

Discipline of Special Education Students

GENERAL PRINCIPLES

In *Honig v. Doe*, 559 IDELR 231 (1988), the U.S. Supreme Court prohibited certain disciplinary actions that result in a **change of placement** for a student with a disability. Therefore, different rules and limitations apply to disciplinary actions taken against students with disabilities than apply to actions taken against nondisabled students.

"10-day rule." The 2006 IDEA regulations provided that a district can remove a student with a disability who violates a code of student conduct from his or her current placement for up to 10 school days by (1) removal to an appropriate interim alternative educational setting, (2) removal to another setting, or (3) suspension, provided the same discipline/intervention would be made in the case of a student without a disability.

The same rule applies to **subsequent removals** of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536). 34 CFR 300.520(b).

School personnel may consider any **unique circumstances** on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. 34 CFR 300.530(a). "What constitutes unique circumstances is best determined at the local level by school personnel who know the individual child and all the facts and circumstances regarding a child's behavior." Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46714 (August 14, 2006).

CONTINUATION OF SERVICES

Districts must continue to provide educational services for IDEA-eligible students with disabilities who have been suspended for more than 10 school days or expelled. See generally 34 CFR 300.530(b)(2).

MANIFESTATION DETERMINATIONS

The 2006 regulations at 34 CFR 300.530(e) require that a manifestation determination be made within 10 school days of any decision to **change the placement** of a child with a disability because of a violation of a code of student conduct.

IDEA 2004 tightened the language for establishing a nexus between a student's disability and misconduct. Under the 2006 regulations at 34 CFR 300.530(e)(1), **the behavior is a manifestation of the child's disability:**

- **If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**
- **If the conduct in question was the direct result of the district's failure to implement the IEP. 34 CFR 300.530(e)(3).**

IN-SCHOOL SUSPENSIONS

Because **in-school discipline is usually not considered a change of placement**, most courts have concluded that such activity does not fall within any of the categories of action triggering due process under the IDEA.

Even an ISS that lasts more than 10 school days apparently would not trigger the IDEA due process requirements, assuming the ISS placement meets three factors. As set out by the Department of Ed in its comments accompanying the publication of the 2006 regulations, a day of ISS placement is not considered the same as a day of removal addressed by 34 CFR 300.530 if:

- The student is afforded the opportunity to continue to appropriately progress in the general curriculum.
- The district continues to provide the services specified in the student's IEP.
- The student continues to participate with nondisabled students to the same extent as he does in his current placement.

Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46715 (August 14, 2006).

WEAPONS AND DRUG OFFENSES/DANGEROUS STUDENTS

IDEA 2004 at Section 615(k)(1)(G)(I)-(iii) identifies three specific instances of conduct that may trigger unilateral placement of a student with a disability in an interim alternative educational setting, without regard to whether the behavior is determined to be a manifestation of the student's disability. If the misconduct includes bringing a **weapon** or **drugs** to school, or the student otherwise poses a **danger to himself or others**, then different rules governing removal of a student with a disability apply.