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

Diane Smith Howard
Senior Staff Attorney
National Disability Rights Network (NDRN)
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
- 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

• “Dear Colleague” Letter

• Stakeholder Brief
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](http://www.pbis.org/blueprint/implementation-blueprint)

• Classroom Management Matrix
  • [https://www.osepideasthatwork.org/evidencebasedclassroomsstrategies](https://www.osepideasthatwork.org/evidencebasedclassroomsstrategies)

• Blog
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

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

• Diane Smith Howard, NDRN:
  • diane.smithhoward@ndrn.org:
  • NDRNSTPP  @dianesmithhoward
  • NDRN.org