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# Disciplining Students with Disabilities: An American Perspective


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# DISCIPLINING STUDENTS WITH DISABILITIES: AN AMERICAN PERSPECTIVE

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*A topic of great interest in Australia, New Zealand, and the United States of America (USA) is how educators struggle to meet the needs of students with disabilities, particularly when their actions threaten the safety of learning environments. Based on the evolving legal questions associated with disciplining students with disabilities, this article opens with a brief introduction before reviewing legal developments in the USA under the Individuals with Disabilities Education Act, an extensive statute on the rights of children with special needs. This section also examines legislation and litigation in the USA while acknowledging similar developments in Australia and New Zealand. The second part of the paper offers practical recommendations to educator and their lawyers on how to protect the due process right of students with disabilities who are subjected to discipline, focusing in policy development and the parameters of the acceptable forms of discipline.*

## I INTRODUCTION

A significant interconnectedness exists between and among schools, parents, students with disabilities, and local communities. A topic of great interest in Australia, New Zealand, the United States, and beyond, educators, working in conjunction with their attorneys, struggle with meeting their legal duty to meet the needs of students with disabilities, not only when they are in school but also when they leave formal educational settings since they must then sustain themselves for the rest of their lives.

As educators seek to meet the educational needs of students with disabilities, an area that often presents a major controversy is discipline, particularly when students' actions threaten the safety of learning environments. At the same time, though, disciplining or excluding students with disabilities, however necessary, may limit their ability to complete their schooling as they prepare to support themselves when they move into the 'real world'. In fact, serious issues arise when educators must evaluate whether student misbehavior is a manifestation of their disabilities, which has implications for both discipline and educational services. Further, since students whose misbehavior is a manifestation of their disabilities cannot be excluded from school, as can their peers who are not disabled, such situations create a tension in which parents and others might argue that differential discipline violates the due process rights of those who are not disabled.

Based on the evolution of legal questions associated with disciplining students with disabilities, the remainder of this article is divided into two substantive sections. The first part of the paper

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examines legal developments in the United States by tracing the evolution of the Individuals with Disabilities Education Act (IDEA),<sup>1</sup> an extensive statute on the rights of children with special needs in the hope that this will be informative to educators from other nations, most notably Australia<sup>2</sup> and New Zealand<sup>3</sup> where the law is not as prescriptive in this regard as in the United States. This section of the paper also examines legislation and litigation in the United States. The second part of the paper offers practical recommendations to educators and their lawyers on steps that they may take to protect the due process rights of students with disabilities who are subjected to discipline. This portion of the paper includes a discussion of policy development as well as the parameters and acceptable forms of discipline such as the use of time out rooms, physical restraints, and exclusions from school. The paper rounds out with a brief conclusion.

## II THE IDEA'S DISCIPLINARY REQUIREMENTS

As important as the topic of disciplining students with disabilities is, the IDEA did not address it explicitly until 1997. Following further refinements in 2004, the IDEA now permits school officials to discipline students as long as they follow procedures that do not deprive children of their rights.<sup>4</sup> Early case law held that while students with disabilities could not be expelled for misconduct that was a manifestation of their disabilities, they could have been excluded if no such relationship was present.<sup>5</sup>

*Honig v. Doe (Honig)*<sup>6</sup> is the Supreme Court's first, and only, case involving discipline and special education. In a dispute over whether school officials in California could exclude two students with disabilities from school, the Court addressed three issues. First, the Court affirmed that the case was moot with regard to one of the two students because he was already over the age of twenty-one but not for the second student, who was twenty-years-old and still eligible for special education. Second, in refusing to write in a dangerousness exception into the statute, the Court affirmed that the IDEA's stay-put provisions prohibit educators from unilaterally excluding students with disabilities from school for dangerous or disruptive actions that are manifestations of their disabilities during the pendency of review proceedings. The Court added that officials could impose normal, non-placement-changing procedures, including temporary suspensions for up to ten school days for students who posed immediate threats to school safety. The Justices conceded that if educators and parents agreed, students could have been given interim placements as proceedings went forward. If this approach failed, the Court acknowledged that officials could have filed suit for injunctive relief to remove children. Third, an equally divided Court affirmed that state-level officials can be compelled to provide services directly to students with disabilities when local boards fail to do so.<sup>7</sup>

