



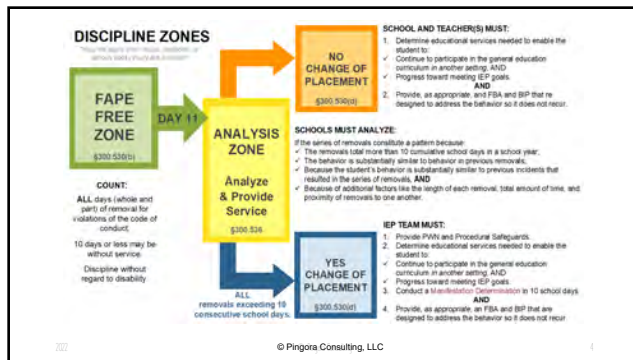
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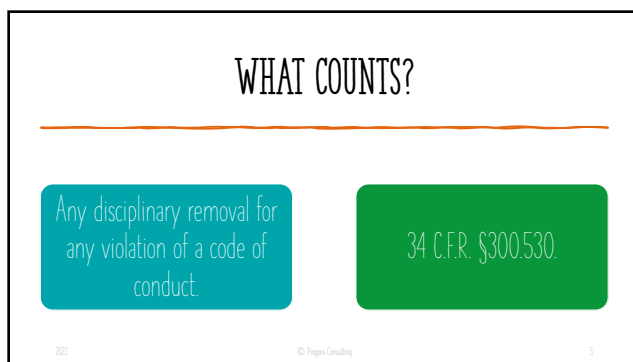
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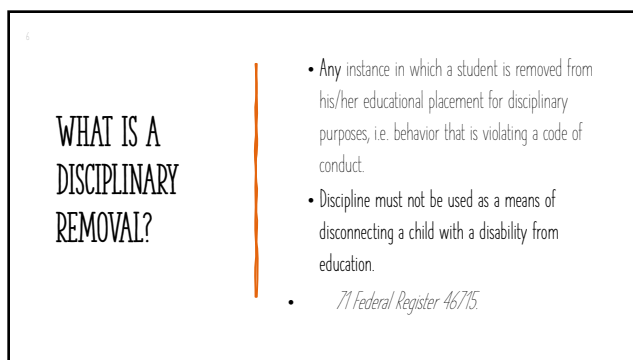
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DOES IT MATTER IF WE CALL
IT SOMETHING ELSE?

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NO!

- A removal from a placement due to a violation of a code of conduct is a disciplinary removal NO MATTER WHAT YOU CALL IT!

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FOR EXAMPLE

Moving a desk or chair into the hallway,

Sending a student to the office for periods of time (we all know the secretary is responsible for these students),

Suspension,

Sending a student home for the day,

Placing any condition on a student's return after a disciplinary removal, i.e. safety assessment, psych eval, etc., OR

Any removal by any other name for a violation of a code of conduct or school rules.

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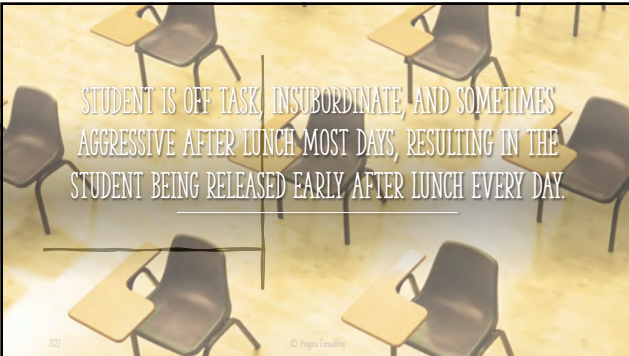
DISCIPLINARY REMOVALS

YES OR NO




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Student is sent home from school after threatening violence with a condition for return, such as a risk assessment or psychological evaluation.

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WHAT ABOUT IN-SCHOOL-SUSPENSION?

- IN-SCHOOL-SUSPENSION (ISS) is NOT counted if the student:
 - Is afforded the opportunity to appropriately participate in the general curriculum;
 - Continues to receive the services specified in the IEP, AND
 - Continues to participate with nondisabled children to the same extent as the current placement.

71 Federal Register 46715

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WHY ARE REMOVALS SO IMPORTANT?

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A SCHOOL DAY = A SCHOOL DAY

Students with disabilities are entitled to the same length of school day as any general education student.

Students with disabilities have the right to an IEP reasonably calculated to result in educational benefit, or progress.

IEPs that do not focus on progress will likely be deemed deficient.

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WHAT IS A SCHOOL DAY?

