

Navigating the Ins and Outs of Special Education Student Discipline

Webinar
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Navigating the Ins and Outs of Special Education Student Discipline

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November 12, 2021

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1

Agenda

1. General Discipline Rules
2. Manifestation Determination Review
3. Removal to IAES
4. Other Considerations (Child Find/504)
5. General IEP Considerations
6. Making LRE Determinations
7. Tips
8. Questions?

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2

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

General Rules

- All students, including students with disabilities, may be suspended for up to 10 school days for gross disobedience or misconduct.
- SB 100's requirements related to out of school suspensions apply equally to students with and without IEPs.

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3

Change of Placement Overview

Will Disciplinary Removal Result in a Change of Placement?

• or

Has the Student Been Suspended for More than 10 School Days in the Current School Year?

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Change of Placement

A “change of placement” occurs if:

- A student is removed in excess of 10 consecutive school days; **or**
- A student has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals totals more than 10 school days in a school year;
 - Because the student’s behavior in the current incident is substantially similar to previous incidents resulting in removal; and
 - Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of removals to one another.

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5

Services to Students after 10 Days



If the disciplinary removal DOES NOT result in a change in placement, then you should comply with regular education discipline procedures.



If aggregate days exceed 10 but do not constitute a “change of placement,” the student is entitled to continue to receive educational services in another setting. An IEP team meeting is not required.



Administrative personnel must consult with the student’s teacher to determine what educational services are needed during the period of removal.

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6

Services to Students After 10 Days

NOTE:

- In addition to the IDEA's requirement that the district continue to provide educational services during the period of removal, SB 100 requires that a student who is suspended for more than four consecutive days for one offense must be provided with "appropriate and available support services" during the period of suspension.

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What Triggers a Manifestation Determination Review (MDR)?

- If the disciplinary removal DOES result in a change of placement
OR
- If the cumulative days of out of school suspension are greater than 10 for one school year



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MDR Requirements

- The MDR includes a review of:
 - all relevant information in the student's file (including the IEP),
 - any teacher observations, and
 - any relevant information provided by the parents.
- The Team must determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability.

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9

ISBE MDR Requirements

- **Similarly, ISBE instructs that the IEP team's manifestation determination must include:**
 - Disability: identify the student's disability.
 - Incidents that Resulted in Disciplinary Action: describe the student's behavior that resulted in the need for a manifestation determination.
 - Student's IEP and Placement: review all relevant information in the student's file, including the IEP. If the IEP was not implemented, the team should document why it was not implemented and whether the failure to implement the IEP impacted the student's behavior.
 - Observations of the Student: review staff observations regarding the student's behavior across all settings and times throughout the school day.
 - Information Provided by Parents: review any relevant information provided by the parents.

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ISBE MDR Requirements



- Determination of Manifestation: make this determination based upon two inquiries:
 - Was the conduct caused by, or did it have a direct and substantial relationship to the student's disability?
- OR
- Was the conduct the direct result of the district's failure to implement the student's IEP?

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Conduct Was NOT a Manifestation

- If the answer to both of the above questions is NO then the student's conduct was NOT a manifestation of his/her disability and:
 - The district may suspend/expel the student consistent with the student code of conduct;
 - The district must continue to provide educational services in another setting determined by the IEP team (and, if the out-of-school suspension is for more than four consecutive days, the district must provide appropriate and available support services during the period of suspension); and
 - Any change in placement requires written notice to the parents along with an explanation of procedural safeguards.

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12

Conduct WAS a Manifestation

- If the answer to either of the above questions is YES, then the student's conduct WAS a manifestation of his/her disability and:
 - The district may not proceed with additional days of suspension or expulsion;
 - The student must be returned to the placement from which he/she was removed; and
 - The IEP team must also create/review/revise the FBA and BIP to specifically address the behavior that resulted in the discipline. If appropriate notice has been provided, the IEP team may discuss if a change in placement is necessary.

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Removal to an Interim Alternative Educational Setting (IAES)

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REMOVAL TO IAES

- School personnel may place a student to an interim alternative educational setting for not more than 45 school days, without regard to whether a student's behavior is a manifestation of the student's disability in cases where a student:

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REMOVAL TO AN IAES



A District may unilaterally place a student in an IAES for up to 45 school days if the student:

- Carries or possesses a weapon
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance
- Has inflicted serious bodily injury upon another person

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REMOVAL TO AN IAES

- A District may request an expedited hearing seeking authority from a hearing officer to place a student in an interim alternative educational setting for up to 45 school days.

