Child Find & Student Discipline: Connecting the Dots

ACSA Every Child Counts Symposium
February 6, 2020
Dina Harris, Attorney
Overview: Let’s take a look at . . .

- Child Find – a quick review
- When behavior (misconduct) triggers assessment
- Student discipline trends & new laws
- When there is a “basis of knowledge” (and when there is not)
- The teacher suspension conundrum
- The left hand / right hand problem
- Equity, civil rights & social justice
A Few Statistics

• Students with disabilities are approximately twice as likely to be suspended compared to peers without disabilities. In 2013-14, students with disabilities made up 12% of students receiving at least one out-of-school suspensions, compared to about 5% of students without a disability.

• Nationally, at least 73% of youth with emotional disabilities who drop out of school are arrested within five years of leaving school.

• Approximately 70% of youth in the general juvenile justice population have been identified as having learning disabilities and 33% have a reading level below 4th grade. Youth in the juvenile justice system are identified as eligible for special education services at 3-7 times the rate of similarly-aged peers outside the system.

(U.S. Commission on Civil Rights, “Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Student of Color with Disabilities (Briefing Report, July 2019), pp. 7, 37, 41, 64.)
Child Find
But first . . . Let’s look at the underlying purpose.
The Purpose of IDEA (preamble)

• Sec. 1400(c)
  (1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

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  (2) Before the date of the enactment of the Education for All Handicapped Children Act . . .
  (A) the special educational needs of children with disabilities were not being met;
  (B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity.
  (C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers. . . .
The Purpose of IDEA – 9th Circuit

• “The [IDEA] was designed to reverse a history of educational neglect for disabled children…. At the time of its passage, the need for institutional reform was pervasive: millions of children with a multitude of disabilities were entirely excluded from public schools, and others, while present, could not benefit from the experience because of undiagnosed – and therefore unaddressed – disabilities.”

• *Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F. 3d 1105.

• Identification and Referral:
  • Educ. Code § 56300:  Systematically seek Out
  • Educ. Code § 56301:  Continuous Child-Find
  • Educ. Code § 56302:  Identification procedures
  • Educ. Code § 56302.1:  Timeline for Initial Assessment
  • Educ. Code § 56302.5:  Assessment - Defined
  • Educ. Code § 56303:  Consideration and use of regular education programs and resources
Child Find – Search & Serve

- Education Code § 56300:
  “Each district, special education local plan area, or county office shall **actively and systematically seek out all individuals with exceptional needs**, ages 0 through 21 years, including children not enrolled in public school programs, who reside in the district or are under the jurisdiction of a special educational local plan area or a county office.”
Child Find - General Obligation

• School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Educ. Code, §§ 56171, 56300 et seq.)

• This ongoing duty to seek and serve children with disabilities is referred to as “child find.” California law specifically incorporates child find in Education Code section 56301. (Educ. Code § 56301 (a) & (b).)
When Behavior Triggers Assessment

"How can I possibly be a discipline problem? I'm usually asleep."
Child Find - Trigger

• A school district’s child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability.

Child Find - Trigger

• The threshold for suspecting that a child has a disability is “relatively low.”

• The appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services.

• The purpose of the Child Find evaluation is to provide access to special education (Fitzgerald v. Camdenton R-III School Dist. (8th Cir. 2006) 439 F.3d 773, 776), making this a civil rights issue (Section 504 and ADA).
Child Find – Exhaustion of General Education Resources?

- Education Code 56303 provides for special education referrals “only after the resources of the regular education program have been considered and, where appropriate, utilized.”

- BUT . . . OSEP clarified that the use of RTI does not diminish a district’s obligation under the IDEA to obtain parental consent and evaluate a student in a timely manner. When there is reason to suspect that a student may have a disability and require special education and related services, the IDEA’s initial evaluation provisions kick in, regardless of whether the district plans to (or already utilizes) RTI strategies with the student. (See Memorandum to State Directors of Special Educ., January 21, 2011).
Child Find – Changed Standard

• Following the issuance of the OSEP Memo, OAH seemingly began to interpret Carrie Rae’s “relatively low” assessment trigger standard in a manner that in many cases, seemed to largely dismiss Section 56303’s direction to use general education interventions before referring a child for testing.

