Must district reinstate teen who brought loaded gun to school?

A 16-year-old California student with an OHI brought a semi-automatic handgun and a full magazine of ammunition to school on Nov. 27, 2012.

The district determined that the behavior was a manifestation of the student's disability and placed him in an interim alternative educational setting.

Subsequently, the district expelled the teen based on the November incident. The district's policy provided that all students with disabilities who bring a firearm to school are subject to expulsion notwithstanding a manifestation determination.

The student's parent filed a due process complaint contending that the district violated the IDEA by expelling the student for behavior that was a manifestation of a disability.

The Gun-Free Schools Act requires each state to have a law requiring LEAs to expel students who bring a firearm to school. 20 USC 7151(b)(1). Under the IDEA, a district may place a student with a disability in an IAES for up to 45 school days under "special circumstances," including where the student brings a weapon to school, without regard to whether the behavior is a manifestation of a disability. 34 CFR 00.530(g).

May the district expel the student for disability-related behavior?

A. No. At most, the district could place the student in an alternative setting for 45 days.
B. No. The Gun-Free Schools Act doesn't apply to students with disabilities.
C. Yes. Because the student brought a weapon to school, the district wasn't required to conduct an MDR.

How the ALJ ruled: A.

Noting that the Gun-Free Schools Act must be implemented in a manner consistent with the IDEA, the AW concluded that the district wasn't permitted to expel the student given the results of the MDR. *Los Angeles Unified Sch. Dist.*, 114 LRP 29102 (SEA CA 05/22/14). The AJL ordered the district to restore the student's prior placement and remove all references to the expulsion proceedings from his records.

The ALJ acknowledged that the district's policy permitted the expulsion of students for disability related conduct.

However, that policy was in conflict with the IDEA. "[I]n Student's case, because his behavior of bringing a weapon to school was determined … to be a manifestation of his disability, the most District was permitted to do under the IDEA was to change Student's placement to an [IAES] for 45 days," the ALJ wrote.

Editor's note: This feature is not intended as instructional material or *to replace legal advice.*

Resource: The pamphlet Dangerous Conduct by Students With Disabilities: Legal Guidelines for Appropriate Responses *is available at* www.shoplrp.com/product/p-300635.html.•

Must district assign 1:1 aide to student who stabbed peers?

An 8-year-old with an emotional disturbance engaged in unpredictable outbursts, hit and bit teachers and students, was defiant, and sometimes eloped. She was also frequently off-task.

On two occasions during the 2013-14 school year, the child stabbed students with a pencil, landing one of the students, who was stabbed in the back, in the hospital.

A January 2014 functional behavioral assessment indicated that the child's triggers could not always be pinpointed. The child's BIP, which was similar to a prior safety plan that failed to stem her behavior, recommended providing a cool-down space, limiting her independent movement in the school, and rewarding appropriate behavior. The school also gave the child markers instead of pencils and provided her with four hours of counseling per month. She also received pull-out instruction from her general education classroom.

Following the BIP's implementation, the 8-year-old showed behavioral improvement but continued to elope and have outbursts.

The parent asked the District of Columbia to provide the child with a dedicated aide. The district argued that a dedicated aide was unnecessary given that the child's behaviors were sporadic.

If a student's behavior impedes her learning or the learning of other students, the district must consider the use of positive behavioral supports and other strategies to address that behavior. 34 CFR 300.324(a)(2)(i).

Do aggression, eloping entitle 8-year-old to dedicated aide?

A. No. The child's current behavioral interventions were adequate and she was making behavioral progress.
B. Yes. There was no other way the district could have addressed the behavior.
C. Yes. The child's violent outbursts were unpredictable and might occur again.

How the IHO found: C.

Concluding that the district's behavioral interventions were inadequate, the IHO ordered the district to assign the child a dedicated aide. *District of Columbia Pub. Schs.*, 114 LRP 25496 (SEA DC 05/05/14).

The IHO reasoned that assigning a one-to-one aide was both appropriate and prudent in order to protect the student and others from harm. In reaching that conclusion, the IHO pointed to the severity and unpredictability of the behavior, the fact that the child had no special education support in her general education classroom, her need for frequent redirection, and the failure of the district to provide medical documentation to back up its claim that the violence would not recur.

"When an 8 year old is engaged in stabbing and elopement, it is appropriate to be vigilant to avoid any possibility of tragedy even if the incidents do not occur every day," the IHO wrote.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The Behavior Management Guidebook: 10 Key Training Components for Staff Development *is available at* www.shoplrp.com/product/p-300155.html .•

Do district's 2 phone calls afford parent chance to participate in manifestation determination review?

A District of Columbia high schooler with an SLD allegedly assaulted a classmate. Shortly thereafter, the student's case manager phoned her mother to invite her to the manifestation determination review meeting, scheduled for about two weeks later. According to the case manager, the parent said her attorney would talk to the district, and hung up.
The case manager tried again a week later with the same result. The parent's attorney never called and the district made no further attempts to invite the parent or her lawyer.

The MDR team determined that the assault wasn't a manifestation of a disability and suspended the student.

The parent alleged in a due process complaint that the district denied the student FAPE by holding the MDR meeting without the parent.

An IEP team meeting may be conducted without a parent if the district is unable to convince the parent to attend. The district must keep a record of its attempts to include the parent, such as: detailed records of telephone calls; copies of correspondence; and records of visits to the parent's home or place of employment. 34 CFR 300.322(a).

Are case manager's efforts to include parent sufficient under the IDEA?

A. No. There was no evidence that the district sent the parent letters regarding the MDR, went to her home, or tried to contact her attorney.
B. Yes. The regulation at 34 CFR 300.322(a) applies to IEP team meetings, not MDR meetings.
C. Yes. Once the case manager called the parent, it was up to the parent to follow through and have her lawyer call the district.

How the IHO found: A.

By limiting its efforts to two phone calls, the district fell short of its obligation to afford the parent opportunity to participate. *District of Columbia Pub. Schs.*, 113 LRP 22141 (SEA DC 05/03/13).

Citing *Fitzgerald v. Fairfax County School Board,* 50 IDELR 165 (E.D. Va. 2008), the IHO concluded that the district was required to make the same efforts to include the parent that it would have had to make for a regular IEP team meeting. "Whatever conclusions may be drawn about Mother's behavior, the IDEA did not permit [the district] to so readily give up its efforts to convince Mother to attend," the IHO wrote.

Specifically, the IHO observed, the district didn't send the parent written notice of the meeting date, visit her home or place of employment, or contact her attorney.

Because the procedural violation seriously infringed on the parent's opportunity to participate, it denied the student FAPE, the IHO concluded.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The pamphlet Discipline Dilemmas: Your Guide to Avoiding the Top IDEA and Section 504 Mistakes *is available at* www.shoplrp.com/product/p-300288.html. •

Is post-meeting alteration of IEP a substantive IDEA violation?

