

SPECIAL POINTS OF IN- TEREST:

- IEP Teams may consider alternatives to suspension for disciplinary infractions
- Supreme Court affirms Third Circuit's standard for monetary damages under Section 504
- Test your knowledge regarding requests for IEEs
- Schools must analyze whether suspensions were based on a pattern of removal when imposing discipline

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Disciplinary Options

Schools are limited in the disciplinary action that can be imposed for students with disabilities under the IDEA. Principals must balance following the legal protections afforded to the students under federal and state laws and maintaining order in the school. Schools also must ensure that students with disabilities are not discriminated against on the basis of their disability. Finally,

students with disabilities maintain the right to receive a free, appropriate public education, even if they are suspended or expelled.

Principals are limited to removing a student with a disability to 10 consecutive or 15 total days of suspension in a school year, unless the behavior is not a manifestation of the child's disability, leaving educators with the question of what consequences

can legally be imposed aside from suspension?

Remember that behavior management is an important component in implementing FAPE. Teams should discuss what consequences that the student might face for violations of the student code of conduct. This eliminates any surprises to the family if discipline is necessary.

This article will explore options that are and are not available.

[Read More about Disciplinary Options on page 3](#)

Independent Educational Evaluation Requests

Under the IDEA, parents have the right to request an Independent Educational Evaluation (IEE) at public expense if they disagree with a school district's evaluation of their child. When a parent requests an IEE, the district must, without unnecessary delay, either agree to provide the IEE at public expense or initiate a due process hearing to show that its own evaluation is appropriate. Parents may also obtain IEEs at their own expense. The results of an IEE must be considered by the District. What is a school's obligation under Section 504?

[Review Requirements for IEEs Under Section 504 on page 5](#)

CASE LAW UPDATE

Supreme Court Issues Decision on Deliberate Indifference in *A.J.T. v. Osseo Area School District*

The U.S. Supreme Court's unanimous decision in *A.J.T. v. Osseo Area Schools* (June 12, 2025) marked a major win for disability rights, clarifying that students with disabilities pursuing discrimination claims under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act are held to the **same standards as other ADA/504 plaintiffs**, not a higher one.

For families and schools in Pennsylvania, however, the ruling brings **clarity but not change**. The Third Circuit, which covers Pennsylvania, had already applied the lower "deliberate indifference" standard, rather than the heightened "bad faith or gross misjudgment" requirement struck down by the Court.

What The Supreme Court Held

The case involved a Minnesota student with epilepsy who alleged that his district denied him evening instruction needed to recover missed classroom time. The Eighth Circuit dismissed his ADA and Section 504 claims, applying the "bad faith or gross misjudgment" standard unique to certain circuits.

In reversing, the Supreme Court explained:

- **Education is not exempt** from federal civil rights protections.
- To prove discrimination, students need only meet the same requirements that apply in other ADA/504 contexts.
- For compensatory damages, plaintiffs must show **deliberate indifference**—meaning the school knew of a risk to the student's rights and failed to act.
- Injunctive relief (such as requiring access or

accommodations) does not require proof of intent.

Justice Jackson, writing for a unanimous Court, emphasized that "[s]tudents with disabilities should not face a heavier burden to vindicate their civil rights than other individuals."

The Effect On Pennsylvania Law

The Third Circuit Court of Appeals has never imposed the "bad faith or gross misjudgment" standard. For years, Pennsylvania courts have used the **deliberate indifference test** for ADA and Section 504 claims in education, the same test now confirmed by the Supreme Court.

Therefore, in Pennsylvania, the decision is more of a confirmation than a change. This case simply creates the same standard in each State and confirms what the PA Courts have consistently held. Thus no change is required in Pennsylvania.

Impact on Schools

The case highlights that monetary damage are available to families under Section 504 and the ADA where parents can prove deliberate indifference. Policies and procedures remain unchanged, but the decision underscores the need to respond promptly and meaningfully to disability-related requests, issues or risks. Ignoring them may support a discrimination claim.

Deliberate indifference is still a much higher standard to prove than a simple denial of FAPE. A denial of FAPE occurs when a student's IEP is not reasonably calculated to provide meaningful educational benefit. This deficiency may result from errors in judgment, inadequate expertise, or even negligence—none of which rise to the level of deliberate indifference. Deliberate indifference requires **proof that the school knew of a substantial risk to the student's rights and consciously disregarded it**. Thus, a school might provide an inappropriate program that denies FAPE, but if it genuinely attempted to develop an appropriate plan and simply made mistakes in execution or methodology, it likely will not meet the higher threshold of deliberate indifference.



DISCIPLINARY OPTIONS

(Continued from page 1)

In-School Suspension (ISS)

In-school suspension is a common disciplinary option that removes a student from the regular classroom but allows the student to remain in school and typically continue receiving instruction. Under the IDEA, an in-school suspension will likely not count as a removal if the student:

- Continues to receive services outlined in the IEP
- Has the opportunity to progress in the general curriculum, and
- Is included with nondisabled peers to the extent possible.

However, if in-school suspension is used in a way that significantly limits a student's access to special education services or the District is unable to implement the student's IEP in that setting, it may constitute a change in placement and trigger procedural safeguards, including a manifestation determination.