• Many recent Child Find cases specifically cited to the OSEP 2011 Memo, which provides: “Although a district is required to utilize the resources of its regular education program, where appropriate, to address a student’s exceptional needs, it may not delay its assessment of a student with a suspected disability on the basis that it is utilizing a response to intervention approach to accommodate the student in the regular education program.”
What this means:

Since the OSEP memo, a trend in Child Find cases has emerged where school districts are consistently being found to have violated their Child Find obligations by not timely assessing under fact patterns that previously would have passed legal muster.
Assessing in All Areas of Suspected Disability

• Under the IDEA, school districts must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Educ. Code § 56320(f).)

• A disability is “suspected,” and a child must be assessed, “when the district has notice that the child has displayed symptoms of that disability.” (Timothy O. v. Paso Robles Unified Sch. Dist. (9th Cir. 2016) 822 F.3d 1105

• Q: When is behavior a “symptom” of a disability?
§ 3030. Eligibility Criteria

(a) A child shall qualify as an individual with exceptional needs, pursuant to Education Code section 56026, if the results of the assessment as required by Education Code section 56320 demonstrate that the degree of the child’s impairment as described in subdivisions (b)(1) through (b)(13) requires special education in one or more of the program options authorized by Education Code section 56361.
Qualifying Disabilities Under the IDEA

1. Autism;
2. Deaf-Blindness;
3. Deafness;
4. Emotional Disturbance
5. Hearing Impaired;
6. Mental Retardation;
7. Multiple disabilities;
8. Orthopedic Impairment;
9. Other Heal Impairment;
10. Specific Learning Disability;
11. Speech or Language Impairment;
12. Traumatic Brain Injury; and
13. Visual Impairment, including Blindness
For Example:

Emotional Disturbance:

(b)(4) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.
(F) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under subdivision (b)(4) of this section.
For Example:

Other Heath Impairment:

(b)(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

(A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(B) Adversely affects a child's educational performance.
Bullying & Harassment

• **Bullying behavior** could indicate that a student is eligible for special education services based on an emotional disturbance. A child may be eligible as a student with ED if he demonstrates (among other possible criteria): 1) inappropriate behavior or feelings under normal circumstances; or 2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. The behavior must occur over a long period of time and to a marked degree that adversely affects the student's educational performance.

• **But also . . .** Incidents of bullying and harassment can raise a red flag that **the student being bullied** might be a student with a disability and in need of special education and related services, thereby triggering the IDEA's Child Find obligations. (See *Rose Tree Media Sch. Dist.* 111 LRP 6194 (SEA PA 12/05/10).)
2014 “Dear Colleague” letter from U.S. Department of Education, Office for Civil Rights, on Bullying and Students with Disabilities

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 21, 2014

Dear Colleague:

While there is broad consensus that bullying is wrong and cannot be tolerated in our schools, the sad reality is that bullying persists in our schools today, and especially so for students with disabilities.¹ In recent years, the Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has received an ever-increasing number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled. This troubling trend highlights the importance of OCR’s continuing efforts to protect the rights of students with disabilities through the vigorous enforcement of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). It also underscores the need for schools to fully understand their legal obligations to address and prevent disability discrimination in our schools.
Child Find Cases

Administrative Hearing & Court Decisions
Cases - BERKELEY

- Student began having attendance issues at the beginning of 2012-2013 school year
- In November 2012, parent notified the District that the student was demonstrating anxiety about attending school, and engaging in school refusal behaviors. District did not report seeing any anxiety at school.
- Parent requested meeting in February 2013 to discuss student’s anxiety issues and later requested that student be placed on an independent study program, where she was ultimately not successful.
- Parent inquired about special education on March 27, 2013. District did not convene SST until May 23, 2013, but no assessment was offered.
- Parents again requested testing in June 11, 2013, and was then provided an assessment plan.
- IEP team convened to review assessment in November 2013, but did not find her eligible.
• OAH found that the district’s knowledge of the student’s anxiety in February 2013, coupled with her related absences and school avoidance triggered its duty to assess the Student at that time.
• OAH concluded that the school had “an affirmative duty to assess to discover why she was not attending,” and questioned Berkeley’s policy of not having teachers directly refer students for special education assessments.
• However, OAH did not order any remedy because she was deemed not eligible for special education and as a result, there was no substantive denial of FAPE.

*Berkeley Unified School District, OAH Case No. 2013120159 (March 17, 2014)*
Cases - PANAMA

- District violated Child Find by not offering assessment plan in response to excessive disciplinary problems at school.
- District convened SST on 1/16/14, but no testing was proposed.
- Instead of requesting an assessment, parent filed due process complaint 8 days later.
- OAH only ordered the district to complete the proposed assessment that was offered.

