

Suspended and Removed:
How to Enforce a Student's Right to School

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Legal Rights Framework

- U.S. Constitution (Goss v. Lopez, 419 U.S. 565 (1975))
- I.D.E.A.
- Section 504/ADA
- Students with Disabilities Not Yet Eligible
- Relevant Guidance
 - August 1, OSERS letter
 - ADHD Guidance

Who are the P&As ?

- P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities (based on a system of priorities for services).
- Maintain a presence in facilities that care for people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions.
- 57 agencies: State and Federal Funds
- Lawyers with “Special Powers” (access and standing)

What is “Informal Removal”?

Removal of students from school without due process

- Goss v. Lopez (gen'l ed) 419 U.S. 565 (1975)
- I.D.E.A.
- Section 504

Various Methods

- “Sent homes”
- Shortened Days
- Homebound/tutoring
- Transfers to no where

Who Does It Impact?

- It appears to impact particularly disenfranchised families/traumatized students
 - Student: School removals increase likelihood of JJ referral and drop out
 - Community: Unsupervised youth
 - Family: Parents often have to quit work
- Hard to say for sure because of lack of data collection, but anecdotally
 - People of Color
 - Low Income People
 - Single parents

The “Dear Colleague Letter”

- Press release

- <http://www.ed.gov/news/press-releases/us-department-education-releases-guidance-schools-ensuring-equity-and-providing-behavioral-supports-students-disabilities>

- “Dear Colleague” Letter

- <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

- Stakeholder Brief

- <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-summary-for-stakeholders.pdf>

Key Points

- The need for and provision of appropriate behavior supports are important elements in FAPE and LRE analyses
- There are no “10 Free Days”
- All removals count, including informal removals
- There is a 3 factor test for use in determining when a removal impacts FAPE/LRE
- These guidance applies equally to all public school programs, including charter school and JJ facility programs.

Resource Materials

- PBIS Blueprint
 - <http://www.pbis.org/blueprint/implementation-blueprint>
- Classroom Management Matrix
 - <https://www.osepideasthatwork.org/evidencebasedclassroomsstrategies>
- Blog
 - <http://sites.ed.gov/osers/2016/08/moment-to-moment-and-year-to-year-preventing-contemporary-problem-behavior-in-schools/>

The 3 Factor Test for FAPE When A Student is Removed

1. Opportunity to be involved/make progress in the general ed curriculum
 - Restraint: likely no opportunity for involvement or progress
 - Seclusion: find out if any academics are provided
2. Receive the Instruction and Services on the IEP
 - Restraint: likely no services or instruction
 - Seclusion: kid is alone and unlikely to receive services or instruction
3. Participate with non-disabled students as they would have in their current placement.
 - Restraint: removed from their peers
 - Seclusion: no participation with peers

Also found in 71 Fed. Reg. 46715 (Aug. 14, 2006)

ADHD Guidance

- **“Dear Colleague Letter and Resource Guide on Students with ADHD”**
- July 26, 2016
- http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

Dear Colleague Letter and Resource Guide on Students with ADHD

Key Points:

- OCR has received 2000 complaints over the last 5 years about ADHD
- District cannot delay evaluation while trying other solutions
- District may not consider effect of medication
- Must evaluate at no cost to parents
- Must consider disciplinary incidents

Applies to ALL Public Schools

- Charter
- Virtual
- Detention
- Juvenile Probation
- JJ Facilities

Case Examples

Some Approaches ...

- Coalition Building: **School Climate Improvements**: School Code Reform
- Reform State legislation/regulation/guidance (e.g. on tutoring, SSD process)
- Reform School Codes and Policies
 - Zero tolerance
 - Discretionary violation
 - SROs
- File complaints- Systemic and Individual : Formal Removal
 - State/IDEA
 - OCR

Some Approaches ...

- *Get the Word Out* – Link the guidance to your website; along with a parent letter template and IEP meeting table packet
- *Removal Dwells in Darkness*: Get media coverage that tells a family story. Impact on the child, parent's employment, unsupervised time, individual ed. impact etc.
- *Empower Parents: Informal Removal*
 - Clarify in a letter that the district sent the child home; not a choice ...
 - Ensure it is not coded as an absence
 - Keep track of dates/hours

Presenter Contact Information

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