### A *Suspensions and Short-term Removals*

*Honig's* failure to resolve all of the legal issues surrounding disciplining students with disabilities led to additional litigation and eventual legislative action.<sup>8</sup> Congress sought to clarify unanswered questions by creating specific procedures as part of the IDEA's 1997 and 2004 Amendments.<sup>9</sup> The IDEA now affords educators the authority to suspend special education students for not more than ten school days as long as the same kinds of sanctions apply to children who are not disabled.<sup>10</sup>

The IDEA's regulations specify that a series of removals that result in a pattern of exclusions that cumulatively have children with disabilities out of school for more than ten school days may be considered changes in placements.<sup>11</sup> The regulations stipulate that if students are suspended for

misbehavior that is substantially similar to past actions that were found to have been manifestations of their disabilities, then this constitutes changes in placements.<sup>12</sup> In making such judgments, the regulations direct school officials to consider the length of each removal, the total amount of time that children have been removed from school, and the proximity of the removals to one another in evaluating whether changes in placements occurred.<sup>13</sup> This provision assures that when students continue to misbehave because of their disabilities school officials cannot simply remove them rather than address the causes of the misbehavior. Stated another way, educators cannot shirk their obligations to provide such students with a free appropriate public education (FAPE) by serially excluding them from all educational services.

Pursuant to the IDEA, school officials can remove students with disabilities from school for separate, but dissimilar, acts of misconduct for more than ten cumulative days in a school year.<sup>14</sup> After students with disabilities are removed from school for ten days in the same school year, during any later removals, educators must provide them with educational services.<sup>15</sup> As exemplified by a case from Minnesota, though, where parents refused to consent to a change of placement for their daughter as a result of her disciplinary suspension, the Eighth Circuit ruled that school officials did not violate the IDEA's stay-put provisions in continuing to exclude her for misbehaving in ways that endangered herself, other students, and school staff.<sup>16</sup> Here the court was convinced that school personnel had no other alternative in the face of the parents' refusal to allow them to transfer the student to a more appropriate setting.

### *B Minor Disciplinary Sanctions*

Courts have held that the IDEA does not restrict or limit school personnel's ability to impose minor disciplinary sanctions that do not result in a change in placement on students with disabilities as those long as the punishments meted out would be the same as given to students who do not have disabilities under the same circumstances. Even so, it is always wise to spell out the use of such sanctions in either the students' IEPs or behavior plans, particularly if the students are known to exhibit disciplinary problems. For example, the Tenth Circuit emphasized that the use of time-outs, as specified in a student's IEP, did not violate his rights.<sup>17</sup> The court was convinced that temporarily removing the child was necessary given the threat he posed to the emotional, psychological, and physical safety of other students and teachers when he became disruptive. The court, in noting that the time-outs were outlined in his IEP as a mechanism to teach him behavioral control, felt that their use was particularly reasonable.

### *C Removal to Interim Alternative Placements*

School officials have increased authority when dealing with students with disabilities who possess weapons or drugs at school.<sup>18</sup> Under an expanded definition of a dangerous weapon, the IDEA incorporates language from another federal statute such that it now includes instruments, devices, materials, and substances that are capable of inflicting harm in addition to firearms, but does not include small pocket knives.<sup>19</sup> In addition, the IDEA defines illegal drugs as controlled substances but excludes those that may be legally prescribed by physicians.<sup>20</sup>

