



Discipline and Students with Disabilities

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Agenda

- IDEA and 504 overview
- Top ten things to know about disciplining students with disabilities
- Case studies
- Q & A

IDEA overview

- Individuals with Disabilities Education Act
 - 20 USC §§ 1400-1419
 - 34 CFR § 300
- FAPE requirement
- IEP for qualifying students
- Strict and explicit rules regarding discipline

Section 504 overview

- Section 504 of the Rehabilitation Act of 1973
 - 29 USC § 794
 - 34 CFR § 104
- Prohibits discrimination on the basis of disability
- FAPE requirement
- 504 plan for qualifying students
- Similar rules regarding discipline, with some differences

Top ten things to know

1. Free Appropriate Public Education (FAPE)
2. Short term removals
3. Change of placement
4. Manifestation determination review (MDR)
5. 45 school day exception
6. Weapons
7. Drugs
8. Serious bodily injury
9. Unidentified students
10. Differences under Section 504

1. FAPE

- Every student with a disability eligible under the IDEA and Section 504 is entitled to FAPE.
- IDEA definition: special education and related services that:
 - Are provided at public expense, under public supervision and direction, and without charge;
 - Meet the standards of the SEA, including the requirements of this part;
 - Include an appropriate preschool, elementary school, or secondary school education in the State; and
 - Are provided in conformity with an IEP.

2. Short term removals

- Suspensions of 10 days or less
 - Schools are free to remove or “suspend” students with disabilities from school for up to 10 cumulative days in a school year without services.
 - During the 10 “FAPE (Free Appropriate Public Education) Free” days there is no duty to provide alternative services, IEP meeting, manifestation review, behavior intervention plans, or functional behavior assessment.

3. Change of placement

- MDR required if disciplinary offense will result in a removal that constitutes a change of placement
- A removal constitutes a change of placement if:
 - It exceeds 10 consecutive school days (long term removal); or
 - Student has been subjected to a series of removals which constitute a pattern amounting to a change of placement cumulating to more than 10 days.

4. MDR

- MDR required within 10 school days of a decision to change the placement of a SWD because of a violation of a code of student conduct.
- MDR team must ask:
 - Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?; or
 - Was the conduct in question the direct result of the LEA's failure to implement the IEP?

4. MDR, cont.

- Team members include a representative from the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency).
- Required to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents in making its determination.

4. MDR, cont.

- If conduct is not a manifestation...
 - LEA may discipline in accordance with LEA discipline policy, just as a student without a disability.
 - Services must be provided during removal to an interim alternative setting.

4. MDR, cont.

- If conduct is a manifestation...
 - LEA must conduct a functional behavior assessment (FBA), unless one has been done due to similar conduct.
 - A behavior plan must be developed, or modified, to address the behavior in question.
 - Student is returned to the placement from which he or she was removed (unless the parent and school agree otherwise).

5. 45 school day exceptions

- Three exceptions to the general disciplinary rules: ***weapons, drugs and serious bodily injury.***
- The exceptions allow school officials to remove students to interim alternative settings for ***up to 45 school days, regardless of whether the behavior is a manifestation of the disability.***
- LEA must provide services in the alternate setting during any period of removal, ***regardless of whether the behavior is a manifestation of the disability.***

6. Weapons

- Student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA.
- 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.

7. Drugs

- Knowingly possessing or using illegal drugs or selling or soliciting the sale of controlled substances while at school, on school premises, or at a school function.

8. Serious bodily injury

- Inflicting serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- Bodily injury which involves 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.

9. Unidentified Students

- If the student does not have an IEP, and the school suspects an educational disability, then the student is protected under the IDEA.

10. Differences under 504

	IDEA	504
Conduct is a manifestation...	FBA & behavior plan. Student is returned to the placement from which he or she was removed (unless the parent and school agree otherwise).	Re-evaluate to determine whether the current placement is appropriate or should be changed. Student is returned to the placement from which he or she was removed (unless the parent and school agree otherwise)
Conduct is not a manifestation...	10 FAPE free days, then FAPE required.	FAPE not required during period of removal.

10. Differences under 504

	IDEA	504
Weapons	45 school day exception	No explicit 45 school day exception (but see 22 IDELR 667).
Serious bodily injury	45 school day exception	No 45 school day exception.
Drugs	45 school day exception	No 45 school day exception. Neither MDR nor due process available in disciplinary actions pertaining to the possession or use of illegal drugs for students who are currently engaged in the illegal use of drugs.