The draft IEP for a Washington sixth-grader with ADHD and written language deficits included two curricular adaptations, which appeared in the student's previous IEPs. Those adaptations were small-group instruction on a pull-out basis and shorter writing assignments. It was particularly important to the parent that the student receive the pull-out instruction. However, unbeknownst to her, the child's teacher wasn't providing it.

After an IEP team meeting, and without the parent's knowledge, the teacher, who was also the IEP case manager, altered the draft IEP by adding the words "if and when necessary" after each adaptation. She later explained that she was simply changing the IEP to conform to what she was already doing in class.

The district sent the parent the final IEP, including the teacher's changes, and prior written notice. The PWN didn't mention the revisions.

The parent subsequently filed a due process complaint alleging a denial of FAPE.

A procedural violation of the IDEA doesn't amount to a denial of FAPE unless it impedes the child's right to FAPE, significantly impedes the parents' participation in the IEP process, or causes a deprivation of educational benefits. 34 CFR 300.513(a)(2).

Does the teacher's revision of curricular adaptations deny child FAPE?

A. No. District IEP team members can make changes to an IEP over a parent's objection if the team doesn't reach a consensus.
B. Yes. Small-group instruction was very important to the parent.
C. Yes. The violation caused a deprivation of educational benefits.

How the AW ruled: B.

The teacher's procedural violation significantly impeded the parents' participation in the IEP process *Peninsula Sch. Dist.*, 114 LRP 20392 (SEA WA 04/04/14).

First, the AW noted that the teacher violated the IDEA procedurally by making changes to the IEP outside of an IEP meeting. Under the IDEA implementation regulation at 34 CFR 300.324(a) (4), a parent and district, after an annual IEP team meeting, may agree to develop a written document to amend the IEP instead of convening another meeting. In this case, however, the parent didn't consent to that process.

Moreover, the ALJ observed, the procedural violation deprived the student of FAPE because the parent believed, based on prior IEPs, that the student had been receiving pull-out instruction in small groups and felt it was important that he continue to do so. "Her testimony made it clear she would have wanted to discuss the changes in question and would probably not have agreed," the AW wrote.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

*School attorney and legal consultant Julie Weatherly will present the session Handling Staff Missteps: How to Pivot and Problem-Solve After Mistakes Are Made at LRP's Special Education Director's Summit July 10-11 and July 31-Aug. 1. Learn more at w*ww.lrpsummit.com.

May district implement IEP without both parents' approval after divorce?

The parents of a Montana student with autism were divorced. Their divorce agreement included a parenting plan that provided for educational decisions to be made jointly.

At a December 2012 IEP team meeting, the father stated that he wouldn't consent to the proposed IEP until the mother approved it. The mother hadn't been notified of the meeting, however, and the December IEP wasn't implemented.

The team met in March to develop a new IEP. On April 9, the mother told the district she still had concerns about the proposed program. Unbeknownst to the mother, the father signed the IEP on April 10 and the district implemented it. It didn't tell her this until June.

The mother filed a complaint with the Montana ED, alleging that the district denied her meaningful participation.

Where parents are divorced, the parental rights established under the IDEA at 34 CFR 300.30(a) apply to both parents, unless a court order or state law specifies otherwise. 71 Fed. Reg. 46,568 (2006).

Is meeting without mom, implementing March IEP dad signed, an IDEA violation?

A. No. There is no requirement that both parents be notified of an IEP meeting.
B. No. The mother didn't tell the district about the parenting plan.
C. Yes. The district was required to take steps to include the mother in IEP meetings and was required to obtain the mother's consent before implementing the student's IEP.

How the ALJ ruled: C.

Given that the parents chose to make educational decisions jointly, the district had an affirmative duty to afford both parents an opportunity to participate in the IEP process. *Student with a Disability, In re,* 114 LRP 11629 (MT SEA 12/20/13).

When parents are married, the Montana ED explained, and one parent receives notice of and agrees to participate in an IEP meeting, the district needn't take further steps to involve the other parent.

"However, when parents ... are divorced, the District has an affirmative duty to ... make specific efforts to include both parents," the ED wrote.

Instead of taking those steps, the ED noted, the district failed for months to inform the mother that it obtained the father's consent and implemented the IEP. This was the case even though it knew the mother still had qualms about the IEP, the ED pointed out.

Moreover, given that the parents had joint decision-making authority, the district was required to obtain the mother's consent prior to implementing the IEP.

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Resource: What Do I Do When ... ® The Answer Book on Special Education Law - Sixth Edition *is available at* www.shoplrp.com/product/p-300055.6ED.html. •

Must district refer teen with ADHD diagnosis and tendency to 'goof off' for evaluation'?

When a high schooler enrolled in a California district in September 2009, his mother alerted the district that he was being treated for ADHD and depression.

In October, the district convened a student study team to determine how best to address the student's behavior and poor grades. The district didn't refer the student for an evaluation until two years later. However, some teachers provided him with informal accommodations, such as extra time on assignments or giving him an object to occupy his hands. The latter accommodation didn't work because the object inevitably became a projectile. The teen's behavioral and academic struggles persisted.

The parent filed a complaint with OCR alleging that the school district failed to timely evaluate her son.

Teachers told OCR that the student was intelligent and capable of learning. They didn't think that ADHD was causing his problems; rather, he simply didn't put in the effort and "goofed off." OCR noted that teachers observed that the student came to class unprepared, was unfocused, failed to turn in assignments, couldn't get organized, and a cited impulsively and inappropriately.

Section 504 requires districts to evaluate any student who needs, or is believed to need, special education or related aids and services because of a disability. 34 CFR 104.3 5(a).

Is district's failure to evaluate student a 504 violation?

A. Yes. In addition to the student's diagnosis, the student was displaying ADHD symptoms in class that appeared to be detrimentally affecting his concentration and learning.
B. No. Given the student's intelligence, it was reasonable for the district to believe the student's lack of effort, not his ADHD, was causing his problems.
C. Yes. A medical diagnosis of ADHD always triggers the duty to evaluate.

How OCR found: A.

The district had reason to suspect the student might be eligible for special education and related services as early as October 2009. *Oakland (CA) Unified Sch. Dist.*, 113 LRP 27902 (OCR 04/16/13).

At that time, OCR reasoned, the district knew of the student's diagnosis and academic and behavioral challenges. Yet, it failed to evaluate him. Instead, a few teachers unsuccessfully attempted ad hoc accommodations. While teachers were skeptical that the student's ADHD was impacting him, their observations of his behavior indicated otherwise, OCR determined.

