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Idaho Special Education News is provided by the Idaho Department of Education for informational purposes only. It is intended to inform the reader about current events in Idaho pertaining to special education. It is not intended to provide legal advice.

Happy New Year - 2020!

In this issue we review several Idaho administrative due process hearings and complaint investigation decisions issued by the Idaho State Department of Education from June 2019 through December 2019.

Due Process Hearing Decisions

Change of Placement vs. Change of Location

General Requirement: A change in educational placement occurs when a proposed change would substantially or materially alter a student's educational program. In making the determination, the following four factors must be examined:

- Whether the educational program in the student's IEP has been revised;
- Whether the student will be able to be educated with nondisabled students to the same extent;
- Whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and
- Whether the new placement option is the same option on the continuum of alternative placements.

After examining the four factors, if it is concluded that a substantial or material change in the student's educational program has occurred, a change in placement has occurred and the school district must provide prior written notice to the parent. On the other hand, if the review of the four factors concluded that a change in location would not substantially or materially alter a student's educational program, a change in educational placement has not occurred, and the prior written notice requirements are not triggered. *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

H-19-05-08a – When does a change in location result in a change in placement for a child with a disability, and when does prior written notice come into play?

Summary of Facts: A school district moved its therapeutic classrooms from one high school to another.



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The parent of a high school student with a disability who attended a therapeutic classroom requested a due process hearing and alleged, among other issues, that the relocation of the therapeutic classroom resulted in a change in placement for the student and the district failed to provide prior written notice of the change as required by the IDEA.

Hearing Officer Findings: The hearing officer found that the only change asserted by the parent was where the student attended the therapeutic classroom. No changes to the student's IEP or other services occurred. The hearing officer concluded that moving the student's therapeutic classroom from one district high school to another was only a change in location, not a change in educational placement. Therefore, prior written notice was not required, and no denial of a free appropriate public education (FAPE) occurred.

Participation in Graduation

General Requirement: The Idaho Special Education Manual (Manual) provides as follows:

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc.,

as students without disabilities. Participation in a graduation ceremony does not mean that the student will receive a high school diploma or indicate the completion of a secondary program. Manual, Ch. 7,

H-19-06-06a - Does a student with a disability have the right to participate in multiple graduation ceremonies?

Summary of Facts:

The student attended the 12th

grade during the 2016-17 school year and participated in high school ceremonies for the class of 2017. Following graduation, the student continued to receive special education services through the semester the student turned 21. A day before the 2019 graduation ceremony was to be held, the parent submitted an emergency motion to the hearing officer requesting that the student be allowed to participate in the 2019 graduation ceremonies.

Hearing Officer Findings: The hearing officer denied the parent's request that the student be allowed to participate in the 2019 graduation ceremonies, as the IDEA, regulations, and the Idaho Special Education Manual do not require that a district allow a special education student to participate in multiple graduation ceremonies. The district satisfied the Manual's requirements when the student had the opportunity to participate in the 2017 graduation ceremonies. No denial of FAPE occurred when the district did not allow the student to participate in a second graduation ceremony.

Complaint Investigation Findings

Amending a Student's IEP

General Requirement: In order to amend a student's IEP, an IEP team meeting must be held. Alternatively, the district and parent may amend a student's IEP by written agreement without the need to convene an IEP team. 34 CFR 300.324(a)(4)(i). Prior to amending a student's IEP, a reevaluation may be necessary. "Reevaluation" refers to the follow-up or repeat evaluations that occur throughout the course of a student's educational career and is intended to help an IEP team determine the special education and related services needed by a student. 34 CFR 300.303. As part of the reevaluation process, the team must review existing evaluation data and any relevant information provided by the parent, and determine what additional data, if any, is needed. 34 CFR



300.305(a)(1)-(2).

C-19-07-03a - Can a district amend an IEP solely on parent request?

