

Suspension of a special education student

Case Example

Michael

- Classified as emotionally disturbed.
- Sixteen years old in the 10th grade.
- IEP recommends special class with related services of individual and group counseling.
- Significant learning disabilities present: exceeds only 6% of peers in math; 5-7 years below grade level in reading and writing.
- Ability to process simple/routine information without making errors in lowest 10%.

Michael

- Early in elementary school, reports show that Michael not listening or focusing in class.
- As he gets older, teacher reports describe him as mischievous and fooling around.
- Evaluation not recommended until 5th grade when he is classified as ED with a recommendation of a 12:1 class with reading supports and counseling.

Michael

- In 6th grade, Michael placed in a school with high staff turnover, had 3 different teachers in the year.
- In 7th grade, placed in district 75
- In 8th grade, mother requests re-evaluation in order to move out of district 75 due to school instability and lack of services.

Michael

- IEP contains language: “Michael is an anxious youngster with poor impulse control. His social judgment is poor. He reacts impulsively, particularly when he believes that he is being challenged. Michael’s manner of handling conflict usually involves aggression.”

Due process issues

- Fact-finding portion of the hearing includes presentation of evidence supporting/refuting charge.
- No later than 10 days after the suspension, a manifestation determination review (MDR) is held. 8 NYCRR §201.4.

MDR

- A team (often the school CSE) shall review all relevant information including the student's IEP, teacher observations and relevant information provided by the parents to determine if:

MDR

- (1) The conduct in question was caused by or had a direct and substantial relationship to the student's disability.
- (2) The conduct in question was the direct result of the school district's failure to implement the IEP.

MDR determination

- If the conduct is determined to be a manifestation of the student's disability, the CSE shall
 - Conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP).
 - Return the student to the placement from which the student was removed unless the parent and the school district agree to a change of placement as part of the modification of the BIP.

FBAs, 8 NYCRR 200.22(a)(3)

- Must:
 - provide a baseline of the student's problem behaviors, across activities, settings, people and times of the day.
 - Include information on why the student engage in behaviors that impede learning and how the student's behavior relates to the environment in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses:

FBA

- Antecedent behaviors
- Reinforcing consequences of the behavior
- Recommendations for teaching alternative skills or behaviors and
- Assessment of student preferences for reinforcement.

BIP: 8 NYCRR 200.22

- The school district must consider strategies to address behavior that impedes learning such as when:
- The student exhibits persistent behaviors that impede his learning or that of others, despite consistently implemented general school-wide interventions;
- The student's behavior places the student or others at risk of harm or injury
- The CSE/CPSE is considering more restrictive programs/placements as a result of the student's behavior.

BIP

- BIPS must be based on the results of an appropriate FBA.
- BIPS must address the baseline measure of the behaviors, the interventions strategies to be used and a schedule to measure the effectiveness of the interventions.

Child Find: 8 NYCRR 201.5

- The parent of a student charged with violating any rule or code of conduct and was NOT identified as a student with a disability at the time of the behavior MAY assert the due process protections available to students with disabilities. Such students are “presumed to have a disability for discipline purposes”.

Child Find

- The school district must have knowledge of a disability prior to the behavior charged and will be deemed to have such if
- The parent has expressed, in writing, concern that the student is in need of special education.
- The parent has requested a special education evaluation
- The teacher or other personnel of the school has expressed specific concerns about a pattern of behavior to the director of special education for the district or other supervisory personnel.

Child Find

- Does not apply where:
- The parent has not allowed an evaluation
- The parent has refused services
- An evaluation determined the child was not a student with a disability.

Provision of services during suspension: 8 NYCRR 201.10

- During suspensions of up to 10 days, students with disabilities shall be provided with alternative education on the same basis as non disabled students.
- During suspensions of greater than 10 days, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum AND to progress toward meeting the IEP goals.