

# Feature Article

## The Idea Amendments:

### What You Need To Know

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#### A) STUDENT DISCIPLINE

Here is a quick walk around the discipline block.

##### 1) The Authority of School Personnel

School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, *for not more than 10 school days* (to the extent such alternatives are applied to children without disabilities.) 20 U.S.C. 615(k)(1)(B). Keep in mind that on the same day the district makes a discipline decision, they must notify parents of the decision and their rights.

*disciplinary procedures for nondisabled students may be applied to the child with a disability in the same manner and for the same duration as would be applied to a nondisabled child.* 20 U.S.C. 615(k)(1)(C)

Keep in mind the child with a disability who is removed for disciplinary reasons for more than 10 school days must be provided a "free appropriate public education" (FAPE).

*The new law makes the disciplinary setting the stay-put placement if the parent requests a hearing to challenge the placement or manifestation determination.*

##### 2) Consideration of

##### Case-By-Case Circumstances

"School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct." Section 615(k)(1)(A).

##### 3) Some Additional Authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be either (1) directly and substantially related to the child's disability, or (2) a result of the school district's failure to implement the IEP, *the relevant*

#### B) MANIFESTATION DETERMINATION (MD)

It is no longer the IEP team that does the manifestation determination... but relevant members of the IEP team responding to two inquiries.

- 1) *Within 10 school days of any decision to change a child's educational placement for disciplinary reasons for more than 10 school days*, the school district, the parent, and the relevant members of the IEP team (20 U.S.C. 615(K)(1)(E)(i).) shall review all relevant information in the student's file, the IEP, any teacher observations, and other relevant information provided by the parent to determine:

- i) If the conduct in question was *caused by*, or had a *direct and substantial relationship to child's disability*.

- ii) If the conduct in question was the *direct result of the school district's failure to implement the IEP*.

If either (i) or (ii) is applicable, the conduct shall be determined to be a manifestation of the child's disability. 20 U.S.C. 615(k)(1)(E).

Remember, the IEP team still determines the interim alternative education setting. Section 615(k)(2).

#### C) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION

If the child's conduct was a manifestation of the disability, the IEP team shall:

- Conduct a *functional behavior assessment*, and implement a *behavior intervention plan* (if no FBA had been done prior to the conduct);
- If a BIP had been developed prior to the conduct, *review and modify the existing BIP* if necessary to address the behavior; and
- *Unless an IAES is in place, return the child to his/her previous placement*, unless the school district and parent agree to a change of placement as part of the modification of the behavior plan. 20 U.S.C. 615(k)(1)(F)

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### D) FORTY-FIVE (45) SCHOOL DAYS

This is a change from calendar days to school days. School personnel may remove a child with a disability to an interim alternative setting (IAES) determined by the IEP Team for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

This one is new.

- Has inflicted *serious bodily injury* upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district. 20 U.S.C. 1415(k)(1)(G);(k)(1)(H)(2).

"Serious bodily injury" means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. 18 U.S.C. 1365(h)(3).

The LEA may order the IAES "without regard to whether the behavior is determined to be a manifestation of the child's disability." 20 U.S.C. § 615(k)(1)(G). The IEP team still determines the IAES. 20 U.S.C. § 615(k)(2).

### E) APPEAL

The new standard removes the burden on the LEA to show likelihood by "substantial evidence." It also eliminates requirement that hearing officer consider appropriateness of the current placement and use of supplementary aids and services.

### F) STAY-PUT IN DISCIPLINE

When an appeal is requested on a disciplinary action, either by the parent, or by a school, "the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first." Section 615(k)(4)(A).

- The new law makes the disciplinary setting the stay-put placement if the parent requests a hearing to challenge the placement or manifestation determination.
- The law also requires that this type of hearing be "expedited," meaning that it take place within 20 school days and result in a decision within 10 school days thereafter. Section 615(k)(4)(B).

### G) STUDENTS NOT YET ELIGIBLE

Revised: Teachers or staff must have expressed specific concern "directly" to special education directors or other supervisors about "a pattern of behavior demonstrated by the child." Section 615(k)(5)(B)(iii).

The new law also clarifies that schools cannot be "deemed to have had knowledge of the child's potential disability" when the parents have refused evaluation of the child, refused services under IDEA, or when the child is evaluated and determined not to be eligible. 20 U.S.C. (K)(5)(C).

The new law eliminates "behavior or performance of the child demonstrates a need for such services".

Keep in mind; neither the statute nor the proposed regulations impose absolute limits on the number of days that a student can be removed from their current placement in a school year. Limitations in the statute and regulations about the amount of time that a student can be removed from their current placement only come into play when schools are not able to work out an appropriate placement with the parents of a student who has violated a school code of conduct.

## Has Your Email or Mailing Address Changed?

Be sure to contact the CASE office if your email address changes.

Also, please contact the CASE office if your mailing address changes.

The CASE office will notify CEC for you if you have not already done so. It is important for any address change to be made with CEC so that you will not have a disruption in receiving your *In CASE* Newsletters (6 per year) and the *Journal of Special Education Leadership* (JSEL, 2 per year).