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Resource: What Do I Do When ... ® The Answer Book on Special Education Law - Sixth Edition *is available at* www.shoplrp.com / product /p-300055.6ED .html. •

Does mom's desire for teen with TBI to graduate justify not evaluating pupil?

A 17-year-old California student was hit by a car in December 2011 and suffered a traumatic brain injury. The injury affected her memory, organizational skills, attention span, and motor skills.

When the high school senior returned to school in March 2012, the district considered evaluating her for special education. The school psychologist explained the special education process to the student's mother. According to the district, the parent opposed an evaluation because she wanted her daughter to graduate with a regular diploma in June. The district provided the student with 504 accommodations, including extended test-taking time.

On June 11, 2012, the parent requested an initial evaluation for special education. That same month, the district provided her with an assessment plan for the first time. The district completed assessments indicating that the student would have been eligible had she not graduated with a regular diploma on June 21.

The parent alleged in a due process complaint that the district violated the IDEA's child find requirement.

Districts have an affirmative duty to refer a student for an initial evaluation when they have a reason to suspect the student may need special education because of a disability. 34 CFR 300.111.

Is failure to assess student after accident a child find violation?

A. No. The parent didn't request an initial evaluation prior to June.
B. Yes. The district didn't provide the parent with an assessment plan until June.
C. No. The district provided the student with accommodations through a 504 plan.

How the ALJ ruled: B.

Although the district discussed and considered conducting a special education evaluation prior to June, it didn't present the parent with a written plan explaining its proposed evaluation. *Newport-Mesa Unified Sch. Dist.*, 114 LRP 6941 (SEA CA 02/05/14).

The ALJ noted that while the district may have correctly believed that the parent wasn't interested in special education in the months following the accident, it was less clear that the parent comprehended the ramifications of postponing an assessment. In any case, it was not the mother's duty to "make the call" as to whether a special education assessment plan should be presented. That was up to the district. "The Child Find obligation is fulfilled when the District presents Mother with a special education assessment plan, and explains what is being offered. This simply didn't occur," the ALJ wrote.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The 90-minute audio CD Avoiding Due Process: IDEA Compliance and Communication Strategies *is available at* www.shoplrp.com/product/p-3801.031114.html.

Do child's short attention span, behavioral issues necessitate 1:1 aide?

In March 2013, the District of Columbia developed a new IEP for a 6-year-old with autism, a sleep disorder, and a feeding disorder. At the time, the student was having lengthy tantrums and was eloping from class. She had difficulty focusing and interacting and needed constant redirection to stay on task. Progress reports indicated that her inability to focus was preventing her from improving academically.

The student missed two months of school during the 2012-13 school year due, at least in part, to medical issues, including two surgeries. By the end of the year, she didn't know the letters in her name and could not count.

Although the district declined to offer a dedicated aide as part of the student's March IEP, it allowed the parent to provide her own.

The parent filed a due process complaint, alleging that the district's failure to provide a one-to-one aide denied the student FAPE.

Districts are required to provide those services that are necessary in order for a child to receive meaningful educational benefit. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

Does failure to offer dedicated aide deprive child of FAPE?

A. Yes. The child required an aide to keep her focused and to address her behavior, so that she could make academic progress.
B. No. It was the student's absenteeism that was causing her academic and behavioral difficulties.
C. Yes. An aide would have enhanced the child's education and allowed her to progress at a rate comparable to her peers.

How the hearing officer found: A

Concluding that the child needed a dedicated aide to receive meaningful education benefit, the IHO found that the district denied the student FAPE. *District of Columbia Pub. Schs.*, 114 LRP 3813 (SEA DC 11/13/13).

The IHO pointed to the student's tantrums, eloping, and lack of focus as indications that she required an aide. Moreover, the student's lack of focus was linked to her academic difficulties. An aide would have been able to help her remain on task so that she could learn, the IHO reasoned.

The IHO also noted that the district appeared to acknowledge that the student needed an aide when it agreed to allow the parent to provide one. "[The district] does not harmonize this position with its current position that an aide was unnecessary," the IHO wrote.

B is incorrect. The evidence indicated that the child's academic and behavioral issues stemmed from her autism and difficulty focusing, not her absenteeism.

C is incorrect. The IDEA doesn't require services that will maximize a child's benefit.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The pamphlet Educating Students With Autism in the LRE: IDEA Rules and Decision Digest *is available at* www.shoplrp.com/product/p-300607 .html.

May district postpone developing transfer student's IEP for 30 days?

A Texas district was funding the private school placement of a student with autism pursuant to a settlement agreement. In April 2013, the district convened IEP team meetings and proposed transitioning the student back to the district in May 2013 when the agreement would expire. The team determined that it needed additional assessment data, although private school representatives attending the meeting stated that they had reams of additional data that the district could review and copy.

The district decided to adopt the private school's IEP - which team members referred to as a "transfer" IEP - for 30 days, during which time it would obtain updated data, create a transition plan, and develop a new program for the student. The district didn't revise the existing IEP.

The student's parents filed a due process complaint, alleging that the district violated the IDEA by failing to create and offer the student an appropriate and timely IEP.

A district may provide comparable services to an intrastate transfer student with an existing IEP who transfers within the same school year until it either: 1) adopts the prior district's IEP; or 2) develops, adopts, and implements a new IEP. 34 CFR 300.323(e).

Is district entitled to adopt the publicly placed private school student's existing IEP?

A. Yes. The student was an intrastate transfer student.
B. No. The student was transferring from a private school.
C. Yes. The district wasn't in a position to develop an IEP, because it needed more assessment data.

How the hearing officer found: B.

Because the student wasn't transferring between public agencies, the IDEA regulation pertaining to intrastate transfer students' IEPs didn't apply. *Beaumont lndep. Sch. Dist.*, 114 LRP 7471 (SEA TX 12/16/13).

The IHO noted that the district incorrectly characterized the student's existing IEP as a "transfer" IEP. However, the regulation at 34 CFR 300.323(e) permitting the adoption of transfer students' existing IEPs pertains to students transferring from one public school to another, where IEPs are subject to the same legal standards, the IHO observed.

Here, the district proposed the student's transition from a private school, not another public school. "In proposing Student's return to the District in May 2013, [the district] had an obligation to offer FAPE to Student at that time and not thirty days later," the IHO wrote. Moreover, if the district wished to implement the private school IEP, it needed to adapt it so that it could be implemented in a public school setting.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The 90-minute audio CD Avoiding Cookie Cutter IEPs: Develop Individualized, Clear IEPs ... Prevent Costly Errors, Confusion *is available at* www.shoplrp.com/product/p-3801.032113.html.

Is assault on teammate who insulted player's mom a manifestation of emotional disturbance?

