



When Protections Collide: Navigating Title IX & Special Education Student Discipline

2026 Keystone Title IX and Education Law Summit

SAXTON & STUMP[®]
LAWYERS AND CONSULTANTS


A DIFFERENT
APPROACH

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Dr. Leigh Dalton has dedicated her career to focusing on the needs of students, strengthening our schools, reducing truancy, and pushing for stronger community support in both government and nonprofit leadership positions in Pennsylvania and Maryland. She is a shareholder in the Saxton & Stump Education Group, bringing more than 20 years of varied legal and governmental education experience to her practice. In her practice, Dr. Dalton provides legal advice to her clients to address complex legal issues with practical implications in the daily operation of public school entities throughout Central Pennsylvania on issues such as special education, student services, compliance monitoring, Title IX, and student discipline. Dr. Dalton devotes a significant portion of her practice to addressing the policy needs of school entities, tracking updates and developments in federal and state laws and regulations.

Practice Areas

- ▶ Education



Basic Rules on Discipline of Students with Disabilities

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Special Education Discipline Basics

1. Some forms of discipline constitute a “change in placement.”
2. The trigger for “special rules” is a “change in placement,” not discipline.
3. Special education rules do not significantly impact disciplinary actions that do not constitute a “change in placement.”
4. Notice. When you decide that intended discipline will involve a “change in placement,” you must notify the parents and provide the procedural safeguards. 34 C.F.R. § 300.530(h).

Special Education Discipline Basics

- Can a student with an IEP be suspended? (yes)
- What are the limitations on suspension? (limited when it constitutes a “change in placement” as defined by federal and state law)
 - Within a school year:
 - 10 consecutive days (federal law)
 - 11-15 cumulative days that constitute a pattern (federal law)
 - More than 15 days in a school year cumulatively (state law)
- Do things like short-term removals, in-school-suspensions, and principal office visits count as suspensions?

Removals

- ▶ Disciplinary removals that are 10 or less consecutive days and that do not accumulate to more than 15 days within a school year are not changes in placement (except under the blended State/Federal Pattern Exception for 11-15 days).

Removals

► Ten or less days (Federal):

1. Short-term suspensions, in-school suspensions, and detentions (during or after school) are not a “change in placement” triggering special rules. However, pay attention to the amount of time and the quality of education in detention or in-school suspension and the denial of FAPE that might occur in that setting because of a failure to implement a student’s IEP.
2. Administrators can unilaterally suspend a special education student for up to 10 days following normal discipline protocols, Chapter 12, and board policy. 34 C.F.R. § 300.530(b).
3. No educational services are required for removals of up to 10 cumulative or consecutive school days unless you normally provide services to regular education students during that period. 34 C.F.R. § 300.530(d)(3).

Removals

- ▶ Eleven to fifteen days (Federal):
 - The school district must determine, on a case-by-case basis, whether there is a pattern of removals that total 11 to 15 days, so as to constitute a “change of placement” triggering the application of special rules. 34 C.F.R. § 300.536. No pattern: reasons for referrals are unrelated; referrals are far apart in time (i.e. once in September; once in April); or student is referred for different behavior.
 - Best Practice is to hold a formal IEP team meeting to determine if the behavior constitutes a pattern.

Removals

► Eleven to fifteen days (Federal):

“A change of placement occurs if...the child has been subjected to a series of removals that constitute a pattern because:

- The series of removals total more than 10 school days in a school year,
- The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals, and
- 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.”

Removals

➤ Eleven to fifteen days (Federal):

- If a pending out-of-school suspension will bring the total exclusions to 11 to 15 school days, examine whether the suspensions constitute a pattern under the Federal rule (above). If so, the next suspension is a “change of placement.”
- Services during days 11 through 15: school districts may provide no educational services whatsoever during a special education student’s first 10 days of suspension; however, after 10 consecutive or nonconsecutive days of suspension, school districts are required to provide some form of FAPE “so as to enable the child to participate in the general curriculum, although in another setting, and to progress toward meeting goals in the IEP.” 34 C.F.R. § 300.530(b)(2)&(d).

Removals

- ▶ Fifteen cumulative days. (PA state rule):
 1. “A disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement.” 22 Pa. Code § 14.143(a).
 2. Educational services are required after the 10 cumulative day mark, and for each suspension or exclusion thereafter.
- ▶ More than 10 consecutive days (Federal rule).
 1. A change of placement occurs if the removal is for more than 10 consecutive school days. 34 C.F.R. § 300.536(a)(1).
 2. Educational services are required at the 11-day mark. In general, a school entity is required to provide all of the services in the IEP during exclusion.

