

Discipline Of Students With Disabilities In Elementary And Secondary Schools

U.S. Department of Education
Office for Civil Rights
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INTRODUCTION

The Office for Civil Rights (OCR) in the U.S. Department of Education (Department) enforces Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), which protects the rights of students with disabilities in schools that receive Federal financial assistance. Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits state and local governments from discriminating on the basis of disability. The Department enforces Title II in elementary and secondary schools and institutions. This pamphlet summarizes the responsibilities of school officials under Section 504 and the ADA and the rights of students with disabilities and their parents or guardians in situations requiring disciplinary action that could result in expulsion or long-term suspension from educational services.

Non-discrimination in school discipline is necessary for equal educational opportunity and promotes an environment where all students can learn.

SECTION 504

The Section 504 regulation requires school districts that receive Federal financial assistance to provide a "free appropriate public education" (FAPE) to each qualified person with a disability in its jurisdiction, regardless of the nature of severity of the disability. An "appropriate education" is "regular or special education and related aids and services" that comprise the following:

- designing educational services to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met;
- educating each student with a disability along with students without disabilities, to the maximum extent appropriate to the needs of the student with the disability;
- employing nondiscriminatory evaluation and placement procedures to guard against misclassifying or inappropriately placing students;

- ❑ reevaluating periodically students who are being provided special education and related services; and employing due process procedures that:
- ❑ notify parents of all actions related to identification, evaluation and placement of a child who is believed to be disabled;
- ❑ enable parents and guardians to examine all records relevant to their child's education;
- ❑ provide for an impartial hearing to review evaluation and placement decisions, with opportunity for participation by parents and representation by counsel; and
- ❑ provide a review procedure for parents who disagree with the hearing decision.

The requirements for providing FAPE that are described specifically in the Section 504 regulation are incorporated in the general non-discrimination provisions of the Title II regulation.

The Individuals with Disabilities Education Act (IDEA) (formerly known as the Education of the Handicapped Act), administered by the Department's Office of Special Education and Rehabilitative Services (OSERS), also has provisions requiring states to provide FAPE to children with disabilities. Although this pamphlet does not address the requirements of IDEA, implementing an individual education program in accordance with IDEA is one way a school district can meet the FAPE requirements of Section 504 and the ADA.

SUSPENSION AND EXCLUSION OF STUDENTS WITH DISABILITIES

As stated above, Section 504 and the ADA require that a school district evaluate a child believed to have a disability before making **an initial placement** of the child in a regular or special education program and before **any subsequent, significant change in her or his placement**. The permanent exclusion of a child for **more than 10** consecutive school days constitutes a "significant change in placement" under Section 504 and the ADA.

A series of suspensions each of which is 10 or fewer days in duration, but that creates a pattern of exclusions, may also constitute a "significant change in placement." The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis. In no case, however, may serial, short exclusions be used to avoid the requirement for reevaluation before a suspension of more than 10 days.

Among the factors considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to each other and the total amount of time the child is excluded from

school. OCR does not consider a series of suspensions that, in the aggregate, is for 10 or fewer days to be a significant change in placement.

Before implementing a suspension or expulsion that constitutes a significant change in the placement of student with a disability, a school district must conduct a reevaluation of the student to determine whether the misconduct in question is caused by the student's disability and, if so, whether the student's current educational placement is appropriate. (Reevaluation procedures that comply with IDEA fulfill the requirements of Section 504 and the ADA.)

THE REEVALUATION PROCESS

As a first step in the reevaluation, the district must determine whether the misconduct is caused by the child's disability. This determination may be made by the same group of persons who make initial placement decisions in conformance with Section 504 and the ADA. The group must have available to it information that competent professionals would require, such as psychological evaluation information related to behavior, and the information must be recent enough to afford an understanding of the child's current behavior. The determination may not be made by the individuals responsible for the school's regular disciplinary procedures, such as the school principal or school board officials, who lack the necessary expertise and personal knowledge about the child to make such a determination. These individuals, however, may participate as members of the placement decision group.

If it is determined that the misconduct of the child with a disability **is** caused by the disability, the evaluation team must continue the evaluation, following the requirements of Section 504 and the ADA for evaluation and placement, to determine whether the child's current educational placement is appropriate. If it is determined that the misconduct **is not** caused by the child's disability, the child may be excluded from school in the same manner as are similarly-situated children who do not have disabilities.

In such a situation, Section 504 and the ADA would permit all educational services to the child to cease. However, OSERS has determined that states receiving funds under the IDEA are required by that statute to continue providing educational services to children with disabilities who have been expelled.

DUE PROCESS

When the placement of a child with disabilities is changed for disciplinary reasons, the child and his or her parent or guardian are entitled to the procedural protections required by Section 504 and the ADA. (A school district may employ due process procedures that meet the requirements of IDEA to comply with the Section 504 and ADA requirements for procedural safeguards.) These protections include appropriate notice to parents or

guardian, an opportunity for their examination of records, an impartial hearing with the participation of parents or guardian and an opportunity for their representation by counsel and a review procedure. Thus, if after a reevaluation of an initial placement decision, the parents disagree with the determination regarding the relationship of the behavior to the disability or with the subsequent placement proposal in those cases where the behavior is determined to be caused by the disability, they may request an impartial hearing.

ALCOHOL AND DRUG ADDICTION

Drug and alcohol addictions may be disabilities covered by Section 504 and the ADA. A person who is addicted to drugs, but who is no longer engaged in the illegal use of drugs, might have a disability and might be entitled to all of the rights under Section 504 and the ADA. A person erroneously regarded as using illegal drugs or using alcohol might be regarded as having a disability and therefore be protected under Section 504 and the ADA.

However, a person who is currently engaging in the use of drugs is not protected under the ADA or Section 504 when the school acts on the basis of the person's current use of illegal drugs. School districts may take disciplinary action against **a student with a disability who is engaged currently in the use of alcohol or illegal drugs** to the same extent that it takes disciplinary action against persons not having disabilities. Furthermore, the due process procedures discussed above do not apply to disciplinary actions regarding the use or possession of alcohol or illegal drugs by students with disabilities who are currently engaged in the use of alcohol or illegal drugs.

A child who has a disabling condition other than drug addiction or alcoholism and is not engaged in the use of alcohol or illegal drugs is protected under Section 504, even with regard to possession of illegal drugs or alcohol. For example, if a mentally retarded child who does not use drugs or alcohol is found in possession of drugs or alcohol, the school district would be required to determine whether this misbehavior results from the child's disabling condition.

ADDITIONAL INFORMATION

OCR does not prohibit a school district from employing its informal, reasonable procedures short of a significant change in placement for dealing with children who are endangering themselves or others.

Where a child presents an immediate threat to the safety of others, school officials may promptly adjust the placement or suspend the child for up to 10 school days, in accordance with rules that are applied evenhandedly to all children.

HOW TO OBTAIN ADDITIONAL ASSISTANCE

OCR enforces Section 504 and the ADA and interprets Section 504 and the ADA and their implementing regulations. OSERS administers IDEA and interprets its regulation. Because Section 504 and the ADA and IDEA are different Federal statutes, they may have different compliance standards. For further information regarding the requirements of Part B of IDEA governing discipline of students with disabilities, contact:

U.S. Department of Education
Office of Special Education Programs
Washington, D.C. 20202-2570

For OCR assistance, see the list of [OCR offices](#)

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