A Michigan football player with an emotional disturbance had problems managing frustration and anger. One day, he was sitting at lunch with fellow players when the boys started teasing each other. The football player made a derogatory comment about another student. The other student then made a negative comment about the football player's mother.

Lunch ended, and the player went to his fourth period class, making a mental note of the location of the other student's class. When the bell rang, he abruptly walked down the hall to the other student's class, waited for him, and then began punching him in the head.

The football player told the police officer who responded that he would have "gotten" the victim at school, his house, or at a store, and that something was going to happen to him for talking about his mother.

Prior to expelling the student, the district determined in a manifestation determination review that the student's conduct wasn't a manifestation of his disabilities. The parent challenged that determination in a due process complaint.

Conduct is a manifestation of a disability if it was caused by or had a direct and substantial relationship to the child's disability. 34 CFR 300.530(e)(l).

Is MD team's decision correct?

A. No. The student's reaction was consistent with his emotional impairment.
B. Yes. The student waited until the end of his next class to assault the student.
C. No. The student was reacting to bullying.

How the ALJ ruled: B.

The MD team correctly determined that the football player's behavior was a deliberate choice, not a sudden uncontrolled response to teasing. *Lakeshore Sch. Dist.*, 114 LRP 4249 (SEA MI 11/13/13).

The ALJ pointed out that the student was in complete control of himself throughout the incident and acted with deliberation. He understood the consequences of his behavior and still chose to hit the student, the ALJ noted. That determination was supported by the student's statements to the responding officer. Because the MD team correctly found that the misconduct was planned and premeditated, it did not err in determining that it wasn't a manifestation of the student's ED, the ALJ concluded.

The ALJ also rejected the implication that bullying caused the student's conduct. Bullying, the ALJ observed, involves inflicting or attempting to inflict discomfort upon another through a real or perceived imbalance of power. Here, the players' behavior at lunch was a case of mutual teasing that angered the student, not bullying, he found.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The 90-minute audio CD Manifestation Determinations: Preventing Errors in Your Review Process *is available at* www.shoplrp.com/product/p-3801.092413.html.

Does nonverbal child's use of iPad at home indicate need for AT assessment?

A 6-year-old with autism and cognitive deficits was mostly nonverbal. He communicated by pointing, using eye gazes, and leading someone by the hand. The student's California district provided him with a Picture Exchange Communication System, but the child had little success using it.

At an IEP team meeting in February 2012, the student's parents explained that the student was independently and enthusiastically navigating an iPad at home for entertainment purposes. The district IEP team members didn't discuss the issue further or schedule an AT evaluation.

Nearly a year later, after the parents obtained a private AT assessment, the district conducted its own AT evaluation and provided the student with an iTouch. The student successfully utilized the device to communicate by navigating through folders and selecting pictures.

The parents filed a due process complaint alleging that the district denied the student FAPE by failing to assess his AT needs in February 2012.

An IEP team must consider whether a child requires AT to receive FAPE. 34 CFR 300.324(a)(2)(v).

Does failure to assess student for AT earlier deny him FAPE?

A. Yes. The student's use of the iPad at home indicated that he could acquire functional communication through a similar device.
B. Yes. The district was required to provide the student with the technology that would maximize the development of his communication skills.
C. No. The student didn't demonstrate the communication abilities necessary to benefit from such technology at that time.

How the ALJ ruled: A.

Given the student's interest and success in using the iPad, the district should have assessed him right after discovering his ability to use it. The district's failure to do so resulted in a year-long delay in the student's development of functional communication skills and denied him FAPE. *Newport-Mesa Unified Sch. Dist*, 11ECLPR55 (SEA CA 2013).

The ALJ rejected the district's argument that the student didn't demonstrate the communication abilities necessary to benefit from assistive technology. "The most compelling evidence Student presented is the fact that he began to use an iPad successfully by the time of his February 29, 2012 IEP meeting, albeit for entertainment purposes," the ALJ wrote.

Had the district assessed the student at that time, the ALJ reasoned, it would have recommended the use of the iTouch to enable the child to develop a functional means of communication applicable across settings.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The pamphlet Assistive Technology in Special Education: Identifying Student Needs, Responding to Parent Requests, and Other Compliance Issues *is available at* www.shoplrp.com/product/p-300641.html.

Does lack of parental consent to evaluate close the book on district's child find duty?

A Colorado district identified a student as potentially needing special education and related services in 2008, but his parents declined to consent to an evaluation.

For the next few years, the district provided the student with "RTI," including peer tutoring to help him with his study habits. However, the student still struggled to organize his class materials, concentrate, and turn in assignments on time.

Although the student appeared to respond to RTI in the sixth grade, his grades dramatically declined in the seventh and eighth grades. The district later explained that it believed that the student's problems stemmed from a lack of motivation.

The parents didn't request an IDEA evaluation. However, in 2011, they informed the district of the student's recent ADHD diagnosis and asked whether a case worker "for students with disabilities" was available to assist him.

The parents filed a due process complaint alleging a child find violation.

Districts must evaluate students suspected of having a disability and needing special education and related services. 34 CFR 300.323(a).

Do student's academic struggles revive obligation to evaluate?

A. No. The parents made it clear years earlier that they opposed an evaluation.
B. No. It wasn't clear that the student's struggles stemmed from a disability, rather than lack of effort.
C. Yes. After the parents refused consent, the student struggled for a long time despite RTL
D. Yes. A medical diagnosis always triggers child find.

How the AW ruled: C.

The student's documented poor academic performance, ADHD diagnosis, and failure to respond to RTI, together with the parents' articulated concerns, should have renewed the district's suspicion that the student needed special education services. *Cheyenne Mountain Sch. Dist. 12,* 113 LRP 46751 (SEA CO 07 /11/13).

The ALJ noted that a district shouldn't be expected to "continually pester" parents with new evaluation requests once consent is withheld. "If, however, a body of data collected over time shows that a child with a disability continues to struggle despite RTI, the district should not be allowed to stand by while the child fails," the AW wrote.

Here, the district should have renewed its evaluation request after it became apparent that the student wasn't responding well to RTL

Editor's note: This feature is not intended as instructional material or *to replace legal advice.*

Resource: Attorney Karen Haase will present the session Finders Keepers: Child Find Rules Under the IDEA and Section 504 *May 6 at LRP's 35th National Institute® in Orlando, Fla. For conference details, go to* www.lrpinsiitute.com.

Do tantrums of boy with autism warrant special class placement?

Despite reports that a child with autism had tantrums and regressed academically in his general education kindergarten class, the father of the 6-year-old California boy rejected a proposal to place him in a small special class for first grade.

According to the child's kindergarten teachers, the student showed no interest in interacting with peers, and was unable to grasp what was being taught to the other students. His tantrums lasted from two to 40 minutes, sometimes occurring several times per day. They occurred whenever his one-to-one aide presented him with a non-preferred task, such as an academic or social activity.

