

Discipline of Students with Disabilities for Teachers/Educators: The Rules and Regulations from Removals to MDRs



David Hodgins

Thompson & Horton LLP
3200 Southwest Freeway
Suite 2000
Houston, Texas 77027

**Thompson
& Horton** LLP

ATTORNEYS | COUNSELORS



Short-Term Removal

- School personnel may remove a child with a disability who violates code of conduct to interim alternative setting, another setting, or suspension for not more than 10 school days to the extent such removal applies to children without disabilities. (Assuming no special provisions in the student's IEP)
- New IDEA does not mention multiple removals of less than 10 days each but the final regulations do.

What Constitutes a Removal?

In other words, "What counts as a day?"

- Suspension from school?
- Portions of the day?
- Bus removals?
- In-school suspension (ISS)?

2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536.

Federal Register, Vol. 71, p. 46715 (August 2006)

2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered.

Federal Register, Vol. 71, p. 46715 (August 2006)

2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under § 300.530.

Federal Register, Vol. 71, p. 46715 (August 2006)

2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

Federal Register, Vol. 71, p. 46715 (August 2006)

2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placements

An in-school suspension would not be considered a part of the days of suspension in § 300.530 as long as the child is:

- Afforded the opportunity to continue to appropriately participate in the general curriculum;
- Continue to receive the services on his or her IEP;
- Continue to participate with non-disabled children to the extent they would have in their current placement.

Federal Register, Vol. 71, p. 46715 (August 2006)

Applying the Law

Randy M. b/n/f Mrs. M. v. Texas City Independent School District; Docket No. 162-SE-100 (April 7, 2000)

- **ISSUE:** Whether Randy's assignment to ISS pending the resolution of the MDR and due process case is an inappropriate change in placement.

Applying the Law

Randy M. b/n/f Mrs. M. v. Texas City Independent School District;
Docket No. 162-SE-100 (April 7, 2000)

- **HELD:** For Respondent. Respondent showed that Randy's existing IEP has been implemented during his assignment in ISS. Therefore, Randy's assignment in ISS does not constitute a change in placement under IDEA.

What Does not Constitutes a Removal?

In other words, "What does not count as a day?"

- Removing an OHI/ADHD 11-year-old from class to engage in a preferred activity, to deescalate, or to participate in state assessments, after he had already been suspended for 10 days was not a removal for disciplinary purposes and did not trigger an MDR review. Capistrano Unified Sch. Dist., 114 LRP 38670 (SEA CA 2014)

Hypothetical

Special education student has been subjected to the following removals throughout the year:

2 days ISS

1 day ISS

3 days OSS

2 days suspended from bus transportation

Student engages in additional behavior subject to discipline . Assistant principal recommends that student be placed in ISS for 5 days.

Must the school hold an MDR before placing the child in ISS?

12

Hypothetical

IT DEPENDS!

Do the previous and current ISS placements constitute a removal? Did the District meet the 3 factors?

- Afforded the opportunity to continue to appropriately participate in the general curriculum;
- Continue to receive the services on his or her IEP;
- Continue to participate with non-disabled children to the extent they would have in their current placement.

Is bus transportation part of the student's IEP?

13

34 CFR § 300.530(b)

- (b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change or placement under § 300.536).

34 CFR § 300.536(a) Change of placement because of disciplinary removals

- For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if –
 - (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern --

34 CFR § 300.536(a) Continued ...

- (i) Because the series of removals total more than 10 school days in a school year;
- (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- (iii) 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.

34 CFR § 300.536(b)

- (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings.

2006 Interpretive comments related to 34 CFR 300.536(b)

Whether the behavior in the incidents that resulted in the series of removals is “substantially similar” should be made on a case-by-case basis and include consideration of any relevant information regarding the child’s behaviors, including, where appropriate, any information in the child’s IEP. However, we do not believe it is appropriate to require in these regulations that the “substantially similar behaviors” be recognized by the IEP Team or included in the child’s IEP as recommended by the commenter. The commenter is correct that what constitutes “substantially similar behavior” is a subjective determination.

Federal Register, Vol. 71, p. 46729 (August 2006)

2006 Interpretive comments related to 34 CFR 300.536(b)

However, we believe that when the child's behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2) of this section for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred. Of course, if the parent disagrees with the determination by the public agency the parent may request a due process hearing.

