subsequent days of removal, the school must provide services to the extent necessary to enable the child progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her individualized education program (IEP).

Disciplinary Change of Placement

In determining whether a change of placement is appropriate for a student with a disability who violates a student code of conduct, school personnel may consider any unique circumstances on a case-by-case basis. The preamble of IDEA 2004 explains that a unique circumstance is best determined at the local level by school personnel who know the child and know all the facts and circumstances about a child's behavior. Questions that might be asked include: What is a child's disciplinary history? Does the child have the ability to understand consequences? Were supports provided to the child before the violation of a school code?

Under IDEA, a change of placement occurs if the student is removed for more than 10 consecutive school days; or the student is subjected to a series of removals that constitute a pattern. In determining whether a pattern exists, factors to consider include such things as the child's disciplinary history, including the length of

previous removals, the total amount of time the child has been removed, and the proximity of removals to one another.

If the suspension does not constitute a change in placement, school personnel, including the child's teacher, determine what services are necessary during the removal to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP. The educational services provided under these discipline provisions do not need to be exactly the same services in the same settings as were provided before the implementation of the discipline provisions.

If, however, the suspension *is* a change of placement, the school is required to notify the parent of a child with a disability of its decision to make a disciplinary removal that constitutes a change of placement on the day it makes the decision, and must provide the parent with procedural safeguards. Additionally, within 10 school days of any decision to change the placement of a child with a disability for disciplinary reasons, a manifestation determination meeting must take place.

What is a Manifestation Determination meeting?

A manifestation determination is a meeting conducted by the school, the parent, and relevant members of student's IEP Team (as determined by the school and the parent) to 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 if the student's behavior was a manifestation of his or her disability. The behavior must be determined to be a manifestation of the child's disability if it was caused by or had a direct and substantial relationship to the child's disability; or if it was the direct result of the school's failure to implement the child's IEP.

If the IEP team determines that the behavior *is* a manifestation of the child's disability for either reason, the child is returned to the placement from which he or she was removed, unless the parent and the school agree to a change in placement. Additionally, the child's IEP team must conduct a functional behavioral assessment (FBA), unless one has already been done, in which case,

it must review the FBA; and implement a behavior intervention plan (BIP), or review and modify a current BIP if one is already in place.

If the behavior is determined to *not* be a manifestation of the child's disability, the school may go forward with a regular disciplinary hearing, but must continue to provide the student with a free appropriate public education (FAPE), although in a different location (which can range from an alternative school to at-home suspension or expulsion). The IEP team determines both the disciplinary placement and the services to be provided during the disciplinary period. Additionally, the child must receive, as appropriate, a FBA and behavior intervention services and modifications designed to address the behavior so that it does not occur again.

What is a Functional Behavioral Assessment?

It is a process for identifying the 'function' of identified behaviors that are interfering with the child's education. A FBA can include interviews, observations, review of records, and reports from teachers, parents, and other professionals who will be looking at the function of the behavior, which is usually to 'get something' or 'avoid something' and what triggers and sustains or reinforces the behavior. That information is then used to develop a positive behavior intervention plan (BIP). As stated, if a BIP is already in effect, the IEP team must review the existing BIP to recommend any revisions. The focus of a BIP is to identify positive strategies which will prevent or redirect inappropriate behaviors, and to plan for effective methods for responding to the targeted behavior if and when it recurs. The Parent Information Network (PIN) Clearinghouse has a document, *Functional Behavioral Assessment and Positive Interventions: What Parents Need to Know (BR22)*, which provides additional information about FBAs and BIPs. You can find this document online at www.azed.gov/ess/pinspals or by calling 877-230-PINS.

Special Circumstances

Schools may remove a student with disabilities from his or her current placement and place the student in an interim alternative educational setting (IAES) for no more than 45 school days if the incident involves drugs, weapons, or serious bodily injury regardless of the relationship of the behavior to the disability. The implementing regulations of the IDEA define serious bodily injury as "bodily injury that involves a substantial risk of death; extreme physical pain; protracted and

obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." The child's IEP team determines the interim alternative educational setting in this circumstance.

Is there an Appeal Process?

Parents always have the right to request a due process hearing if they disagree with any decision regarding identification, evaluation, placement, or the provision of a FAPE. When the parent disagrees with the decision of the IEP team at the manifestation determination meeting, the parent(s) may request an expedited due process hearing to resolve the dispute. Additionally, a school that believes that maintaining the child's current placement is substantially likely to result in injury to the child or others may request an expedited due process hearing, and the hearing officer may order a change of placement to an appropriate IAES for not more than 45 school days. This process may be repeated as necessary.

A resolution meeting must occur within 7 calendar days of the school's receipt of the expedited due process complaint, and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days. The expedited hearing should take place within 20 school days from the date of the hearing request and a determination should be made within 10 school days after the hearing. The student remains in the IAES until the hearing decision is made or, if the violation involved drugs, weapons, or serious bodily injury, until the 45 days expires.

Other Considerations

It is important to note here that parents of a regular education student may ask for protection under the IDEA 2004 if the school had prior knowledge that the student had a disability, even if the student had not yet been evaluated and found eligible for special education services at the time of the violation. All students undergoing an evaluation to determine eligibility are also protected under IDEA 2004. If a request for an evaluation is made during the time-period a student is subject to disciplinary action, the school must conduct a comprehensive educational evaluation in an expedited manner.

References

U. S. Department of Education, Building the Legacy: IDEA 2004, <http://idea.ed.gov/explore/video Download/s/DIS>

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