The father stated that the boy interacted well with his family and behaved well in community settings. He pointed to his good behavior in a small preschool class and in a swim class consisting of the boy and another child.

The father filed a due process complaint alleging that the district's proposed placement violated LRE.

Under the IDEA's LRE requirement, districts may educate students in special classes or separate schools only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300. l 14(a).

Does LRE obligate district to place 6-year-old in a general education class?

A. Yes. The child's behavior outside of school indicated that he could have been successful in a general education setting.
B. Yes. The social benefits of a general education setting warranted keeping the student there.
C. No. The child's disability would prevent him from gaining any benefit from such a setting.

How the ALJ ruled: C.

Because of the severity of the student's behavior and his academic needs, the child needed separate instruction to obtain meaningful benefit. *Irvine Unified Sch. Dist.*, 113 LRP 43085 (SEA CA 10/18/13).

The evidence established that the student wouldn't receive any academic or social benefit from a general education placement, the AW stated. The student's behavior in kindergarten supported the district's view that the academic and social demands of such a setting would trigger his tantrums and impede his learning.

Moreover, the student's reported ability to engage in activities outside of school without significant behavioral issues wasn't inconsistent with the district's view. "Father's testimony that Student's tantrums were mild at home and that he did well there, in pre-school, and in his small group swim class, supported District's placement recommendation, rather than contradicted it," the ALJ wrote.

Editor's note: This feature is not intended as instructional material or *to replace legal advice.*

Resource: The pamphlet Legally Speaking: A Staff Training Guide for Communicating With Parents and Avoiding Conflicts in Special Education *is available at* www.shoplrp.com/product/p-300644.html. •

Must district provide services to student in prison's special unit?

A Pennsylvania student in his late teens with an ED and ADHD was convicted as an adult under state law. He was incarcerated in a prison for adults.

The prison served as the student's local educational agency. He was IDEA-eligible at that time, but was due to age out of the IDEA before his release.

The prison assigned the student to a special unit for highly assaultive inmates. While in that unit, the student committed assaults, possessed contraband, and threatened guards, despite stringent safety protocols. He was placed on a paper restriction after he used it to block his cell window – an action that made it highly dangerous for guards to open the door.

The prison developed two IEPs for the student stating that he would obey the rules in the special unit and that he would receive feedback, monitoring, and modification to materials as needed. The prison provided the student a "self-study" packet - the same one it gave other inmates.

The teen filed a due process complaint alleging that the prison denied him FAPE. He argued, in part, that the prison could have escorted him to a room for direct academic instruction, social skills training, and anger management.

If a student is convicted as an adult under state law and incarcerated in an adult prison, the IEP team may modify the child's IEP notwithstanding its obligations to create a substantively adequate IEP, based on "a bona fide security or compelling psychological interest that cannot otherwise be accommodated." 20 USC 1414(d)(7)(B).

Did the prison's development of inadequate IEPs violate the IDEA?

A. No. Once the student was convicted under state law and placed in an adult prison, the district had no duty to provide him with a substantively adequate IEP.
B. No. The student posed a significant danger to guards.
C. Yes. The IEPs were utterly inadequate in that they contained no special education, related services, or measurable goals.
D. Yes. Just because the prison couldn't safely remove the student from his cell to provide him instruction and services doesn't mean it could not have found some other method to provide him FAPE.

How the IHO found: B.

The evidence demonstrated that the student was a constant security risk despite the unit's safety protocols. *State Corr. Inst* Pine *Grove*, 113 LRP 32792 (SEA PA 05/01/13).

It was obvious, the IHO acknowledged, that the student's IEPs fell miles below IDEA standards. At the same time, that failure did not violate the IDEA. The IHO noted that the student frequently subjected guards to highly dangerous situations. Providing a greater level of special education and related services, at least in the manner that the student suggested, would have increased the risk even further.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

May district bar student with autism from using iPad to access Internet?

Despite his parents' supervision, a Maine student with autism repeatedly accessed the Internet from his parents' homes and sent inappropriate, and sometimes threatening, emails and Facebook messages to a particular teacher.

When the student entered high school, the school issued iPads with Internet access to all students. The iPad helped the student, who learned through repetition and visual learning. Concerned about his continuing attempts to contact the teacher, the district removed the student's ability to access the Internet on the iPad outside of school.

The student's IEP didn't require him to have Internet access, and he didn't have homework that required it.

The customization caused the student and his parents some anxiety that he was being treated differently than his peers. Still, school personnel downloaded any apps his parents requested. According to teachers, the student continued to progress academically and was happy at school.

The parents claimed that the restriction on the student's Internet access denied him FAPE.

Did restrictions on Web access after school deny student FAPE?

A. Yes. As a student with autism, Internet access would have enhanced the student's ability to learn.
B. No. The IEP didn't require such access, and the student was progressing without it.
C. Yes. The district was providing other students with Internet access.

How the IHO found: B.

The student's solid progress at school demonstrated that limiting the student's Internet access didn't deprive him of meaningful educational benefit. *Regional Sch. Unit* #57, 113 LRP 39386 (SEA ME 05/21/ 13).

While empathizing with the parents' disappointment that the district wasn't allowing their son the same privileges as other students, the IHO noted that the student was making adequate progress toward his IEP goals.

Furthermore, the district's failure to provide Internet access so the student could use certain apps didn't deprive him of FAPE. "It is possible that the Student may obtain greater educational benefits or faster results by using iPad apps at home," the IHO wrote. However, the IDEA doesn't require districts to maximize a student's educational benefit or rate of progress. Moreover, the student's IEP didn't require Internet access or use of apps. In any case, the IHO observed, the district downloaded all of the apps the parents requested.

A is incorrect. The IDEA doesn't require a program that will further enhance a student's learning, as long as the program it offers is appropriate.

C is incorrect. The IDEA doesn't strictly require equal treatment of students. Although the parents' concern about equal treatment could implicate Section 504 and the ADA, the district's action was based on legitimate concerns about the student's inappropriate messages.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The pamphlet Legally Speaking: A Staff Training Guide for Communicating With Parents and Avoiding Conflicts in Special Education *is available at* www.shoplrp.com/product/p-300644.html.

Do efforts to defend player from bullying fall short of district's IDEA duties?

An Illinois student with ADHD, pervasive developmental disorder, and mental health issues was bullied at school. The student's basketball teammates sometimes physically and verbally harassed the student in the locker room and on the bus, referring to him using racial epithets, or calling him demeaning names, such as “skank," or pulling his pants down. The bullying incidents occurred over the course of several years.