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REMOVAL TO AN IAES: FACTORS CONSIDERED BY IHO

IHO must determine whether:

1. The district has demonstrated substantial evidence that maintaining the current placement is likely to result in injury to the student or others
2. The student's placement is appropriate
3. The district has made reasonable efforts to minimize the risk of harm in the student's current placement
4. The IAES will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring

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18

EXPEDITED DUE PROCESS HEARING



- Request by Parent:
 - May be requested if there is disagreement with respect to an MDR decision or regarding a district's decision to remove a student to an IAES.
- Request by District:
 - If school personnel believe maintaining the current placement is likely to result in injury to the student or others.

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19

Removal Through Court Injunction

- Courts retain the authority to remove a student with a disability when the student's current placement is substantially likely to result in injury to the student or others.
- IDEA does not require districts to exhaust administrative remedies before seeking an injunction.

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Other Relevant Considerations (Child Find/504)

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Students Suspected of Having a Disability

- A previously unidentified student with a disability facing disciplinary action such as suspension, expulsion, or a change in placement to an interim alternative educational setting may nonetheless claim the procedural safeguards of the IDEA
- If the district had knowledge that the student was a student with a disability "before the behavior that precipitated the disciplinary action occurred."

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Students Suspected of Having a Disability



- The IDEA describes three circumstances under which the district will be deemed to have had knowledge that a student has a disability:
 1. The parent of a student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
 2. The parent of the student requested an evaluation of the student; or
 3. The teacher of the student, or other personnel of the local educational agency, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or to other supervisory personnel of the agency.

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23

Students Suspected of Having a Disability

- A district is not deemed to have had knowledge that a student is a student with a disability when:
 1. The parents have not allowed an evaluation of the student; or
 2. The parents have refused services; or
 3. The student has been evaluated determined to not be a student with a disability.

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24

Student Discipline Under Section 504

Section 504 regulations contain the basic rules districts must follow when disciplining a student protected by Section 504, including when subjecting a student to a significant change of placement.

OCR considers a suspension or expulsion of a student with a disability for more than 10 consecutive school days a "significant change in placement."

With a few notable exceptions, the disciplinary rules and procedures of Section 504 largely mirror those of IDEA.

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General IEP Considerations (Discipline & Behavioral)

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General IEP Considerations

- IDEA requires the IEP team, in the case of a student whose behavior impedes his learning or that of others to consider use of PBIS or other strategies.
- BIP is not necessarily mandated for all students with disciplinary misconduct. The need for behavioral interventions must be determined on a case-by-case basis.

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General IEP Considerations

- IDEA explicitly mandates development of a FBA/BIP in one circumstance:
 - If a student is subjected to a disciplinary change of placement and the conduct in question is found to be a manifestation of the student's disability



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OSEP/OSERS GUIDANCE (August 2016)

- The agency cited concerns with district's believing they have 10 "free" days to implement discipline.
- A student's repeated misconduct may indicate a need to include or change behavior supports already provided in the IEP.
- Agency cited some examples of behavioral interventions: violence prevention, anger management groups, counseling, behavior coaching and social skills instruction.

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Functional Behavior Assessment, defined by Illinois Regulations

- An assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.

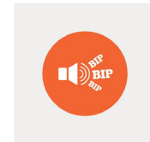
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Behavior Intervention Plan, defined by Illinois Regulations

The IEP of a student who requires a behavior intervention plan shall:

- Summarize the findings of the functional behavior assessment;
- Summarize prior interventions implemented;
- Describe any behavioral interventions to be used including those aimed at developing or strengthening alternative of more appropriate behaviors;



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31

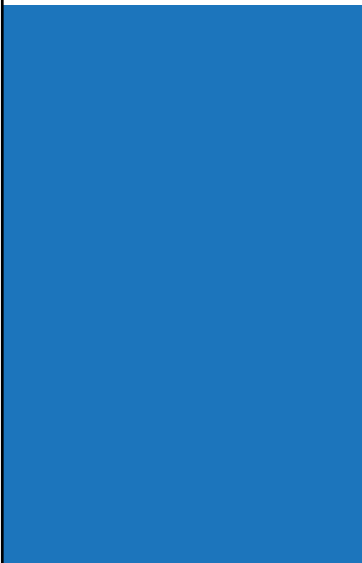
Behavior Intervention Plan (cont.)