Under the IDEA's provisions on the immediate removal of students with disabilities, school officials may unilaterally transfer children to interim alternative placements for up to forty-five school days for carrying or possessing weapons<sup>21</sup> or for knowing possession, use, sale, or solicitation of drugs<sup>22</sup> on school property or at school functions as long as this sanction applies under like circumstances for students who are not disabled.<sup>23</sup> In an important addition in the 2004

version of the IDEA, students who have inflicted serious bodily injury on other persons while at school, on school premises, or at school functions can be placed in alternative educational settings.<sup>24</sup> In defining ‘serious bodily injury’, the IDEA relies on another federal law which defines the term as one involving 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.<sup>25</sup>

The IDEA’s interim alternative placement provisions require school officials to permit students to continue to progress in the general education curriculum where they still receive necessary services that are outlined in their IEPs.<sup>26</sup> Educators must also provide students with services and modifications that are designed to prevent the misbehavior from recurring.<sup>27</sup>

If students are moved to alternative placements for more than ten school days,<sup>28</sup> educators must conduct functional behavioral assessments (FBAs) and implement behavioral intervention plans (BIPs) if they are not already in place.<sup>29</sup> If plans were in place when children misbehaved, IEP teams must review them and their implementation in order to make any necessary modifications.<sup>30</sup> If parents disagree with alternative placements and request hearings, consistent with the IDEA’s stay-put provision, their children must remain in the alternative settings.<sup>31</sup> Once the forty-five day periods expire, officials must return students to their former settings even if hearings on school board proposals to change their placements are pending unless parents and educators agree otherwise.<sup>32</sup> Whenever any change in placement occurs for disciplinary reasons, students must be able to receive the support and services they require in the new placement.<sup>33</sup>

The Eighth Circuit held that a transfer to an interim alternative placement does not amount to a constructive long-term suspension and therefore school officials are not required to provide students with hearings before school boards prior to making such a move.<sup>34</sup> School administrators had suspended a student with disabilities for fighting, bringing a knife to school, uttering obscenities at school personnel, and threatening to kill staff. His IEP team determined that his misconduct was not a manifestation of his disability and recommended that he be placed in the school system’s alternative high school following his suspension. The court was satisfied that the team acted within its statutory authority in changing his placement. By the same token, a federal trial court in Virginia found that a school board did not have the authority to place a student with disabilities in an alternative setting.<sup>35</sup> The court noted that the IDEA stipulates that the IEP team, not the school board, is to make determinations regarding alternative educational settings.

#### *D Manifestation Determinations*

The IDEA includes definitions and procedures to evaluate whether, on ‘case-by-case determinations’,<sup>36</sup> misconduct is related to students’ disabilities.<sup>37</sup> The IDEA defines a manifestation as conduct that was caused by or had a direct and substantial relationship to students’ disabilities or was the direct result of the failure of school officials to implement IEPs properly.<sup>38</sup> In an ironic twist, under the current standard IEP teams must find that a manifestation occurred when IEPs are not implemented as written but not if the IEPs were inappropriate in the first place. A federal trial court in Virginia held that since a child’s IEP was implemented as written, his behavior could not be attributed to a failure to implement the IEP, even though a hearing officer had concluded that he had been denied a FAPE because his IEP failed to address behavioral concerns.<sup>39</sup> In reviewing whether placements were inappropriate, IEP teams should use the same standards that applied when they prospectively evaluated whether proposed placements were appropriate. If IEP teams interpret misconduct as either a manifestation of students’ disabilities or as a result of improperly implemented IEPs, children may not be expelled or suspended for more than ten days and school

officials must reconsider their current placements.<sup>40</sup> In making manifestation determinations, IEP teams must consider all relevant information, including evaluations and diagnostic results as well as student observations.<sup>41</sup>

As with other aspects related to special education, manifestation determinations are subject to the IDEA's administrative appeals process. The 2004 amendments require school officials to expedite hearings incident to manifestation determinations, meaning that they must occur within twenty school days of the dates on which they were requested and that hearing officers must render decisions within ten days of hearings.<sup>42</sup> If parents contest manifestation determinations, then educators must postpone long-term suspensions or expulsions until hearings have been completed, even though students may remain in interim alternative educational settings.<sup>43</sup> In addition to leaving children in their then current, or pendent, placements, hearing officers may issue change in placement orders.<sup>44</sup> In a case from New York, the Second Circuit ruled that while a student could challenge whether his being placed in an interim alternative setting denied him the opportunity to take part in extracurricular activities, he lacked a right to return to a regular school setting while his situation was under review.<sup>45</sup>