The student's parent complained about each incident. In most instances, the district responded by investigating, and either disciplining the perpetrator or changing its practices and policies. For example, it suspended some of the harassers. In some cases, it also increased the level of the coaches' supervision at practices and on the bus to away games.

The parent alleged that the district denied the student FAPE by failing to protect him from bullying.

A district may deprive a student of FAPE if its failure to appropriately respond to bullying amounts to deliberate indifference or prevents the student from obtaining meaningful educational benefit.

Does district's response to harassment deny student FAPE?

A. No, The district had no IDEA duty to respond because the harassment was based on the student's race, not his disability.
B. Yes. The fact that the incidents continued for several years demonstrated that the district's response was ineffective.
C. No. The district took appropriate steps to address the incidents.

How the IHO found: C.

The district's actions in disciplining perpetrators and taking other steps to reduce the opportunities for students to engage in harassment demonstrated that its response was not indifferent. *Pikeland Cmty. Unit Sch. Dist.* 10, 113 LRP 29936 (SEA IL 07/12/13).

There was no doubt that the student was bullied for several years, the IHO wrote. However, the evidence showed that the district took prompt and appropriate action in most instances, investigating each complaint of bullying and racially tinged name-calling. It punished the perpetrators and made changes to its policies where appropriate.

"While the District's documented actions may not have been as effective as they could have been, the evidence submitted does not support that the district displayed any deliberate indifference," the IHO wrote. Nor did any flaws in the district's response prevent the student from obtaining meaningful educational benefit.

Editor's note: This feature is *not intended* as *instructional material* or *to replace legal advice.*

Resource: The 90-minute audio CD Game On: Following OCR's Guidance for Including Students With Disabilities in Athletics *is available at* www.shoplrp.com/product/p-3801.091213.htrnl.

Do student's suspensions for disruption require MD review?

An Ohio student with multiple disabilities who attended a self-contained class violated the code of conduct almost daily during the 20J2-13 school year, according to school officials. She was suspended out of school for three school days beginning March 13, 2013, after she allegedly banged on desks and walls and used profanity. The district sent the parent another notice of out-of-school suspension beginning March 25, 2013, for disruptive and "disobedient" behavior. The five-day suspension notice indicated that the student could return to school on April 8. the day after spring break. Spring break began on March 29. The student had no other suspensions that school year.

The parent filed a complaint with the Ohio ED, alleging that the district violated the IDEA by falling
to conduct an MD review.

A district must conduct an MD review when a change of placement occurs. A change of placement occurs if the student is removed from her current placement and: 1) the removal is for more than 10 consecutive school days; or 2) the student has been subjected to a series of removals that constitute a pattern because -they total more than 10 school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals. 34 CFR 300.536.

Was the district required to conduct an MD review?

A. Yes. The student missed more than 10 calendar days of school.
B. No. The student was suspended for only eight school days that school year.
C. No. The suspensions did not constitute a "pattern" of removals.

How the ED found: B.

The student was not removed from school for more than 10 school days. *Conneaut Area City Schs.*. 113 LRP 26341 (SEA OH 06/07/13).
The Ohio ED noted that the first suspension was for three school days. Although the March 25 to April 8, 2013, suspension was 13 calendar days. it constituted only five school days because the district's spring break occurred during that period, the ED determined. The ED concluded that, while the student may have engaged in daily disciplinary infractions throughout the school year, she was only actually suspended a total of eight days. Thus, the district was not required to conduct an MD review.

A is incorrect. School breaks and weekends don’t count when calculating whether the 10-day threshold has been reached.

C is incorrect. The underlying conduct in both cases was the student's disruptive and defiant behavior. Had those suspensions totaled 11 days, she would have been entitled to an MD review because the conduct was substantially similar.

Editor's note: This feature is not intended as instructional material or *to replace legal advice.*

Resource: The *90-minute audio* CD Manifestation Determinations: Preventing Errors in Your Review Process *is available at* www.shoplrp.com/product/p-3801.092413.html. •

May district place child with tendency to hit, kick in seclusion room?

A 6-year-old Maryland child with an emotional disturbance began engaging in aggressive behavior. In response, his district increased the student's various behavioral supports and conducted a behavioral assessment. The assessment indicated that the student became aggressive when over stimulated.

Based on the assessment, the district provided the student additional behavioral interventions and supports, such as sensory breaks and rewards. It also created an intervention plan that allowed the student's teacher to place him in seclusion when he acted aggressively or threatened to harm someone.

The district's "use of seclusion" forms indicated that the student was placed in the small seclusion room attached to his classroom several times for attempting to bite or hit his aide, and for threatening his teachers by facing them in a "karate stance." The room had a small window, peeling drywall, and a ledge on top of which were objects the child could have used to inflict injury.

The student's grandmother filed a complaint with the Maryland ED, claiming that the use of the room was unlawful. At the time, Maryland law prohibited seclusion except in nonemergencies unless a student's IEP described the circumstances in which seclusion could be used. It also required seclusion rooms to be free of objects with which a student could self-inflict bodily harm.

Is the district's seclusion of the child with ED lawful?

A. No, The IDEA prohibits the use of seclusion with students with disabilities.
B. No. The room was unsafe under state law because it contained objects the student might use to harm himself.
C. Yes. The student's "karate stance" was an emergency justifying the use of seclusion.

How the ED found: B.

Although the district used seclusion in appropriate circumstances, its seclusion room was not compliant with state law. *Baltimore City Pub. Schs.,* 113 LRP 27527 (SEA MD 03/11/13). The Maryland ED noted that the student's IEP documented the specific behaviors that would trigger the use of the room, such as when the student acted aggressively. Moreover, the district's documentation indicated that school personnel placed the student in seclusion in a manner that was consistent with his IEP. However, given that the room contained objects that the child might have used to injure himself, the use of the room was not permissible under Maryland law.

A is incorrect. Although the IDEA includes a preference for positive behavioral interventions, it does not flatly prohibit the use of seclusion.

C is incorrect. While it might be debatable whether every incident cited in the district's forms constituted an emergency, and while some states may limit the use of seclusion to emergencies. Maryland law did not.

Editor's note: This feature is not intended as instructional material or *to replace legal advice.*

Resource: The Behavior Management Guidebook: 10 Key Training Components for Staff Development *is available at w*ww.shoplrp.com/product/p-300155.html.

Does failure to create IEP for child who panics at home deny her FAPE?

The father of a California preschooler had her evaluated after staff members told him that they were having difficulty controlling her behavior. An evaluator noted, based on her one-hour observation of the child, that the preschooler was overly focused on her own desires, unduly attached to her stuffed duck, hoarded objects, fidgeted, rolled on the floor, and became distracted. She attributed the child's behavior to anxiety.