Panama-Buena Vista Union School District, OAH Case No. 2014010855 (April 16, 2014)
An OAH judge concluded that the student's behaviors were significant enough to trigger Child Find. The incidents of bullying alone were a sign that she might be a child with a disability in need of special education and related services.

Furthermore, the severity of the student's aggressive and disruptive behavior and indications that it stemmed from a disability warranted evaluating the student over the parent's objection.

Anaheim City School District, OAH Case No. 2013030142 (June 13, 2013)
Cases - TORRANCE

• A middle school year old girl had a lengthy history of attacking her schoolmates out of frustration

• District Court agreed with an administrative law judge that the student was a student with ED. The court reasoned that the California student exhibited inappropriate behavior or feelings under normal circumstances for a long period of time to a marked degree and that the behavior adversely affected her educational progress.

• “There is evidence that [the student] had been suspended and/or disciplined on multiple occasions for punching, tripping, bullying, and otherwise physically harming her classmates,” the court wrote. Moreover, the court pointed out, the student was unable to attend school because of her aggressive behaviors.

A Texas school district determined that a young boy who had long-standing behavioral problems (including bullying classmates, misinterpreting others, and threatening to harm himself and others) was ineligible for special education and related services.

The hearing officer determined that the district denied the child FAPE, and ordered the district to reimburse the child's parents for private tuition, pointing to clear evidence that the boy qualified as a child with ED and needed special education and related services because of his behavior.

The district's psychologist concluded that the child was acting out just to avoid unwanted tasks and to obtain things he wanted. The hearing officer believed that if the psychologist had reviewed reports by the student's psychologist and psychiatrist, and observed him in class or at home, she might have reached a different conclusion.

*Birdville Independent School District*, 57 IDELR 60 (SEA TX 2011),
Student Discipline
The Shift

• Once upon a time… “zero tolerance” was the mantra (even though it was never permitted under the law).

• The use of suspensions increased steadily from the late 1980s and early 1990s through the 2011-12 schoolyear and then began to drop.

• As alternative discipline methods continue to spread, many school districts and entire states are witnessing a decrease in student suspension rates. For example, California school districts witnessed a 46% decrease in suspensions from the 2011-12 to the 2016-17 school year.

WHERE IS EVERYONE?

THEY WERE EXPelled
What’s New (& Newly Relevant) in Student Discipline

• Educ. Code § 48900(k) (Senate Bill 419) – limits on suspension for disruption/defiance

• Educ. Code § 48900.5 – Other means of correction – a refresher

• Educ. Code § 48910 – teacher/class suspension (increasing due to legal changes)
Disruption & Defiance
SB 419 and “(k)” violations

• Historically, students at all grade levels could be suspended or expelled for repeated violations of Education Code section 48900, subdivision (k):
  • *Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.*

• Several years ago, the law changed to prohibit expulsion of any students for “(k)” violations (disruption/defiance), and to prohibit suspension of students grades K-3 for these “(k)” violations. The result: students in grades 4-12 could be suspended, but not expelled, for disruption/defiance at school.

• NOW: Senate Bill 419 (effective January 1, 2020) amended Education Code section 48900(k) so that, starting July 1, 2020, students in grades K-8 may not be suspended from school based on Section 48900(k). Only students grades 9-12 may be suspended for disruption/defiance.
Educ. Code § 48900(k) (full text)

• 48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent … or the principal … determines that the pupil has committed an act as defined . . .

(k)(1) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(2) Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in paragraph (1), and those acts shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph is inoperative on July 1, 2020.

(3) Except as provided in Section 48910, commencing July 1, 2020, a pupil enrolled in kindergarten or any of grades 1 to 5, inclusive, shall not be suspended for any of the acts specified in paragraph (1), and those acts shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion.

(4) Except as provided in Section 48910, commencing July 1, 2020, a pupil enrolled in any of grades 6 to 8, inclusive, shall not be suspended for any of the acts specified in paragraph (1). This paragraph is inoperative on July 1, 2025.
SB 419 – Legislative Intent

- Senate Bill 419 includes several statements of legislative intent.

- To Education Code section 48900 itself, it added the following language as paragraph (w)(2):

  “It is further the intent of the Legislature that Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.”
SB 419 – Legislative Intent

• In addition, Section 1 of SB 419 states the following:

(a) It is the intent of the Legislature to provide teachers and school administrators with the means to foster safe and supportive learning environments for all children in California.

