

Compliance Corner

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Do You Have the Tools When Implementing the Discipline Rules? (Part 2 of 4)

Topics Include:

Change in Placement

Pattern of Removals

“10-Day Rule”

When Services Are Required

Being aware of the discipline process and the protections for students who are eligible under the Individuals with Disabilities Education Act (IDEA) can appear daunting. There are numerous regulations and considerations not only to keep in mind but also apply. In this second edition of a four-part series, we will be exploring several aspects of the discipline process including what constitutes a change in placement, what is a pattern of removals and when services that are prescribed in a student’s Individualized Education Program (IEP) must be implemented. These concepts are important to understand when disciplining a student for a violation of the student code of conduct.

It is important to note that special protections exist for students who are eligible under Section 504 of the Rehabilitation Act and those not yet eligible under the IDEA but for whom there was a suspicion of a disability prior to the violation of the student code of conduct. For purposes of this article, the focus will remain on those who have been found eligible under the IDEA.

When disciplining a student who is eligible under the IDEA, one must determine if the proposed disciplinary action will constitute what is referred to as a change in placement. Perhaps an appropriate place to start is to define what a placement is.

As discussed in a previous Compliance Corner edition, IDEA discusses a placement in 34 CFR §300.316 in the following manner:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§[300.114](#) through [300.118](#);

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

IDEA requires school districts to have available a continuum of alternative placements. This continuum offers options for IEP Teams to consider when determining the extent to which the student needs to be removed from the regular education setting. In determining the placement for an eligible student, IEP Team members consider, among other information, the child's strengths, areas of need, and the necessary supports the child requires. This decision takes into consideration the intensity of the required services and supports as well as the amount of specialized instruction needed.

There are several instances in which a child's placement may be changed. A change in placement may occur if the student requires a more intensive setting, a less intensive setting or the student is graduating from high school, to name a few examples. In addition to these examples, there are instances where the removal of the student may constitute a change in placement due to disciplinary actions. There are several scenarios where this may be the case. IDEA defines a change in placement due to disciplinary actions in 34 CFR §300.536 as:

For purposes of removals of a child with a disability from the child's current educational placement under §§ [300.530](#) through [300.535](#), a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) 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.

It is important to take note of the words “consecutive” as well as “or” referenced in the citation above. These scenarios are independent of one another. In other words, if one or the other applies, it will result in a change in placement for the student.

If the proposed disciplinary action will result in a change in placement, school teams must conduct a Manifestation Determination Review (MDR) within ten school days of the decision to remove the student. The MDR process will be discussed in great detail in the fourth and final edition of this four-part series. Concepts regarding information to consider, who should be at the table as well as the ramifications regarding the decisions made during the meeting will be discussed.

Each instructional year, students who are eligible under the IDEA can be removed from the educational setting due to disciplinary reasons for a total of ten (10) instructional school days without being provided any instruction so long as students in regular education are not provided instruction during the same number of days of suspension. 34 CFR §300.530(d)(3) states:

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 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

However, any subsequent removals must be accompanied by the services that are prescribed in the student’s IEP. 34 CFR §300.530(b)(2) states:

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under [paragraph \(d\)](#) of this section.

In sum, special considerations must be given when imposing a disciplinary action for a student who is eligible under the IDEA. Prior to imposing a disciplinary action, administrators need to analyze the situation. Is the proposed removal for more than 10 **consecutive** school days? If yes, then it’s a change in placement. Has the student already been removed for 10 **cumulative** school days **and** the proposed removals constitute a **pattern of removals**? If yes, then it’s a

change in placement. As a result, a Manifestation Determination Review, which will be discussed in detail at a later date, must be conducted.

Join me for the next edition of Compliance Corner when we will discuss the provisions involving In-School-Suspension (ISS) as well as what violations of the student code of conduct would involve Special Circumstances resulting in a placement in an Interim Alternative Educational Setting (IAES).

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.