

The Special Educator[®]

News & Analysis of Events Important to Special Educators

VOLUME 33, ISSUE 14

JANUARY 19, 2018

Q&A

Get up to Speed on Disciplinary Actions under Section 504

A 504-eligible student with ADHD gets into a fight at school. Both he and the other student involved, who does not have a disability, receive 11 days of out-of-school suspension.

Did the district fulfill its obligations under Section 504 by ensuring both students received the same disciplinary action?

Not unless the 504-eligible student's team convened to conduct a manifestation determination review.

Like the IDEA, Section 404 provides extra procedural protections to eligible students facing long-term disciplinary action, said Christina M. Stephanos, a school attorney with Sweet, Stevens, Katz & Williams LLP in Pennsylvania.

Unlike the IDEA, however, the 504-regulations don't provide specific details about the process, she said.

"The term 'manifestation determination' isn't part of Section 404's providence, but it's fully embodied in it," Stephanos said.

OCR interprets the regulation to mean that districts must reevaluate a student before a significant change in placement. Such a change in placement occurs when a disciplinary removal is for more than 10 consecutive school days or when the child is subjected to a series of removals that constitute a pattern.

During that reevaluation, the student's 504 team must determine if the misconduct was related to or caused by the student's disability or if it was the result of a failure to implement the student's plan. If either answer is yes, the student cannot be suspended or expelled for more than 10 school days, Stephanos said. Below, review questions about how these disciplinary protections apply in the 504 context:

What triggers an MDR?

A removal of more than 10 consecutive school days is a significant change in placement, said Mary Ellen Sowyrda, a school attorney with Murphy, Hesse, Toomey & Lehane LLP in Massachusetts.

"Up to 10 days, a principal can suspend a student without any manifestation determination," she said. "But if we're up to 11 days, the team must convene."

Building administrators and case managers need to work closely to keep track of 504 and IDEA students, Stephanos said.

"In any disciplinary action, the disciplinarian needs to check that list of students eligible under 504 or the IDEA and 'cc' the case manager so they're fully involved in the process," she said.

Can a series of short-term removals trigger an MDR?

In some instances, a pattern or series of short-term removals that adds up to more than 10 cumulative school days can also constitute a significant change in placement and trigger these disciplinary protections, Stephanos said.

"You want to make sure that that's not happening to try to bypass this process," she said.

Look at the length of each removal, the proximity in time and if the student's behavior or misconduct in each incident was similar, she said.

"If this is the same type of action, we need to reevaluate and ask, 'Is this a function of the child's disability?'" Stephanos said.

Who conducts the MDR?

The student's 504 team is the most appropriate group to determine if the misconduct is a manifestation of the student's disability or a result of a failure to implement the student's plan, Stephanos said. The team may also need to invite other individuals, such as the student's psychologist or an outside evaluator, who might have relevant information about the student's current condition, she added.

What if the student's impairment is not behavioral in nature?

"These protections apply to all 504 students regardless of the disability," Sowyrda said.

Caution teams about making assumptions about a student's conduct based on stereotypes, Stephanos said.

"You could have two students with 504 plans for anxiety to do the same thing, but only in one case is the conduct caused by the student's condition," she said.

Look at how each student's disability manifests itself in that particular student, she said.

Do parents need to attend?

"We advise our clients to invite parents to the MDR meeting," Sowyrda said.

Although parents aren't required team members, schools need to get their input, she said.

Can schools impose a suspension longer than 10 days?

Yes, but only if the student's team determines that the student's behavior was not a manifestation of her disability nor a result of a failure to implement the student's plan.

"The child may be excluded from school in the same manner as a similarly-situated child without a disability," Stephanos said.

On the other hand, she said, if the conduct is a manifestation of the student's disability, the team needs to review the student's placement and determine if any behavioral supports such as a BIP need to be put in place.