

Disciplining Students Receiving Special Education

By

Vincent H. A. Gordon, Jr., Ph.D.

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Abstract

A brief synopsis of the legality of disciplining students with special needs in public education is presented. An example of a case study is also presented from the experience of the author demonstrating laws surrounding providing students with a free and public education (FAPE). Examples of the application of the laws protecting students' rights to FAPE and the responsibility of school districts to insure the timely response of handling discipline issues are also presented.

Legal Analysis

Laws are made to protect the rights, liberty, life, and the pursuits of happiness of individuals. This paraphrase of the Fourteenth Amendment of the Constitution of the United States of America is exhibited in every area of society. The discipline of education also has these same laws to protect and to preserve the sanctity of instruction where the transmittal of knowledge is presented in an atmosphere that is conducive to the learning environment. When students habitually display inappropriate attitudes and behaviors especially after appropriate disciplinary responses are applied to try to discourage those destructive actions, alternative means of providing education to those students become an urgent priority of the school to insure that instruction and learning continue and are not hindered by the wrongful choices of disrespectful, disobedient, and disruptive students.

There are federal laws, state statutes, case laws, and local policies which address the areas of rights, liberty, life, and the pursuits of happiness of individuals who are disabled. The intent of these laws, statutes, and policies are positive. The main purpose of these safeguards is to insure that everyone is treated fairly and is not disadvantaged due to a physical, mental, or emotional disability. The challenge exists when individuals with a disability or disabilities exploit their disability or disabilities and the intent of these laws, statutes, and policies, to perpetuate their wrongful and selfish impulses. The topic: *Disciplining Students Receiving Special Education* attempts to address the importance of following legal documents to help and not to hinder the protection and preservation of instruction and learning in a safe environment for all students.

According to Title 20>Chapter 33>Subchapter II>c 1415 Procedural Safeguards, there are different types of procedures listed which address the responsibilities and rights of schools, parents, and students pertaining to disciplining students receiving Special Education. One of those procedures discussed the steps to be initiated by the school prior to initiating or refusing to initiate a change of placement.

- (3) Written prior notice to the parents of the child, in accordance with subsection (c) (i), whenever the local educational agency
 - (A) proposes to initiate or change; or
 - (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child (<http://www.4.law.cornell.edu/uscode>).

In case either the school or the parent is not satisfied with a particular decision, an appeal becomes the next step in trying to resolve the issue. According to Procedural Safeguards 1415 of Title 20>Chapter 33>Subchapter II, the definition along with a brief description of an appeal is given when both parties or either party tries to rectify a problem pertaining to Free And Appropriate Education (FAPE) and Individuals with Disabilities Education Act (I.D.E.A.):

- (A) In general, the parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.
- (B) Authority of hearing officer
 - (i) In general, a hearing officer shall hear, and make a determination regarding an appeal requested under subparagraph (A).

(ii) Change of Placement Order. In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability.

In such situations, the hearing officer may-

(I) return a child with a disability to the placement from where the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others

(<http://www4.law.cornell.edu/uscode>).

According to Imber (2004), “disputes between parents and schools over the issue of LRE are common. Sometimes the school advocates special placement, while parents favor education in the regular classroom, and sometimes the positions are reversed.” Sometimes, the behavior of the student is so disruptive that it impedes the learning of other students (p277). Imber presented a case study of a sixth grader whose parents insisted that their son’s disruptive behavior was due to his disability of Attention Deficit Hypertension Disorder (ADHD) (p261). The school had tried numerous intervention plans to accommodate and modify the student’s behavior. However, his behavior was the same. When the school attempted to expel the student, the parents stated that expelling their son was not permitted under the policies of IDEA because of his disability of ADHD. The parents argued that their son was entitled to FAPE. The school contended that they had to significantly alter their discipline code of conduct to accommodate their son’s inappropriate behavior (p262).

The case went before the First Circuit. The First Circuit upheld the school’s decision to expel the sixth grader because, according to the court, Americans with

Disabilities Act (ADA) does not require “a school to suspend its normal codes of conduct in order to tolerate disruptive and disrespectful conduct when that behavior impaired the educational experience of other students and significantly taxed the resources of the faculty and other students” (p262).