Two cases from Virginia highlight the principle that if the inappropriate actions of students are not manifestations of their disabilities, then they may be disciplined in the same manner as peers who are not disabled. In the first dispute, a student, who had Asperger's Syndrome and was already on probation, filed suit after a manifestation determination review found that since his behavior was unrelated to his condition, he could be suspended and reassigned to another school for sexually harassing a classmate by using his cell phone to take pictures up her skirt without her knowledge.<sup>46</sup> In rejecting the student's claim that he was disciplined due to his disability, and granting the school board's motion to dismiss, the court declared that he had to exhaust administrative remedies under the IDEA before initiating litigation.<sup>47</sup> In the second, a federal trial court rejected the claim of a student with emotional disabilities that he was improperly disciplined for his role in a paintball shooting incident at his school. Where the record revealed that the student drove his car, with friends inside of the vehicle, past the school and shot paintballs at the building on three occasions, the court rebuffed his assertion that his misbehavior was a manifestation of his disability as the incident was clearly well-planned.<sup>48</sup>

Educators must complete FBAs and BIPs if they decide that disciplinary infractions are manifestations of students' disabilities.<sup>49</sup> As important as FBAs and BIPs can be, and as prescriptive as the IDEA and its regulations typically are, neither addresses their content or form in the scant case law on point.<sup>50</sup> The important consideration is that students' misbehavior must be addressed, regardless of the form or procedures used to assess their behavior and implement intervention strategies.<sup>51</sup>

At the same time, school officials also should conduct FBAs and develop BIPs to address misbehavior that is not a manifestation of students' disabilities as a means of ensuring that it will not recur.<sup>52</sup> For example, even though an IEP team determined that a student's misbehavior was not a manifestation of his disability, a federal trial court in Virginia agreed that school personnel violated the IDEA by not conducting an FBA and developing a BIP after he experienced several documented behavioral incidents and had been suspended on three occasions.<sup>53</sup> In a recent decision the federal trial court in the District of Columbia wrote that school personnel should have conducted an FBA and developed a BIP where the record indicated that his behavioral problems seriously affected his academic performance, inasmuch as his teachers stated that his behavior impacted his functioning in the classroom and that his behavior had declined.<sup>54</sup> Even so, FBAs and BIPs are not required when students commit only minor infractions.<sup>55</sup>

### *E Services During Expulsions and Long-term Removals*

The IDEA clarified whether school officials can discontinue services for children who are properly expelled for misconduct that is not disability-related. In codifying a federal policy directing officials to provide services for a student who was excluded for misbehavior that was not disability-related, the IDEA essentially repudiated a case from Virginia wherein the Fourth Circuit rejected the notion that such a requirement existed.<sup>56</sup> The IDEA now requires boards to provide appropriate educational placements for all students with disabilities including those who have been expelled from school.<sup>57</sup> In other words, even if students are expelled for disciplinary infractions that are unrelated to their disabilities, they must be provided with services that allow them to progress toward achieving their IEP goals.<sup>58</sup> In this respect, the services provided must be determined by the IEP.<sup>59</sup>

### *F Students Not Yet Identified as Disabled*

Prior to the adoption of the statute's 1997 revisions, courts disagreed over the treatment of students who were not yet assessed for special education but claimed to have been covered by the IDEA. Officials must now provide the IDEA's protections to students if they knew that children were disabled before they misbehaved.<sup>60</sup> As a case from Connecticut illustrates, officials are considered to be on notice if parents request evaluations.<sup>61</sup> Educators may also be considered to be on notice in light of students' prior behavioral and academic performances and the concerns of teachers about their performances.<sup>62</sup> An exception exists if educators already conducted evaluations and concluded that students were not disabled or if parents refused to grant their permission for evaluations or declined offered special education services.<sup>63</sup>

