PART I: DISCIPLINE OF STUDENTS WITH DISABILITIES UNDER SECTION 504

Sec. 1. STUDENTS WITH DISABILITIES UNDER SECTION 504

Raul Yzaguirre Schools for Success ("RYSS") shall conduct an evaluation in accordance with 34 C.F.R. 104.35(b) before taking any action with respect to any significant change in placement of a student with a disability who needs or is believed to need special education and related services. *34 CFR 104.35(a)*.

RYSS may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or alcohol to the same extent that RYSS would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. *29 U.S.C. 705(20)(C)(iv)*.

PART II: DISCIPLINE OF STUDENTS RECEIVING SPECIAL EDUCATION SERVICES

Sec. 2. SPECIAL EDUCATION STUDENTS

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal ("ARD") committee. Any disciplinary action shall be determined in accordance with federal law and regulations, including those requiring the provision of:

1. functional behavioral assessments ("FBAs");
2. positive behavioral interventions, strategies, and supports;
3. behavioral intervention plans/behavior improvement plans ("BIPs"); and
4. the manifestation determination review ("MDR").

Education Code 37.004(b).

Sec. 3. REMOVAL FOR TEN DAYS OR LESS

A student with a disability who violates the RYSS Student Code of Conduct may be moved from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities. *20 U.S.C. 1415(k)(1)(B); 34 C.F.R. 300.530(b)(1)*.

Services During Removal for Ten Days or Less. RYSS is required to provide services during the period of removal if RYSS provides services to a child without disabilities who is similarly removed. *34 C.F.R. 300.530(d)*.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 4. SUBSEQUENT REMOVALS OF TEN DAYS OR LESS

RYSS personnel may remove the student for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement under 34 CFR 300.536. *34 C.F.R. 300.530(b)(1)*.

Services During Subsequent Removals of Ten Days or Less. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent removal of ten consecutive school days or less, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed so as 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 individualized education program ("IEP"). *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530(d)(4)*.

Sec. 5. NOTICE OF PROCEDURAL SAFEGUARDS

Not later than the date on which the decision to take the disciplinary action is made, RYSS shall notify the student's parents of the decision and of all procedural safeguards. *20 U.S.C. 1415(k)(1)(H)*.

Sec. 6. CHANGES IN PLACEMENT

Any disciplinary action that would constitute a change in placement may be taken only after the student's ARD committee conducts an MDR.

For purposes of disciplinary removal of a student with a disability, a change in placement occurs if a student is:

1. Removed from the student's current educational placement for more than ten consecutive school days; or
2. Subjected to a series of removals that constitute a pattern because:
   a. The series of removals total more than ten school days in a school year;
   b. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in the series of removals; and
   c. Additional factors exist, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

RYSS determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement. RYSS's determination is subject to review through due process and judicial proceedings.

34 C.F.R. 300.536.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

RYSS personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates the Student Code of Conduct. *20 U.S.C. 1415(k)(1)(A)*.

Sec. 7. MANIFESTATION DETERMINATION

Within ten school days of any decision to change the placement of a student because of a violation of the Student Code of Conduct, RYSS, parents, and relevant members of the ARD committee (as determined by the parent and RYSS) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine whether the conduct in question was:

1. Caused by, or had a direct and substantial relationship to, the student's disability; or
2. The direct result of RYSS's failure to implement the IEP.

If RYSS, the parent, and relevant members of the ARD committee determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability.

20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530(e).

a) *Not a Manifestation*

If the determination is that the student's behavior was not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as for students without disabilities. The ARD committee shall determine the interim alternative educational setting. *20 U.S.C. 1415(k)(1)(C), (k)(2); 34 C.F.R. 300.530(c)*.

i. *Services During Removal*

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1)–(2).

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

b) *Manifestation*

If RYSS, the parents, and relevant members of the ARD committee determine that the conduct was a manifestation of the student's disability, the ARD committee shall:

1. Conduct an FBA, unless RYSS had conducted an FBA before the behavior that resulted in the change in placement occurred, and implement an BIP for the student; or
2. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

Except as provided at SPECIAL CIRCUMSTANCES below, the ARD committee shall return the student to the placement from which the student was removed, unless the parent, and RYSS agree to a change in placement as part of the modification of the BIP.

20 U.S.C. 1415(k)(1)(F); 34 C.F.R. 300.530(f).

i. *Special Circumstances*

RYSS personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of Texas Education Agency (the "TEA") or RYSS; or
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the TEA or RYSS;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the TEA or RYSS.

20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530(g).

The ARD committee shall determine the interim alternative education setting. *20 U.S.C. 1415(k)(2).*

c) *Services During Removal*

The student must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

These services may be provided in an interim alternative educational setting.

34 C.F.R. 300.530(d)(1).

Sec. 8. APPEALS

A parent who disagrees with a placement decision or the manifestation determination may request a hearing. Additionally, RYSS may request a hearing if it believes that maintaining a current placement of a student is substantially likely to result in injury to the student or others. *20 U.S.C. 1415(k)(3)(A); 34 C.F.R. 300.532(a); 19 TAC 89.1151*.

a) *Placement During Appeals*

When an appeal has been requested by a parent or RYSS, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the student's assignment to the alternative setting, whichever occurs first, unless the parent and RYSS agree otherwise. *20 U.S.C. 1415(k)(4); 34 C.F.R. 300.533*.

Sec. 9. REPORTING CRIMES

Federal law does not prohibit RYSS from reporting a crime committed by a student with a disability to appropriate authorities. If RYSS reports a crime, RYSS shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom RYSS reported the crime. RYSS may transmit records only to the extent permitted by the Family Educational Rights and Privacy Act ("FERPA"). *20 U.S.C. 1415(k)(6); 34 C.F.R. 300.535*.

Sec. 10. STUDENTS NOT YET IDENTIFIED

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated the Student Code of Conduct may assert any of the protections provided for in the Individuals with Disabilities Education Act if RYSS had knowledge that the student had a disability before the behavior that precipitated that disciplinary action occurred. *20 U.S.C. 1415(k)(5)(A); 34 C.F.R. 300.534(a)*.

a) *School Knowledge*

RYSS shall be deemed to have knowledge that a student has a disability if, before the behavior that precipitated the disciplinary action occurred:

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

1. The parent of the student expressed concern in writing to RYSS supervisory or administrative personnel, or to the teacher of the student, that the student was in need of special education and related services;
2. The parent requested an evaluation of the student for special education and related services; or
3. The student's teacher, or other RYSS personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the special education director or to other RYSS supervisory personnel.

20 U.S.C. 1415(k)(5)(B); 34 C.F.R. 300.534(b).

b) *Exceptions*

RYSS shall not be deemed to have knowledge that the student had a disability if:

1. The parent has not allowed an evaluation of the student;
2. The parent has refused services; or
3. The student has been evaluated and it was determined that the student did not have a disability.

20 U.S.C. 1415(k)(5)(C); 34 C.F.R. 300.534(c).

If RYSS does not have knowledge, before taking disciplinary measures, that a student has a disability, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

20 U.S.C. 1415(k)(5)(D); 34 C.F.R. 300.534(d).

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP