



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 18 2005

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This is in response to your email to the Office of Special Education Programs (OSEP) in which you seek written clarification of the requirements of Part B of the Individuals with Disabilities Education Act Amendments of 1997 (Part B) for conducting a manifestation determination review for children with disabilities in disciplinary situations.

In your inquiry, you request that OSEP provide an opinion on the Oregon Department of Education's interpretation of 34 CFR §300.523 of the March 12, 1999 regulations implementing Part B. Specifically, you state: "Oregon has determined that no manifestation determination review need be held, even when a student has an expulsion hearing pending." You further state that it is your contention that "the IDEA was written to include all times a district 'contemplates' such a removal, and furthermore, that scheduling and holding an expulsion hearing, no matter what the outcome, is evidence of contemplating exactly that." This response confirms the oral clarification that members of my staff provided you regarding this matter.

The U.S. Supreme Court decision in the case of *Honig v. Doe*, 108 S. Ct. 592 (1988) established that a student with a disability could not be unilaterally removed from school for more than ten school days for misconduct that arose from the student's disability. The Individuals with Disabilities Education Act Amendments of 1997 included specific provisions in law requiring a manifestation determination review before a school district could implement a disciplinary removal that constituted a change of placement. 20 U.S.C. §1415(k)(4); see also 34 CFR §300.523.

Section 300.519 of the Part B regulations defines "change of placement for disciplinary removals" as a "removal for more than 10 consecutive school days" or "a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another." 34 CFR §300.519(a)-(b).

The Part B regulation at 34 CFR § 300.523(a) provides as follows:

§300.523 Manifestation determination review.

(a) **General.** If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior

that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

34 CFR §300.523(a)(1)-(2). Part B does not require that a manifestation determination review occur when a disciplinary removal is being considered; rather, the requirement to conduct the manifestation review determination is triggered on the date that the decision is made to implement a removal that constitutes a change of placement, and such review must occur "immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made." With regard to your inquiry, Part B does not require that a manifestation determination occur prior to scheduling or conducting an expulsion hearing.

I hope this information is helpful.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Dr. Nancy J. Latini
Associate Superintendent