22 Pa. Code § 14.143 (b). Disciplinary placements.

A removal from school is a change of placement for a student who is identified with [intellectual disabilities], except if the student's actions are consistent with 34 CFR 300.530(g)(1)—(3) (relating to authority of school personnel).

What is a Manifestation Determination?

Required Procedure: Once you intend to impose discipline that constitutes a change in placement, you must schedule a manifestation determination review (MDR) to determine whether the underlying behavior was a manifestation of the child's disability.

- When?
 - Immediately, if possible, but in no case later than ten (10) days of decision to change placement. 34 C.F.R. § 300.530(e)(1).
 - Recommended: after the informal hearing.

The Only Legal Test —whether the conduct in question:

- (1) “Caused by or had a direct and substantial relationship to the child’s disability,” or
- (2) A “direct result” of LEA’s failure to implement IEP

Removals

If the team decides that either (1) or (2) is true then the conduct was a manifestation of the child's disability. 34 C.F.R. § 300.530(e)(2).

- a. If behavior was NOT a manifestation, the district may proceed with a suspension/expulsion hearing but must continue to provide FAPE starting with day 11. 34 C.F.R. § 300.530(d). Must provide parents with prior written notice of the decision so the parent can disagree and initiate due process proceedings. If the parents do not disagree, follow Chapter 12.
- b. If behavior WAS a manifestation, the IEP team must:
 - Either conduct an FBA and develop a PBSP or review and modify an existing plan, and
 - Return the student to his previous placement unless the parties agree otherwise. 34 C.F.R. § 300.530(f).

CAUTIONS:

- ▶ Failing to follow the proper procedure before and after an MDR can have direct impact on due process rights and substantive IDEA rights.
 1. Mentioning expulsion possibility before an informal hearing.
 2. Mentioning/scheduling manifestation meeting before confirmed hearing.
 3. Discussing manifestation simultaneously with expulsion.
 4. Presenting an expulsion agreement/waiver after a finding of manifestation.
 5. Expelling the student after a finding of manifestation.
 6. Appearances of Predetermination.
 7. Proposing a change of placement before an MDR is completed.

- **But wait! What about a general education student who is suspected to have a disability?**

- Did the district have knowledge that the child was a child with a disability?
 - a. Parents expressed concern in writing that child needed special education;
 - b. Parent requested a special education evaluation; or
 - c. Teacher or district personnel has expressed to director of special education concerns about a pattern of behavior demonstrated by the child. Teachers not required to submit written notice or concerns. 34 C.F.R. § 300.534(b).
- Not-yet identified student CANNOT assert protections if:
 - a. Parent has not allowed an evaluation or refused special education services;
 - b. Child was evaluated and determined not to be eligible. 34 C.F.R. § 300.534(c)
- Conduct manifestation determination if there is a change of placement.



Title IX & Discipline

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Title IX & Discipline

- ▶ “A recipient's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.” 34 C.F.R. §106.44(a)
- ▶ “[A recipient shall] describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.” 34 C.F.R. §106.45(1)(vi)

Title IX & Discipline

▶ Key Takeaways:

- A District may not impose discipline on a respondent until a determination has been reached regarding the allegation of sexual harassment.
 - Instead, a District should offer supportive measures.
- Supportive measures may not be punitive.
- Supportive measures may not deprive a student access to the educational environment or benefit of service.



Title IX &
Discipline of
Students with
Disabilities



Title IX & Discipline of Students with Disabilities

- ▶ Discipline Considerations for Students with Special Education Needs:
 - A manifestation determination review is still needed in Title IX procedures.

But When?

- Previous Slide #1: “Immediately, if possible, but in no case later than ten (10) days of decision to change placement. 34 C.F.R. § 300.530(e)(1). “
- Previous Slide #2: “District may not impose discipline on a respondent until a determination has been reached regarding the allegation of sexual harassment.”

Title IX & Discipline of Students with Disabilities

- ▶ Would the decision as to whether to change placement occur:
 - a. At the time the Formal Title IX Complaint is filed?
 - b. When Title IX Coordinator determines that if the allegations as written in the Formal Complaint are true, a Title IX violation occurred, thus necessitating investigation? OR
 - c. Once the Title IX decision has been issued, finding that a student with a disability did violate Title IX?

