

Student Discipline for Student Success: A Primer

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Lesson #1

Equitably apply your
School District
discipline
policies/ procedures .

U.S. Departments of Justice and Education

Dear Colleague Letters 2016/2022

- ▶ Explains nondiscrimination requirements under Titles IV and VI of the Civil Rights Act of 1964 and reminds schools of their legal obligations to administer student discipline without discriminating on the basis of race, color or national origin
- ▶ Explains what OCR will do when it receives a complaint or begins a compliance review related to discrimination in the administration of student discipline, and outlines the legal framework and approach OCR will follow in its investigation.

Dear Colleague letter, cont.

- ▶ Urges school districts to evaluate their discipline policies, practices and procedures to ensure they are fair and applied equally to all students.
- ▶ Provides recommendations to assist schools in the fair and equitable administration of student discipline.
- ▶ Urges schools to “redouble their efforts” to administer discipline of special education students in a manner, which is equitable and appropriate in light of their disabilities.

<https://sites.ed.gov/idea/idea-files/dcl-implementation-of-idea-discipline-provisions/>

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>

Lesson #2

Appropriately
discipline students
who fall under IDEA
and Section 504.

Who is a child with a disability?

- ▶ IDEA Definition
- ▶ Section 504 definition

IDEA Eligibility Determinations

A child with a disability is a child with intellectual disability, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disability who by reason thereof needs special education or related services.

What about Gifted...?

- ▶ Gifted qualifications alone does not qualify the student for special circumstances related to discipline.
- ▶ If coupled with a disability qualified under IDEA or 504, then yes.

504 Qualified handicapped person

(1) with respect to public school, a handicapped person:

(i) of an age during which non-handicapped persons are provided such services,

(ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or

(iii) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of the Handicapped Act;

504 Major Activities Impairment

- ▶ Major life activities, for purposes of Section 504 eligibility, include functions such as caring for one's self, performing manual tasks, reading, concentrating, thinking, communicating, walking, seeing, hearing, speaking, breathing, **learning**, eating and working.
- ▶ This list is not exhaustive. Other functions can be major life activities for purposes of Section 504.

Lesson #3

Special Education students *can* be disciplined for school conduct, but their disability must be considered.

NMPED Regulations related to student discipline

NMAC 6.11.2

Basis for disciplinary action:

A student may appropriately be disciplined by administrative authorities in the following circumstances:

- (1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible;
- (2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority; or
- (3) by committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

Suspension as Discipline

- ▶ Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC.
- ▶ Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC.

N.M. Admin. Code 6.11.2

Continued

- ▶ G. Discipline of students with disabilities:
- ▶ Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program.
- ▶ However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits.
- ▶ Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

Lesson #4

Administrators must track suspension days for special education students. (Think about days in ISS as well.)

34 CFR Sec. 300.530.

- ▶ (1) School personnel under this section 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 10 consecutive school days** (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 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 Sec. 300.536).
- ▶ (2) 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.

34 CFR Sec. 300.530. cont.

- ▶ (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--
- ▶ (i) Continue to receive educational services, as provided in Sec. 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; and
- ▶ (ii) 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.

Does In-school Suspension Count?

- ▶ Maybe.
- ▶ Commentary to the regulations provides that an in-school suspension would not be considered as part of the days of suspension . . . So long as
 - ▶ the child is afforded the opportunity to appropriately progress in the general curriculum,
 - ▶ continue to receive the services specified on his IEP, and
 - ▶ continue to participate with nondisabled children to the extent he would have in the current placement.

What About Partial Days of Suspension?

- ▶ Again not made clear in the regulations
- ▶ Discussed in the commentary
 - ▶ Portions of a school day that a child has been suspended may be considered as a removal in regard to determining whether there is a pattern of removals.
 - ▶ A bus suspension would count as a suspension if it is part of student's IEP - unless provided in some other manner.

Lesson #5

Conduct an appropriate
Manifestation
Determination Review
for special ed students.

Must conduct a Manifestation Determination (MDR)

- ▶ The process for determining whether a student's misconduct is related to his disability is referred to as a manifestation determination.
- ▶ This determination is a key step in the discipline process under both Section 504 and IDEA because it impacts the type of discipline the district can impose on the student.

MDR under 504 v. IDEA?

- ▶ **Key difference:**
- ▶ Under 504, if the conduct is not a manifestation of the disability, then the student may receive the same discipline as a general education student and no services are required.
- ▶ i.e.:
 - ▶ Student caught smoking marijuana on multiple occasions.
 - ▶ Administration recommending long-term suspension.
 - ▶ The student qualifies for 504 due to ADHD.
 - ▶ The MDR team determines that the conduct is not a manifestation of the student's disability.
 - ▶ Student may move to hearing to be long-termed and the District is not required to provide services.