(b) It is further the intent of the Legislature to ensure that pupils who transfer between multiple classrooms, taught by multiple teachers, be allowed to attend all remaining classes from which they have not been removed for disciplinary reasons.

• Paragraph (b) relates to teacher suspensions “from class” under Section 48910, and the Legislature’s desire to allow students to be removed from one class without it impacting other classes – which occurs when a student is suspended “from school” by an administrator.
SB 419 – alternatives encouraged

• Education Code section 48900, subdivision (v) was also amended by SB 419 to read:

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal is encouraged to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age appropriate and designed to address and correct the pupil's specific misbehavior as specified in Section 48900.5.
Educ. Code § 48900.5 - Suspension & Other Means of Correction

Generally:
Suspension (including on-campus supervised suspension) may be imposed only when other means of correction fail to bring about proper conduct. (Educ. Code § 48900.5)

• But there are exceptions…
A student (including a student with an IEP or 504 plan) may be suspended for a first offense if the principal determines that the student violated Section 48900 (a), (b), (c), (d), or (e), OR that the student’s presence causes a danger to persons.

Here are (a)-(e):

- (a) Caused, attempted or threatened to cause physical injury to another person; or willfully used force or violence against the person of another, except in self-defense
- (b) Possessed, sold, or furnished a knife or other dangerous object
- (c) Unlawfully possessed, used, furnished or been under the influence of a controlled substance
- (d) Offered to sell a controlled substance and provided look-alike substance instead
- (e) Committed or attempted to commit robbery or extortion
“Other means of correction” include, but are not limited to:

- A conference between school personnel, the pupil's parent or guardian, and the pupil
- Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling
- Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents
- Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an IEP or 504 plan
- Enrollment in a program for teaching prosocial behavior or anger management.
- Participation in a restorative justice program
- A positive behavior support approach with tiered interventions that occur during the schoolday on campus
- After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups
- Alternatives described in Section 48900.6 (community service)
The Teacher Suspension Conundrum
Educ. Code § 48910
Teacher Suspensions from Class

• **Generally.** A teacher may suspend any pupil from class, for
  any of the acts enumerated in Section 48900, for the day of
  the suspension and the day following.

• **Report to Principal.** The teacher shall immediately report the
  suspension to the principal of the school and send the pupil
  to the principal or designee for appropriate action.

• **If Remains On Campus.** If that action requires the continued
  presence of the pupil at the school, the pupil shall be under
  appropriate supervision as defined in board policies/regs.

(continued)
Educ. Code § 48910
Teacher Suspensions from Class

• Mandatory Request for Parent Conference. As soon as possible, the teacher **shall** ask the parent or guardian of the pupil to attend a parent-teacher conference regarding the suspension. If practicable, a school counselor or a school psychologist may attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests.

• Return to Class During Teacher Suspension. The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.

(continued)
Educ. Code § 48910
Teacher Suspensions from Class

- Placement During Teacher Suspension. A pupil suspended from a class shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day, this applies only to other regular classes scheduled at the same time as the class from which the pupil was suspended.

- Referrals for School Suspensions: A teacher may also refer a pupil, for any of the acts enumerated in Section 48900, to the principal or the designee of the principal for consideration of a suspension from the school.
Questions

• Is there any limit to teacher suspensions?
• How are they being tracked?
• Do they follow board policies and regulations established per Educ. Code § 48900.1?
• What if the same student is repeatedly removed?
• Are teachers sensitive to Child Find issues?
• Are teacher suspensions disproportionately impacting a particular protected group?
Limit on Days - Generally

- **Duration**: A principal, principal’s designee, or superintendent may suspend a pupil from school for no more than five consecutive school days. (Section 48911(a))
  - This limit does not apply if a student is recommended for expulsion and the superintendent’s designee determines that the suspension should be extended pending then hearing. (Section 48911(g))

- **Days Per Year**: A student may not be suspended for more than 20 school days per school year, or, if the student enrolls or is transferred to another school for purposes of adjustment, 30 school days per school year (Section 48903)

- Q: What about teacher suspension? Any limit?
Discipline: Students w/ Disabilities
Special Protections

Certain restrictions and procedural requirements apply when considering the suspension of a student with a disability. The most important requirement is timely holding the Manifestation Determination meeting.

