



“Discipline of Special Education Students”

By Heidi Konkler-Goldsmith, Esquire

The discipline of special education students has caused tremendous confusion within the area of special education law. Among one of the most litigated issues in special education, the law regarding discipline has recently undergone many changes. The Individuals with Disabilities Education Act (IDEA) places specific requirements on school districts before special education students may be disciplined. The students protected under these regulations include: 1) Students under the Individuals with Disabilities Education Act (IDEA), 2) Handicapped students protected by Section 504 of the Rehabilitation Act of 1973 and/or 3) Students who are “thought-to-be eligible” under these laws who have not yet been identified.

Students with disabilities other than mental retardation disabilities may be suspended if they violate school rules for up to ten consecutive (10) days at a time, but no more than fifteen (15) days in a school year, using the school’s discipline rules as applied to students without disabilities. A proposed exclusion for more than 10 days at a time or 15 days in a school year, is considered a “change of placement for disciplinary reasons.” School districts must follow certain procedures before such a “change of placement” can be made.

Specifically, if the school district wants to change a protected student’s placement for disciplinary reasons, they must provide written notice to the parents of the proposed change in educational placement and provide notice of their procedural safeguards on the day that the decision to impose the disciplinary action is made. Additionally, within ten (10) school days of any decision to change the placement of a disabled student because of a violation of a code of student conduct, the parent, and relevant members of the Individualized Education Program (IEP) Team (as determined by the parent and the LEA) shall review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents to determine: 1) if the behavior in question was caused by, or had a direct and substantial relationship to, the student’s disability; or 2) if the behavior in question was the direct result of the District’s failure to implement the IEP. This process is known as a Manifestation Determination.

McAndrews Law Offices, P.C.

30 Cassatt Avenue
Berwyn, PA 19312
Phone: (610) 648-9300
FAX: (610) 648-0433

Wyomissing, PA ● Phone: (610) 374-9900
Harrisburg, PA ● Phone: (717) 221-1422
Scranton, PA ● Phone: (570) 969-1817

The impact of whether the student's behavior is determined a manifestation of his or her disability is substantial. If it is determined that a student's behavior was not a manifestation of their disability, school personnel have the authority to implement the same disciplinary procedures as those for non-disabled students. If the District, the parent, and relevant members of the IEP Team make the determination that a disabled student's behavior was a manifestation of his or her disability, with the exception of situations involving weapons, drugs, or serious bodily injury inflicted upon another person, a disabled student must return to the placement from which he was removed unless the parent agrees to change the child's placement.

If you would like to receive an electronic copy or more information regarding this article, please visit our website at <http://www.mcandrewslaw.com/> or call (610) 648-9300.

McAndrews Law Offices, P.C.

30 Cassatt Avenue
Berwyn, PA 19312
Phone: (610) 648-9300
FAX: (610) 648-0433

Wyomissing, PA ● Phone: (610) 374-9900
Harrisburg, PA ● Phone: (717) 221-1422
Scranton, PA ● Phone: (570) 969-1817