



NASET Q & A Corner

Issue #12

Questions and Answers about Discipline Procedures

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This NASET Q & A Corner addresses significant changes from preexisting regulations to the final regulatory requirements regarding discipline procedures.

Did IDEA 2004 add a new authority for school personnel to consider unique circumstances?

Yes. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of 34 CFR 300.530, is appropriate for a child with a disability who violates a code of student conduct. [34 CFR 300.530(a)] [20 U.S.C. 1415(k)(1)(A)]

Did IDEA 2004 expand removal authority for special circumstances related to serious bodily injury?

Yes. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA); knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or, has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. [34 CFR 300.530(g)(1)-(3)] [20 U.S.C. 1415(k)(1)(G)(i)-(iii)]

Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code². [34 CFR 300.530(i)(3)] [20 U.S.C. 1415(k)(7)(D)]

Did IDEA 2004 retain previous authority for immediate short-term removals?

Yes. School personnel under 34 CFR 300.530 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 ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten 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 34 CFR 300.536).

[34 CFR 300.530(b)(1)] [20 U.S.C. 1415(k)(1)(B)]

Did IDEA 2004 retain authority for long-term removals for behavior that is not a manifestation of the disability?

Yes. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 34 CFR 300.530(e), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 34 CFR 300.530(d) (services). [34 CFR 300.530(c)] [20 U.S.C. 1415(k)(1)(C)]

Did IDEA 2004 clarify when services are required during disciplinary removals, the provision of such services and who makes the determination regarding services and interim alternative educational settings?

Yes. A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

[34 CFR 300.530(d)(3)]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under 34 CFR 300.530(d) (services). [34 CFR 300.530(b)(2)]

A child with a disability who is removed from the child's current placement pursuant to 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability) or (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury) must:

- Continue to receive education services, as provided in 34 CFR 300.101(a) (free appropriate public education (FAPE) requirements), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP

- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. [34 CFR 300.530(d)(1)] [20 U.S.C. 1415(k)(1)(D)]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. [34 CFR 300.530(d)(4)]

If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 34 CFR 300.530(d)(1). [34 CFR 300.530(d)(5)]

The services required by 34 CFR 300.530 (d)(1), (d)(3), (d)(4), and (d)(5) may be provided in an interim alternative educational setting. [34 CFR 300.530(d)(2)]

The child's IEP Team determines the interim alternative educational setting for services under 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability), (d)(5) (a removal that is a change of placement), and (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury). [34 CFR 300.531] [20 U.S.C. 1415(k)(2)]

Did IDEA 2004 specify when the LEA must give notice?

Yes. On the date on which 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 34 CFR 300.504. [34 CFR 300.530(h)] [20 U.S.C. 1415(k)(1)(H)]

Did IDEA 2004 establish a new standard for manifestation determinations?

Yes. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either 34 CFR 300.530(e)(1)(i) or (1)(ii) was met. [34 CFR 300.530(e)(1) and (2)] [20 U.S.C. 1415(k)(1)(E)]

If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 34 CFR 300.530(e)(1)(ii) was met, the LEA must take immediate steps to remedy those deficiencies. [34 CFR 300.530(e)(3)]

Did IDEA 2004 add a new provision when there is a determination that the behavior was a manifestation of the disability?

Yes. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in 34 CFR 300.530(g), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. [34 CFR 300.530(f)] [20 U.S.C. 1415(k)(1)(F)]

Did IDEA 2004 retain a definition of change of placement and clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals meets the definition?

Yes. For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 through 300.535, a change of placement occurs if:

- The removal is for more than ten consecutive school days
- The child has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals total more than ten school days in a school year
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
 - Because of such additional factors 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 public agency 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. [34 CFR 300.536]

Did IDEA 2004 retain and revise the standard for a public agency's basis of knowledge for children not determined eligible for special education and related services?

Yes. A child who has not been determined to be eligible for special education and related services under Part B of the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Part B if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- 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
- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311
- 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. [34 CFR 300.534(a) and (b)] [20 U.S.C. 1415(k)(5)(A) and (B)]

Did IDEA 2004 establish exceptions to the public agency's basis of knowledge for ineligibility, or refusal of consent to evaluation or services?

Yes. A public agency would not be deemed to have knowledge under 34 CFR 300.534(b) if the parent of the child has not allowed an evaluation of the child pursuant to 34 CFR 300.300 through 300.311 or has refused services under Part B of the IDEA; or the child has been evaluated in accordance with 34 CFR 300.300 through 300.311 and determined to not be a child with a disability under Part B of the IDEA. [34 CFR 300.534(c)] [20 U.S.C. 1415(k)(5)(C)]

Did IDEA 2004 retain hearing rights related to disciplinary removals?

Yes. The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). [34 CFR 300.532(a)] [20 U.S.C. 1415(k)(3)(A)]

Did IDEA 2004 establish the authority of the hearing officer?

Yes. A hearing officer under 34 CFR 300.511 (impartial due process hearing) hears, and makes a determination regarding an appeal under 34 CFR 300.532(a) (disagreements regarding disciplinary removals and placement and manifestation determinations are subject to a hearing).

In making the determination under 34 CFR 300.532 (b)(1), the hearing officer may:

- Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures under 34 CFR 300.532(a) and (b)(1) and (2) may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. [34 CFR 300.532(b)] [20 U.S.C. 1415(k)(3)(B)]

Did IDEA 2004 establish procedures for an expedited hearing?

Yes. Whenever a hearing is requested under 34 CFR 300.532(a) (related to disciplinary removals), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through (c) and 300.510 through 300.514, except as provided in 34 CFR 300.532(c)(2) through (4).

The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing. Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506:

- A resolution meeting must occur within seven days of receiving notice of the due process complaint
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

A State may establish different State-imposed procedural rules for expedited due process hearings conducted under 34 CFR 300.532 than it has established for other due process hearings, but, except for the timelines as modified in 34 CFR 300.532(c)(3), the State must ensure that the requirements in 34 CFR 300.510 through 300.514 are met.

The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.514. [34 CFR 300.532(c)] [20 U.S.C. 1415(k)(4)(B)]

Did IDEA 2004 address the child's placement pending a disciplinary hearing decision?

Yes. When an appeal under 34 CFR 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. [34 CFR 300.533] [20 U.S.C. 1415(k)(4)(A)]