When the child entered kindergarten, she worried about schoolwork and social situations, according to her teacher's testimony. However, her difficulties dissipated as the year proceeded, and the student otherwise behaved appropriately and progressed academically.

The parent claimed that the student had panic attacks at home in response to television commercials, and would run away screaming at the thought of something she saw on television.

The district evaluated the student and concluded that she was ineligible for special education and related services under the IDEA.

The parent filed a due process complaint, claiming that the district should have found the student eligible as a child with an emotional disturbance. To be eligible as ED, a child must exhibit one of five characteristics over a long period of time, and to a marked degree, which adversely affect educational performance. The characteristic the parent cited was "inappropriate types of behavior or feelings under normal circumstances."

Did kindergartner's behaviors show that she was eligible as ED?

A. Yes. Screaming and hiding in response to the television clearly constituted inappropriate behavior.
B. Yes. The student's hoarding, distractibility, and self-absorption in preschool showed that she engaged in inappropriate behavior or feelings under normal circumstances.
C. No.The student didn't demonstrate inappropriate behavior in school.

How the ALJ ruled: C.

Neither the evaluator's statements regarding the child's behavior in preschool, nor the kindergarten teacher's testimony, suggested that the child qualified as a student with an ED. *Redwood City Seh. Dist., 113* LRP 23575 (SEA CA 05/06/13).

The ALJ concluded that the parent failed to establish that the child engaged in inappropriate behavior, or even that her behaviors in preschool were abnormal. The ALJ pointed out that the reported preschool behavior appeared to indicate, not anxiety, but rather a relatively high level of activity.

Although the evaluator stated that the student was more "fidgety" than other children, paid less attention, was attached to objects, and hoarded things, that conduct wasn't sufficient to establish the type of behavior necessary for ED eligibility. The only setting in which the student engaged in sufficiently serious behavior was at home.

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Resource: The Behavior Management Guidebook: 10 Key Training Components for Staff Development *is available at* www.shoplrp.com/product/p-300155.htrnl

Is a small, structured class overly restrictive for bright student with hearing impairment?

A 4-year-old with cochlear implants behaved appropriately and was on par with, or beyond, her typical peers when it came to learning, according to her teachers.

The district placed her inits "RSEED" class, with minimal related services, a few accommodations, and an FM system. The district's handbook described the RSEED class as a "special day class." However, the district characterized it as a general education placement offer because, although all 14 of its students that year had IEPs, only seven required specialized academic instruction – those with cognitive impairments. The others were students with hearing or speech impairments.

The class included four adults, embedded special education services, and structured small-group activities. However, the teacher stated that the class was able to provide curriculum tailored to each pupil's ability due to the high adult-student ratio.

The RSEED class contrasted starkly with the state-run general education preschool class next door, which used the general education curriculum and consisted of two adults and 24 students, two of whom and IEPs. The two classes interacted during recess and breaks in a common area between them.

The parents claimed the placement was overly restrictive. The district responded that is was a "regular education" class.

Does the RSEED placement violate LRE?

- **A. Yes**. Every student in the class had an IEP.
- **B. No**. LRE only applies to school aged children, not preschoolers.
- **C. No**. The class was capable of providing a curriculum at the student's level, and thus was a general education placement for her.

How the Administrative Law Judge ("ALJ") ruled: A.

The student was capable of succeeding in a general education classroom, but was placed in a class with no typical peers. *Redland Unified Sch. Dist*., 113 LRP 882(SEA CA 12/23/12).

The IDEA required that districts educate students with disabilities with nondisabled peers to the maximum extent appropriate. 34 SFR 300.114(a)(2).

The ALJ pointed out that the district's description of RSEED as a general education classroom clashed with reality, as well as its own handbook. In fact, its class structure and embedded services aligned with that description.

Moreover, OSEP defines a "regular" preschool as being composed of a least 50 percent nondisabled children. Here, every student had an IEP. "It does not matter, as asserted by the District, that [special academic instruction] was not included in some of the pupils' IEPs," the ALJ wrote.

Editor's note: this feature is not intended as instructional material or to replace legl advise.

Resource: The guide Educating Students With Disabilities: An Analysis of Federal Law is *available* at www.shoplrp.com/product/p-300642.html.

Must MD team factor in psychiatric diagnosis teen receives after his misconduct?

On May 2, 2013, a 17-year-old California student with a hearing impairment, ADHD, and a history of emotional and behavioral struggles became distraught during an argument with his girlfriend. He chased her through the school, banged his head against a wall, and allegedly punched a staff member. Later, he threatened to kill himself and was hospitalized.

During the hospitalization, the school psychologist visited. The parent told him that the hospital psychiatrist diagnosed the student with bipolar disorder. The student was discharged on May 7.

On May 9, a manifestation determination team, which included the school psychologist, concluded that the student's conduct wasn't a manifestation of his hearing impairment or ADHD, and placed him in an interim alternative educational setting.

The parent alleged in a due process complaint that the MD review was flawed. She stated that she informed the MD team of the bipolar diagnosis. Team members testified that they were uncertain whether she provided it.

In determining whether a disciplinary infraction is a manifestation of a disability, a district must review all relevant information in the student's file, teacher observations, and relevant information from the parent. 34 CFR 300.530(e).

Does district's failure to consider bipolar diagnosis render MD review inadequate?

A Yes. The diagnosis was relevant to whether the student's conduct was related to a disability.
B. No. The team was only required to consider relevant information available at the time of the disciplinary incident.
C. No. It was unclear whether the parent raised the issue during the MD meeting.

How the ALJ ruled: A.

Because the district was aware of the diagnosis, and the diagnosis was pertinent to determining whether the student's conduct was a manifestation of a disability, the MD team had a duty to consider it. *Roseville Joint Union High Sch. Dist*, 113 LRP 44610 (SEA CA 10/04/ 13).

The ALJ noted that, regardless of whether the parent raised the issue at the meeting, the district knew of the diagnosis as a result of the school psychologist's hospital visit. It violated the IDEA procedurally when it neglected to discuss the diagnosis, the student's suicidal ideation, or his hospitalization. The ALJ ordered the district to reinstate the student.
B is incorrect. The team was required to consider all relevant information.
C is incorrect. The district was already aware of the diagnosis, as well as the student's past behavioral episodes. Its obligation to consider the diagnosis wasn't contingent on whether the parent raised it.

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Resource: The *90-minute audio CD* Manifestation Determinations: Preventing Errors in Your Review Process *is available at* www.shoplrp.com/product/ p-3801.092413.html. •

Does creating IEP months before start of teen's school year taint her program?

In January 2011, a New York district developed an IEP for a 14-year-old with a pervasive developmental disorder for the 2011-12 school year. The IEP offered the student a 12-month program beginning in July at a special school. The district advised the parents that the team could reconvene any time to update the student's goals. The parents made no objections.

