

IDEA's Disciplinary Procedural Safeguards May Apply To Students Not Yet Eligible For Special Education

In two recent decisions, the Office of Administrative Hearings (OAH) provided guidance regarding potential discipline safeguards and procedures for students not yet eligible for special education and related services. In *Anaheim Union High School District* (2012) OAH No. 2012031076 and *Fairfield-Suisun Unified School District* (2012) OAH No. 2012030917, OAH found that the school districts violated the Individuals with Disabilities Education Act (IDEA) by failing to provide procedural safeguards in disciplinary matters.

When disciplining students with disabilities, school districts must comply with certain IDEA requirements. For example, prior to changing special education students' placements for disciplinary reasons, relevant members of a student's IEP team must conduct a "manifestation determination" to determine whether the student's misbehavior was "caused by, or had a direct and substantial relationship" to the disability or was the "direct result" of the district's failure to implement the IEP. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).)

The IDEA discipline procedures may also apply to students who have not yet been identified as having a disability or have never received special education services before committing the offense for which they are disciplined. (20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534.) This is so if the school district has a "basis for knowledge," that the child has a disability before the child engages in the misconduct. A basis of knowledge exists if one of the following occurs *before* the child's misconduct: (1) the parent expressed concerns in writing to a supervisor, administrator, or teacher that the child is in need of special education; (2) the parent requested a special education evaluation; or (3) the child's teacher or other district staff expressed specific concerns directly to the director of special education or other supervisor about a pattern of behavior demonstrated by the child. (34 C.F.R. § 300.534(b).)

The key issue in both cases was whether the school districts had a basis of knowledge about the students' disabilities, thereby entitling the students to the IDEA's procedural safeguards. In *Anaheim Union High School District*, a 10th-grade student was suspended from school and recommended for expulsion after he was accused of soliciting the sale of drugs on campus. Approximately five months before the student's offense, the district had created a Section 504 accommodation plan for him, to address his increasing academic difficulties, anxiety, ADHD, lethargy, inattention, and need for frequent breaks during class. The student argued that the existence of his Section 504 plan alone gave the district a basis of knowledge that he had a disability. OAH disagreed, refusing to create a rule that a Section 504 plan or meeting automatically gives a district knowledge of a student's disability under the IDEA.

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However, OAH found that the district had a basis of knowledge because at the Section 504 plan meeting, school district staff had “expressed specific concerns about a *pattern of behavior* demonstrated by the child” directly to the assistant principal. (34 C.F.R. § 300.534(b)(3), emphasis added.) Here, OAH determined that “pattern of behavior” includes the types of concerns that were raised by the student’s teachers at his 504 plan meeting: the negative effect of the student’s anxiety, including a recent suicide attempt and resulting hospitalization, inattention, and lack of focus on his ability to access his education. OAH also took into consideration the student’s needs and academic difficulties that continued even after the Section 504 plan was implemented.

In *Fairfield-Suisun Unified School District*, OAH similarly addressed whether the school district had a basis of knowledge of the student’s potential disability, based on staff members expressing concerns at meetings regarding the student’s behavior. There, a 7th grade student with a history of negative behaviors and social-emotional difficulties was suspended and ultimately expelled for writing sexually explicit and threatening comments in a classmate’s book. The student’s bullying and disruptive behavior became so pronounced that the district held a Student Study Team (SST) meeting for him during the spring of his 6th grade academic year. At the SST meeting, staff expressed concerns that the student lacked empathy, bullied other students, defied school authorities, and attempted to set fires at home. Furthermore, a few days prior to the offense for which the student was expelled, he had threatened to kill one of his teachers. In discussing the threat with district administrators, the mother expressed concerns about her son’s psychotic ideations, Internet searches for guns, and access to guns at his father’s house, and requested psychological support for him. The administrators relayed these concerns to the student’s principal.

OAH clarified that in order for a district to have a basis of knowledge based on a staff member’s expression of concern, the discussion need not be about a suspected, educationally-related disability or specifically mention an assessment for special education. Moreover, OAH held that concerns need not be raised solely to special education administrators, but could also be raised with other supervisory personnel. Thus, the discussions amongst school administrators at the SST meeting and the subsequent meeting regarding the student’s threat to kill his teacher were sufficient to give the district knowledge of the student’s disability.

In both cases, the students successfully established that the school districts had knowledge of their disabilities before they engaged in misconduct, because school staff members had expressed concerns about the students’ behavior to supervisory staff. Because the districts knew of the students’ disabilities, they violated the students’ rights by failing to provide procedural protections, such as conducting a manifestation determination. OAH in *Anaheim Union School District* also acknowledged in its order the necessity to complete an expedited assessment of the student prior to proceeding with the manifestation determination hearing.

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These decisions highlight the importance in understanding the events or discussions that trigger the application of IDEA's procedural safeguards to students not receiving special education at the time of their misconduct. If a parent previously requested an assessment, expressed in writing that the child needs special education, or if staff members expressed concerns regarding a pattern of behavior to certain administrators or supervisors, the IDEA's disciplinary requirements may apply.

If you have any questions regarding these decisions, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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