

Disciplinary Issues Facing Students with Special Needs

By Lauren I. Mechaly

Danielle is a student with a disability and is enrolled in a local public school operated by the New York City Department of Education. She is twelve years old. When Danielle turned five, the Committee on Special Education (CSE) classified her as a student with a learning disability. Danielle was placed in a general education classroom, but she received speech and language therapy and special education services to address her delays. As a result of her disability, Danielle is easily frustrated and has difficulty with attention to task. The classroom teacher, Mr. Frank, is aware that she is a student with a disability, and does his best to provide additional help to Danielle on a regular basis. She sits at the front of the room to minimize the distractions, and Mr. Frank often repeats instructions to her so that she can complete classroom assignments. Danielle's previous teachers advised Mr. Frank that without these interventions, Danielle has the potential to act out in the classroom, thereby impeding her ability to learn, and also disturbing the other students in the class. This "acting out" behavior may be exhibited in the home as well, affecting the student's ability to complete homework assignments, study for tests, or relate appropriately with his or her siblings and peers. Such behaviors must be addressed by the CSE, and memorialized on the student's Individualized Education Program (IEP).



her skills were not as advanced as his. The boy started getting impatient, and told Danielle that he wanted a new partner because he did not like to work with stupid people. Offended by his comments, Danielle stood up and hit the boy, and then ran out of the room. The math teacher witnessed the incident and contacted the school's principal. Danielle was found in the bathroom with a torn math book, and was brought to the principal's office, where her parents were contacted. Danielle was subsequently suspended for ten days for her violent and disruptive behavior. On the same date, a letter was sent home to Danielle's parents, advising them of the Manifestation Determination Review.

Often a student who is the subject of a disciplinary action is removed from his or her current educational placement. If a student "is insubordinate or disorderly or violent or disruptive, or [his or her] conduct otherwise endangers the safety, morals, health or welfare of others," he or she may be suspended.³

A student may be suspended for five school days either by the trustees or board of education, a district superintendent, or a building principal with authority to suspend.⁴ During the suspension, the student shall be placed in an appropriate IAES. The length of the suspension may not exceed the length of suspension that would be imposed on a non-disabled student for the same behavior. In the event that a suspension of more than five days is imposed, a superintendent's hearing must be conducted, either by a superintendent of schools or by a hearing officer so designated, to determine whether the student shall be suspended for an extended period of time.⁵

A student's removal from his or her educational setting is considered a "disciplinary change in placement" if the suspension or removal is for more than 10 consecutive school days, or the student is subject to a series of suspensions or removals that constitutes a pattern. Such a pattern is established when the suspensions or removals accumulate to more than 10 days in a school year, and the student's behavior that precipitates that suspension or removal is substantially similar to the behavior which precipitated the previous suspension or removal. The school district shall consider the length and proximity of each suspension or removal in determining whether this pattern warrants a change in placement. If such a pattern is established, a student with a disability may not be removed for a suspension if such a suspension would result in this disciplinary change in placement. An exception to this rule is if the manifestation team has determined that the behavior is not, in fact, a manifestation of the student's disability, as discussed below.

Unfortunately, a student's behaviors are not always appropriately addressed, and maladaptive behavior can result in disciplinary action against the student. When a student with a disability is removed from his or her current educational program for disciplinary reasons, he or she is placed in a temporary educational placement, or interim alternative educational setting (IAES). While placed in this interim program, the student continues to receive educational services pursuant to his or her IEP.¹ The parent must be notified of any change in placement, including placement in an IAES or a disciplinary change in placement due to a suspension.²

A. Suspensions and Disciplinary Changes in Placement

In February, Danielle was involved in an altercation with a boy in her math class. Specifically, this boy was assigned to work with Danielle on an in-class project. Danielle was on a lower math level than this boy, and

B. Manifestation Determination

If a student with a disability is subject to a disciplinary action, a manifestation review must be conducted to determine whether the conduct is a manifestation of the student's disability.⁶ Such review shall be conducted no later than 10 days following: 1) a superintendent's decision to change the student's placement to an IAES; 2) an Impartial Hearing Officer's decision to place a student in an IAES; or 3) the imposition of a suspension that constitutes a disciplinary change in placement.⁷ The parent has an absolute right to attend the manifestation determination review, and should be invited to the meeting in writing on the day of the decision to change the student's placement to an IAES.⁸

The manifestation review meeting will consider the student's file, and will determine whether the student's behavior was "caused by or had a direct and substantial relationship to the student's disability; or...was the direct result of the school district's failure to implement the IEP."⁹ Under either circumstance, the student's behavior is deemed a manifestation of his or her disability, and the CSE must conduct a functional behavioral assessment, implement a behavioral intervention plan (or modify the existing plan) (*see* Section C below), and, except under limited circumstances, return the student to his or her original placement (unless otherwise agreed).¹⁰ Further, if any deficiencies in the IEP were discovered as a result of this review, said deficiencies must be remedied.¹¹

The team conducting Danielle's Manifestation Determination included a district representative, Danielle's classroom teacher, the school psychologist, and Danielle's parents. Danielle also participated. The team determined that Danielle's behavior had a direct relationship to her disability. A Functional Behavioral Assessment was scheduled, and the team recommended that a Behavioral Intervention Plan be developed and implemented. The school psychologist also suggested adding one session per week of counseling to Danielle's IEP.