34 CFR §300.11

School day means any day, including a partial day that children are in attendance at school for instructional purposes.

School day has the same meaning for all children in school, including children with and without disabilities.

16

ASK:

1

How will shortening the school day for this student improve his/her challenging behavior?

2

How will shortening the school day for this student lead to increased performance?

3

How will shortening the school day for this student teach the student new skills?

17

LESS INSTRUCTION

By removing a student with a disability, you are shortening the amount of instructional time.

In other words, you are altering a student's right to receive FAPE.

18



SHORTENED SCHOOL DAY

- OSEP indicated that subjecting a student to a shortened school day to address his problematic behavior could amount to a disciplinary removal from the child's current placement for purposes of the IDEA's discipline procedures.
- *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022); *Letter to Mason*, 72 IDELR 192 (OSEP 2018).

19

AN INTERESTING TWIST

- *Osseo Area Schs. Indep. Sch. Dist. No. 279 v. A.J.T.*, 81 IDELR 256 (D. Minn. 2022).
- Districts need to remember that administrative convenience will never trump a student's needs when it comes to instructional time.
- Rather than consider the student's educational and medical needs, this district, citing the inconvenience, refused to provide instruction in the late afternoon and early evening when she was less prone to seizures.
- Districts are obligated to consider a student's unique needs, which can sometimes mean extending the school day.

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CAUTION!

Reynolds v. George County Sch. Dist., 81 IDELR 282 (S.D. Miss. 2022).

↓

A district's inability to manage a student's aggressive or violent behaviors does not allow it to provide a bare-bones special education program.

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CAUTION!

- If behavioral interventions and supports prove ineffective, the IEP team should discuss whether the student would benefit from a more specialized placement outside of the public school system.
- This district had evidence that the student's behaviors were impeding his progress toward his IEP goals even after the significant reduction in instructional time.
- That lack of progress, coupled with the student's escalating behavioral problems, should have prompted the district to consider solutions other than a shortened school day.

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HOW TO COUNT?



Any school day, in whole or in part, that a student is removed for disciplinary purposes.



Part day removal is counted as a part day, in the same way you would count an absence for a nondisabled student.



For example, at the elementary level, attendance is typically taken twice per day, a.m. and p.m. At the high school level, attendance is typically taken every hour.

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WHEN DOES THE COUNT START?

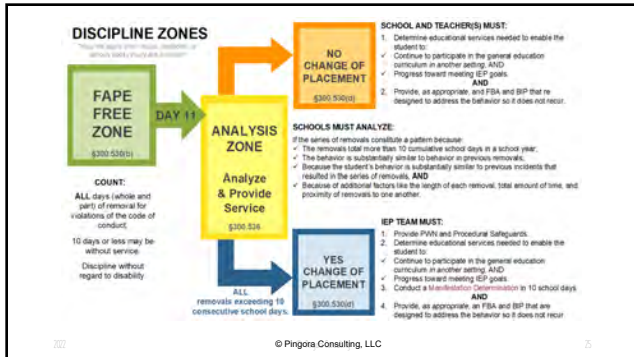
- The count begins on the first day school is in session.
- Counting continues for the remainder of the school year.
- The count starts over with the next school year.

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WHAT DOES 10 FREE DAYS REALLY MEAN?

The school is not required to provide instruction during the first 10 days of removal.

It DOES NOT mean that the IEP team can forget about the educational needs of the student. What has changed?

26

FAPE FREE ZONE

DAYS OF REMOVAL + DAYS OF ISS = 10 DAYS OR LESS, counting whole and part days

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WHAT HAPPENS ON DAY 11?

Beginning on the 11th day in a school year that a student is removed from his/her current placement, and for any subsequent removals, educational services must be provided FAPE!


71 Federal Register 46717

28


WHAT HAPPENS IF REMOVALS EXCEED 10 SCHOOL DAYS?



THE STUDENT IS ENTITLED TO ADDITIONAL PROTECTIONS.



THE TEAM HAS MORE WORK TO DO.



THE SCHOOL MUST PROVIDE FAPE!

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ANALYSIS
ZONE

Analyze &
Provide
Service

Responsibilities in the Analysis Zone include:

1. Take a close look at the student's behavior.
2. Determine whether the removals constituted a de facto disciplinary change in placement.
3. Be fair and accurate.

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WHAT IS A DISCIPLINARY CHANGE IN PLACEMENT?

A student's behavior has interfered with the receipt of FAPE.

The student is failing to make progress.

The student is NO LONGER receiving FAPE.

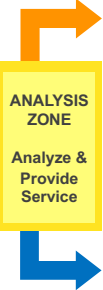
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BE READY ON THE 11TH DAY.



