

Discipline of Students in Special Education Series

Part 7 of 9

What is Basis of Knowledge?

Can IDEA's discipline protections be applied to, or claimed by, children not previously determined to be eligible for special education and related services under IDEA?

Perhaps an example would clarify what this question is really asking. Suppose this situation: A student who has not yet been found to be a "child with a disability" under IDEA has violated a code of student conduct. The school system takes disciplinary action according to its policies—at which time the student asserts that, in fact, he or she is a "child with a disability" as IDEA defines that term and that the protections under IDEA must guide the discipline policies that are applied. Is this permissible?

Answer: Of course the answer is "sometimes" and "under certain circumstances." The pivot point, without a doubt, is whether or not the school system had knowledge that the child was a "child with a disability" when the child violated the code of student conduct. This is called "Basis of Knowledge" and is the focus of this article.

Criteria for Basis of Knowledge

And when would a school system be deemed to have such knowledge about a given child? IDEA is quite specific about what qualifies as "basis of knowledge." It states at §300.534(b) that the school system can be deemed to have such knowledge if, before the behavior occurred:

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child...or
- (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

Implications of These Criteria

These criteria have direct relevance to teachers, administrators, and parents alike. Each can play a potential role in the chain of events we've described and whether or not the child in question can legitimately assert the protections of IDEA. Consider the following situations and whether or not an LEA could be deemed to have basis of knowledge.

- The child's parent said something to the child's teacher about the child maybe needing special education. (No, the parent's concern must be expressed in writing.)
- The child's teacher was talking to another teacher in the lounge about the child's behavior. (No, the teacher's concern must be expressed directly to someone filling a supervisory role in the public agency.)
- An employee of the LEA is worried about a child's behavior and thinks the child needs special education and related services. To whom would the employee express these concerns? (To the director of special education or to other supervisory personnel at the LEA.)

The Child Find Mechanism

These provisions contain a presumption that, if involved individuals express concerns to other involved individuals (especially those in supervisory positions within the school system) about a child's behavior or possible need for special education and related services, the school has an affirmative obligation to act upon those concerns and investigate the child's need for special education and related services. As the Department explained:

...the child find and special education referral system is an important function of schools, LEAs, and States. School personnel should refer children for evaluation through the agency's child or special education referral system when the child's behavior or performance indicates that they may have a disability covered under the Act. Having the teacher of a child (or other personnel) express his or her concerns regarding a child in accordance with the agency's established child find or referral system helps ensure that the concerns expressed are specific, rather than casual comments, regarding the behaviors demonstrated by the child and indicate that the child may be a child with a disability under the Act. (71 Fed. Reg. 46727)

However, as the Department also noted, not all child find systems and referral processes in States and LEAs have policies in place that meet the requirements described in IDEA's "basis of knowledge" provisions—specifically, that:

...[a] teacher of the child, or other personnel of the LEA...must express specific concerns about a pattern of behavior demonstrated by the child "directly to the director of special education of such agency or to other supervisory personnel of the agency"... (Id.)

Recognizing that child find and special education referral policies in the States vary, the Department cautioned:

For these reasons, we would encourage those States and LEAs whose child find or referral processes do not permit teachers to express specific concerns directly to the director of special education of such agency or to other supervisory personnel of the agency, to change these processes to meet this requirement. (Id.)

Noting the Exceptions

IDEA also includes several exceptions to the "basis of knowledge" criteria, wherein a school system would not be deemed to have the knowledge that a child was a "child with a disability" before the child's behavior occurred. These provisions appear at §300.534(c) and apply IF:

(1) The parent of the child—

- (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
- (ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

Children Receiving Early Intervening Services

An issue not mentioned in either “basis of knowledge” or the “exception” provisions just discussed is whether or not a school system would be deemed to have “knowledge” if the child in question is receiving early intervening services. Early intervening services are provided to children:

...in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. [§300.226(a)]

So--if a student receiving early intervening services breaks the student code of conduct, can he or she assert that the school had basis of knowledge beforehand, because it had been worried enough about that student to identify the student as needing early intervening services?

The answer is: No, a school is not considered to have a basis of knowledge merely because a child receives early intervening services. However, if a child's parent or teacher expresses a concern, in writing, to appropriate school personnel, that the child may need special education and related services, then the school would be deemed to have knowledge that the child is a child with a disability under IDEA. (71 Fed. Reg. 46727)

What Happens if There is No “Basis of Knowledge?”

The final portion of §300.534 describes the conditions that apply if the school is deemed not to have a “basis of knowledge” that the child was a “child with a disability” before taking disciplinary action against the child. If this is the case, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. If an evaluation of the child is requested during the time the child is subjected to these disciplinary measures, the evaluation must be conducted in an expedited manner and, until the evaluation is completed, the child remains in the educational placement determined by school authorities—which can include suspension or expulsion without educational services.

If the child is found to be a “child with a disability,” the school must then provide special education and related services to the child. This includes the requirements of §§300.530 through 300.536—IDEA’s discipline procedures—especially those related to “extent of services.”