Both of these documents, the U.S. Code and the case law support the educational practice of disciplining students receiving special education where a change of placement may be warranted. According to Title 20 subsection (6) under Procedural Safeguards 1415, any party has an opportunity to present a complaint if either party is dissatisfied with a decision made pertaining to “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE” when disciplining a student with special needs (<http://www4.law.cornell.edu/uscode>).

Case Study

One school year as a new administrator, I had the opportunity to participate in a Mediation meeting with one of our students who was receiving special services at our public high school. Due to a number of level 3 and 4 infractions which are infractions of a more serious nature according to the U.S. Virgin Islands Board of Education Policy Manual, student “X” received intervention plans, counseling from his school counselor, and a behavior contract. The behavior of this student escalated to the point of his physically retaliating against one of the school monitors during a fight after school. The Basic Child Study Team (BCST) which consisted of the five administrators (principal and four assistant principals), school’s guidance counselors, the resource teacher in the Department of Special Education at the school, and the school nurse, met to review those students whose behaviors and academic performances were found to be at risk academically and socially, and to decide a plan of action for assisting them to do better at school. Determination of identifying those students whose academic performances

and behaviors to be at risk were: attendance, academics, and discipline records. This process was completed for all of the students (General Education, Bilingual Education and Special Education students) whose level of performance in the above mentioned areas were poor. The BCST decided that perhaps a change of placement would be best for some of these students whom the school preferred to refer to as our “students of hope” instead of using the negative descriptor “students at risk” to describe or to refer to them. Those students who were referred to the Alternative Education Program transferred without incident from either student or parent, with the exception of one parent. Student “X”’s mother’s sentiments which were expressed verbally to me were that she did not want her son to be “mixing with criminals” at the Alternative Education Program.

The director of the Alternative Education Program was present at the school conducting an orientation of the program for the parents of those students who were referred to attend the program. The parent of student “X” walked out of the orientation and stated that the orientation was not for her son. The parent promptly filed a Due Process with the State Office of Special Education, she contacted a Child Advocate, and she sent a copy of her complaint to the Office of the Superintendent in the Department of Education.

I received a letter from the superintendent, the attorney representing the parent, and from the State Office of Special Education directing me to allow student “X” to remain at the school. The directive was a “Stay Put” directive until a decision could be rendered at the Mediation meeting since the time of completing the Due Process had already passed the ten days.

The Mediation was held where the Director of Special Education and the Mediator agreed that due to some discrepancies with the student’s Behavior

Intervention Plan (BIP) which was not completed in a timely manner by the resource teacher, and due to the lack of following protocol in communicating with the parent in writing within ten working days before making a decision to transfer her son to an alternate setting, the school erred and therefore, the student would remain at the home school. Part of the compromise, however, was that the student's Individualized Education Plan (IEP) and Behavior Intervention Plan (BIP) would reflect the expectation of the team for drastic adjustments to be made in the student's attitude and behavior. Accountability was set in place in the student's IEP and BIP to ensure complete compliance with the goals of the IEP team and the academic/discipline code of conduct of the school. The student would complete the remaining of the school year at his home school. He would begin the next school year and would continue to follow the IEP goals and the BIP goals. Any infractions would result in an IEP meeting to discuss change of placement.

Although one may feel that the school could have been given an opportunity to correct their procedural error while permitting the student to attend the Alternative Education Program in order to receive the services which student "X" desperately needed without any distractions, the importance of completing careful documentation and following procedures within the ten working days in order to prevent litigation or the violation of someone's rights were understood. In order to prevent legal issues from arising, one has to be extremely careful in documenting and following proper protocol according to law and to those policies which guide schools. The student completed the remaining year without incident and did not return the following school year. His mother transferred him to another school district within the United States.

References

Imber, M. and Geel, T. (2004). *Educational law third edition*. Lawrence Erlbaum Associates, Inc. New Jersey.

The U.S. Code. Retrieved from <http://www4.law.cornell.edu/uscode>