SCHOOLS MUST ANALYZE:

If the series of removals constitute a pattern because:

- ✓ The removals total more than 10 cumulative school days in a school year;
- ✓ The behavior is substantially similar to behavior in previous removals;
- ✓ Because the student's behavior is substantially similar to previous incidents that resulted in the series of removals, **AND**
- ✓ Because of additional factors like the length of each removal, total amount of time, and proximity of removals to one another.

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NO CHANGE OF PLACEMENT



SCHOOL AND TEACHER(S) MUST:

1. Determine educational services needed to enable the student to:
 - ✓ Continue to participate in the general education curriculum *in another setting*, **AND**
 - ✓ Progress toward meeting IEP goals.
- AND**
2. Provide, *as appropriate*, and FBA and BIP that are designed to address the behavior so it does not recur.

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YES, CHANGE OF PLACEMENT

➔

YES CHANGE OF PLACEMENT

Removals of more than 10 consecutive days are **ALWAYS** a change in placement!

IEP TEAM MUST:

1. Provide PWN and Procedural Safeguards.
2. Determine **educational services** needed to enable the student to:
 - ✓ Continue to participate in the general education curriculum *in another setting*, AND
 - ✓ Progress toward meeting IEP goals.
3. Conduct a **Manifestation Determination** in 10 school days; AND
4. Provide, *as appropriate*, an FBA and BIP that are designed to address the behavior so it does not recur.

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CHANGE OF PLACEMENT?

The timeline shows the following incidents and suspensions:

- September:** Student is insubordinate and uses foul language in class. 2 day suspension.
- November:** Student is caught stealing from the cafeteria. 5 day suspension.
- January:** Student uses school computer to access inappropriate websites. 3 day suspension.
- May:** Student gets in a scuffle with another student. 5 day suspension.

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CHANGE OF PLACEMENT?

The timeline shows the following incidents and suspensions:

- September:** Student loses control in classroom, tipping desks and throwing papers. 3 day suspension.
- October:** Student pushes a peer and leaves the building without permission. 3 day suspension.
- January:** Student brings alcohol to school in her backpack. 5 day suspension.
- February:** Student gets in a fight with another girl over her boyfriend. 5 day suspension.

36




WHEN IS A MANIFESTATION DETERMINATION REQUIRED?

Only when a change of placement occurred.

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37



WITHIN 10 SCHOOL DAYS
OF THE DECISION TO
CHANGE THE STUDENT'S
PLACEMENT FOR
DISCIPLINARY REASONS.

38

38

MANIFESTATION DETERMINATION

§300.530(e)

Within 10 school days of a decision to change a placement because of a violation of a code of conduct, the IEP team MUST:

1. Review all relevant information in the student's file and information from parents, AND
2. Determine if:
 - ✓ The conduct in question was *caused by or had a direct and substantial relationship to the student's disability*; OR
 - ✓ The conduct in question was the direct result of the LEA's failure to implement the IEP.

Manifestation

No Manifestation

YES, THE BEHAVIOR IS A MANIFESTATION OF THE STUDENT'S DISABILITY:

1. Conduct (or review) and FBA;
2. Implement (or review and revise) a BIP; AND
3. RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT

NO, THE BEHAVIOR IS NOT A MANIFESTATION OF THE STUDENT'S DISABILITY:

1. Discipline without regard to disability; AND
2. Provide FAPE in the disciplinary setting.

The disciplinary placement is the stay-put placement if challenged! §300.533

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39

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HOW TO CONDUCT THE MANIFESTATION DETERMINATION

THIS IS A TIME TO BE THOROUGH AND CAREFUL.

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GATHER YOUR TEAM.

The LEA Relevant IEP Team Members The Parent

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GATHER YOUR DATA.

- The team must review ALL relevant information in the student's file, including:
 - ✓ The IEP,
 - ✓ Teacher observations, and
 - ✓ Input from parents.

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ANSWER THESE QUESTIONS

Was the conduct in question caused by, or did it have a direct and substantial relationship to the child's disability?

AND

Was the conduct in question the direct result of the school's failure to implement the student's IEP?

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DETERMINE

NO, THE BEHAVIOR IS NOT A MANIFESTATION:

1. Discipline without regard to disability; AND
2. Provide FAPE in the disciplinary setting.

No Manifestation

YES, THE BEHAVIOR IS A MANIFESTATION:

1. Conduct (or review) and FBA;
2. Implement (or review and revise) a BIP;

AND

3. RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT!

Manifestation

44

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AND THEN WHAT?

