MYTH: Only students who have been evaluated and found eligible as a child with a disability under IDEA have protections under the IDEA in disciplinary situations.

FACT: The IDEA does include very specific protections for students who are IDEA eligible. However, the IDEA also includes protections for students not yet identified as a child with a disability and IDEA eligible. It is important for LEAs to be aware of these protections and have procedures in place to ensure compliance.

MYTH: Students who were referred for a special education evaluation before the disciplinary incident must wait until the evaluation is complete before getting the protections in disciplinary situations under the IDEA.

FACT: Students who have not been identified as having a disability may be subjected to the same disciplinary measures applied to children without disabilities only if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline.

The district has knowledge of the disability when:
A. the parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child; or,
B. the parent has requested an evaluation; or,
C. the student's teacher or other school staff has expressed specific concern about a pattern of the student's behavior directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability; or determined that an evaluation was not necessary and provided proper Notice of Action Refused prior to the behavior incident; or, if the parent of the child has not allowed an evaluation of the child pursuant to IDEA or has refused services.

In the situation described in the myth, the LEA does have prior knowledge and must follow all of the disciplinary procedures under IDEA for this student including holding a manifestation determination meeting within the 10 school day timeframe. The manifestation determination should be based on current information and the suspected disability area(s). The LEA must provide services to the student during the long-term suspension which may include homebound services based on the suspected disability or compensatory services after the development of the IEP.

MYTH: Students who were referred for a special education evaluation during the time of the disciplinary action do not have protections under the IDEA in disciplinary situations.

FACT: A parent can request a special education evaluation at any time, including during the time when a student is subject to a disciplinary action. If a request for evaluation is made during the period the student is subject to disciplinary measures, the LEA will need to expedite the determination of whether or not the student is suspected of having a disability and provide the parent with a Notice of Action either refusing the request or proposing a special education evaluation. The special education evaluation will be expedited and, until the evaluation is completed, the child remains in the educational placement determined by the school district, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school district shall provide special education and related services and follow all required procedures for disciplining students with disabilities including holding a manifestation determination meeting.

Myth: Compensatory services are never required for students who were not IDEA eligible at the time of the disciplinary incident.

FACT: The IDEA requires that a child with a disability who is removed from the child's current placement for more than ten (10) school days consecutively or cumulatively when there is a pattern of removals must:
A. continue to receive educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP, and
B. receive, as appropriate, a functional behavioral assessment, and behavior intervention services, and modifications that are designed to address the behavior violation so that it does not happen again.

As noted above, IDEA provides protections to students who are not yet IDEA eligible when a disability is suspected. If a student is found eligible under the IDEA, an IEP must be developed that will provide a free appropriate public education (FAPE) to that child. Compensatory service may be required to be provided to a student back to the date of the initial IEP in the circumstance when a student's behavior resulting in the disciplinary action was found to be a manifestation of the child's disability.

LEGAL REFERENCES AND RESOURCES: Please refer to 34 CFR 300.534 and Regulation V-Procedural Safeguards/Discipline in the MO State Plan for Special Education at http://dese.mo.gov/special-education/state-plan-special-education , the Procedural Safeguards at http://dese.mo.gov/special-education/compliance/procedural-safeguards , and the model Discipline Documentation Form at http://dese.mo.gov/special-education/compliance/special-education-forms for additional information and guidance. Note that DESE has created TWO NEW FLOWCHARTS for Discipline of Students Identified as IDEA Eligible or Suspected of Having a Disability Under IDEA (D1) AND Discipline of Students Not Yet Identified as IDEA Eligible (D2) to further assist LEAs with step-by-step guidance in these types of situations available at http://dese.mo.gov/special-education/compliance/special-education-forms

MO DESE Special Education Compliance  
August 2016