Bus Suspensions

For many students with disabilities, transportation is considered a related service under IDEA. If transportation is part of a student's IEP, suspension from the bus can effectively equal a suspension from school unless the district provides an alternative method of transportation. In those cases, a bus suspension may count toward the 10/15 day limit of removals that can trigger a change in placement. Districts must consider whether bus behavior is related to the student's disability and whether behavioral supports should be added to the IEP or whether the IEP should be revised.

Field Trip Exclusions

Schools sometimes attempt to exclude students with disabilities from field trips due to safety or behavior concerns. However, blanket exclusions or decisions made without individualized consideration may violate the IDEA, Section 504 and the ADA. Unless the school can demonstrate that participation would pose a **direct threat** that cannot be mitigated with reasonable accommodations, students with disabilities must be given equal opportunity to attend field trips. If a student requires additional supports to participate, schools must provide them to avoid discrimination.

If all students must meet certain criteria to attend a field trip or if other students are also limited in participating in a field trip due to disciplinary reasons, the District may be able to limit a student with a disability from attending if they are being treated the same as others. IEP Teams however, should always review whether the behavior is a manifestation of the child's disability before making a decision to exclude participation in a field trip.

Extra-Curricular Activities

Participation in extracurricular activities—including clubs, sports, and school-sponsored events—is also protected under the IDEA, Section 504 and the ADA. Excluding a student with a disability from extracurricular activities solely because of behavioral or disability-related concerns may be discriminatory. Schools are obligated to provide reasonable modifications and supports—including behavior management - unless doing so would fundamentally alter the activity or create a direct safety risk. Discipline that limits extracurricular participation must be applied consistently with how the school disciplines nondisabled students, and schools must ensure that the exclusion does not deny equal access.

What To Know About Patterns of Removal

	<p>Under the IDEA and PA Chapter 14 Regulations, schools are permitted to suspend a student with a disability for up to 10 consecutive days or 15 total days in a school year, without holding a manifestation determination, unless the conduct constitutes a “pattern of removal.” The decision of whether there is a pattern of removal should be made on a case-by-case basis.</p>
Definition of Pattern of Removal	<ul style="list-style-type: none"> • Cumulative short term suspensions constitute a pattern and a change of placement if: <ul style="list-style-type: none"> • The series of removals total more than 10 school days in the school year; • The child’s behavior is substantially similar to the behavior in previous incidents that resulted in removals; or • Additional factors, such as the length of each removal, the total amount of times the child has been removed and the proximity of the removals indicate a pattern
Number of Days	<ul style="list-style-type: none"> • In PA, schools are limited to 15 total days in the school year • Review behavior for a pattern starting with the 11th day of suspension
Was the Behavior Substantially Similar?	<ul style="list-style-type: none"> • Review each behavior that led to a disciplinary removal • Look at descriptions of the behavior not just the actual infraction (different teachers may code the same behavior differently) • Even if the behaviors were coded as different types of infractions, were the underlying actions similar?—for example, each behavior removal involved confrontation with peers.
Look at Duration and Proximity of Removals	<ul style="list-style-type: none"> • Has the student been suspended multiple times this month? • How many days was the student suspended so far this year—we have to review after the 11th day of suspension • Have the days of suspension been increasing? • If the student has been removed multiple times within a short period it should be a red flag that something is not working.
Consultation with IEP Team	<ul style="list-style-type: none"> • If patterns of behavior are shown prior to the 11th day, consult with the IEP Team or hold an IEP meeting • Consider whether a reevaluation/FBA should be conducted • Consider whether to revise the child’s PBSP • Goal is to prevent the behavior from occurring so there is not a pattern that will lead to disciplinary removals.

WHAT DO YOU THINK?

Ethan, is a seventh-grade student who has a Section 504 plan for ADHD and anxiety. His plan provides accommodations such as extended time on tests, preferential seating, and check-ins with the school counselor.

At the most recent 504 review meeting, the school presented the results of its evaluation, which concluded that Ethan's academic performance was within grade level expectations and that no additional accommodations or services were necessary. The evaluation was conducted by the school psychologist and based on classroom observations, teacher reports, and standardized test scores.

His mother disagreed with the findings. She felt the school's evaluation did not fully capture Ethan's struggles with executive functioning, organization, and the impact of his anxiety on test performance. She believed the school overlooked how much Ethan relies on her at home to complete assignments and manage deadlines. She believes he needs additional accommodations in his 504 Plan

After the meeting, his mother sent an email to the 504 Coordinator requesting an Independent Educational Evaluation (IEE) at public expense. What is the school required to do?

- A. The District must agree to pay for an IEE or request a due process hearing
- B. The District must conduct its own reevaluation if the parent disagrees
- C. The District can deny the request for an IEE

Unlike the IDEA, Section 504 of the Rehabilitation Act does **not** provide parents with the right to an IEE at public expense. While schools may consider outside evaluations provided by parents, Section 504 regulations do not require districts to fund an IEE or respond to such a request in the same manner as under IDEA. Instead, the Section 504 team is responsible for drawing upon a variety of sources—including teacher reports, grades, medical information, and observations—to determine whether a student has a disability and what accommodations are needed. Parents always have the option to obtain an independent evaluation at their own expense and present it to the 504 team for consideration, but the district is not obligated to pay for it under Section 504. If you said "C" you were correct!



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Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



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Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.