If parents request evaluations when students are subject to disciplinary sanctions, they must be conducted in an expedited manner.<sup>64</sup> Consistent with the IDEA's stay-put provision, until expedited evaluations are completed, students must remain in the placements deemed appropriate by educators.<sup>65</sup> If evaluation teams discern that children are disabled, they must provide students with special education services.<sup>66</sup> In a case reaching mixed results, a federal trial court in Mississippi decided that while school officials violated the IDEA by failing to provide a testing procedure to evaluate whether a student who was expelled for bringing a Swiss Army knife to school had a disability, they did not contravene the statute's stay-put provision in excluding the child.<sup>67</sup>

### *G Relationship to Law Enforcement*

The IDEA's discipline provisions do not prohibit school officials from reporting student crimes to the proper authorities or impeding law enforcement and judicial authorities from carrying out their duties.<sup>68</sup> If officials do report crimes, they must make copies of students' special education and disciplinary records available to appropriate authorities.<sup>69</sup>

## III RECOMMENDATIONS

Under the amended IDEA, students with disabilities are subject to the disciplinary process when they misbehave. To the extent that the IDEA entitles students with disabilities to a FAPE, additional due process may be required if disciplinary actions can result in substantial losses of educational opportunities. As discussed throughout, since no area of special education law is more contentious than that caused by the imposition of disciplinary sanctions on students with

disabilities, educational leaders and their attorneys need to be particularly mindful when dealing with this important topic.

The current provisions of the IDEA, along with case law, seem to strike an appropriate balance. School officials may take disciplinary actions against students with disabilities by following the IDEA's procedures. This balance allows educators to discipline misbehaving students while removing the possibility that these students can be deprived of educational opportunities for behavior that stems from their disabilities. The recommendations below have been developed from the IDEA and case law. Even so, readers are cautioned to also consult state law in this area since many jurisdictions impose additional requirements on school officials when disciplining students with disabilities.

In developing discipline policies, school officials should

1. Impose normal minor disciplinary actions such as detentions or time-outs by following their usual procedures.
2. Follow the usual procedures when suspending students with disabilities for periods of up to 10 school days.
3. Immediately initiate the IDEA's due process protections whenever disciplinary sanctions may involve expulsions or transfers to other educational settings such as alternative schools.
4. Determine whether students' misconduct was a manifestation of their disabilities
5. Complete manifestation determinations within ten school days of decisions to change students' placements.
6. Ensure that manifestation determinations are made by school personnel, including student IEP teams in conjunction with a child's parents.
7. Ensure that parents are invited to participate in manifestation determination meetings and are notified of their rights.
8. Ensure that the teams making manifestation determinations examine whether the misconduct in question was either caused by or had a direct and substantial relationship to a student's disability.
9. Ensure that the teams making the manifestation determinations consider whether a student's IEP was properly implemented.
10. Ensure that all evaluation data are current or conduct reevaluations if they are not
11. Provide special education services during expulsion periods for students who have been properly expelled.
12. Propose new placements if IEP teams determine that since the then-current placements of students did not meet their needs, this may have been a contributing factor in their misbehavior.
13. Provide expedited hearings to parents who disagree with the results of manifestation determinations.
14. Immediately remove students who are charged with the possession of weapons or drugs on school property or at school functions by following the normal suspension procedures.
15. Place students who are charged with the possession of weapons or drugs on school property or at school functions in interim alternative settings for forty-five day periods following their initial 10-day suspensions.



