

# STUDENT DISCIPLINE



## 1 GENERALLY

- > Students with Section 504 plans are subject to the same grounds and procedures for discipline as non-Section 504 students, except as provided herein. (See Ed. Code, § 48900.)
  - > **Note:** A student who does not have a Section 504 plan and who engages in behavior that violates a student code of conduct may assert the protections provided herein if the LEA had a basis of knowledge that the student had a disability. (See 34 C.F.R § 300.534; see, e.g., *Fresno County Superintendent of Schools*, Case No 09-15-1021 (OCR 294).)

## 2 THE TEN DAY RULE

- > Section 504 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. § 104.35.)
  - > **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.*, § 48911, subd. (g).)
  - > **Services:** Services are not required when a Section 504 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 Section 504 student's non-consecutive removals total more than 10 school days within a school year and constitute a "pattern of removals," the district must determine whether the removals constitute a change of placement. (34 C.F.R. § 104.35(a); see also *Kalamzoo (MI) Pub. Sch. Dist.*, 50 IDELR 80 (OCR 2007).)
- > 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. (See *Springfield (MA) Public Schools*, 54 IDELR (OCR 2009).)
  - > 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. (See *Broward County (FL) Sch. Dist.*, 36 IDELR 159 (OCR 2001).)
    - > If there is a significant change in placement
      - > **Services:** If the student's removals constitute a significant change of placement.
      - > **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 significant change of placement. (34 C.F.R. § 104.35; see also *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138 (OCR 2009).)
  - > **Services:** The LEA shall consider whether a student's new placement is appropriate and will provide FAPE given the student's disability-related needs. (See *Grossmont (CA) Union High Sch. Dist.*, 113 LRP 27939 (OCR 2013).) Additionally, an LEA must provide educational services to a properly suspended student with a disability, if the LEA has a policy or practice of providing services to nondisabled students removed for similar offenses. (34 C.F.R. § 104.4; OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995).)
  - > **Conduct a manifestation determination review (See No. 5 below)**

## 5 MANIFESTATION DETERMINATION

---

- > A manifestation determination is conducted in substantially the same way, regardless of whether the student is IDEA-eligible or covered only by Section 504. 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 Section 504 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 Section 504 plan.
  - > **If the answer to (1) is "Yes":**
    - > The student may not be disciplined and the evaluation must determine whether the student's current educational placement is appropriate. (See e.g. *Tulsa (OK) Public Schools*, 46 IDELR 49 (OCR 2005).)
  - > **If the answer to (2) is "Yes":**
    - > If the Section 504 plan was not properly implemented, take immediate steps to remedy this.
  - > **If the answer to both questions is "No":**
    - > The district may elect to impose whatever long-term suspension or expulsion it would impose on a non-disabled student under the same circumstances, and the student may be disciplined just as any other student. (See, e.g., *Gates-Chili (NY) Cent. Sch. Dist.*, 50 IDELR 51 (OCR 2007).)
- > 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); or
  - > 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 Section 504 team.
      - > The student's Section 504 team shall determine and provide the appropriate educational services, although in another setting, for the student to receive FAPE under Section 504. (See *Grossmont (CA) Union High Sch. Dist.*, 113 LRP 27939. (OCR 2013).)
    - > **But continue to conduct a manifestation determination review in any event (See No. 5 above)**

## 7 "STAY PUT"

---

- > Neither the Section 504 statute nor its regulations have a specific "stay-put" requirement that parents can invoke to stay a disciplinary action. However, noting that districts must reevaluate students with disabilities before initiating a significant change in placement, OCR has observed that "a fair due process system would encompass the school district waiting for the results of the process before making the change." (See *Letter to Zirkel*, 22 IDECR 667 (OCR 1995).)

**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 © 2018 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. December 10, 2018