

CLIENT NEWS BRIEF

U.S. DOE Opines that Due Process Hearing Officers May Determine Whether a Special Education Student Subjected to Discipline Actually Violated the Student Code of Conduct

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The United States Department of Education's Office of Special Education Programs (OSEP) recently released a non-binding policy letter indicating that in a special education due process hearing addressing the student discipline process, a hearing officer is permitted to determine whether a student's behavior actually violated the code of student conduct.

Under the Individuals with Disabilities Education Act (IDEA), if a school district seeks to change the educational placement (generally, the setting in which the child is educated) of a special education student for *more than ten school days* for disciplinary reasons (e.g., a suspension or expulsion), the district must conduct a manifestation determination review (MDR). At the MDR, the student's IEP team analyzes whether the student's conduct was related to his or her disability or occurred as the result of a failure to implement the student's IEP. If the IEP team finds that the student's conduct is related to the disability or occurred due to the failure to implement the IEP, the district must, among other actions, return the student to his or her pre-discipline placement.

A student who believes that a school district violated the IDEA's discipline procedures may file a due process complaint. At the due process hearing, the hearing officer determines whether the change in placement violated the IDEA, or if the MDR was conducted appropriately. Historically, when conducting this analysis, hearing officers in California have not typically analyzed whether the student's behavior actually violated the code of conduct. The analysis usually pertains only to whether the school district complied with the required MDR procedures.

In *Letter to Ramirez*, 113 LRP 3448 (OSEP December 5, 2012), OSEP opined that a hearing officer *is permitted*, but not required, to determine whether a student's conduct violated school rules. As OSEP explained, a hearing officer may determine whether a change in placement was appropriate, or if the student's behavior was related to his or her disability. Because the IDEA provides that a change of placement may only be made if the student broke school rules, and that the MDR is conducted only if the student violated a code of conduct, it follows that the hearing officer may determine whether a student's conduct actually did run afoul of school rules.

Letter to Ramirez has stirred nationwide debate. Student attorneys claim that the policy letter is entirely consistent with the intent of the IDEA, while school attorneys are concerned with the changes that may result. For example, allowing a hearing officer to rule on whether a student violated school rules provides students with another opportunity to argue their innocence, allows hearing officers to second-guess administrators' decisions, and could increase the time and cost of hearings. In response, OSEP maintains that *Letter to Ramirez* neither creates new requirements, nor establishes any new powers for hearing officers.

Although *Letter to Ramirez* is not legally binding, and provides only informal guidance that serves as OSEP's interpretation of the laws, school districts should



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take note of OSEP's position. If this non-binding opinion is relied upon, in a due process hearing regarding discipline issues, the district may also have to address whether the student's actions actually violated the code of conduct.

For more details on *Letter to Ramirez* or for assistance with special education discipline procedures, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).