10. Differences under 504

	IDEA	504
Disciplinary protections for students suspected of having a disability	Yes	No

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Case Studies

Scotty

Scotty is suspected of having an emotional disturbance. He has been referred for a special education evaluation. Before the evaluation has been completed, Scotty has a behavioral incident during class. He becomes upset after being accused of hitting another student. The classroom teacher attempts to verbally calm Scotty and recommends that he take a break. Scotty refuses the break and pushes the teacher, whose arm gets scratched as a result. Teacher calls in the principal, who attempts to de-escalate student. Scotty then threatens both adults, jumps a table, and must be physically removed from the room by the principal in order to prevent Scotty from injuring himself. The school's discipline policy requires a 90 day suspension for these types of behaviors.

What is the next step in addressing this incident?

Scotty

- a) Suspend him for 90 days. Take no further action since he is a general education student.
- b) Remand him to an interim alternative setting for up to 45 school days due to the IDEA exception regarding weapons, drugs, or serious bodily injury.
- c) Since the discipline policy requires a long term removal, hold a manifestation determination review to determine whether the behavior was a manifestation of Scotty's suspected disability.
- d) Scotty cannot be suspended since he has a suspected disability.

Scotty

- c) Since the discipline policy requires a long term removal, hold a manifestation determination review to determine whether the behavior was a manifestation of Scotty's suspected disability. **34 CFR § 300.530(b) – MDR required if removal is longer than 10 consecutive school days.**

Wrong:

- a) Suspend him for 90 days. Take no further action since he is a general education student. **34 CFR § 300.534(a) – Since school was on notice of a suspected disability, IDEA disciplinary rules apply.**
- b) Remand him to an interim alternative setting for up to 45 school days due to the IDEA exception regarding weapons, drugs, or serious bodily injury. **18 USC 1365(h)(3) – A scratch does not constitute serious bodily injury!**
- d) Scotty cannot be suspended since he has a suspected disability. **Students with disabilities may still be suspended, so long as the appropriate policies and procedures are followed.**

Stevie

Stevie is 16 years old and is eligible for special education services as Other Health Impaired (OHI). One day, Stevie is found in possession of prescription painkillers at school. He purchased the pills from Christy during recess. The next day, the IEP team and other appropriate staff hold a manifestation determination review. They assess school and medical documentation, which indicate that Stevie is impulsive and often acts without thinking through consequences. Ultimately, the team determined that Stevie's behavior was a manifestation of his disability.

What is an allowable FIRST step in addressing this incident?

Stevie

- a) Place Stevie in an interim alternative educational setting for up to 45 school days. Ensure that special education services continue.
- b) Expel Stevie for one calendar year. Since the offense was drug related, special education and related services are not required.
- c) Expel Stevie for one calendar year and provide special education and related services.
- d) Place Stevie in an interim alternative educational setting for up to 45 school days with no requirement to provide special education services.

Stevie

- a) Place Stevie in an interim alternative educational setting for up to 45 school days. Ensure that special education services continue. 34 CFR §300.530(d), 34 CFR §300.530(g)(2)

Wrong:

- b) Expel Stevie for one calendar year. Since the offense was drug related, special education and related services are not required. If manifestation & drug related → only up to 45 school days. SPED services still required.
- c) Expel Stevie for one calendar year and provide special education and related services. If manifestation & drug related → only up to 45 school days. SPED services still required.
- d) Place student in an interim alternative educational setting for up to 45 school days with no requirement to provide special education services. SPED services still required! 34 CFR 300.530

Rachy

Rachy has an IEP for speech impairment. The teacher requests several times that she complete an assignment and reminds her that if she does not, she will receive an “incomplete.” Rachy becomes upset, starts yelling, throws her book across the room, threatens to club the teacher’s knee, and storms out of the room into the hallway. Rachy has not received any disciplinary removals this school year.

What may happen next?

Rachy

- a) Administer a 3 day suspension.
- b) Hold a manifestation determination review.
- c) Conduct a functional behavior assessment.
- d) All of the above.

Rachy

- d) All of the above!
- a) Administer a 3 day suspension. Rachy has up to 10 FAPE free days per school year. 34 CFR § 300.530. Note that Rachy has only threatened serious bodily injury, not committed it.
- b) Hold a manifestation determination review. Not required because this is not a change in placement, but recommended. 34 CFR § 300.536.
- c) Conduct a functional behavior assessment. Only required if behavior was a manifestation, but still allowable. 34 CFR 300.530 (f).

Questions?

These materials are not intended as legal advice, and should not be so construed. Law, local policy, and unique facts make dramatic differences in analyzing any situation. Consult your LEA attorney for legal advice regarding a specific situation.

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