

SPECIAL EDUCATION (AND SECTION 504) STUDENT DISCIPLINE



1 GENERALLY

- > Students with IEPs or Section 504 plans are subject to the same grounds and procedures for discipline as non-special education students, except as provided herein. (See Ed. Code, § 48900.)
 - > **Note:** A student who does not receive special education and who engages in behavior that violates a student code of conduct may assert the protections provided herein, if the LEA had prior knowledge that the student had a disability. (See 34 C.F.R § 300.534.)

2 THE TEN DAY RULE

- > Disabled students may be removed for up to 10 cumulative or consecutive school days for a single incident, without considering whether the removal constitutes a change of placement. (34 C.F.R. § 300.530.)
 - > **Note:** Under CA law, a student can only be suspended for up to five consecutive days for a single incident. (Ed. Code, § 48911, subd. (a).) When a recommendation for expulsion is pending, the district superintendent or other designee may extend the suspension, in writing, until a decision on the expulsion is rendered. (*Id.*, subd. (g).)
 - > **Services:** Services need not be provided when a disabled student is removed for 10 school days or less, as long as services are not provided to nondisabled students similarly removed. (71 Fed. Reg. 46717 (Aug. 14, 2006).)

3 NON-CONSECUTIVE REMOVALS TOTALING MORE THAN 10 SCHOOL DAYS

- > If a disabled student's non-consecutive removals total more than 10 school days within a school year, the district must determine whether the removals constitute a change of placement. (34 C.F.R. § 300.356.)
- > A change of placement will have occurred if:
 - > The student's behavior is substantially similar to behavior in previous incidents that resulted in the removal.
 - > Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement. (34 C.F.R. § 300.356.)
 - > If there is no change in placement
 - > **Services:** School personnel, in consultation with the student's special education teacher, shall determine and provide the appropriate educational services on the 11th day, to the extent necessary to: (1) enable the student to appropriately progress in the general curriculum; and (2) appropriately advance toward achieving the goals in the student's IEP. (71 Fed. 46716 (Aug. 14, 2006).)
 - > If there is a change in placement
 - > **Services:** If the student's removals constitute a change of placement, the student's IEP team shall determine and provide the appropriate educational services on the 11th day, to the extent necessary, to: (1) enable the student to appropriately progress in the general curriculum; and (2) continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals with that IEP, and to address the student's behavior violation so that it does not recur. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.530.)
 - > **Conduct a manifestation determination review (see No. 5 below)**

4 REMOVALS OF MORE THAN 10 CONSECUTIVE SCHOOL DAYS

- > A removal of more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.356.)
 - > **Services:** The student's IEP team shall determine and provide the appropriate educational services on the 11th day, to the extent necessary, to: (1) enable the student to appropriately progress in the general curriculum; and (2) continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals with that IEP, and to address the student's behavior violation so that it does not recur. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.530.)
 - > **Conduct a manifestation determination review (see No. 5 below)**

5 MANIFESTATION DETERMINATION

- > When a disciplinary removal constitutes a change of placement, a manifestation determination review must occur, no later than 10 school days after the date of the decision to take disciplinary action. (34 C.F.R. §§ 300.530(e), 300.536.) The IEP team will determine whether the behavior that led to the discipline was: (1) caused by, or had a direct and substantial relationship to the student's disability; or (2) the direct result of the district's failure to implement the student's IEP.
 - > **If the answer to (1) is "Yes":**
 - > The IEP team must:
 - > Conduct a functional behavioral assessment ("FBA") (unless an FBA was conducted before the behavior).
 - > Implement a behavioral intervention plan ("BIP") for the student. If a BIP is already in place, review it and modify it as necessary to address the behavior.
 - > Return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. (34 C.F.R. § 300.530(f).) **Note:** a student does not need to be returned to his/her placement when the student has been removed to an interim alternative educational setting for not more than 45 days (**see No.6 below**).
 - > **If the answer to (2) is "Yes":**
 - > If the IEP was not properly implemented, take immediate steps to remedy this.
 - > **If the answer to both questions is "No":**
 - > The student is subject to the same sanctions for misconduct as a student without a disability. However, the child must continue to receive educational services 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. (34 C.F.R. § 300.530(d).)
- > An additional manifestation determination meeting must be held each time an additional removal takes place (for example, for each additional suspension).

6 INTERIM ALTERNATIVE EDUCATION PLACEMENT - DANGEROUS BEHAVIOR

- > A disabled student may be unilaterally placed in an appropriate interim alternative educational setting for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function:
 - > Carries or possesses a weapon, as defined in 18 U.S.C. § 930;
 - > Knowingly possesses or uses illegal drugs;
 - > Sells or solicits the sale of a controlled substance, as identified in 21 U.S.C § 812(c);
 - > Inflicts serious bodily injury upon another person, as defined in 18 U.S.C. § 1365.
 - > **Services**
 - > The student's interim alternative educational setting shall be determined by his/her IEP team. (20 USC 1415(k)(1)(G); 34 CFR 300.531.)

- > The student’s IEP team shall determine and provide the appropriate educational services, although in another setting, to the extent necessary, to: (1) enable the student to appropriately progress in the general curriculum; and (2) continue to receive those services and modifications, including those described in the student’s current IEP, that will enable the student to meet the goals with that IEP, and to address the student’s behavior violation so that it does not recur. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.530.)
- > **But continue to conduct a manifestation determination review in any event (see No. 5 above)**

7 EXPEDITED DUE PROCESS HEARING

- > A parent who disagrees with the manifestation determination, or a district that believes maintaining the current placement of the student is substantially likely to result in injury to the student or others, may request an expedited due process hearing. (20 U.S.C. §1415(k)(3); 34 C.F.R. § 300.532(a).)
 - > Must occur within 20 school days of the request; hearing officer must make a decision within 10 school days after the hearing. (34 C.F.R. 300.532(c)(2).)

8 “STAY PUT” DURING DUE PROCESS PROCEEDINGS

- > While the appeal is pending, the student shall remain in the disciplinary setting pending the decision of the hearing officer (or, if applicable, until the expiration of the 45 school-day interim alternative educational placement), whichever occurs first, unless the parent and the LEA agree otherwise. (20 U.S.C. §1415(k)(4)(A); 34 C.F.R. §§ 300.532, 300.533.)

DISCLAIMER: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

Copyright © 2017 Lozano Smith - All rights reserved. No portion of this work may be copied, or sold or used for any commercial advantage or private gain, nor any derivative work prepared there from, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. - Rev. September 13, 2017