If a parent disagrees with the school district's decision regarding the placement, such as placement in an IAES, or with the determination of the manifestation team, the parent may request an expedited impartial hearing.¹² Parents should keep in mind that a procedural violation for disciplining a student with a disability will not automatically invalidate the determination of a manifestation team,¹³ while a failure to produce evidence regarding the district's compliance with the procedures for conducting a manifestation determination review may not uphold the determination of the team.¹⁴

C. Behavior Intervention Plan

A student's IEP should be reasonably calculated to ensure educational benefit.¹⁵ An IEP shall "consider the

use of positive behavioral interventions and supports, and other strategies, to address that behavior" if the child's behavior impedes his or her learning or that of others.¹⁶

A behavioral intervention plan (BIP) is developed based upon the results of a functional behavioral assessment (FBA). The FBA is conducted in order to identify the student's "problem behavior" as well as the "contextual factors that contribute to the behavior."¹⁷ The BIP that is developed as a result includes "a description of the problem behavior...hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behaviors."¹⁸

Following the FBA, the CSE convened to develop Danielle's BIP and to amend her IEP. The BIP noted Danielle's difficulty with attention to task, and memorialized the interventions already in place, albeit informally, such as her need for the teacher to repeat directions. Preferential seating was also added to Danielle's IEP. Counseling was added to Danielle's IEP for one group session per week for thirty minutes per session, to assist Danielle in her socialization and communication skills.

D. Students Not Yet Identified (201.5)

If the student charged with a violation of the school district's code of conduct had not yet been identified by the CSE as a student with a disability, the parent may request a manifestation determination review, a functional behavioral assessment, or any other protection set forth under the law. However, the school district must have had knowledge that the student was a student with a disability before the behavior occurred. This "basis of knowledge" can be determined through prior writings from the parent to the school expressing a concern for the student's education, a previous request for an evaluation, or the classroom teacher's concern regarding a pattern of behavior exhibited in the classroom.¹⁹ If, however, the parent had previously refused an evaluation, refused services, or it was determined that the student was not disabled, the student will not be considered a student with a disability for purposes of the pending disciplinary action.

If there is no basis for knowledge of the student's disability, the same disciplinary measures will be imposed on the student as on any student not classified with a disability.

E. Conclusion

Parents of children with special needs should be aware of their rights under the law so that they can effectively advocate for their children. Students with disabilities are entitled to certain rights under both federal and state law, and there are considerable safeguards in place to ensure that a student with a disability receives

a free appropriate public education, as is his or her right under the law.

Endnotes

1. 34 C.F.R. § 300.530(d).
2. 8 NYCRR 201.7.
3. NY Educ. L. 3214(3)(a).
4. 8 NYCRR 201.7(b); N.Y. Educ. L. 3214(3).
5. 8 NYCRR 201.2(q).
6. 8 NYCRR 201.4(a); 30 C.F.R. § 300.530(e); 20 U.S.C.S. § 1415(k)(1)(E).
7. *Id.*
8. 8 NYCRR 201.4(b); 20 U.S.C.S. § 1415(k)(1)(H).
9. 8 NYCRR 201.4(c).
10. 8 NYCRR 201.4(d); 34 C.F.R. § 300.530(f).
11. 8 NYCRR 201.4(e).
12. 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(c); 8 NYCRR 201.11(3)-(4); *see also* *Coleman v. Newburgh Enlarged City Sch. Dist.*, 503 F.3d 198, 201-02 (2d Cir. 2007) and *Application of a Student with a Disability*, Appeal No. 11-034, at 8.
13. *Fitzgerald v. Fairfax County Sch. Bd.*, 556 F. Supp. 2d 543, 551 (E.D.Va. 2008); *Farrin v. Maine Sch. Admin. Dist. No. 59*, 165 F. Supp. 2d 37, 51 (D. Me. 2001); *A.C. v. Bd. of Educ.*, 553 F.3d 165, 172 (2d Cir. 2009); *Matrejek v. Brewster Cent. Sch. Dist.*, 471 F. Supp. 2d 415, 419 (S.D.N.Y. 2007) *aff'd*, 2008 WL 3852180 (2d Cir. Aug. 19, 2008); Appeal No. 11-034, at 9.
14. *Application of the Bd. of Educ.*, Appeal No. 10-028; Appeal No. 11-034.
15. 20 U.S.C. 1400 et. seq.
16. 20 U.S.C. 1414 (3)(B)(i) (2012).
17. 8 NYCRR 200.1(r).
18. 8 NYCRR 201.2(a).
19. 8 NYCRR 201.5(b).

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