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I have sent many articles regarding suspension and the right to manifestation determination hearing (aka Superintendent meeting or hearing). Below is specific information for students who don't have an IEP and their protections against being suspended for behaviors which are directly related to their disabilities. This is a time of year we often see an increase in suspensions, so I thought I would send out this information to all of you. ---- Regards, Kathy

October, 2012 The U.S. Department of Education published; DISABILITY RIGHTS ENFORCEMENT HIGHLIGHTS; OFFICE FOR CIVIL RIGHTS. <http://www2.ed.gov/documents/news/section-504.pdf> (I would encourage you to download the entire 12 pages because it is an exceptional resource.)

The Office of Civil Rights works to protect students with disabilities from violations of their rights in the discipline process. Under Section 504 and Title II, students with disabilities may not be punished or disciplined for behaviors that is caused by or is a manifestation of their disabilities. To protect against this, schools must hold a hearing before suspending a student with a disability for more than 10 consecutive school days (some states have different number of days) or if there is a pattern to behavior that results in discipline.

A dilemma that I will continue to pursue is what I perceive as a major contradiction in the above statement. It first states that students with disabilities may not be punished for symptoms of their disabilities. But then it goes on to say that actually they MAY be punished for up to 10 days.

However, it is a step forward to have a document written by the US Department of Education stating that students with 504 Plans have similar protection as do students with IEP and there must be a hearing to determine if the behavior in question is directly related to the disability. This information is critically important for students with TS. As you know these youngsters often have symptoms which 'violate the school's code of conduct', are misinterpreted as being purposeful misbehaviors and result in the student being inappropriately punished.

Another important consideration applies to a child who parents are concerned that they MAY be suspended for a behavior. Parents should put in writing, every year, that they believe their child is in need of special education services. According to the Federal Regulations below, by doing just that, the student is legally considered to be a child that is presumed have a disability and are provided the same protections that would be afforded them if they DID have an IEP. In my experience schools typically do not let parents know about these protections. Additionally, it is not unusual for school personnel to be unaware of this regulatory protection.

Regulations: Part [300](#) / [E](#) / 300.534

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C6%2C>

10. Retain and revise the standard for a public agency's basis of knowledge for children not determined eligible for special education and related services.

A child who has not been determined to be eligible for special education and related services under Part B of the *IDEA* and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Part B if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, *or a teacher of the child*, that the child is in need of special education and related services; or
- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns *about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.*

[34 CFR 300.534(a) and (b)] [20 U.S.C. 1415(k)(5)(A) and (B)]

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