- Identify measurable behavioral changes expected and methods of evaluation;
- Identify a schedule for the review of the interventions' effectiveness; and
- Identify provisions for communicating with the parents about their student's behavior and coordinating school-based and home-based interventions.

**The team shall include a person knowledgeable about positive behavior strategies.*

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Making Least Restrictive Environment (LRE) Determinations

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33



IDEA LRE PROVISIONS

The IDEA Requires that each public agency ensure that:

- To the maximum extent appropriate, students with disabilities are educated with children who are not disabled;
- Special classes, separate schooling or other removal from the general education environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved.

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IDEA LRE PROVISIONS



- A student cannot be removed from the regular education setting solely because of needed modifications in the general education curriculum.
- A student need not fail in the general education environment before the LEA can consider or implement a change of placement in a more restrictive setting.

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IDEA LRE PROVISIONS

- Be careful:
 - Avoid relying on lack of adequate personnel or resources as justification for placement in a more restrictive setting

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Final Tips!



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Final Tips

- Make sure you are monitoring behavioral patterns when issuing disciplinary consequences, to avoid Child Find or FAPE violations.
- Make sure staff are properly trained to implement behavioral interventions and are documenting their effectiveness.

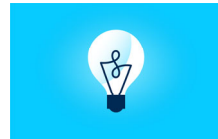
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Final Tips

- Suspensions for portions of the school day or school removals may be considered a removal in regard to determining a pattern of discipline removals.
- Contrast with ISS where FAPE was provided or removal from class to engage in preferred activities, calming, sensory breaks, or de-escalation.

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39

Final Tips

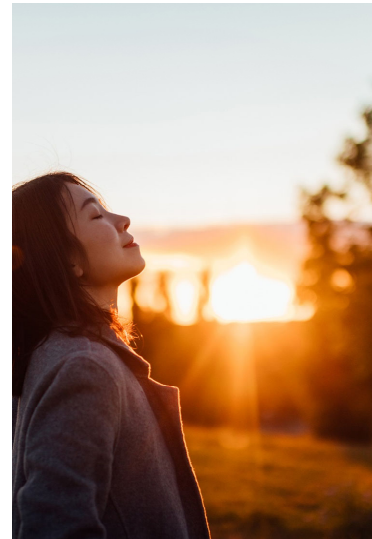
- Hold an MDR meeting within 10 school days.
- Prepare for MDR meetings by compiling relevant records and information.
- Consider ABC data for reviewing and analyzing the incident: antecedent, behavior, consequence of the incident

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Final Tips

- Keep calm and carry on!



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41

Coming Soon!

- Available for purchase Student Discipline Administrator Toolbox. Toolbox will include:
 - Template for parental notice letters
 - Template of procedures for suspension review hearing and expulsion hearing
 - Template for determination letters
 - Sample Board Motions
 - Procedural Tools and References

*To purchase a Student Discipline Administrator Toolbox, please send an email to criehle@robbins-schwartz.com

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42

Questions?



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Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)

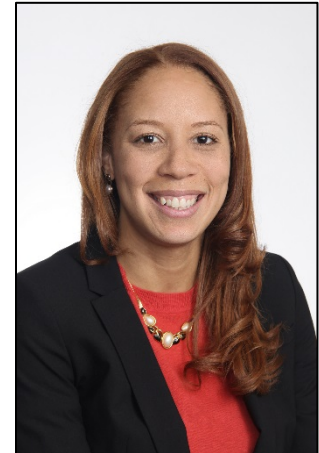
RECENT PRESENTATIONS

Use of Restraint & Seclusion: The Risks & Challenges Districts Face, IAASE (October 2018)

Legal Update in Special Education, Superintendent Leadership Conference (June 2018)

Current Trends Related to Placement and LRE: A Review of Recent Guidance from the Courts, IAASE (February 2018)

"Free Speech" Issues on Public College Campuses, ICCSSO (January 2018)



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Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Risk Assessments, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)

Escalating Student Behavior and Safety Concerns: Legal Options and Considerations, Illinois Alliance of Administrators of Special Education Winter Conference (February 2019)

Student Bullying Legal Framework & Recommended Practices, In-Service (August 2018)



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