What Happens at the MDR?

- ▶ Answer two questions:
 - ▶ Is the conduct a result of the school district's failure to implement the student's IEP?
 - ▶ Is the conduct a manifestation of the student's disability?
 - ▶ If the answer to both questions is **NO** - proceed to the next step...

Disciplinary Hearing

Lesson #6



Hold an appropriate disciplinary hearing.

Exceptions to Hearing Requirement...

- ▶ Special circumstances. School personnel may remove a special education 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--
- ▶ (1) Carries a **weapon** to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- ▶ (2) Knowingly **possesses or uses illegal drugs**, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- ▶ (3) 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.

Disciplinary Hearing

- ▶ If the MDR determines that the conduct is NOT a manifestation of the student's disability,

AND

- ▶ The is not qualifying exception: drugs, weapons, serious bodily injury,
- ▶ The student must be afforded a hearing.
- ▶ This due process is required under the law.
- ▶ The hearing officer must be provided with the determination of the MDR at hearing.

Lesson #7

Your hearing officer must be neutral.

Hearing Officer Must be Neutral

- ▶ The hearing officer may not have been involved in the investigation of the incident leading to the hearing.
- ▶ They must recuse if conflicted.
- ▶ The hearing officer **MAY NOT** participate in the MDR.
- ▶ They must be a neutral party.

Hearing Officer...

- ▶ N.M. Admin. Code 6.11.2
- ▶ (b) Review authority.
 - ▶ Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose a harsher punishment. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subsection G, Paragraph (4), Subparagraph (o) of Section 6.11.2.12 NMAC below.
- ▶ (c) Disqualification.
 - ▶ **No person shall act as hearing authority, disciplinarian or review authority in a case where (s)he was directly involved in or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.**

Lesson #8

Individualize your
Interim Alternative
Educational Setting
(IAES) programs.

Interim Alternative Educational Setting

- ▶ Special Education students **may not** be given a harsher punishment for the same offense as their non-disabled peers.
- ▶ **EXAMPLE:** If general ed students are not long-term suspended for first drug offense, special education students may not be.
- ▶ **REMEMBER:** 45 days is the maximum. The placement should be determined individually for each student. It should not be an automatic 45 days.

IAES program...

- ▶ Does not have to mirror the student's typical school day, but services must be provided.
- ▶ Younger students being placed in IAES more frequently.
- ▶ FBA and BIP are critical to avoid over placement of students in IAES.
- ▶ Can be considered a denial of FAPE if a BIP has not been developed to address a pattern of behavior and the student is removed.

Lesson #9

Take appropriate proactive steps when a student is having ongoing behavioral issues.

Functional Behavior Assessment

- ▶ Should include interviews and observations.
- ▶ Should include multiple persons viewpoints and team collaboration and input.
- ▶ Should include gathering of specific data points to get a comprehensive look at the student's conduct throughout the day and in different settings.
- ▶ Should not just restate the student's disciplinary referrals.

Behavior Intervention Plan

- ▶ Should describe the expected outcomes and goals for the plan;
- ▶ Should specify the interventions used to achieve the goals;
- ▶ Should specify person who is responsible for specific interventions;
- ▶ Should specify a review date;
- ▶ Should not regurgitate the student handbook and discipline matrix.

Lesson #10

Train staff and administrators on the equitable application of discipline for all students.

Statistically...

- ▶ Black and Latino students are consistently punished more severely than white students for the same infractions.
- ▶ Nearly 50 percent of preschool children who are suspended multiple times are children of color, yet children of color represent less than one-fifth of the preschool population.
- ▶ Black students are far more likely to be referred to law enforcement or arrested for a school-based offense than white students or other students of color.
- ▶ Black girls are suspended at a much higher rate than girls of any other race.
- ▶ Students with disabilities, who represent only 12 percent of the public school population, account for almost 60 percent of students who are placed in seclusion.
 - ▶ 2014 Department of Education Office of Civil Rights study

Protections for students not yet eligible for special education

Child may assert protections when:

“Staff of teachers must have expressed concern directly to special education directors or other supervisors” about a pattern of behavior demonstrated by the student

Then LEA had knowledge that child was a child with a disability and must treat the child as such when disciplining the child.

BE AWARE: This does not apply if parents have denied testing for the student. They cannot assert this protection if the student was referred and the parents declined. Student should be treated as a general education student.

Additional Provision for School Seeking Removal of Student

- ▶ School district may invoke hearing process if it believes that maintaining current placement of the student is substantially likely to result in injury to the child or to others.
 - ▶ A hearing officer can order a change in placement to an appropriate alternative educational setting for not more than 45 school days
- ▶ Talk to your legal counsel before going this route.

Want to learn more?



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