Federal Register, Vol. 71, p. 46729 (August 2006)

Examples of Change of placement via a Pattern of Disciplinary removals?

- Rolla 31 School District, 111 LRP 51354 (SEA MO 2011) (IHO determined that bipolar disorder student's removal for 2 days for insubordination and .4 days for leaving early for aggressive behavior, and 2.8 days for assaulting district staff, all in the month of September (5.2 total), followed by five (5) days of removal for assaulting district staff in February was not a pattern. Although the behavior was substantially similar to 2.8-day suspension, the total suspension for the substantially similar conduct was only 7.8 days– these removals were not chronologically close and less than the 10 days allowed under the Act.

20

Examples of Change of placement via a Pattern of Disciplinary removals?

- Horizon Science Academy of Cleveland, 110 LRP 65947 (SEA Ohio 2009) (3 day suspension and multiple time outs in the hallway not a pattern)
- Twinsburg City (OH) School District, 58 IDELR 231 (OCR 2011) (OCR rejected District's argument that student's seven suspensions, amounting to 31 days, did not constitute a pattern of removal that required an MDR. Suspensions varied in length of time and were generally less than one month apart)
- In re: Student with a Disability, 55 IDELR 299 (SEA Wyoming 2010) (Student with ID frequently sent home from school due to physically and verbally aggressive behavior. Removals for substantially similar reason – aggression – equals change in placement)

Examples of Change of placement via a Pattern of Disciplinary removals?

- Administratively shortened day due to behavior constitute a pattern resulting in change of placement? *See Letter to Mason*, 72 IDELR 192, (OSEP July 27, 2018). According to OSEP, shortened school days, if imposed repeatedly as a disciplinary measure, could help create a "pattern" of removals triggering the IDEA's disciplinary protections, including the right to a manifestation determination review.

Final Regulation § 300.530(d)(4)

- (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Long-Term Removals & Manifestation Determination Reviews

24

MDR Meeting

- When district proposes removal of student that would exceed 10 school days due to violation of code of conduct, district, parent, and relevant members of IEP Team shall meet to conduct MDR within 10 school days of district's decision.
- Relevant members of IEP team shall be determined by parent and district.

25

Consideration of Information at MDR Meeting

- **Group shall review all relevant information in student's file, including:**
 - IEP;
 - Any teacher observations; and
 - Any relevant information provided by parents.

Consideration of Information at MDR Meeting

- Other relevant information in student's file, including:
 - Evaluation data;
 - Discipline history;
 - Details of the incident.

27

Consideration of Information at MDR Meeting

- While courts have not interpreted the law to be exhaustive, requiring review of every piece of information contained in a student's educational file, the MDR team must review the information pertinent to the decision.
- *In re Student with a Disability*, 59 IDELR 150 (SEA N.Y. 2012)

Consideration of the following was sufficient for MDR purposes to determine ADD did not cause the student to fight:

- Current IEP; Latest assessment;
- Diagnostic measures; Teacher reports
- Classroom observations; FBA and BIP;
- Disciplinary reports for last 2 years and nature of previous infractions;
- Parent information including that the student had stopped taking ADD medication; and
- Whether there was anything in the records that would indicate concerns about violent behavior.
- In re: Student with a Disability, 59 IDELR 150 (SEA N.Y. 2012).

Student's File

- What to look for:
 - Patterns of attendance, discipline, grades
 - Universal screening data (behavior and academic)
 - Other behavior data (logs, graphs, etc.)
 - FBA
 - IEP
 - Eligibility category
 - Appropriate to address needs
 - Documentation of services

30

IEP Questions

- Was the IEP legally developed?
- Was the IEP implemented as written?
- Have the services been provided consistent with the IEP?
- Is the student making educational progress?
- Did the IEP address all of the student's needs?
- Are behavioral goals and objectives included in the IEP?
- Was there a developing pattern of conduct that should have been detected and addressed?
- Has the IEP been modified over time to reflect changes in the student?

31

Observations of student

- Sources:
- Teachers, staff, parents, student report (e.g., ratings)
- Can be based upon observations
- Previous recent observation data
- Following the incident
- Is behavior similar to that of others with a similar disability?
- Recent changes in mood, behavior, frustration, etc.
- Understanding of consequences
- Ability to control behavior
- Previous socially acceptable behavior examples
- Previous self-control examples

32

Impaired ability to understand consequences

- Are the student's thought processes logical?
- Did the student understand consequences for violation?
- Did the student know the behavior was inappropriate?
- Does the student know and understand the district code of conduct?
- Has the student demonstrated the ability to follow school rules?
- Has the student previously expressed that similar behavior is wrong?
- Has the student expressed an understanding of consequences of behavior?