- If the conduct is a manifestation of a student's disability, you **MUST RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT!**

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WHAT IF THE STUDENT IS TRULY DANGEROUS?

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Request a due process hearing pursuant to 34 C.F.R. §300.532 to prove up dangerousness.

46

DETAILS, DETAILS

THE GRAVITY OF AN MDR WARRANTS A THOROUGH AND DETAILED APPROACH.

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47

RULE #1

CONVENE THE WHOLE TEAM

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48

RULE #2
REVIEW & CONSIDER **ALL**
RELEVANT INFORMATION

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RULE #3
TAKE A BROAD VIEW OF
"DISABILITY" TO INCLUDE ALL
AREAS OF NEED.

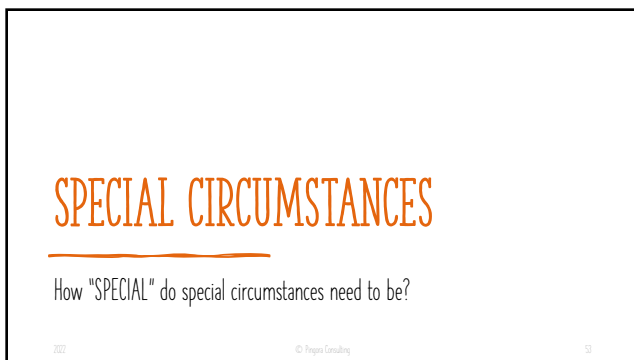
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RULE #4
REMEMBER THE SCHOOL MUST
CONTINUE TO PROVIDE FAPE.

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WEAPONS

Dangerous weapon is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

8 USC 930(g)(2)

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WEAPONS

School 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 child's disability, if the child --

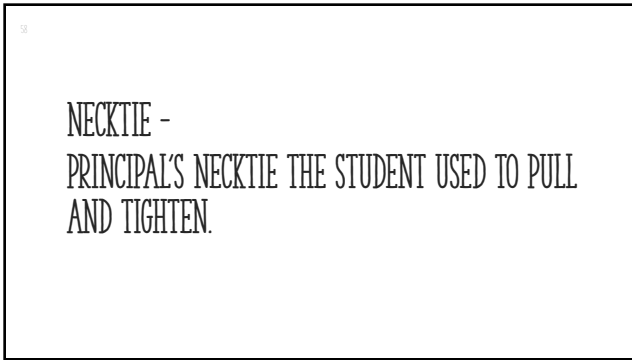
- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA.

34 CFR §300.530(g)

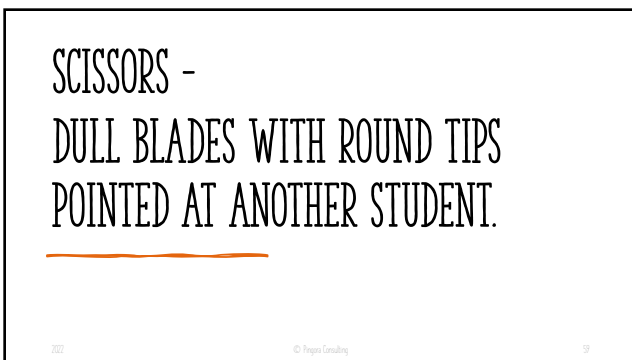
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PENCIL -
USED IN A STABBING MOTION.

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KNIFE -
TWO INCHES IN LENGTH POINTED AT ANOTHER
STUDENT.

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DRUGS

- 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 an SEA or an LEA.

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DRUGS

- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812 (c)).
- *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

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DRUGS

- ▶ School 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 child's disability, if the child --
 - ▶ 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 an SEA or an LEA.

34 C.F.R. §200.530(g)

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SERIOUS BODILY INJURY

- *Serious bodily injury* means bodily injury which involves-
 - (A) a substantial risk of death,
 - (B) extreme physical pain,
 - (C) protracted and obvious disfigurement, or
 - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(8 USC 16251)(2)

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SERIOUS BODILY INJURY

School 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 child's disability, if the child --

- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

34 C.F.R. §200.530(g)

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NOTHING IN THE ACT [IDEA] PERMITS SCHOOLS TO EXPAND
THE DEFINITION OF 'SERIOUS BODILY INJURY.'

71 FEDERAL REGISTER 46722

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IS THIS SERIOUS BODILY INJURY?

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A BROKEN NOSE.

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- Head-butting a paraprofessional resulting in pain rated at 7 on a 10 point scale.



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- Teacher experienced redness, swelling, and pain in her arm.
- She missed one day of work.

