

# DISCIPLINE OF SPECIAL EDUCATION STUDENTS: GETTING IT RIGHT

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Public school officials must grapple with the challenges of disciplining children in today's highly litigious climate. Whether it is high-profile "cyberbullying" or "sexting" that is taking place on school campuses, among those challenges is ensuring compliance with various legal requirements related to disciplining students with disabilities. Such technical compliance will not only help avoid liability for the school district but also ensure that the necessary procedural and educational safeguards are provided to students who require them.

## WHEN AND HOW TO DISCIPLINE: GENERAL PRINCIPLES

Special education students can be disciplined to the extent that their non-disabled students can be disciplined except that special education students are entitled to certain procedural rights related to the disciplinary process and procedures. The Individuals with Disabilities Education Act ("IDEA"), the federal law that governs the rights of eligible special education students, outlines the procedural safeguards to which such students are entitled. Such protections include conducting a determination of whether a student's disability or the school's failure to implement the child's individual education program ("IEP") directly caused the behavior that resulted in the punishable misconduct. When students with special needs commit offenses under the student code of conduct or any state or federal law, they may be subject to removal from their school setting, either as a short-term suspension or a permanent expulsion from school. So long as the proper legal protections are followed, these students may be subject to a disciplinary proceeding before a hearing panel which will determine whether the student may remain attending the school.<sup>1</sup>

In many cases, as with non-disabled students, the "first line of defense" when dealing with mis-behavior by special education students may not be to impose a suspension or a recommendation for expulsion. In certain jurisdictions, state laws require that other interventions or means of correction be considered and utilized prior to removing a child from his or her classroom via suspension or expulsion. For many students with disabilities, behavior may very well be a "unique" educational need requiring intervention and supplementary supports through an IEP. For example, supports may include having a behavior support plan or behavior intervention plan that contains very specific components (e.g., a one-to-one paraprofessional's assistance) which all the student's teachers and administrators should be made aware of and receive training on in order to comply with the IEP. Additionally, a habitually disruptive student who has a diagnosis of ADHD and who receives multiple disciplinary referrals for unrelated acts may not be aware of the consequences of his behavior and, therefore, may have other needs which need to be assessed and addressed, rather than be suspended repeatedly. Furthermore, teachers who continually send disabled students to the principal's office or otherwise out of the classroom as a means of correction or discipline may be violating the student's due process rights if

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<sup>1</sup> General education students who do not qualify for special education but who are disabled and qualify for accommodations and services under a Section 504 plan, under Section 504 of the Rehabilitation Act of 1973, are entitled to analogous protections. Satisfying the procedural requirements under the IDEA related to discipline will generally suffice to ensure Section 504 plan students receive their rights as related to discipline.

such removals from class constitute an improper “change in placement” without meeting the required procedural protections required under the IDEA. Therefore, it is very important that any school personnel who are responsible for supervising or instructing a special education student coordinate with the student’s special education case manager and the site administration to ensure that, upon certain triggering events or circumstances, the student’s rights under the law are met and that school officials and staff follow the letter of the law.

### **READY TO DISCIPLINE: NOW WHAT?**

For special education (and Section 504 plan) students, the behavioral acts which lead to disciplinable misconduct may be a result of the disability(ies) that qualify them for the services and procedural safeguards. When proceeding with disciplinary proceedings, it is important to document how the student’s rights under all applicable laws have been met. Subject to each state’s own laws and regulations governing student discipline, the IDEA and federal case law interpreting the statute require that no student with disabilities may be subject to a “change in placement” without necessary procedures being implemented to evaluate the reason for the misconduct. This typically requires the coordination and collaboration of the entire supervisory, instructional and administrative team that works with the student. School staff and officials would do well to document all necessary steps taken to address such students’ recurring behavior, any particular “pattern” of misconduct, the prior interventions and other means of correction that have been utilized and whether they were successful, and keeping a clear record of the necessary notifications to the students’ parents regarding the steps along the disciplinary process.

### **COMPLIANCE IS KEY**

Although special education students may be expelled like their non-disabled peers, the due process requirements related to the technical expulsion hearing – which are available to all students subject to expulsion - are distinct from the procedural due process requirements specified in the IDEA that must be met prior to expelling special education students. Proper compliance with these additional legal requirements requires that the supervisory and administrative school team coordinate and collaborate throughout all relevant processes to ensure all procedural safeguards are sufficiently maintained and documented.