Summary of Facts: The student was in the sixth grade and enrolled in a virtual school operated by an Idaho school district in August 2018. The student was eligible for special education services under the disability category of Autism. The student was previously enrolled in an Idaho virtual charter school and had an IEP. The student's IEP from the previous school included academic and behavioral goals and identified that the student's behavior impeded learning. The student had a behavior plan of positive behavior supports as part of the IEP. Upon enrollment, the parent asked that the Behavior Intervention services be removed from the student's IEP as the parent believed that "they were causing more problems than they solved."

Based on the parent's request, the school amended the student's IEP from the previous virtual charter school. The amendments included removal of all behavior goals, supports and interventions, including the removal of services by a Behavioral Interventionist for 720 minutes per week.

Complaint Investigator Findings: The complaint investigator found that the IEP amendments were made based solely on the request of the parent, without consideration of the impact that the removal of the services might have on the student whose behavior may impede the student's learning. Further, the IEP team did not review existing evaluation data that the school received from the previous virtual charter school. While the IDEA requires a district to consider the concerns of the parents for



enhancing the education of the student when developing or revising a child's IEP, this "does not equate to capitulation by the other members of the IEP team to those concerns or wishes – concerns not supported by evidence in the form of assessment data . . . In this instance, the [parent's] well-intentioned desire to remove the Behavior Intervention services from the Student's IEP required the support and professional analysis of an IEP team member with professional background and expertise to review existing evaluation and assessment data."

The complaint investigator concluded that the removal of the Behavior Intervention services resulted in the district disregarding several of the most important requirements of the IDEA; namely, the requirement to review existing evaluation data, the requirement to provide comparable services upon transfer, and the requirement to consider positive behavioral interventions and supports when behavior impedes learning.

The district was found out of compliance on this issue and a Corrective Action Plan (CAP) was put into place by the SDE in order for the district to become compliant with all IDEA requirements.

C-19-07-12a – Can a district unilaterally amend an IEP?

Summary of Facts: The student attended a district's elementary school and was eligible for special education under the category of Autism Spectrum Disorder. In May 2019, the district confirmed that the parents were interested in ESY services for their child during the summer. The district determined that the student would benefit from ESY services based on the likelihood of the student's regression in reading, writing and math. The district completed the "Extended School year Data Documentation Form" on June 3, 2019 and recommended 4.5 hours of ESY per week for four weeks. An informal meeting occurred with the

parents to discuss ESY, and the IEP was amended to provide ESY services. The student received 18 hours of ESY, consisting of two 45-minute sessions twice weekly in reading, writing and math between July 15 and August 7, 2019.

Complaint Investigator Findings: The complaint investigator found that an IEP team meeting did not occur to discuss ESY services, nor was there a signed agreement to amend the student's IEP without a meeting. Further, the ESY services provided to the student were within a predetermined time frame and did not include an individualized determination of whether the student would benefit from services outside of the district's scheduled summer school program. Further, the district failed to provide written notice of its decision to provide the student with ESY services during summer 2019.

The district was found out of compliance on this issue and a Corrective Action Plan (CAP) was put into place by the SDE in order for the district to become compliant with all IDEA requirements.

Discipline: Manifestation Determination & Pattern of Removals

The general requirements for conducting a manifestation determination when disciplining a student with disabilities was set forth in the May 2019 newsletter. A manifestation determination must be conducted within ten school days of any decision to change the placement of a student because of a violation of a code of student conduct. However, how does school personnel determine whether a change in placement occurred? It is important to understand that there are several ways in which a change in placement can occur.

A change in placement occurs any time a student is removed from the school setting for more than ten consecutive school days for disciplinary reasons.

Additionally, a change in placement may occur

when a series of suspensions resulted in a student's removal for disciplinary reasons for more than ten cumulative school days in a school year. A change in placement based on cumulative disciplinary removals occurs if it is determined by school personnel that a pattern of removals occurred.



In looking at whether a pattern of disciplinary removals has occurred, the following factors must be considered:

1. A series of removals occurred totaling more than ten school days in a school year;
2. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; or
3. Additional factors, including the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Whether a student's behavior is substantially similar to previous incidents of behavior must be made on a case-by-case basis. 34 CFR 300.536(b)(1).

C-19-08-12a – When does a disciplinary pattern of removals occur?