In July 2011, the parents filed a due process complaint alleging that the district violated the IDEA procedurally. They argued that the IEP team couldn't develop an appropriate program in January, because there was no way for it to know what the student's skill levels would be when the school year started.

An IHO agreed, citing a May 2011 report from the student's unilateral placement as evidence that the IEP didn't reflect her present levels of academic achievement and functional performance. An SRO reversed the IHO's finding, and the parents appealed.

The IDEA requires that each student with a disability have an IEP in place at the start of the school year. 34 CFR 300.323(a).

Is gap between IEP development, implementation, a procedural violation of the IDEA?

A Yes. The IDEA requires an IEP to be implemented within a reasonable time after it's developed.
B. No. It was up to the district when to develop the IEP, as long as it was before the student's school year started.
C. Yes. The May 2011 report demonstrated that the IEP didn't reflect the student's present levels of performance.

How the court ruled: B.

Observing that the IDEA doesn't require a district to develop an IEP at any particular time, the court affirmed the SRO's decision in the district's favor. J.M. *and* N.M. *ex rel. L.M. v. New York City Dep't of Educ.*, 113 LRP 45259 (S.D.N.Y. 11/07 /13).

The court pointed out that the IDEA only sets forth two timing requirements with regard to IEP development: 1) the district must ensure the IEP team reviews the student's program at least once a year; and 2) the district must ensure that each student has an IEP in place at the start of the school year. 'There is no allegation ... that either of these requirements was lacking," U.S. District Judge Katherine Polk Failla wrote. Moreover, parents participated in the January meeting and didn't object to its timing or to the proposed program.
A is incorrect. The IDEA does not require an IEP to be developed at a particular point, as long as it is in place by the first day of school.
C is incorrect. Because the appropriateness of an IEP is determined prospectively, the IHO erred by relying on the report.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The 90-minute audio CD Avoiding Cookie Cutter IEPs: Develop Individualized, Clear IEPs ...Prevent Costly Errors, Confusion *is available at* www.shoplrp.com/ product/ p-3801. 032113 .html.

Must district assess student who is often anxious in class?

The parents of a student with an intellectual disability and autism provided their Oregon district with a hospital report diagnosing the student with, and recommending that she be treated for, anxiety. The student's triennial review also indicated enough concerns regarding anxiety that the district convened an IEP team meeting to address the issue.

At the meeting, the team discussed the student's fear of making mistakes and testing-related anxieties. The student would become physically ill from stress, rushed through assignments and tests in an effort to finish first, and sought constant reassurance from teachers. The district did not evaluate her anxiety or offer counseling, but it addressed the issue in the IEP with extended time to complete assignments and tests. Another provision stated that she would ask for assistance appropriately.

The parents filed for due process, contending that in failing to evaluate the student's anxiety, the district denied her FAPE.

Is failure to address high schooler's anxiety a denial of FAPE?

A. Yes. The district knew the student's anxiety impacted her ability to complete work.
B. No. The student's behavior was more of a problem for the students around her and teachers than it was for her.
C. No. While the district failed to evaluate her anxiety, the accommodations in the IEP rendered the error harmless.

How the ALJ ruled: A

The district overlooked red flags that the student had an anxiety-related disability that was impacting her education. *Forest Grove Sch. Dist.*, 112 LRP47139 (SEA OR 09/12/12).

The ALJ explained that a district needn't evaluate a child in every conceivable area. However, it must assess a child in all areas of suspected disability. 34 CFR 300.304(c)(4).

Here, the district was required to assess the student's anxious behaviors. The ALJ pointed to the IEP team's discussion of the student's fear of mistakes and anxiety related to testing. "This was sufficient information to trigger the District's obligation to offer to evaluate Student in the area of anxiety," the ALJ wrote.

The hospital report and triennial reviews were further indications of significant anxiety. Yet no evaluations were completed to determine why the student was exhibiting the behaviors and how they were interfering with her education - information that was critical to developing an IEP that addressed her needs.

B is incorrect. Behavior must be addressed if it impedes either the student's learning or the learning of others.

C is incorrect. Without an evaluation, it was not possible to conclude that the accommodations addressed the issue, particularly where the district did not offer counseling.

Editor's note: This feature is not intended as instructional material or to replace legal advice. Learn more about the 90-minute audio CD

Strategies to Support Students With Anxiety and Depression *at* www.shoplrp.com/product /p-3801.040312.html. •

Is MD team's focus on student's control over his behavior proper?

A student with ADHD received four separate three-day, out-of-school suspensions over a period of several months. The first was for tobacco possession, the second for defacing property, and the last two for harassment.

The student's Pennsylvania district and his parent met to determine whether the conduct was a manifestation of his disability.

The team concluded that the student "has not demonstrated a pattern of uncontrollable behavior." The worksheet from the meeting, as well as the testimony of school officials who participated, revealed that the team's analysis of whether there was a connection between the conduct and disability rested solely on its conclusions that there was no pattern of behavior, that the student was able to control his conduct, and that he knew right from wrong.

The parent challenged the decision in a due process hearing.

Is the district's MD review appropriate?

A Yes. It correctly considered whether the student was in control of his behavior.
B. No. It didn't utilize the correct legal standard.
C. No. The district reached the wrong conclusion when it determined that the conduct at issue did not create a pattern.

How the IHO found: B.

The district failed to apply the IDEA's standard for whether conduct is a manifestation of a disability. *Tunkhannock Sch. Dist.*, 112 LRP 33640 (SEA PA 06/12/12).

Conduct is a manifestation of a disability if it was caused by, or had a direct and substantial relationship to, the child's disability; or was the direct result of an IEP implementation failure. 34 CFR 300.530(e)(l).

The IHO pointed out that, rather than utilizing the IDEA test for whether conduct is a manifestation of a disability, the MD team considered whether the student "knew right from wrong" and whether his conduct was "uncontrollable." The worksheet confirmed that the team never considered whether the conduct was caused by or directly related to his ADHD. Finally, the team appeared to confuse the rules for establishing a pattern of removals with the standard for whether behavior is a manifestation.

A is incorrect. The student's ability to control his behavior was relevant to whether he was acting impulsively during the incidents in question. However, the team was still required to apply the correct legal standard during the meeting.

C is incorrect. The district reached the correct conclusion that no pattern of removals existed. The four incidents did not involve substantially similar behavior, and were not in close proximity to one another. However, the issue in this case was not whether the team made a correct determination, but whether the MD review was procedurally deficient.

Editor's note: This feature is not intended as instructional material or to replace legal advice.

Resource: The 90-minute audio CD, The Nuts & Bolts of Manifestation Determinations, *is available at* www.shoplrp.com/product/p-3801 .100412.html. •A