

Expulsion and the Special Education Student – A Brief Overview of School District Options and Obligations

One of the increasingly common issues that has arisen for school districts concerns special education students who have committed an expellable offense. However, school districts often struggle with determining what disciplinary options exist for a potentially expellable offense, and perhaps more importantly, what legal obligations are imposed on a school district if a special education student is to be expelled.

From the outset, it is helpful to keep in mind that special education procedures, e.g., manifestation determinations, re-evaluations, 45 school day alternative placements, etc., are independent from the expulsion process, which is a regular education based procedure. Conceptually, the special and regular education processes can be thought of as two separate roads that intersect along the way.

From a special education standpoint, as most districts are well aware, when a student commits a disciplinary infraction that is punishable by greater than 10 days suspension from school, a manifestation determination must held. Under federal law, any disciplinary exclusion beyond 10 days is considered a change in educational placement, and as such, a manifestation determination meeting must be convened with the IEP team, including the parents. Further, a change of placement has also occurred in the event the child has been subjected to a series of removals totaling more than 10 days that constitute a general pattern of substantially similar behaviors by the student that have resulted in the discipline. Such an occurrence would necessitate a manifestation determination meeting. In addition to the requirements under the IDEA and its regulations, a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year under Pennsylvania law will automatically be considered a pattern so as to be deemed a change in educational placement, necessitating a manifestation determination meeting. 22 Pa. Code § 14.143

At the manifestation determination meeting, the team must determine whether the expellable offense is related to the student's disability before an expulsion may be imposed. Specifically, the team will consider (1) if the conduct by the student was caused by or had a direct and substantial relationship to the child's disability, or (2) if the conduct in question was the result of the local education agency's failure to implement the IEP?

Obviously, the manifestation determination decision is pivotal, as under the IDEA, a student may **not** be expelled for misconduct that is found to be related to his or her disability. Conversely, a special education student may be expelled for a disciplinary offense which is determined to be unrelated to the student's disability. Note, however, that the IEP team conducting the manifestation determination is only establishing the "relatedness" of the offense to the student's disability, not what the ultimate punishment may be, e.g., expulsion.

To this end, presuming that the team (including the parents), agrees that a student's actions were not a manifestation of his or her disability – a required conclusion

for a school district to even consider expelling an eligible student – the district then may pursue expulsion. If the school district wants to proceed with an expulsion of the student, assuming of course that the district would expel other students for the same behavior, it must adhere to all of the informal and formal procedures it follows for the expulsion of regular education students.

In the event a parent of a disabled student disagrees with the manifestation determination by the IEP team and/or challenges the District's determination to proceed with an expulsion, the parent may request an expedited Due Process Hearing to challenge the team's determination and/or placement of the student¹. However, and most notable under IDEA '04, the student's pendent placement during the hearing and appeals process would be the expulsion or the alternative placement determined by the informal and formal discipline procedures your District follows for the discipline of regular education students.

Notwithstanding, if a school district decides to expel a special education student, it is at this point that there often is some confusion as to the next steps the district must follow. As has been suggested above, the subsequent steps are clearer and more logical if the special education and expulsion procedures are considered independently.

Specifically, the IEP team generally should proceed as it would for any student who is going to be disciplined for conduct unrelated to his or her disability. As such, until the student is actually expelled, the student would return to school after a maximum of 10 consecutive days of suspension (or 15 cumulative days), unless the misconduct involves a federally defined weapons or drug offense, in which case the student may be placed in a 45 school day alternative placement until any expulsion procedures have been completed. 20 U.S.C § 1415(k)(1)(G)(i)(ii)(iii)

Once the expulsion process has concluded for a **regular** education student, the school district's educational obligation to that student is usually significantly reduced or even eliminated. On the other hand, often to the dismay of school boards and administrations, the expulsion of a special education student has virtually no effect on the school district's duty to provide that student with a free and appropriate public education ("FAPE"). In other words, whether a special education student has been expelled ultimately has little bearing on the school district's educational obligation to that student.

Given this, once a special education student has been expelled, the IEP team typically meets to discuss program and placement options that would continue to provide the student with FAPE. Unfortunately, despite the inherent difficulties that may exist in developing a program under such parameters, the IDEA provides little guidance in terms of defining the amount, frequency, extent, or even location of the services that must be provided to special education students who have been expelled.

¹ For purposes of discipline, an expedited due process hearing shall occur within 20 school days of the date of the request for the hearing. A decision by an impartial hearing officer would result 10 school days following the completion of the expedited hearing. 20 U.S.C § 1415(k)(1)(G)(4)(B)

Nevertheless, it generally is accepted that while sufficient educational services must be provided to enable the student to make appropriate educational progress towards IEP goals, a replication of everything the student would have received if he or she had remained in school is not required. Obviously, however, the type and intensity of the services necessary to deliver FAPE will vary by student, and, therefore, must be considered by the team on a case by case basis. As with any special education student, however, the IDEA is clear that the provision of services must continue until the student either graduates with a regular high school diploma, or the student turns 21 years of age.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.