



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 27, 2018

Carrie Mason
Education Attorney
Metro Defender Juvenile Division
Education Rights Project
100 Woodland Street
Nashville, Tennessee 37213

Dear Ms. Mason:

This letter responds to your correspondence to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP). In that letter, you asked OSEP to provide clarification on partial day exclusions from school counting toward a disciplinary change in placement. You asked, “specifically, what factors should school staff consider in determining, on a case by case basis, whether shortened school days are considered in the disciplinary change of placement analysis?” We regret the delay in responding.

In your letter, you provide a description of one of your client’s cases in which a child experienced an administratively shortened school day to address problem behavior at the child’s school. You stated that the shortened school days did not occur as a result of the individualized education program (IEP) Team process. You further stated that you reached an agreement with the school for the child to be returned to full school days and for compensatory services. However, you disagree with the school administrators about whether the daily exclusions from school should be considered disciplinary removals when evaluating whether a pattern of removals has occurred that would constitute a change of placement. You stated that you are concerned that students with disabilities in this school are not being provided with the disciplinary protections required under the Individuals with Disabilities Education Act (IDEA). While we cannot comment specifically on the facts of your case, we can provide clarification on the regulatory requirements surrounding this issue.

We note that section 607(d) of the IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances. In addition, this response does not address issues under Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act.

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as an out-of-school suspension, for a child with a disability who violates a code of student conduct, for up to 10 consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of up to 10 consecutive school days for separate incidents of misconduct, so long as those removals do not constitute a change of placement. 34 CFR §300.530(b)(1). For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR §§300.530 through 300.536, a change of placement occurs if 1) the removal is for more than 10 consecutive school days; or 2) the child has been subjected to a series of removals that constitute a pattern (i) because the series of removals total more than 10 school days in a school year; (ii) because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 CFR §300.536(a). Additionally, the public agency must determine on a case-by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to review through due process and judicial proceedings. 34 CFR §300.536(b).

In general, the Department does not consider the use of exclusionary disciplinary measures to be disciplinary removals from the current placement for purposes of 34 CFR §300.530, so long as children with disabilities are:

- Afforded the opportunity to continue to be involved in and make progress in the general education curriculum;
- Receive the instruction and services specified on their IEPs; and
- Participate with nondisabled children to the extent they would have in their current placement.

The use of short-term disciplinary measures under the circumstances you described, if implemented repeatedly (emphasis added), could constitute a disciplinary removal from the current placement, and thus the discipline procedures set out in 34 CFR §§300.530-300.536 would apply.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder,
Acting Director
Office of Special Education Programs