

# NOT SO FAST: School Discipline for Students with Disabilities

By Michael J. Connolly

In today's climate of school violence, viral videos of students being arrested at school and reports of student-on-student bullying, among other things, there can be a tendency to take a zero-tolerance approach to student discipline in schools.

However, there are certain rules and procedures that public schools must follow when disciplining any student, as well as certain disciplinary protections afforded to students with disabilities under both state and federal laws.

As a general matter, Pennsylvania school districts are given a fair amount of latitude when it comes to disciplining students for violations of the school's code of student conduct. With the exception of corporal punishment and other similar aversive disciplinary measures, the why, when and how of school discipline for most students is typically left to the discretion of the school district, with some minimal due-process requirements for school suspensions and expulsions. For example, under Chapter 12 of the Pennsylvania Code, any out-of-school suspension requires that the student be informed of the reasons for the suspension and given an opportunity to respond, a suspension that is four to 10 days in length requires an informal hearing and any suspension beyond 10 days (which in Pennsylvania is considered an expulsion) requires a formal hearing before the school board. However, for those students who are eligible or "thought-to-be-eligible" (those students not yet identified as eligible, but who, because they met certain criteria, may be eligible for services) for services under the Individuals with Disabilities









Education Act (IDEA) or eligible for accommodations under Section 504 of the Rehabilitation Act, there is an additional layer of complicated and often confusing disciplinary rules that may provide a child with significantly more protections and place certain limitations on a school district's ability to impose disciplinary measures.

More specifically, the IDEA provides rules and protections for eligible students and thought-to-be-eligible students where a student engages in behavior that is a manifestation of his or her disability. Although Section 504 does not include the same level of specificity in regard to disciplinary issues, it does contain a general prohibition on discriminating against a student because of his or her disability, which has been interpreted by the courts as prohibiting discipline where there is a clear nexus between the behavior at issue and the student's disability.

In Pennsylvania, the disciplinary protections related to suspensions and/or expulsions from school afforded to students with special needs generally begin after 10 consecutive days of suspension or 15 cumulative days of suspension in a given school





year — which can include bus suspensions and in-school suspensions under certain circumstances — unless the student in question is intellectually disabled. For such students, disciplinary protections apply even when considering a one-day removal. Until one of those thresholds is crossed, the only protections from a suspension available to an eligible student are the same due-process protections afforded to all students under Chapter 12 of the Pennsylvania Code as noted earlier. Once the threshold of 10 consecutive or 15 cumulative suspension days has been crossed (or, for students with an intellectual disability, one day), any further removals from school of an eligible student are considered a disciplinary change in educational placement, which requires a manifestation-determination meeting to take place before going forward with the proposed disciplinary removal from school. Again, while Section 504 does not have a specific manifestation-determination requirement, there still must be some level of consideration as to whether there is a nexus between the behavior at issue and the student's disability. A manifestation-determination meeting allows a school district to meet this requirement under Section 504.

A manifestation determination requires the student's Individualized Education Program (IEP) team — which includes the student's special and regular education teachers, related services providers if any (e.g., speech therapist, occupational therapist, counselor/therapist, etc.), a representative of the district (e.g., principal, supervisor of special education or similar) and parents — to meet to review the behavior at issue in light of the student's disability and to determine whether the behavior was, in fact, a manifestation of the student's disability by answering two specific questions: (1) Was the conduct in question caused by or did it have a direct and substantial relationship to the child's disability and (2) Was the conduct in question the direct result of the district's failure to implement the student's IEP? If the team answers yes to either question, the behavior is considered to be a manifestation of the student's disability, the student must be returned to his or her placement at the time of the incident (or other placement mutually agreed to by the parents and district) and the school district may not proceed with any further disciplinary action.

