

Discipline of Students in Special Education Series

Part 2 of 9 - September 2010

School Authority in Special Circumstances

Introduction

In addition to the general authority of school personnel to remove a student with disabilities from his or her current placement in disciplinary situations, school personnel also have the authority to remove a student with disabilities for what's known as "special circumstances." These circumstances apply to a child with a disability:

- who carries a weapon to or possesses a weapon at school, on school premises, or at a school function
- who knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, at school, on school premises, or at a school function
- who has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA). [§300.530(g)]

In any of these circumstances, school personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. The focus of this issue of *NASET's Discipline of Students in Special Education* series will be to address the authority that school personnel have to remove a student with a disability whose violation of the student code of conduct involves any of these three factors.

Definitions

"Dangerous weapon" is defined in 18 U.S.C. 930(g)(2) as follows:

- The term dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length. (71 Fed. Reg. 46723)

Note that the child doesn't have to use the weapon; he or she may merely possess it. It's also enough for a child with a disability to knowingly possess an illegal drug; he or she doesn't have to be caught using the drug. In contrast, for drug violations involving controlled substances, IDEA means that the child must sell or solicit the sale of a controlled substance.

Clearly, there's a difference between illegal drug and controlled substance. IDEA defines what a controlled substance is and what an illegal drug is at §300.530(i)(1) and (2).

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Clear as mud? That's because the definition of controlled substance is "lengthy and frequently changes," according to the Department (71 Fed. Reg. 46723). If you need the current definition, you can find it by visiting the Controlled Substance Act page of the U.S. Drug Enforcement Administration at the U.S. Department of Justice, at: <http://www.usdoj.gov/dea/pubs/abuse/1-csa.htm>

And what about the definition of serious bodily injury? Again, the definition comes from another law, which states that:

The term serious bodily injury means bodily injury that involves—

1. A substantial risk of death
2. Extreme physical pain
3. Protracted and obvious disfigurement
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (71 Fed. Reg. 46723)

Consequences Involving Special Circumstances

When a student with a disability has committed a weapons or drug violation, or inflicted serious bodily injury on another person, school personnel may remove that child to an interim alternative educational setting—hereafter referred to as an IAES—for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. [§300.530(g)]

Other provisions of IDEA's discipline procedures apply under special circumstances—for example:

- conducting the manifestation determination under §300.530(e)
- notifying parents under §300.530(h)
- determining the extent of services that must be provided to the child under §300.530(d)(1)

Conclusion

As we mentioned in Part 1 of our series, General Authority of School Personnel, IDEA includes three categories of disciplinary actions that a school district can take. The special circumstances described here represent the third category. As the Senate HELP committee explained:

Because of the inherent and immediate dangers connected with this category of cases, school personnel need to retain the ability to take swift action to address these situations, to ensure the safety of all students, teachers, and other such personnel.

[To top](#)