Summary of Facts: The student was in the seventh grade attending a middle school in the district. The student was eligible for special education services under the disability category of Autism Spectrum Disorder. The student had significant maladaptive behaviors, including self-injurious behavior. The complainant alleged that the district suspended the student in March of 2019 for approximately two weeks, which resulted in the student's change in placement.

Complaint Investigator Findings: The complaint investigator reviewed the evidence, including

student attendance details, and determined that the student was suspended for a total of six days in February of 2019. Because the student's suspension was less than ten cumulative days in the school year, a change in placement due to a pattern of disciplinary removals did not occur. Additionally, the district was not required to hold a manifestation determination review, since no change in placement occurred.

The allegation was determined to be unfounded and the district was found to be in compliance on this issue with IDEA requirements.

Hot Topic

Throughout the school year, the Idaho Department of Education receives a variety of questions regarding special education requirements. One such question may affect many Idaho school districts, especially if a district has a policy or practice that a student will be dropped from enrollment (disenrolled) if the student has missed 10 consecutive school days. Two cases are discussed below addressing this issue. Additionally, guidance in a Q & A format is provided.

In the case of *R.B. v. Mastery Charter School*, 762 F. Supp. 2d 745 (E.D. PA, 2010) the school did not initially record a student's attendance because it recognized that the student had an IEP and attendance issues, as the student's health conditions often made it difficult for her to get to school on time. After a disagreement with the school, the parent stopped bringing her child to school. At that point in time the school began keeping attendance records on the student and sent the parent three written communications regarding the student's attendance. After the third notification, the school dropped the student from enrollment. The school argued that it treated the student the same as all other students who missed more than 10 consecutive school days. However, the judge held that a

unilateral disenrollment by the district of a student on an IEP was much like an expulsion, in that it terminates educational services. Thus, a disenrollment is a change in placement and procedures must be followed.

A similar decision was issued by a hearing officer in *Springfield Public Schools*, 107 LRP 65535 (MA SEA 2007). The school district had an attendance policy that applied to all students. The policy provided that after a student was marked absent for more than ten days, a letter was sent to the parent requesting a meeting. If the parent failed to respond to the letter within five days, the student was unilaterally disenrolled. The school district argued that the disenrollment process was merely a clerical procedure and did not deny students a free appropriate public education (FAPE). However, while a student could reenroll at any time, the parent was required to provide the same information as for enrollment, i.e., proof of residence, medical records, birth certificate and IEP, if applicable. Further, the reenrollment process required a minimum of two business days, and in some cases, up to two weeks.

In the *Springfield* case, twin brothers with disabilities and attendance issues were disenrolled pursuant to the district's policy on several occasions. The hearing officer reviewed whether a change in placement occurred when the students were disenrolled and found that the "administrative unenrollment for truancy is functionally equivalent to termination of a special education program and placement for a special education student. Unenrollment bars a student from further participation in his/her agreed upon special education placement until certain other administrative steps unrelated to special education are completed." The hearing officer concluded that the multiple unilateral disenrollment of the students had a detrimental substantive effect and deprived them of FAPE.

The two case studies above help to answer the following questions:

Q: Does unilateral disenrollment result in a change in placement?

A: Yes. Both of the cases discussed clearly held that disenrollment is a change in placement.

Q: What actions, if any, should a district take before making the administrative decision to disenroll a student with a disability due to lack of attendance?

A: Since disenrollment constitutes a change in placement, all actions that a district must take when contemplating a change in placement apply.

Q: Is disenrollment for non-attendance a disciplinary action?

A: Perhaps. In the Springfield case, the hearing officer found that disenrollment by the district is similar to a graduation or expulsion change in placement. In both instances, substantive and procedural protections of the IDEA are triggered.

Q: Is a manifestation determination meeting required to determine whether the student's disability affects the student's attendance before disenrollment occurs?

A: Yes. When attendance is an issue for a student on an IEP, the IEP team should determine whether poor attendance is a manifestation of the student's disability.

Q: What notification is required when a district disenrolls a student for failure to attend school?

A: The parent must be provided prior written notice of the change in placement and a copy of the procedural safeguards notice.

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