

PART E: IDEA AND DISCIPLINE
AND EXTENDED SCHOOL
YEAR SERVICES

IDEA AND DISCIPLINE

10-Day Removal

- Students with disabilities can be removed without services for up to 10 cumulative days in a school year
- These removals are for violating the code of student conduct



What happens at the 10th day of removal?

- School must provide services to ensure child meets FAPE after 10 days
- Check to see if BIP is in place
- Adjust BIP if in place
- If not in place, complete an FBA and create a BIP
- Consider change of placement

What does the 10-day Removal mean to you?

- 10 days is a red flag
- Getting close to 10 days is a red flag that something is wrong
- Get a copy of the code of student conduct for every school
- Get documentation for every suspension
- Be cautious with in-school suspensions



Manifestation Determination

The parent and relevant members of the IEP team must review all relevant information in the student's file to determine:

- If the conduct in question was **caused by or had a direct and substantial relationship** to the child's disability; or
- If the conduct in question was the **direct result** of the school's failure to implement the IEP

If either of these prongs is met, then the conduct must be determined to be a manifestation of the child's disability. If the second prong is met, then the school must take immediate steps to remedy those deficiencies.

3 Exceptions to the Rule

1. Carrying a weapon to school
2. Possessing or using drugs
3. Inflicting Serious Bodily Injury

45-day removal to an interim alternative educational setting (IAES) regardless of whether it is related to disability

How to prevent disciplinary issues?

- Document! Document! Document!
- Functional Behavioral Assessments (FBAs)
- Behavioral Intervention Plans (BIPs)

EXTENDED SCHOOL YEAR SERVICES

Where can ESY be provided?

- At the home
- At the school
- School-based with community activities
- Related services

*And all of the above alone or
in tandem with each other*

School districts cannot...

- Limit ESY to a certain disability or disability categories (300.106(a)(3))
- Unilaterally limit the type, amount, or duration of ESY (300.106(a)(3))

Ways to be eligible for ESY

1. There is no single criterion to determine eligibility for ESY (per Johnson v. Independent School District No. 4., Reusch v. Fountain)

Many measures should be used to determine if ESY is appropriate

Ways to be eligible for ESY

2. Regression and Recoupment (Battle v. Commonwealth)

Regression: The decline in knowledge and skills that can result from an interruption in education

Recoupment: The amount of time it takes to regain the prior level of functioning

Ways to be eligible for ESY

2. Regression and Recoupment

Look at both RETROSPECTIVE and PREDICTIVE data

Data can be either empirical and qualitative

Ways to be eligible for ESY?

3. Emerging Skills or Windows of Opportunity (Reusch v. Fountain, Lawyer v. Chesterfield School Board)

If the child is on the brink of developing a skill or at a critical learning stage



Ways to be eligible for ESY

4. Nature and severity of disability

Does the nature and severity of the disability require the child to receive ESY?

Ways to be eligible for ESY

5. Have enough notice and timing

After deciding whether ESY is necessary, parents must have enough time to file for due process

Ways to be eligible for ESY

6. Special circumstances that interfere with child's ability to benefit from special education (Reusch v. Fountain)

For example, medical conditions or fragility.

Ways to be eligible for ESY

7. Interfering behavior (Reusch v. Fountain)

- Ritualistic, self-injurious, stereotypic, or aggressive behaviors

The child's behavior interferes with educational progress

Ways to be eligible for ESY

8. Degree of Progress (Reusch v. Fountain)

Without ESY, if the child will not receive some educational benefit from the educational program during the school year

A few caveats about ESY

- Lack of progress is not the only way to determine ESY (OSEP 2003 Memo)
- Students cannot be required to fail in order to receive ESY
- Even if the student received ESY last summer, the student may not receive ESY this summer
- ESY may not be the same services as school year services