**TIP:** When considering the suspension of any student, first check (1) how many days the student has been suspended that year to date; (2) the log of interventions and other means of correction; and (2) whether the student has an IEP or 504 plan.
Key Principles

• A student cannot be disciplined (i.e., discriminated against) based on his or her disability

• A “change in placement” of a student with a disability, without an IEP team determination and parent consent (or OAH order), is a violation of IDEA

• Removal from instruction for more than 10 days is deemed to be a “change in placement”
Manifestation Determination

• A Manifestation Determination is a conclusion reached by “relevant” members of a student’s IEP or 504 team (as determined by the District and the parent) about the recent, specific misconduct of the student.

• The team must review all relevant information in the student's file, including the child's IEP/504, any teacher observations, and any relevant information provided by the parents, and ask and answer two important questions:
The Two MD Questions

The IEP/504 team must determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.

2. If the conduct in question was the direct result of the LEA's failure to implement the IEP.

Note: The determination must relate to the specific incident and behavior that led to proposed disciplinary action. An MDR held prior to the incident does not count.

See 34 C.F.R. § 300.530(e), § 300.536; 20 U.S.C. § 1415(k)(1)(E)
If the Conduct IS a Manifestation of the Student’s Disability

• If the answer to either MD question is “yes” then:
  
  • The misconduct is considered to be a manifestation of the student’s disability
  • There can be no disciplinary action against the student that would constitute a “change in placement” (more than 10 days per school year)
  • Team must conduct behavior assessment, and implement behavior plan, or update behavior plan
  • BUT consider a 45-day interim placement for weapons, drugs, or serious bodily injury.

See 34 C.F.R. § 300.530(e),(f),(g); 20 U.S.C. §1415(k)(1)(F),(G)
If the Conduct is NOT a Manifestation of the Student’s Disability

• If the answer to BOTH questions is “no”

  • The misconduct is considered to be NOT a manifestation of the student’s disability
  • Normal school disciplinary procedures may be used to address the incident in the same way as they would be applied to non-disabled students.
  • However, student must still receive services necessary to make progress towards goals, but in a different setting.

See 34 C.F.R. §300.530(c); 20 U.S.C. § 1415(k)(1)(C)
Timing

- The Manifestation Determination must be made within [no later than] 10 school days of any decision to **change the placement** of a child with a disability because of a violation of a code of student conduct.

**Note:** This is an outside time limit. Often the MD will need to be held sooner in order to prevent an unlawful “change of placement.”

See 34 C.F.R. § 300.530(e)
Limit on Days: Students w/ IEP/504

• A student with a disability may not be suspended more than 10 days per school year until/unless the District holds a manifestation determination meeting, and student is cleared for further discipline.

• This applies to students with IEPs \textbf{and} students with 504 plans.

• This also applies to students for which there is a “basis of knowledge” that the student has a disability (even if not yet identified) according to certain legal criteria.
Students Not Yet Identified as Eligible for Special Education
Rights of Children Not Yet Identified

For discipline purposes, a child who has not been determined to be eligible for special education, and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided under IDEA (such as a manifestation determination) if the district had “knowledge” that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534(a).)
Basis of Knowledge

For discipline purposes, a district is deemed to have a “basis of knowledge” that a student is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent expressed concern in writing to the teacher or administrative staff that the child is in need of special education and related services;

2. The parent requested an evaluation of the child; or

3. The teacher or other personnel expressed to a supervisor or director of special education specific concerns about a pattern of behavior demonstrated by the child. (20 U.S.C. § 1415(k)(8); 34 C.F.R. § 300.534(b).)
No Basis of Knowledge

• A public agency is **not** deemed to have a “basis of knowledge” of a disability if:
  • The parent of the child has not allowed an evaluation of the child, or has refused services; or
  • The child has been evaluated and determined to not be a child with a disability. (34 C.F.R. § 300.534(c).)

Q: How long does this exception apply?
Q: What’s the big lesson here?
If No Basis of Knowledge

- If a public agency does not have a “basis of knowledge” a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. (34 C.F.R. § 300.534(d).)
Request for Initial Assessment During Disciplinary Process

• If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an *expedited* manner.

• Until the evaluation is completed, **the child remains** in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

• If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services. (34 C.F.R. § 300.534(d).)

• Note: This does NOT stop or negate the discipline process. (But…)
Equity, Civil Rights & Social Justice
Over the past five fiscal years (2011-2015), the Department’s Office for Civil Rights (OCR) has received more than 16,000 complaints alleging discrimination on the basis of disability in elementary and secondary education programs. Approximately 2,000, or one in nine, of these complaints involved allegations of discrimination against a student with ADHD. In resolving such complaints, OCR has found that many teachers and administrators often take appropriate action to ensure that students with ADHD receive the protections to which they are entitled under Federal law, but many others are not familiar with this disorder, or how it could impact a student’s equal access to a school district’s program.

