

Discipline of Students in Special Education Series

Part 1 of 9 - August 2010

General Authority of School Personnel

Introduction

At the beginning of the school year, students often receive guidelines of expected standards of behavior, dress, academic integrity, and attendance, as well as the consequences of violating those standards. IDEA addresses the extent to which schools may take disciplinary action when a child with disabilities violates a local code of student conduct. These codes vary from place to place, so it may be important for you to get a copy of your local school district or State policies with respect to acceptable (and unacceptable) student conduct.

Let us say that a child with a disability has violated a code of student conduct. The question that many school systems, families, and advocates then ask is: What authority do school personnel have to discipline that child?

The answer begins with the general authority of school personnel under §300.530(b)(1). Read what IDEA says, and then we'll explain.

§300.530(b)(1):

Authority of School Personnel

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

This first part of IDEA's discipline regulations provides the foundational layer for school personnel's authority to remove a child with a disability from the current setting to another setting for disciplinary infractions. There are so many if-this, then-that variables at play here, it's hard to understand. Let's break it down.

First-Time Violation

School personnel may remove a child to an appropriate interim alternative educational setting (IAES), another setting, or suspension for not more than 10 school days in a row—to the extent those alternatives are applied to children without disabilities.

To further clarify, here's a little Q&A, with the A's in parentheses following the Q's:

- ***To where do school personnel have the authority to remove a child?*** (An appropriate IAES, another setting, or suspension)
- ***Another setting from what?*** (The child's current placement)
- ***For how long?*** (Not more than 10 consecutive school days, to the extent those alternatives are applied to children without disabilities)
- ***Is day 10 counted in that length of time?*** (Yes)
- ***How does disciplining children without disabilities relate to this provision?*** (The alternatives mentioned by IDEA—IAES, another setting, suspension—may only be applied to children with disabilities to the extent those disciplinary actions are applied to children without disabilities.)

The 10-day rule is the first category of disciplinary actions a school district can take.[1] There are three, as we'll see.

Does the student continue to receive special education services during the time of removal?

Although it's not stated in the provision above, it's important to know that schools do not have to provide students with disabilities with special education services during a removal of up to 10 school days in one school year—as long as they also do not provide educational services to children without disabilities who are similarly removed [§300.530(d)(3)].

Additional Violations

What if the child violates a code of conduct more than one time in the same school year? Can school personnel remove that child again for up to and including 10 school days in a row?

Yes—and for each separate incident of student misconduct— with two associated conditions. Those conditions are:

- Additional removals of not more than 10 consecutive school days in a school year from the current educational placement may occur so long as those removals do not constitute a “change of placement” in the disciplinary context under §300.536. [§300.530(b)(1)]
- Beginning with the 11th cumulative day in a school year that a child is removed, the school system must provide services to the extent required in §300.530(d). [§300.530(b)(2) and (d)(4)-(5)]

You may well be wondering what constitutes a “change of placement”? We'll talk about that in a moment, since it's a critical issue in IDEA's discipline procedures. First, though...

What happens to a child on the 11th cumulative day? Answer: The school system must provide services to the child to the extent required under §300.530(d), which clarifies that the child must continue to receive educational services so that the child can continue to participate in the

general education curriculum (although in another setting), and progress toward meeting the goals in his or her IEP.

What's a Change of Placement?

School personnel have the authority to make additional removals of a child with a disability for not more than 10 consecutive school days in the same school year for separate incidents of misconduct—as long as those removals do not constitute a change of placement under §300.536. Section 300.536 provides that a change of placement occurs if:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern.

What factors are to be considered in determining whether the series of removals constitutes a pattern? IDEA states in §300.536 that a pattern would exist:

- when the series of removals total more than 10 school days in a school year
- when the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
- when additional factors exist such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The school system determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

Consider the two illustrations below.

Case 1

If Jenna, a child with a disability, is suspended from school for 6 days in November and then another 3 days in February and then 1 day in April, does that constitute a pattern of removals that amount to a change of placement for Jenna? (No, that's only 10 school days total. IDEA states at §300.536(a)(2)(i) that a pattern is “a series of removals that total more than 10 school days in a school year.”

Case 2

How about this situation with a child with a disability named Robert?

1—Two separate incidents of throwing food at children in the cafeteria, each time resulting in a suspension of one day in September and October.

2—Pulling the fire alarm in November. A five-day suspension.

3—Fighting in class in December. Two days removal.

4—Setting off the sprinkler system in the school with a lighter in February. Two days removal.

Could the school system determine that Robert's removals constitute a pattern and, thus, a change of placement? Yes. According to §300.536(a)(2)(i), a pattern is “a series of removals that total more than 10 school days in a school year.” In our case, Robert has been removed from his current placement for a total of 11 days. School systems cannot use repeated short-term removals as a way of avoiding the Act’s change in placement provisions. Therefore, the school system would need to consider whether this series of removals constitutes a pattern and, thus, a change of placement, including considering (a) whether Robert’s behavior was substantially similar to that of previous incidents, and (b) any additional factors or relevant information regarding Robert’s behaviors, including, where appropriate, any information in his IEP.

The Department of Education acknowledged in response to a public comment:

...what constitutes “substantially similar behavior” is a subjective determination. However, we believe that when the child’s behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2)...for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred. Of course, if the parent disagrees with the determination by the public agency, the parent may request a due process hearing pursuant to §300.532. (71 Fed. Reg. 46729)

Case-by-Case Determinations

Under a new provision in the reauthorized IDEA, school personnel may consider whether a change in placement that is otherwise permitted under the disciplinary procedures is appropriate and should occur. We italicize those words to stress their importance. At first glance, this provision may appear to give school personnel the authority to unilaterally determine a change of placement for a child, but this is not so. School personnel must exercise this new authority on a case-by-case basis, and they can only use this authority if the removal would otherwise be consistent with the other provisions in §§300.530-300.536.

In other words: School authorities may only exercise their discretion on a case-by-case basis to allow removals for unique circumstances if the other disciplinary procedures have been satisfied.

What are unique circumstances? If school personnel now have the authority to take any unique circumstances or factors into consideration as part of change-of-placement decision making, what kind of circumstances might they consider?

According to the Department:

Factors such as a child’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a child with a disability prior to the violation of a school code [of student conduct] could all be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability. (71 Fed. Reg. 46714)

Is the IEP team involved in a case-by-case determination? According to the Department of Education, not officially:

[W]e do not believe it is appropriate to define a role for the IEP Team in this paragraph. There is nothing, however, in the Act or these regulations that would preclude school personnel from involving parents or the IEP Team when making this determination. (71 Fed. Reg. 46714)

Which school personnel are involved? IDEA's regulations do not specify the answer to this question. The Department explains that "...such decisions are best made at the local school or district level and based on the circumstances of each disciplinary case." (71 Fed. Reg. 46714)

Parent Notification

Parent notification is a very important aspect of implementing IDEA's discipline procedures. On the date when the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in §300.504. [§300.530(h)]

What Happens Next?

If a decision is made to change the child's placement because of a violation of a code of student conduct, then a manifestation determination must be conducted within 10 school days of that decision [§300.530(e)]. The purpose of the manifestation determination is to determine whether or not the child's violation of the student code of conduct is substantially linked to his or her disability. Manifestation determinations are discussed in a separate article, for they represent the next step in IDEA's discipline procedures.

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