

Address parent misconceptions about disabilities, discipline

Some parents may believe their child's misbehavior is purely symptomatic of his disability and thus contend that the student should be exempt from the school's code of conduct.

Such was the case in *Sher v. Upper Moreland Township School District*, 57 IDELR 95 (E.D. Pa. 2011).

Here, the parents of a student with ADHD disagreed with the disciplinary action taken against their son because "they believe[d] all or most discipline was given in response to behavior which was solely caused by [the student's] ADHD," the judge wrote.

Indeed, the district disciplined the student numerous times over a three-year period for behavior ranging from disrespect to noncompliance to fighting and bringing a toy gun to school. The court explained that the district's discipline did not amount to disability discrimination because Section 504 does not prohibit a district from disciplining students with disabilities.

Even though the district avoided a violation in this case, it holds lessons for schools, sources say. Respond early to patterns of negative behavior. Also address common parent misconceptions regarding students with disabilities and discipline.

"This case reflects the misconception that a diagnosis is a shield to all discipline," said Holly Boyd Wardell, a school attorney with Schwartz & Eichelbaum Wardell Mehl and Hansen PC in Austin, Texas. "It is not rare for parents of students with certain disabilities to see any and all misbehavior as directly related to the student's diagnosis."

This case shines a light on other classic misconceptions held by a fair number of parents of students with disabilities, Wardell added.

Alert staff to the following issues so that they will know how to respond if parents misunderstand your ability to discipline students with disabilities:

School officials' right to question students

"It is not uncommon for parents to mistakenly claim that school administrators cannot question their kids without a parent being present. But the fact is, there is no requirement that school officials have to contact parents before conducting a school investigation," Wardell said.

School officials can talk to a student any time he is on school property or at a school-related event, she noted. Moreover, they can do so without giving Miranda warnings. However, different rules apply when law enforcement officials conduct an investigation.

Address this misconception by clearly describing in your district's student code of conduct or student handbook the authority of school administrators to question students without parents being present, Wardell recommended. Also, "don't agree in an IEP or 504 plan to do otherwise; it's not wise and not necessary for a student to receive FAPE."

School officials' right to involve police

Some parents mistakenly believe that because their child has a disability, school officials cannot involve the police in disciplinary matters, Wardell said.

But Congress explicitly provides for that in IDEA 2004, she noted. Specifically, Section 615(k)(6) of IDEA states: “Nothing in [Part B] shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities.”

In addition to recognizing and responding to these common parent misconceptions, use the following tips to help avoid a claim in the first place:

- **Respond to patterns of negative behavior.** “The first thing that stood out in this case is that the student had a history of disciplinary incidents,” said Christina Sepiol, assistant director of the Southwest Cook County Cooperative Association for Special Education in Oak Forest, Ill. In fact, he received 67 disciplinary sanctions from eighth grade to 10th grade. “This should be a red flag for districts.” Monitor the number of student disciplinary incidents and designate a team to review cases in which you have a high number of incidents, Sepiol said.
- **Address behavioral issues in student’s 504 plan or IEP.** “When you have a student with a history of disciplinary issues, conduct a functional behavioral assessment and include a behavioral intervention plan with his 504 plan or IEP,” Sepiol suggested. “I don’t expect parents to understand the intricacies of a BIP or FBA and to bring it up to the school,” she said. “It is the school’s responsibility to recognize that the incidents are not decreasing and to find out what they should be doing differently.”
- **Discuss measures taken for misbehavior unrelated to disability.** “When behavior is not related to or caused by a student’s disability, districts may impose the same disciplinary consequences that apply to students without disabilities,” Wardell said. As such, “in both 504 plans and IEPs, address whether the student will be held to the same code of conduct as his peers, and if not, address the parameters for exceptions,” Sepiol said.

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