“Dear Colleague Letter” (July 26, 2016)
Through our enforcement efforts, we have learned that many students with ADHD are still experiencing academic and behavioral challenges in the educational setting, and that policy guidance is needed to ensure that those students are receiving a free appropriate public education (FAPE) as defined in the Department’s regulations implementing Section 504. OCR investigations have revealed that students with ADHD could be denied FAPE because of problems that school districts have in identifying and evaluating students who need special education or related services because of ADHD. Some of these problems are as follows:

- students never being referred for, or identified by the school district as needing, an evaluation to determine whether the student has a disability and needs special education or related services;
- students not being evaluated in a timely manner once identified as needing an evaluation; or
- school districts conducting inadequate evaluations of students.

“Dear Colleague” Letter (July 26, 2016)
Federal and State Response

- The July 2016 guidance on school discipline, issued jointly by the U.S. Department of Education’s Office for Civil Rights (OCR) and the Department of Justice (DOJ), as President Obama was ending his second term, changed how complaints of exclusionary disciplinary practices were investigated and resolved.

- On December 21, 2018, the new administration rescinded portions of the OCR guidance from 2016 – narrowing the scope of investigations.

- On February 4, 2019, the California Attorney General issued a “Dear Colleague” letter to clarify that principles outlined in the federal July 2016 guidance would continue to be enforced in California.

RE: Oversight and Enforcement of Laws Related to Discrimination in School Discipline in California

Dear Colleagues:

Responding to the discriminatory use of suspensions and expulsions in school and its impact on educational outcomes, the United States Departments of Education and Justice jointly released the School Discipline Guidance Package (“2014 Guidance”) in January 2014.¹ These important documents assist elementary and secondary schools with meeting their obligations under the Civil Rights Act of 1964 and other federal laws to administer student discipline without discriminating on the basis of race, color, sex, disability, or national origin.² In a troubling step backward, on December 21, 2018, these federal agencies rescinded critical portions of the 2014 Guidance. As a result, I am writing to clarify the legal obligations of schools in California that receive state funding.
In California, the law also provides that suspension generally may be used only as a discipline tool of last resort and that alternative means of correction, such as restorative justice and a continuum of positive behavior supports, must be exhausted prior to most exclusions. These and other effective, research-based, and proven alternatives to discipline help ensure that appropriate behavior is positively reinforced, encourage students to accept responsibility for misbehavior and follow school rules, assist students in developing social and emotional competencies (e.g., responsible decision-making and self-management), and involve students and parents in maintaining safe, inclusive, and positive educational environments. California has tools available to support the implementation of such alternatives. I encourage schools to access the additional resources and training being made available soon through Assembly Bill 1808 to help reduce discriminatory discipline and close the achievement gap.
Cover letter to the Commission on Civil Rights 214 page report. Of the eight commissioners, six approved the key findings.

Letter of Transmittal

July 23, 2019

President Donald J. Trump
Vice President Mike Pence
Senate Majority Leader Mitch McConnell
Speaker of the House Nancy Pelosi


Research reflects that, in addition to missed class time, excessive exclusionary discipline negatively impacts classroom engagement and cohesion and increases the likelihood excluded students will be retained in grade, drop out of school, or be placed in the juvenile justice system. Research also shows that zero tolerance policies and the practice of exclusionary discipline in schools in the absence of consideration and application of alternatives to exclusionary discipline are ineffective in creating safe and healthy learning environments for students, teachers, and staff.
Takeaways

• With the **shift in student discipline laws** and policy, schools can no longer rely on “days of suspension” to track students who have significant behaviors and require assessment under Child Find.

• **Behavioral interventions** and other means of correction are critical, but **cannot delay** assessment of a student who is suspected of having a disability and should be assessed for Special Education or Section 504 eligibility.

• Beware of **teacher suspensions** and how they may be impacting individual students. OCR and CDE look not only at suspensions and expulsions when investigating complaints, but also referrals and any exclusionary practices.

• Keep good records of interventions and **other means of correction** in order to support suspension and expulsion when appropriate, but also **review these logs** through the lens of Child Find.

• **Coordination** and communication between Child Welfare & Attendance and Special Education Departments (and school sites) is critical to “**search and serve**” students who may have behavioral and/or emotional difficulties that qualify them for services under IDEA or 504.
Thank you for attending!