33

Impaired ability to control behavior

- Has the student previously followed school rules?
- What features of disability have been exhibited in the past?
- What situations is the student able to control behavior?
- Are there factors that explain the misconduct?
- Was the behavior premeditated? Plan?
- Would similarly situated students without disabilities react in a similar manner?

34

Parent Information

- Recent changes
- Medications
- Family circumstances/environment
- Outside evaluations
 - Diagnosis and hospitalizations
- Behavior in home environment
- Consider cultural differences

35

Circumstances of Incident

- Antecedents, behavior, consequences
- Relationship to eligibility category and/or existing or suspected diagnosis
- Individual involved in incident
- History surrounding specifics within the incident
- Behavior
- Individuals
- Environment
- Other recent events
- Is there evidence that previous efforts have been made to address the behavior?

36

MDR Questions

- Group shall determine:
 - 1) Was the conduct in question caused by, or did it have a direct and substantial relationship to, the child's disability?
 - 2) Was the conduct in question the direct result of the district's failure to implement the IEP?

34 C.F.R. 300.530(e)

37

When is Behavior a Manifestation?

- If the answer to either question (1) or question (2) is “yes,” the conduct shall be determined to be a manifestation of the child’s disability.
- To be manifestation, conduct cannot have “attenuated association, such as low self-esteem, to child’s disability.” H.R. REP. No. 779, 108th Cong., 2d Sess., at 225 (2004).

When Behavior is Manifestation

- IEP Team shall:
 - (1) Conduct FBA and implement BIP (if not done prior);
 - (2) If BIP exists, review BIP and modify it, as necessary, to address behavior; and
 - (3) Return child to placement (unless parent & district agree to change placement as part of BIP modification and unless 45-day removal applies).

When Behavior Isn't Manifestation

- If no manifestation, relevant disciplinary procedures applicable to children without disabilities may be applied to child in same manner and for same duration as for children without disabilities (except student must continue to receive FAPE).
- Interim alternative educational setting will be determined by IEP Team.

40

Manifestation

Student v. Fremont County School District #25, 118 LRP 4023 (SEA WY 2017)

- An IHO determined that a Wyoming school district denied a student FAPE when it determined that the student's behaviors which led to his discipline and expulsion were not a manifestation of his OHI.
- The case involved a high school student who qualified for special education services as an individual with other health impairment (OHI), attention deficit hyperactivity disorder (ADHD).
- Student's IEP had a Positive Behavior Support Plan, which among other things, describes what was to occur if the Student was physically or verbally "unsettling," and defines crisis behaviors to include shouting, hitting, punching, and making threats, all of which were "red card" behavior.

Manifestation

Student v. Fremont County School District #25, 118 LRP 4023 (SEA WY 2017)

- The Plan instructed school staff to immediately remove the Student from class in the event of "red card behavior". In relation to "yellow card" behavior, which the Plan defines as "making noise, faces, or having a tight body, or being off task/off topic," School staff's instructions included ignoring minor behavior and monitor without engaging when possible, redirecting the Student to the least restrictive intervention, limited verbal corrections, and allowing the Student to request a break to return to the a specified room to avoid escalation of negative behavior and/or a smaller setting.
- During the relevant school year, received 10 discipline referrals because of truancy, skipping detentions, derogatory language to staff and others, damaging property, and insubordination, resulting in a total of 10 days out of suspension.
- In automotive class, the student became upset regarding which group he was assigned and after some interaction between with the classroom teacher and classroom paraprofessional regarding the student, according to witnesses and the student, the student told the paraprofessional to "f**k off" and also stated "I will f**king kick your ass. I'll beat you down. I will f**king kill you."