Title IX & Discipline of Students with Disabilities

- ▶ Would the decision as to whether to change placement occur:
 - a. At the time the Formal Title IX Complaint is filed?
 - b. When Title IX Coordinator determines that if the allegations as written in the Formal Complaint are true, a Title IX violation occurred, thus necessitating investigation? OR
 - c. Once the Title IX decision has been issued, finding that a student with a disability did violate Title IX?

- ANSWER: C. A manifestation determination review meeting must be held within ten days of a Title IX decision finding that a student with a disability did violate Title IX.

Title IX & Discipline of Students with Disabilities

- For students with disabilities (Individualized Education Program (IEP); Section 504 Service Agreements), the IEP or Multidisciplinary/Section 504 Team should be involved in the grievance procedure.
- Student information must be protected under the privacy provisions of the IDEA. Data privacy protections in IDEA generally mirror those found in FERPA.
 - What does that mean for the exchange of evidence and investigatory information?

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.





Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Question 1

- ▶ The Title IX Coordinator gets involved in this matter. What is one of the first things to be done, even before calling parents of students?



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Answer 1

- ▶ Ask the Principal or check the student management system to learn whether Abbie and/or Ben are students with disabilities.



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More to the Story:

- ▶ The Title IX Coordinator learns that Abbie and Ben are in the same class for students with intellectual disabilities.
- ▶ Though the Principal called the parents of each student, the Title IX Coordinator then also calls Abbie’s parents to discuss next steps, including supportive measures.
- ▶ Abbie’s Parents ask for Ben to be removed from the bus.



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Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Question 2

- ▶ Can the Title IX Coordinator put that supportive measure in place?
 - Why/Why Not?



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Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 2

- ▶ No.
 - Assuming transportation is in Ben’s IEP, removing Ben from the bus would also violate his right to receive a Free Appropriate Public Education.



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Question 3

- ▶ Broader Comprehension Check:
 - What if Ben were not a student with a disability? Could the Title IX Coordinator grant Abbie’s Parents’ request to remove Ben from the bus?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 3

- ▶ **Broader Comprehension Check:**
 - **No. Supportive measures cannot be disciplinary in nature. Removing Ben from the bus would be disciplinary. He has a right to ride the bus unless/until there is a determination that he violated Title IX.**



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

More to the Original Story:

- ▶ While the Title IX Coordinator cannot require Ben to be removed from the bus as a supportive measure, s/he may still ask Ben’s parents if they want him to continue to ride the bus. The Title IX Coordinator does ask Ben’s parents who indicate they want Ben to continue to ride the bus.



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Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben.

Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Question 4

- ▶ How can the Title IX Coordinator address Abbie’s Parents’ request for supportive measures pertaining to Abbie’s safety on the bus?

Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben.

Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 4

- ▶ A few options:
 - Bus Aide
 - Assigned Seats
 - Separate bus/van for either Abbie/Ben
 - Is that nonpunitive?
 - Remind Abbie’s parents that they are able to provide transportation to Abbie.



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

More to the Story:

- ▶ The outcome of the Title IX investigation indicates that Ben did violate Title IX.



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Question 5

- ▶ What is the Title IX Coordinator’s next steps with Ben?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 5, Question 6

- ▶ Consult with the Special Education Department.
 - Why?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben.

Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 6, Question 7

- ▶ The Special Education Department will check on the number of days Ben has had any removals from the placement described in his IEP.



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Answer 7, Question 8

- ▶ Ben has not had any removals. As the building principal you tell Ben’s parents that Ben has out of school suspension, based on the Code of Conduct for the infraction of “inappropriate touching.”
 - Later that night you receive a voicemail from the Director of Special Education, who is frantic and upset with the discipline you gave Ben. Why?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben.

Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 8, Question 9

Any removal of a student with an intellectual disability from the placement in their IEP is considered a change in placement.

What must happen now?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben.

Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 9, Question 10

A manifestation determination review should be held to determine if Ben’s behaviors in violating Title IX were a manifestation of his disability.

If the Team determines that Ben’s behavior was a manifestation of his disability, may they remove him?



Test Your Knowledge

Hypothetical

You are the building principal for the elementary school. You learn from a bus driver that an incident occurred between Students Abbie and Ben. Specifically, Abbie told the bus driver that Ben asked if he could “touch her privates.” When Abbie said no, Ben did it anyway.

Answer 10, Question 11

No. The IEP Team should convene and discuss how to revise Ben’s IEP to address his behavior through his special education services, given that his behavior was a manifestation of his disability.

Thank you!

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