16. Consider whether students who caused serious bodily harm should be removed to interim alternative settings for forty-five day periods.
17. Ensure that the alternative setting allows students to progress in the general education curriculum and permits the delivery of their special education services.
18. Seek orders from courts or hearing officers to remove students whose presence in school could cause a danger to themselves and/or others or could substantially interrupt the education process.
19. When seeking injunctions to exclude students from their educational programs, be prepared to show that everything possible has been done to mitigate the danger or chance of disruption and that there is no less restrictive alternative than removal.
20. Conduct functional behavioral assessments and develop behavioral intervention plans as part of the annual IEP process for all students with disabilities who have a history of misbehavior.
21. Review functional behavioral assessments and behavioral intervention plans when students are faced with serious disciplinary action or manifestation determinations are scheduled.
22. Include the following elements in functional behavioral assessments: observations of students, documenting aspects of their behavior; analysis of the situations that trigger misbehavior; review of the effectiveness of previous interventions; medical, psychological, and social data that could affect behavior; and any other information that could provide insight into the behaviors.
23. Include the following elements in behavioral intervention plans: strategies for dealing with a student's behavior (both strategies for dealing with the behavior at the time it surfaces and long-term strategies for preventing future occurrences), supportive services that can be provided to the students to help them to deal with the situations that tend to precipitate the unwanted behavior, expected behaviors, a description of inappropriate behaviors, and a statement of the positive and negative consequences for any behavior
24. Provide the IDEA's protections to students who have not been identified as having disabilities but who may, in fact, be disabled.
25. Provide special education and disciplinary records of students to the appropriate authorities if school personnel report crime in which students were involved.
26. Carefully and completely document all misbehavior and all actions taken in response to the misbehavior of students.

A final generic point transcends special education but is applicable here just as well. More specifically, educators and their lawyers should review all policies annually, typically between school years, not during or immediately after controversies in order to ensure that they are up-to-date with developments in the ever-changing arena of Education Law. By not reviewing policies once a controversy has ended, educators and attorneys can take a more dispassionate step-back approach to reviewing their content. Further, revising policies on a scheduled basis not only affords educators and lawyers better perspectives, but also, in the event of litigation, provides evidence that they are doing their best to be current in maintaining safe, orderly schools while safeguarding the rights of all students in their school communities.

## IV CONCLUSION

As with most legal issues, compliance with these recommendations with regard to disciplining students with disabilities is no guarantee that all controversy can be avoided. However, to the extent that educational leaders, wherever they are in Australia, New Zealand, the United States, or elsewhere in the world, follow their national laws and the suggestions described in this article, then they will have increased their chances to avoid potentially costly due process hearings and litigation. Consequently, educational leaders should be able to best serve all children in their systems.

*Keywords:* special education; students with disabilities; discipline; special needs; due process.

