

School Discipline and School Safety – A Review

by Annemarie Harr, Esq.

Following the recent and tragic school shooting in Parkland, Florida, school districts have been forced to review their own policies and procedures relating to school safety, security and discipline. Schools have faced an increased number of threats and must be well equipped to deal with them.



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Under the school code, a student must be given notice of the reasons for a suspension as well as an opportunity to respond, unless it is clear that the health, safety or welfare of the community is threatened. If a threat to a school, its students and staff is made, it is likely that this notice requirement will be appropriately waived. However, if the district intends to remove the student for more than three (3) days, the student and parent must be given an opportunity to participate in an informal hearing. If the district intends to expel the student, then it must hold a formal expulsion hearing. If the expulsion hearing cannot be scheduled during the period of suspension, not to exceed 10 days, the district must, at the time of the informal hearing, determine whether the student's presence in his or her normal classes would constitute a threat or the health, safety, or welfare of others. If the district answers the question in the affirmative, then it may continue to hold the student out beyond the ten-day suspension period, but the formal hearing must take place within 15 school days from the date of suspension, unless both parties agree otherwise.

These provisions apply to all students, but students with disabilities are entitled to extra provisions. For students who are protected under the IDEA, a manifestation determination must be performed when a district proposes disciplinary measures that will result in a change of placement. A change of placement occurs when the removal is for more than 10 consecutive days, or the student has been subjected to a series of removals that constitute a pattern. The manifestation determination should be completed by the parent and relevant members of the IEP team. If the parent and school team determine that the behavior was not a manifestation of the student's disability, then the district may proceed with discipline consistent with the school code and the district's code of student conduct. If the behavior is a manifestation of the student's disability, the district may remove the student from his or her placement only if the student has brought drugs or weapons to school or has inflicted serious bodily injury upon another

When dealing with any threat to school safety, districts should consult with their solicitor in order to determine the appropriate course of action.

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Providing Students with a Continuum of Behavior and Emotional Supports

More schools are moving toward comprehensive academic and behavioral prevention and intervention frameworks, often termed Multi-Tiered Systems of Support (MTSS). This term encompasses Response to Intervention (RTI) and School-Wide Positive Behavioral Interventions and Supports (SWPBIS).

While most students will respond to primary Tier 1 supports that identify and promote behavioral expectations valued by the school community, some students will require a higher level of support. This support may be provided by Tier 2 or Tier 3 interventions, depending on the level of need. If these supports are exhausted and a student is still demonstrating behavior or emotional needs, school teams may determine that a multidisciplinary evaluation is warranted to determine the eligibility and need for special education services. When conducting this evaluation, school psychologists often consider whether the student satisfies special education criteria as a student with an Emotional Disturbance. Where a student satisfies the criteria of Emotional Disturbance, they are eligible for special education. In contrast, a Socially Maladjusted student is generally ineligible for special education but may require other behavior interventions administered through general education.

Currently, interdisciplinary research is being conducted by Rebecca Heaton Hall and School Psychologist and Adjunct Professor in the school psychology program at The Pennsylvania State University, Dr. Jessica Dirsmith on the use of intervention, prevention, assessment, and appropriate



Attorney Rebecca Heaton Hall

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person. In situations where the behavior is a manifestation but the student has not brought drugs or weapons or inflicted serious bodily injury on another person, the district must return the child to their previously determined placement and either (1) conduct a functional behavior assessment, if one has not already been conducted, or, (2) where the student already has a positive behavior support plan, update the support plan as necessary.

In a situation where a student with a disability makes a threat to a school district, it is recommended that the district issue a Permission to Re-Evaluate in order to determine the appropriate placement for the child moving forward. Similarly, if a student who is not receiving special education makes such a threat, the district should consider issuing a Permission to Evaluate in order to determine if the child requires special education or additional services. If the student already has a Positive Behavior Support Plan, the District should place provisions into the plan in order to support school safety. If the student is not a student who qualifies for special education, the district should consider developing a safety plan for the student, in order to minimize the risk that any such threat materializes.

As a reminder, districts require reasonable suspicion in order to search students. In order to meet this standard, the district must show that there are reasonable grounds for suspecting that the search will reveal evidence that the student has violated or is violating the law or school rules, and that the search measures are reasonably related to the objectives of the search.

When dealing with any threat to school safety, districts should consult with their solicitor in order to determine the appropriate course of action to take based on the individual circumstances.

Providing Students with a Continuum of Supports, *continued*

identification of students' behavioral and emotional needs. This research analyzes hearing officer and federal court decisions to determine the evidence and facts generally relied upon by courts in identifying students as Emotionally Disturbed or Socially Maladjusted. The data collected suggests that students who manifest consistent anxiety or depression over the course of at least one school year will likely qualify as Emotionally Disturbed. Additional data researched suggests that courts also look to prior partial hospitalizations, inpatient psychiatric treatment, and periods of homebound education. Dr. Dirsmith and Attorney Hall's research is ongoing and it is anticipated that their findings will be available by June 2018.



We're Speaking...

- Attorney Ira Weiss has been named the chair of the Pennsylvania Family Support Alliance. The mission of the statewide organization is to protect children from abuse and neglect through education, parent support and community outreach.
- Attorneys Annemarie Harr and Rebecca Heaton Hall will be presenting on the topic of "504 Plan Legal Essentials" for the National Business Institute's seminar in Pittsburgh on April 30, 2018. Ms. Hall will present on "How to Determine Eligibility for a 504 Plan" and "Evaluating Students Under 504 Plans" while Ms. Harr will address the topic of "How to Draft a Personalized 504 Plan and Documentation to Include."
- Attorney Jocelyn Kramer and Attorney Hall will be co-presenting for FrontlineEducation on May 10, 2018 at the DoubleTree Hotel - Green Tree in Pittsburgh. Ms. Kramer and Ms. Hall will discuss "Hot Topics in Pennsylvania Special Education Compliance & Law."
- In March, Attorney Weiss spoke to the Western Region Pennsylvania Association of Career & Technical Administrators at the Parkway West Career and Technology Center. Mr. Weiss presented on the topics of Act 6, Act 55 furlough provisions and new reporting requirements for career readiness.

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer, LLC.

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