


THE LONG AND WINDING ROAD
A practical application of the IDEA's
discipline provisions

DISCIPLINE

The 10-day Rule:


- School personnel may remove a student with a disability who commits a violation of the student code of conduct for not more than **10 school days** to an appropriate interim alternative educational setting, another setting, or suspension.



DISCIPLINE

Remember to consider:

- In-school suspensions
- Partial day suspensions
- Bus suspensions
 - ❖ These all may “count” toward 10 days, depending upon circumstances.



THE 11TH DAY

After a student with a disability has been removed from his or her current placement for 10 school days in a school year, services must be provided during any subsequent removals.



CHANGE OF PLACEMENT

A change of placement occurs if:

- The student is removed for more than 10 consecutive school days.
- The student is subjected to a series of removals that constitute a pattern because:
 - they cumulate to more than 10 school days in a school year;
 - the child's behavior is substantially similar to his behavior in previous incidents that resulted in a removal; and
 - 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.
- ◊ School personnel determine on a case-by-case basis if a pattern of removals constitutes a change of placement.



PROVISION OF SERVICES

School personnel, in consultation with at least one of the student's teachers, decide what educational services to offer during removals that do not constitute a change of placement.



PROVISION OF SERVICES

The **IEP team** determines the extent to which services are necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP during removals that constitute a change of placement.



MANIFESTATION DETERMINATION

- A manifestation determination is a meeting to determine if the child's behavior that gave rise to the disciplinary incident was a manifestation of his or her disability.
- The manifestation determination is conducted by the school, the parent, and relevant members of the IEP team (as determined by the parent and the school).
- The manifestation determination must take place within **10 school days** of any decision to change the placement of a child with a disability due to a violation of a code of student conduct.



MANIFESTATION DETERMINATION

A manifestation determination is required when:

- A school is considering removing a child from his or her current educational placement for more than 10 consecutive school days
- A school is considering removing a child from his or her current educational placement more than 10 cumulative school days in a school year, if that removal is deemed a change in placement
- Any time placement is made in an Interim Alternative Educational Setting (IAES)



MANIFESTATION DETERMINATION

The conduct shall be deemed a manifestation of the child's disability if either of the following apply:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability

OR

- If the conduct in question was the direct result of the school's failure to implement the IEP



MANIFESTATION DETERMINATION

If the behavior **IS** a manifestation of the child's disability, the IEP team must:

- Conduct a functional behavioral assessment, if one has not already been done;
- Implement a behavior intervention plan; or
- If a behavior intervention plan is already in place, review and modify it as necessary to address the current behavior; and
- Return the child to the placement from which he or she was removed **UNLESS**:
 - The offense involved "special circumstances" (drugs, weapons, or serious bodily injury); or
 - The parents and school agree to a change of placement



MANIFESTATION DETERMINATION

If the behavior is **NOT** a manifestation of the child's disability, the school :

- May go forward with a regular disciplinary action
- Must continue to provide the student with a free appropriate public education (FAPE), although in another setting



SPECIAL CIRCUMSTANCES

School personnel may remove a student with a disability to an Interim Alternative Educational Setting (IAES) for not more than *45 school days*, regardless of whether the behavior is a manifestation of the student's disability under three "special circumstances."



SPECIAL CIRCUMSTANCES

- The child carries or possesses a **weapon** to or at school, on school premises, or to or at a school function
- The child 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
- The child has inflicted **serious bodily injury** upon another person while at school, on school premises, or at a school function



DEFINITION OF "WEAPON"

A device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length

18 U.S.C. § 930



**DEFINITION OF "ILLEGAL DRUGS"
& "CONTROLLED SUBSTANCES"**

The term controlled substance means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act.

The term illegal drug means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional.

21 U.S.C. 812

DEFINITION OF "SERIOUS BODILY INJURY"

This term does not apply to every assault, but applies in situations that do not involve a weapon, but that involve:

- A substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty

18 U.S.C. § 1365(h)

INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

An IAES is a temporary educational placement for a period of up to 45 school days, other than the student's original placement, where students may be sent:

- Under the "special circumstances" without initiating a due process hearing (principal may make determination)
- By initiating an expedited due process hearing, if school personnel can show that maintaining the student in his or her current placement is substantially likely to result in injury to self or others

INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

The IAES is determined by the IEP team, must be *appropriate*, and must:

- Enable to the student to continue to participate in the general curriculum (though in a different setting),
- Provide services and modifications described in the student's IEP that will enable the student to progress toward meeting the goals set out in his or her IEP
- Provide behavioral intervention services and modifications to address the behavior so that it does not recur



APPEALS

- IDEA allows a parent who disagrees with any decision regarding placement (IAES) or the manifestation determination to initiate an expedited due process hearing
- IDEA allows school personnel to initiate a due process hearing if they believe that maintaining the student's current placement is substantially likely to result in injury to self or others



PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION

A child who is not yet eligible under the IDEA, but who commits a violation of the student code of conduct, may assert the rights and protections of IDEA's disciplinary provisions if the school *had knowledge* that the child was a child with a disability before the behavior that precipitated the disciplinary action took place.



PRIOR KNOWLEDGE

A school will be deemed to “have knowledge” if, prior to the violation:

- The child’s parent expressed concern *in writing* to the school’s supervisory or administrative personnel, or to the child’s teacher, that the child is in need of special education services
- The parent had requested that the student receive an evaluation for special education
- The child’s teacher, or other school personnel, had expressed directly to the director of special education or to other supervisory personnel, specific concerns about a pattern of behavior demonstrated by the child



NO PRIOR KNOWLEDGE

A school will **NOT** be deemed to “have knowledge” if, prior to the violation:

- The parent refused to allow the school to evaluate the child or refused to allow the school to provide services to the child
- If the school had already evaluated the child and he or she was found ineligible
- If the parent has revoked consent for special education services



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