Manifestation

Student v. Fremont County School District #25, 118 LRP 4023 (SEA WY 2017)

- Student was proposed for expulsion related to threatening a staff member. An MDR was held in December of 2016 and school personnel determined that the misconduct was not a manifestation of his disability. The parties agreed to an IEE and reconsideration of the MDR, which occurred in June of 2017, but resulted in no change in the MDR decision.
- Testimony indicated that instead of the ratio called for in the Behavior Plan of positive actions to corrective actions being 3 to 1, it was closer to 1 to 2, in favor of corrective actions. The Plan also stated that verbal corrections should be limited, but the expert observed 3 verbal corrections in a 10 second period. Furthermore, expert found no evidence that the school district routinely did fidelity checks, to determine if the Plan was being implemented correctly.
- The IHO overturned the MDR decision and found that “[a]part from the possibility that previous assessments of the Student had overlooked appropriate qualifying disabilities, the behavioral support plan which Respondent prepared for the Student was not faithfully executed and critical staff were not adequately trained to implement and monitor its implementation to better insure effectiveness and prompt refinement.”

Manifestation

- The act of knocking the phone out of the teacher's hand may have been oppositional but were the types of behaviors noted in the evaluation and IEP. *District of Columbia Public Schools*, 115 LRP 40248 (E.D. DC. 2015)
- ED student's chokehold and assault of classmate was directly and substantially related to his disability where BIP specifically targeted student's history of resorting to physical violence when angered. *District of Columbia Public Schools.*, 114 LRP 34500 (SEA DC 2014).
- An MDR team for a charter school leaned too heavily on evidence that a student with ED and ADHD paused to reflect before jettisoning a stapler at a teacher. Noting that the student's ED caused the student to have angry outbursts when frustrated, the IHO concluded that the team incorrectly found that the behavior wasn't a manifestation of a disability. *Student with a Disability, In re.*, 117 LRP 21279 (SEA DC 2017).

Manifestation

- Student's ED caused her to be impulsive and combative, which triggered her to elope from class and start a fire on school grounds. *District of Columbia Pub. Schs.*, 114 LRP 3336 (SEA DC 2013)
- No manifestation overturned when, among other things, during the MDR meeting, the District stated they "had not yet implemented the [student]'s IEP because they [were] unable to find he[r] IEP from her transferring school." *Toledo City Schs.*, 115 LRP 30 (SEA OH 2014).
- District correctly determined a manifestation but failed to modify the student's BIP. *Kalamazoo Regional Educational Service Area.*, 114 LRP 34047 (SEA MI 2014)

Not a Manifestation

- 15-year-old student's physical assault of another student was not impulsive, and was not a manifestation of student's disabilities of ADHD or SLD in written expression where evidence showed prior to the assault student requested another student to video the assault. *J.H. by L.H. v. Rose Tree Media Sch. Dist.*, 118 LRP 38235(E.D. Penn 2018).
- Student's decision to bring knife to school, conceal it, and display it to other student's was not a manifestation of his ADHD, but a conscious choice. *High Tech Middle North County*, 114 LRP 53441(SEA CA 2014).
- 6th-grader's decision to assault AP was not a manifestation of his ADHD or Asperger syndrome when student's 25-minute tirade ceased upon being told that the police would be called--he had control over his behavior. *In re: Student with a Disability.*, 115 LRP 6203 (SEA VA 2014).

Not a Manifestation

- E.D. student's physical assault of another student when student "deliberately set out to hit Student A as a result of the comments made during lunch...not a sudden uncontrolled response to teasing.... Student chose to hit Student A.... Student understood the consequences of his behavior and still chose to hit Student A." *Lakeshore School District*, 114 LRP 4249 (SEA MI 2013).
- Student's behavior of arguing, defiance, instigation, and obscene language were not related to impulsivity or ADHD symptoms, but instead were caused by the child choosing to be defiant and disrespectful. *In re Student with a Disability*, 114 LRP 2925 (SEA VA 2013)
- Decision of student with a ADHD "seemed to be pre-meditated and deliberate, rather than impulsive and thoughtless." *Plano Independent School District*, 113 LRP 48594 (SEA TX 2013)

Not a Manifestation

- 11th-grader's decision to conduct a weekend paintball raid on his high school was unrelated to his anxiety issues. *Fitzgerald v. Fairfax County Sch. Bd.*, 50 IDELR 165 (E.D. Va. 2008).
- 6th-grader's creation of a list of schoolmates he wanted to shoot was not a manifestation of a recently diagnosed pervasive developmental disorder. *Z.H. by R.H. and J.H. v. Lewisville Indep. Sch. Dist.*, 65 IDELR 147 (E.D. TX 2015).
- A ninth-grader's decision to light a fire in class by bringing five aerosol cans of body spray and wrapping a pencil in paper before igniting it was done in concert with other students, was not impulsive, and was not a manifestation of his disability (ADHD). *Ocean Twp. Bd. of Educ.*, 68 IDELR 147 (SEA NJ 2016).