Moreover, for an IDEA-eligible student where it was determined that a behavior

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was a manifestation of the student's disability, the school district must also complete a Functional Behavior Assessment (FBA) and develop a Positive Behavior Support Plan (PBSP), or review and revise an already existing PBSP. Although Section 504 does not explicitly require an FBA and a PBSP to be developed, it is clearly advisable for a school district to do so under the same circumstances it would under the IDEA. The IEP team may also want to meet to consider any further revisions or additional supports that should be added to the student's program to help address the behavior of concern.

If the IEP team's answer is no to both manifestation-determination questions, then the behavior at issue is not considered a manifestation of the student's disability, and the school district may proceed with disciplinary action so long as the student is still afforded the due-process protections contained in Chapter 12. The school district must also provide the parents with notice of its decision, from which the parents

may disagree and request an expedited due-process hearing under the IDEA to challenge the school district's determination. An expedited hearing under the IDEA is much different than an expulsion hearing. The hearing is held before a hearing officer assigned by the Pennsylvania Department of Education through the Office for Dispute Resolution, who will ultimately decide if the behavior is a manifestation of the student's disability and whether the school district may proceed with any further discipline. During any dispute over the manifestation determination, the district may proceed with the suspension or expulsion until the hearing officer issues a decision. However, if the hearing officer ultimately finds in favor of the parents and student, the school district is required to allow the student to return to school and may owe additional educational services/hours to make up for the period of the time the student was removed from school for what was ultimately a manifestation of the student's disability. In addition, even if a suspension or expulsion is permitted to



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go forward, a student eligible under the IDEA is still entitled to a free and appropriate public education from the school district during the period of disciplinary removal, so long as the suspension or expulsion exceeds 10 days in a school year.

There are, however, several exceptions to the general disciplinary rules that allow a school district to unilaterally remove an eligible student to an Interim Alternative Education Setting (IAES) for 45 school days. Specifically, a school district may remove a student to an IAES for 45 school days without regard to whether the behavior in question is a manifestation if the student: (1) possesses a weapon at school or a school function; (2) possesses, uses, sells or solicits the sale of a controlled substance at school or a school function or (3) inflicts serious bodily injury upon another person while at school or a school function. It is important to note that the definition of a weapon, a controlled substance and serious bodily injury is defined by federal law and not the school district's code of student conduct. For example, most school districts consider a knife under 2.5 inches to be a weapon. However, under federal law, such a knife would be excluded. Similarly, while for many school districts, possession of one's own prescribed medication on school grounds is a violation of the school's drug policy, possession of such medication is specifically excluded from the definition of a controlled substance under the IDEA. If a student's conduct does not fall under one of the three exceptions listed above, but the school believes the student's behavior is likely to cause harm to the student

or others, a school district can request an expedited hearing of its own and, if it can establish that the student is, in fact, a danger to him- or herself or others, it can ask the hearing officer to remove the student to an IAES for 45 school days.

While the disciplinary protections provided to students with disabilities under the IDEA and Section 504 may seem overly burdensome to school districts — particularly in today's climate — it is important to understand that the reason for these protections is that oftentimes there is an underlying cause for the behavior that is directly related to a student's disability. If, in lieu of disciplinary action, appropriate supports and services are put into place to address the underlying cause of the inappropriate behavior, many times the behavior can be prevented from happening again. <sup>14</sup>

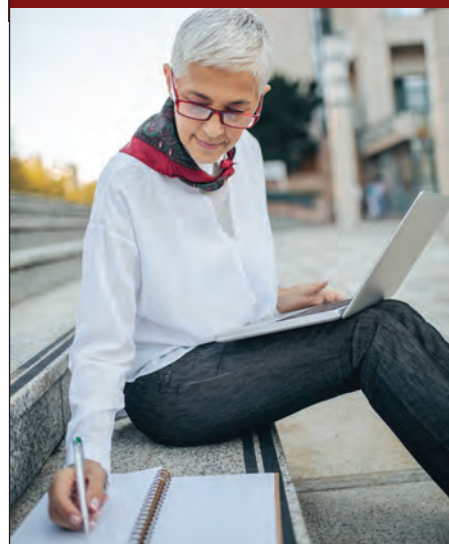
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