## ENDNOTES

- 1 20 U.S.C.A. §§ 1400 *et seq.* (2005).
- 2 For a discussion of the legal rights of students with disabilities in Australia, *see* Sally Varmham & Jim Jackson, Australia, in *The Legal Rights of Students with Disabilities: International Perspectives* at 21-43, in C. Russo (ed.), Rowman & Littlefield: Lanham, MD (2011).
- 3 For a discussion of the legal rights of students with disabilities in New Zealand, *see* Kate Diesfeld & John Hancock, New Zealand, in *The Legal Rights of Students with Disabilities: International Perspectives* at 157-178, in C. Russo (ed.), Rowman & Littlefield: Lanham, MD (2011).
- 4 *LJH ex rel. LH v. New York City Bd. of Educ.*, 103 F. Supp.2d 658 (E.D.N.Y. 2000).
- 5 *See, e.g., Stuart v. Nappi*, 443 F. Supp. 1235 (D. Conn.1978); *S-1 v. Turlington*, 635 F.2d 342 (5th Cir.1981), *cert. denied*, 454 U.S. 1030 (1981); *School Bd. of Prince William County, Va. v. Malone*, 762 F.2d 1210 (4th Cir. 1985).
- 6 484 U.S. 305 (1988).
- 7 *Doe by Gonzales v. Maher*, 793 F.2d 1470 (9th Cir.1986).
- 8 *Hayes Through Hayes v. Unified Sch. Dist. No. 377*, 877 F.2d 809 (10th Cir.1989); *Hacienda La Puente Unified Sch. Dist. of Los Angeles v. Honig*, 976 F.2d 487 (9th Cir. 1992); *Light v. Parkway C-2 Sch. Dist.*, 41 F.3d 1223 (8th Cir.1994), *reh'g and suggestion for reh'g en banc denied, cert. denied*, 515 U.S. 1132 (1995).
- 9 20 U.S.C.A. § § 1415(i)(j)(k)(l).
- 10 20 U.S.C.A. § 1415(k)(1)(B).
- 11 34 C.F.R. § 300.536(a)(1).
- 12 34 C.F.R. § 300.536(a)(2).
- 13 34 C.F.R. § 300.536(a)(2)(iii).
- 14 34 C.F.R. § 300.530(b)(1).
- 15 34 C.F.R. § 300.536(b)(2).
- 16 *M.M. ex rel. L.R. v. Special Sch. Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008), *reh'g and reh'g en banc denied* (2008).
- 17 *Couture v. Bd. of Educ. of Albuquerque Pub. Schs.*, 535 F.3d 1243 (10th Cir. 2008).
- 18 20 U.S.C.A. §§ 1415(k)(7)(A)-(B).
- 19 18 U.S.C.A. § 930(g)(2).
- 20 20 U.S.C.A. § 1415(k)(7)(B). For the list of controlled substances, *see* 21 U.S.C.A. § 812(c).
- 21 20 U.S.C.A. § 1415(k)(1)(G)(i).
- 22 20 U.S.C.A. § 1415(k)(1)(G)(ii).
- 23 20 U.S.C.A. § 1415(k)(1)(C).
- 24 20 U.S.C.A. § 1415(k)(1)(G)(iii).
- 25 18 U.S.C.A. § 1365(h)(3).
- 26 20 U.S.C.A. § 1415(k)(1)(D)(i).
- 27 20 U.S.C.A. § 1415(k)(1)(D)(ii).