Considerations When Student Violates Code of Conduct

- School personnel may consider any unique circumstances on case-by-case basis when determining whether to order a change in placement for child with disability who violated student code of conduct. 34 CFR 300.530 (a)

45-Day Removals (drugs, weapons, serious bodily injury)--"Special Circumstances"

- For certain violations of code of conduct, district may remove student to interim alternative educational setting (determined by IEP Team) for not more than 45 *school* days **regardless of whether behavior was manifestation.** 34 CFR 300.530 (g) (emphasis added)

50

Possession of Weapons

- District may remove student for 45 school days (regardless of MDR determination) if student carries or possesses a weapon on school premises or to or at a school function.

51

IDEA Definition of “weapon” is in 18 USC 930(g) – “dangerous weapon”

- Weapon, 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.

52

- Weapon includes a firearm defined in part by federal law as any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive . . .
- And also any explosive, incendiary, or poison gas “destructive device.”

53

Weapon

- Metal awl (metal spike 2 inches long) was a weapon. *In re: Student With a Disability*, 50 IDELR 180 (SEA VA 2008).
- Scissors qualified as a weapon. *Anchorage Sch. Dist.*, 45 IDELR 23 (SEA AK 2005).
- Cigarette lighter with retractable blade was a weapon. *Chester Upland Sch. Dist.*, 35 IDELR 104 (SEA PA 2001).
- District properly placed a student with SLD in an IAES regardless of MDR result when the student possessed a knife two-and-a-half inches long when measured from the handle to the point of the blade. *Propel Charter Schs.*, 116 LRP 48618 (SEA PA 2016).

Weapon

- *Pittsburgh Sch. Dist.*, 115 LRP 17342 (SEA PA 2015).
- Autistic teenager's unintended possession of knife on school property with a blade of 4 inches that was left in his jacket after a camping trip met the definition of a weapon and supported an assignment to the IAES regardless of intent.
- IHO stated that the absence of an intent requirement for weapons, but not for drugs, indicated that the removal was appropriate regardless of the student's unintentional possession or what the parents deemed an "honest mistake."

Not a Weapon

- Pulling on the assistant principal's necktie. *Scituate Pub. Schs.*, 47 IDELR 113 (SEA MA 2007).
- Scratching a fellow student with a paper clip. *Anaheim Union High School Dist.*, 32 IDELR 129 (SEA CA 2000).
- Stabbing a classmate with a pencil. *Independent Sch. Dist. #831*, 32 IDELR 163 (SEA MN 1999).
- Dull scissors not capable of inflicting serious bodily injury *California Montessori Project*, 56 IDELR 308 (SEA CA 2011)

Possession/Use of Illegal Drugs

- District may remove student for 45 school days (regardless of MDR determination) if student 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.

Definitions come from federal law

- Controlled substance – drug or other substance identified under the Controlled Substances Act, 21 U.S.C. 812(c).
- Illegal drug – a controlled substance, but does NOT include a controlled substance that is legally possessed or used under the authority of a health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. 34 CFR 300.530 (i) (1) and (2).

Infliction of Serious Bodily Injury

- District may remove student for 45 school days if student has inflicted serious bodily injury upon another person while on school premises or at school function.
- “Serious bodily injury”: 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. 34 CFR 300.530 (i)(3); 18 USC 1365 (h)(3).

Serious Bodily Injury - NO

- Hardest of 3 to interpret.
- Most assaults will NOT qualify.
- Teacher experienced redness, swelling, and pain, and missed one day of work to go to the doctor; there was no evidence the teacher sought further medical care. *West Orange Cove CISD*, 114 LRP 18521 (SEA TX 2014)
- Lots of pain one day but not the next not enough. *In re: Student with a Disability*, 54 IDELR 139 (SEA KS 2010).