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6 year old head-butted teacher, causing pain, bruising, and contusion.
Pain medication was prescribed.
The teacher was off work for a week.

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SERIOUS BODILY INJURY

- The school maintained that a 7 year old dragged the assistant principal down the hall by her hair inflicting extreme physical pain, and stabbed his paraprofessional in the eye with a pencil.
- However, the child was calmly sitting on the paraprofessional's lap when the school called emergency medical services to take him to the hospital.

74

SERIOUS BODILY INJURY

Federal court permitted IDEA claims and civil rights claims to move forward based on the misrepresentations and exaggerations of the school.

Patrick v. Success Academy Charter Schs, Inc., 73 IDELR 146 (E.D.N.Y. 2018).

75

A FEW WORDS ABOUT
45 DAY REMOVALS

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IAES

Who determines the interim alternative educational setting?

THE IEP TEAM!

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IAES

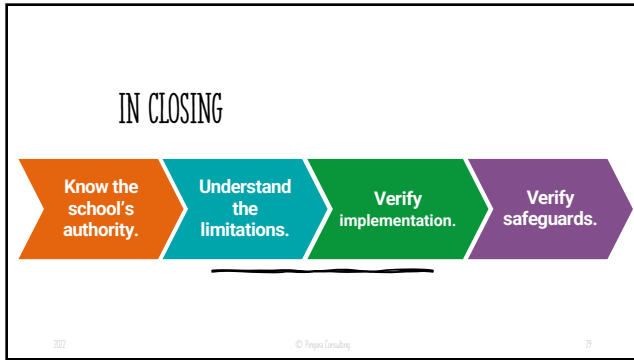
Is a Manifestation Determination required within 10 school days of the decision to place the student in an IAES?

YES!

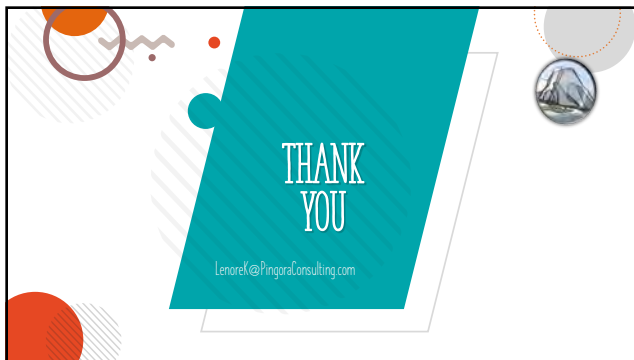
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IT IS MANDATED.

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DISCIPLINE ZONES

may not apply when drugs, weapons, or serious bodily injury are involved



COUNT:

ALL days (whole and part) of removal for violations of the code of conduct.

10 days or less may be without service.

Discipline without regard to disability.

DAY 11



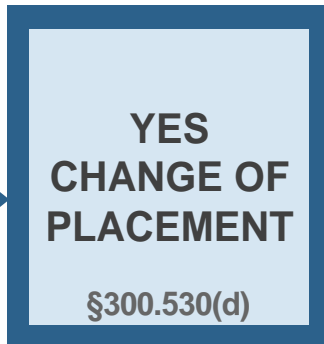
ALL
removals exceeding 10
consecutive school days.



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- ✓ The behavior is substantially similar to behavior in previous removals;
- ✓ Because the student's behavior is substantially similar to previous incidents that resulted in the series of removals, **AND**
- ✓ Because of additional factors like the length of each removal, total amount of time, and proximity of removals to one another.



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 - ✓ Continue to participate in the general education curriculum *in another setting*, AND
 - ✓ Progress toward meeting IEP goals.
- AND**
2. Provide, *as appropriate*, and FBA and BIP that re designed to address the behavior so it does not recur.

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1. Provide PWN and Procedural Safeguards.
2. Determine educational services needed to enable the student to:
 - ✓ Continue to participate in the general education curriculum *in another setting*, AND
 - ✓ Progress toward meeting IEP goals.
3. Conduct a **Manifestation Determination** in 10 school days.
- AND**
4. Provide, *as appropriate*, an FBA and BIP that are designed to address the behavior so it does not recur.

IDEA DISCIPLINE: AUTHORITY & LIMITS

- What is a disciplinary removal?
- Does it matter if we call it something else?
- Do shortened school days count?
- What, exactly, do you mean when you say 10 free days?
- What happens if removals exceed 10 days?
- What is a disciplinary change of placement?
- When and how do we conduct a manifestation determination?
- And then what happens?
- Sometimes students are truly dangerous. What happens then?
- How “special” do the “special circumstances” need to be?