28 20 U.S.C.A. § 1415(k)(1)(D)(ii).  
 29 20 U.S.C.A. § 1415(k)(1)(D)(ii)(&); 34 C.F.R. § 300.530(d)(ii).  
 30 34 C.F.R. § 300.530(f)(1)(ii).  
 31 20 U.S.C.A. § 1415(k)(4)(A). *See J.S., ex rel. Duck v. Isle of Wight County Sch. Bd.*, 368 F. Supp.2d 522  
 (E.D. Va. 2005) (rejecting a mother’s claim that school officials violated her son’s rights by suspending  
 him and placing him in an alternative school due to accusations of a sexual nature by a female student).  
 32 20 U.S.C.A. § 1415(k)(4)(A).  
 33 *George A. v. Wallingford Swarthmore Sch. Dist.*, 655 F. Supp. 2d 546 (E.D. Pa. 2009).  
 34 *Doe v. Todd County Sch. Dist.*, 625 F.3d 459 (8th Cir. 2010).  
 35 *School Bd. of City of Norfolk v. Brown*, 769 F. Supp. 2d 928 (E.D. Va. 2010).  
 36 20 U.S.C.A. § 1415(k)(1)(A).  
 37 20 U.S.C.A. § 1415(k).  
 38 20 U.S.C.A. § 1415(k)(1)(E)(I).  
 39 *School Bd. of City of Norfolk v. Brown*, 769 F. Supp. 2d 928 (E.D. Va. 2010).  
 40 20 U.S.C.A. § 1415(k)(1)(C).  
 41 20 U.S.C.A. § 1415(k)(1)(E)(I).  
 42 20 U.S.C.A. § 1415(k)(4)(B).  
 43 20 U.S.C.A. § 1415(k)(4)(A).  
 44 20 U.S.C.A. § 1415(k)(3)(B).  
 45 *Coleman v. Newburgh Enlarged City School Dist.*, 503 F.3d 198 (2d Cir. 2007)  
 46 *A.W. ex rel. Wilson v. Fairfax County School Bd.*, 548 F. Supp.2d 219 (E.D. Va. 2008).  
 47 *See also Farrin v. Maine Sch. Admin. Dist. No. 59*, 165 F. Supp.2d 37 (D. Me. 2001) (refusing to order  
 the reinstatement of a student who was expelled for violating his school’s drug policy since his pupil  
 evaluation team decided that his misbehavior was unrelated to his learning disability).  
 48 *Fitzgerald v. Fairfax County Sch. Bd.*, 556 F. Supp.2d 543 (E.D. Va. 2008).  
 49 20 U.S.C.A. § 1415(k)(1)(F)(I).  
 50 *See, e.g., School Bd. of Indep. Sch. Dist. No. 71 v. Renolett*, 440 F.3d 1007 (8<sup>th</sup> Cir. 2006) (explaining  
 that a BIP need not be in writing)  
 51 *See, e.g., A.C. and M.C. ex rel. M.C. v. Bd. of Educ. of Chappaqua Cent. Sch. Dist.*, 553 F.3d 165 (2d  
 Cir. 2009) (holding that since an IEP adequately addressed a student’s behavior the failure to conduct  
 a formal FBA did not render the IEP inadequate).  
 52 *Shelton v. Maya Angelou Pub. Charter Sch.*, 578 F. Supp. 2d 83 (D.D.C. 2008).  
 53 *School Bd. of Cith of Norfolk v. Brown*, 769 F. Supp. 2d 928 (E.D. Va. 2010).  
 54 *Long v. District of Columbia*, 780 F. Supp. 2d 49 (D.D.C. 2011).  
 55 *See, e.g., J.A. and E.A. ex rel. M.A. v. East Ramapo Cent. Sch. Dist.*, 603 F. Supp. 2d 326 (S.D.N.Y.  
 2009) (ruling that an FBA was not required when no evaluation reports indicated a need for an FBA);  
*Rodriguez v. San Mateo Union High Sch. Dist.*, 357 F. App’x 752 (9th Cir. 2009) (affirming that a  
 student’s behavioral problems did not rise to the level of severity necessary to trigger the need for a  
 BIP).  
 56 *Commonwealth of Va., Dep’t of Educ. v. Riley*, 106 F.3d 559 (4th Cir. 1997).  
 57 20 U.S.C.A. §§ 1412(a)(1)(A), 1415(k)(1)(D)(i).  
 58 34 C.F.R. § 300.530(d)(i).  
 59 *Shelton v. Maya Angelou Pub. Charter Sch.*, 578 F. Supp. 2d 83 (D.D.C. 2008).  
 60 20 U.S.C.A. § 1415(k)(8).  
 61 *J.C. v. Regional Sch. Dist. No. 10*, 115 F. Supp.2d 297 (D. Conn. 2000), *rev’d on other grounds*, 278  
 F.3d 119 (2d Cir. 2002).  
 62 20 U.S.C.A. § 1415(k)(5)(B).  
 63 20 U.S.C.A. § 1415(k)(5)(c). For such a case, *see M.G. v. Crisfield*, 547 F. Supp.2d 399 (D.N.J.  
 2008) (rejecting a parental claim that school officials inappropriately suspended their son since they  
 consistently refused to have him identified and served under the IDEA).  
 64 20 U.S.C.A. § 1415(k)(5)(D)(ii).  
 65 20 U.S.C.A. § 1415(k)(5)(D)(ii).

- 66 20 U.S.C.A. § 1415(k)(5)(D)(ii).
- 67 *Colvin ex rel. Colvin v. Lowndes County, Miss. Sch. Dist.*, 114 F. Supp.2d 504 (N.D. Miss. 1999).
- 68 20 U.S.C.A. § 1415(k)(6)(A). *Commonwealth v. Nathaniel N.*, 764 N.E.2d 883 (Mass. App. Ct. 2002)  
(affirming that a juvenile court proceeding did not constitute a change in placement even when it took  
place due to a student's misconduct at school).
- 69 20 U.S.C.A. § 1415(k)(6)(B).