



Q&A: Individuals with Disabilities Education Act (IDEA) Protections for a Child Not Yet Determined Eligible for Special Education Services

The Minnesota Department of Education (MDE), Division of Compliance and Assistance, has developed this document to provide technical assistance to districts and parents that have raised questions about IDEA protections in the context of a disciplinary removal for a child that the school district is deemed to have knowledge is a child with a disability. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: Can a child be protected under the IDEA when the child has not been evaluated for special education eligibility prior to violating a school district's disciplinary policy resulting in a dismissal from school?

Answer: Yes, if the district had knowledge that the child was a child with a disability before the disciplinary incident. 34 C.F.R. § 300.534(a). The district is deemed to have knowledge if one of three situations listed below occur:

1. If a child's parent has expressed concerns in writing to supervisory or administrative personnel at the school district or to the child's teacher that his or her student may need special education and related services prior to the disciplinary incident. 34 C.F.R. § 300.534(b)(1);
2. If a child's parent has requested a special education evaluation. 34 C.F.R. § 300.534(b)(2); or
3. If the child's teacher or other school district staff has expressed specific concerns to the school district's special education director or other supervisory personnel of the school district about a child's pattern of behavior. 34 C.F.R. § 300.534(b)(3). The child's teacher or other school district staff should communicate their specific concerns in accordance with their local child find or referral policy in the school district's Total Special Education System (TSES) plan. Minn. R. 3525.100, Subp. 2, Questions and Answers on Discipline Procedures; Office of Special Education and Rehabilitative Services (OSERS), Answer to Question A-4, A-7, June 1, 2009; and at 34 C.F.R. § 300.534, cmts. at 71 F.R. 46727 (August 14, 2006).

Authority: 34 C.F.R. § 300.534(a) and (b)(1)-(3); Minn. R. 3525.100, Subp. 2; and Questions and Answers on Discipline Procedures; Office of Special Education and Rehabilitative Services (OSERS), Answer to Question A-4, A-7, June 1, 2009; and 34 C.F.R. § 300.534, cmts. at 71 F.R. 46727 (August 14, 2006).

Question 2: To whom must the parent give or send the written document expressing concerns regarding his/her child's need for special education and related services in order for the child to receive IDEA protections?

Answer: The parent must express the concern that the child is in need of special education or related services in writing to supervisory or administrative personnel of the school or to one of the child's teachers. 34 C.F.R. § 300.534(b)(1). The comments to the federal regulations specifically state that "to allow the parent of a child to orally express their concerns (as opposed to doing so in writing) is inconsistent with and would impermissibly broaden the requirements of the Act". 34 C.F.R. § 300.534 cmts. at 71 F.R. 46726-46727. A parent may request assistance in communicating written concerns from organizations such as the Minnesota Disability Law Center, ARC, and PACER, a parent resource agency. Additional resources are available on the Procedural Safeguards documented posted on the MDE webpage at:
http://education.state.mn.us/MDE/Accountability_Programs/Compliance_and_Assistance/Recommended_Due_Process_Forms/index.html.

Authority: 34 C.F.R. § 300.534(b)(1) and 34 C.F.R. § 300.534 cmts. at 71 F.R. 46726-46727; Questions and Answers on Discipline Procedures; Office of Special Education and Rehabilitative Services (OSERS), Answer to Question A-4. (June 1, 2009).

Question 3: Are there any exceptions to the three situations listed in Question 1?

Answer: Yes. A school district is deemed to NOT have knowledge that a child was a child with a disability before a disciplinary incident if one of the following occurred:

1. If a child's parent has refused to consent to a special education evaluation. 34 C.F.R. § 300.534(c)(1)(i);
2. If a child's parent has refused special education services 34 C.F.R. § 300.534(c)(1)(ii); or
3. If the child has already been evaluated in accordance with the evaluation regulations in IDEA and found not eligible for special education services. 34 C.F.R. § 300.534(c)(2).

Authority: 34 C.F.R. § 300.534(c)(1)(i)-(ii) and (c)(2).

Question 4: What responsibility does a school district have when a parent requests a special education evaluation after the child violates the school district's discipline policy?

Answer: The school district must conduct the evaluation in an expedited manner. The child must remain in the educational placement determined by the school district pending completion of the evaluation.

Authority: 34 C.F.R. § 300.534(d)(2)(i)-(ii).