60

Serious Bodily Injury – NO cont'd

- Third-grader's biting and kicking the school principal not enough where principal was not prescribed pain medication when she sought medical treatment. *Central Dauphin School District*, 115 LRP 1141 (SEA PA 2014).
- Swollen kicked knee not enough. *Bisbee Unified Sch. Dist. No. 2*, 54 IDELR 39 (SEA AZ 2010).
- Assault of district employee who returned to work next day not enough. *Southern York County Sch. Dist.*, 54 IDELR 305 (SEA PA 2010).

Serious Bodily Injury – YES

- Student rammed head into teacher's chest with full force.
- Internal chest contusions.
- 2 medications — worst pain of her life.
- Missed one week's work.
- Extreme physical pain proven. *Westminster Sch. Dist.*, 56 IDELR 85 (SEA CA 2011).

62

Provision of Behavioral Assessment and Services

- For student who is removed for drug or weapon offense, for inflicting serious bodily injury, or for violation of code of conduct that would lead to removal of more than 10 school days, district must, as appropriate, provide FBA, behavior intervention services, and modifications designed to address behavior so it doesn't recur.
- Must provide regardless of MDR outcome.

63

- What does it mean to receive FAPE or continuation of services in the discipline setting?

64



ATTORNEYS | COUNSELORS

Continuation of Services/FAPE in the Discipline Setting

- It is not exactly the same services in exactly the same setting as before discipline.
- But special education and related services must:
 - Enable student to continue to participate in the “General curriculum” – same as for nondisabled students.
300.320(a)(1)(i)
 - Progress toward meeting goals and objectives. 71 Fed. Reg. 46,716 (2006)

- District need not replicate all services and instruction student would receive if in school. Dept. of Education, State of Hawaii, 115 LRP 53315 (E.D. HI 2015).

66

District of Columbia Public Schools, 115 LRP 16763 (2015)

- School district suspended a middle schooler with multiple disabilities for possessing marijuana at school sending him "work packets" to complete at home instead of enrolling him in an alternative school where he could receive special education and behavioral interventions.
- As a result, the student missed 29 days of instruction and was unable to progress toward his annual academic and behavioral goals.

67

District of Columbia Public Schools, 115 LRP 16763 (2015)

- The hearing officer concluded that the district failed to place a student in an appropriate interim alternative educational setting during his long-term suspension in violation of the IDEA.
- The hearing officer instructed the district to provide the student with compensatory education.

68

Hearing officer Ordered Student Returned to Placement from IAES

- Could not work on IEP goals
- District did not provide psychological, counseling and social behavioral services set out in IEP.

Oregon City Sch. Dist., 28 IDELR 96 (SEA OR 1998)

69

Hearing Officer Determines Services For Expelled Student Inappropriate

- Student expelled for 2 months for smoking marijuana at school.
- She was provided a packet of work and told to call the school staff if she needed help.
- Hearing officer ordered compensatory services.

Upper Lake Union High Sch. Dist., 47 IDLER 89 (SEA CA 2006)

70

Obligation to Provide Continued Services

- A district must provide a student who is expelled from school for disciplinary reasons with behavioral intervention services that are designed to address the student's misconduct so that it does not recur. 34 CFR 300.530(d).
- *In Re: Student with a Disability*; I54 IDELR 209; 110 LRP 23238 (E.D. WI 2010)

Hearings Regarding Discipline

72



ATTORNEYS | COUNSELORS

Appeal of Discipline or MDR Determination

- Parent who disagrees with any decision regarding placement for disciplinary purposes or with the MDR determination may request a hearing.

73

Hearing Officer's Determination on Appeal

- Hearing officer may order change in placement in response to appeal.
- Hearing officer may return child to placement from which he or she was removed or order that child be placed in appropriate interim setting for 45 school days or less if current placement is substantially likely to result in injury to child or to others.

74

No Stay-Put During Discipline Hearing

- While appeal is pending, child shall remain in interim alternative educational setting (discipline setting) until hearing officer makes decision or until time applicable to relevant disciplinary consequence expires, whichever occurs first.

75

Expedited Hearing for Appeal of Discipline Decision

- District or SEA shall arrange for expedited hearing, which shall occur within 20 school days of date hearing is requested and shall result in determination within 10 school days after hearing.

76

Summary of Important Points Regarding Discipline

- MDR meeting.
- Standards for MDR.
- Exception for certain allowable 45-day removals.
- No stay-put during discipline hearing.

THANK YOU!
For allowing us to make this
presentation

David B. Hodgins
dhodgins@thompsonhorton.com
of
Thompson & Horton LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027

78