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The Safe Schools Act and Special Education

Does the Safe School Law apply to special education students?

State laws, such as Texas' Safe Schools Act, cannot override the provisions in the Individuals with Disabilities Education Act (IDEA), the federal law that governs most facets of the education of students who have been identified as having a disability. Therefore, the Safe Schools Act does apply to special education students, but only to the extent that the state provisions do not conflict with the IDEA.

Under the Safe Schools Act, a teacher may remove from class a student: (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn. For students removed under this provision, the principal may not return the student to that teacher's class without the teacher's consent unless a placement review committee determines that such placement is the best or only alternative available.

IDEA, however, contains a "stay put" provision providing that the special education student must remain in the current educational placement during the pendency of any proceedings, such as a parent's appeal of an Admission, Review, and Dismissal (ARD) committee decision, unless the involved parties agree otherwise. So, if the student is removed from the classroom under the Safe Schools Act for more than ten days and the parties don't agree on an alternative placement, the disruptive special education student may eventually be returned to his original classroom assignment under the "stay put" provision, the teacher's objections notwithstanding. Moreover, unless a special education student's ARD committee approves a permanent change in placement, the student will remain in that class.

Nevertheless, parts of the Safe Schools Act are still applicable to special education students. For example, a special education student may be suspended or removed to an alternative education program in the same manner as students without disabilities for a period of not more than ten school days. For a suspension or removal to trigger the ten-day limitation, a "change in placement" must occur. The removal or suspension of a special education student from the regular classroom placement set forth in his IEP will not be considered a "change in placement" unless it falls under one of the following definitions:

- 1) The removal is for more than ten consecutive school days; or
- 2) The child is subjected to a series of removals that constitute a "pattern" of removal because the removals cumulate to more than ten school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

So, a series of short-term suspensions or removals under the Safe Schools Act that cumulate to more than ten school days may be considered a change in placement, requiring an evaluation by the ARD committee; but, this is determined on a case by case basis. If the removals do constitute a change of placement, an ARD committee meeting must be held to evaluate the removals and assess and address the behavior. Specifically, the federal regulations state that the ARD meeting must be held "not later than 10 business days after...first removing the child for more than 10 school days in a school year."

If the Safe Schools Act were applied to a special education student such that the alternative placement met those three conditions, then, the removal would not count towards the ten-day limit imposed by the federal law.

At the other extreme, emergency removal is also an option that may be applied to special education students. In the event of compelling reasons such as possession of a weapon or drugs on campus or a clear danger of physical harm to self or others, the student may be removed from the class or school for a maximum of 45 days. In this situation, the school district must request an order from an impartial special education hearing officer appointed by the Texas Education Agency to place the student in an alternative setting for up to 45 calendar days. If the district is successful, the "stay put" provision is not applicable even if the parents challenge the change in placement through a due process hearing.

When dealing with a consistently disruptive special education student, a teacher should seek the assistance of the school district's special education administrators. And, as always, it is critical that the teacher carefully document the disruptive conduct so that the teacher will have the necessary "proof" when he or she goes to the administration, and the administration will have the same "proof" when they talk to the parents.

Thus, while the removal provisions applicable to special education students are driven by federal instead of state laws, the Safe Schools Act

and other disciplinary tools may be applied to a special education student without running afoul of the federal requirements.