



WEBINAR MATERIALS

"Discipline and Students with Disabilities: Key Concepts and Strategies for Advocates"

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**Discipline and Students with Disabilities:
Key Concepts
and Strategies for Advocates**

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Discipline and Students with Disabilities

Key Concepts

- Suspension (10 days or less; over 10 days)
- Manifestation Determination
- Interim Alternative Educational Settings
- Expulsion
- Due Process
- Protections for Students Not Yet Eligible for Special Education

Removal of Ten Days or Less

- School has authority to remove student to an alternative educational setting or suspension for:
 - Not more than ten *consecutive* school days
 - Not more than ten school days in the same year, if the removals are a pattern and constitute a "change in placement"

When is a Series of Short Term Removals a "Pattern"?

- Factors to consider
 - Series of removals totals more than ten days in one school year
 - Child's behavior was substantially similar each time
 - Length of each removal
 - Proximity in time between removals
- School district determines on case-by-case basis whether removal is a change in placement
- If "change in placement," then the district must comply with procedures for removals for more than ten days

Removal to Alternative Setting

- Short-term
- "Non-placement changing"
- Only to same extent as a non-disabled peer
- Provision of educational services - only to extent that would be provided to a non-disabled student

Removal for More than Ten Days

- Manifestation determination – the district must:
 - Notify parents of the decision and provide copy of procedural safeguards
 - Convene a IEP team meeting within ten days to determine whether:
 1. The conduct was "caused by, or had a direct and substantial relationship to, the child's disability;" OR
 2. The conduct was a direct result of the district's failure to implement the child's IEP. 34 C.F.R. 300.530(e)(1).

Factors to be Reviewed by the Manifestation Determination IEP Team

- All relevant information in the student's file, including:
 - The child's IEP
 - Any teacher observations
 - Any relevant information provided by parent

If Conduct is a Manifestation of the Student's Disability

If either (1) or (2) are found by the IEP team, the behavior **MUST** be considered a manifestation of the student's disability

If the conduct is found to be a direct result of the district's failure to implement the child's IEP, then the district must correct those deficiencies immediately.

34 C.F.R. 300.530(e)(3)

If Conduct is a Manifestation of the Student's Disability

- The IEP team must:
 - Either:
 - Conduct a Functional Behavioral Assessment (FBA) and implement a Behavioral Intervention Plan (BIP); OR
 - If BIP already exists, review and modify it to address the behavior
 - Return child to his or her placement, unless parents and district agree on a change of placement

If Conduct is Found NOT to be a Manifestation of the Disability

- District may apply disciplinary procedures in the same manner and duration as for a non-disabled child.
- BUT, the interim alternative educational setting for services must be determined by the child's IEP team.
- District must still provide FAPE and enable the student to continue making progress

Discipline and Students with Disabilities

Hypothetical Case #1

Q & A

Exceptions for Specific Offenses – Interim Alternative Educational Setting

- School district may remove child up to 45 days, even if conduct was a manifestation of the disability, if, *while at school, on school premises or at a school function*:
 - Child brings or possesses a weapon
 - Child possess, uses, or sells illegal drugs
 - The child has inflicted “serious bodily injury” upon another person
- BUT, the interim alternative educational setting must be determined by the IEP team.

Expulsion

- Constitutional right to public education as a property interest protected by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

Goss v. Lopez, 419 U.S. 565, 573-75 (1975).

- Due Process Protections
- School Discretion

Expulsion: Examples of Due Process Requirements

- Adequate notice
- Independent consideration of the specific facts and circumstances of the case
- Hearsay evidence may be admitted, but may not be the sole basis for the expulsion

When Parents Disagree with Placement or Manifestation Determination Decision

- Right to appeal through an due process hearing
 - Statute of limitations: two years of knowledge of the alleged violation
 - Parent must be provided information about low-cost or free legal services
 - Party filing complaint must submit copy to opposing party and the SEA
 - Complaint must contain specific information, including the problem and recommended resolution

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Hypothetical Case #2

Timeline for Expedited Hearing

- An expedited due process hearing is available for complaints filed about a manifestation determination
 - **Hearing:** within 20 school days of the filing of the complaint, and as soon as 15 days of the receipt of the complaint.
 - **Resolution meeting:** within seven days of receipt notice of the due process complaint
 - **Waiver:** in writing by the parent and LEA
 - **Decision:** within ten school days of the hearing

“Stay Put” Pending the Decision

- “Stay Put” = student must remain in his/her current educational placement pending the outcome of the due process hearing.
- EXCEPTION for Interim Alternative Education Settings: the child will remain in the alternative setting unless:
 - Parents and District agree to a change, or
 - The time period for the interim alternative educational setting (45 days) expires

Returning Child to Original Placement

- The hearing officer may return the child to the original placement if:
 - behavior leading to discipline was a manifestation of the student's disability, or
 - the removal of the student violated the school district's authority to do so (in violation of 34 C.F.R. 300.530).
- BUT the school may still request *another* hearing if returning the child to the original placement would likely lead to injury of child or others.
 - Hearing officer may then order the child to the original setting or to an interim alternative educational setting for up to 45 days.

School District May Also Appeal the Manifestation Determination

- Where the school district believes that returning the student to the original placement would lead to the injury of the child or others, it may also use the expedited due process appeal
 - In deciding for the district, the IHO may order the student to an interim alternative educational setting for up to 45 days

Protections for Children Not Yet Eligible for Special Education Services

- If the school *had knowledge* of the child's disability before the conduct leading to discipline, the child is entitled to the same protection as other special education students

Did the School District Have Knowledge?

- The school will have had knowledge if:
 - The parent expressed concern that the child needed special education, in writing, to school personnel
 - The parent requested an evaluation of the child
 - The teacher or other school personnel expressed concern about a pattern of behavior to the special education administrators

Did the School District Have Knowledge?

- The school will NOT have had knowledge if:
 - The parents refused either an evaluation or special education services, when offered, OR
 - The child was previously evaluated and found not to have a disability

If the School District Did Not Have Knowledge

- Student may be disciplined according to the policy applied to regular education students
- If an evaluation is requested during the disciplinary process:
 - Evaluation must be expedited
 - School district determines placement while evaluation is pending according to policy applying to all students
 - If a disability is discovered, then the school must ensure that the child receives appropriate services
