



**Key points:**

- Schools cannot discipline students with disabilities more harshly than other students based on disability
- Administrators can consider factors such as age, involvement in incident, history of misconduct
- Use data to spot disciplinary trends that have disparate impact

**Tips to avoid disparate discipline measures**

When a student with ADD and an anxiety disorder urinated on the floor, walls, and sink of a school bathroom, an administrator investigated the incident and gave the student "Saturday detention" for defacing school property.

The parent of the student with ADD alleged that the district disciplined her son more harshly than other students involved in the incident based on his disability. Specifically, she claimed that her son became anxious when another student turned off the lights in the bathroom, causing him to urinate on the floor. Considering the accounts of other witnesses, the court sided with the administrator's decision in *Held v. Northshore School District*, [114 LRP 49870](#), (W.D. Wash. 11/17/14).

There is a constellation of factors that might lead an administrator to dole out separate consequences for two students involved in the same incident, said Julie Fay, school attorney with [Shipman & Goodwin LLP](#) in Hartford, Conn. This includes the age of the students involved, whether they were warned not to engage in the incident beforehand, and the extent to which they were involved in the incident.

However, civil rights laws, including Section 504, prohibit districts from using a student's disability or other protected characteristics, such as race or gender, as the basis for [disciplining](#) two similarly situated students differently, Fay said.

"That isn't to ensure that students with disabilities *never* get disciplined, but it's to ensure that they're not excluded from a program in a significant way on the basis of their disability," Fay said.

The process for investigating and disciplining students with or without disabilities should be equal and neutral, she said. "There should be fairness in the results, but that doesn't necessarily mean the *same* results for all kids involved," she said.

Consider the following:

- **Use data to spot disparate discipline issues.** While a single disciplinary incident might not appear discriminatory, districts might find that on a larger scale, students with disabilities or other protected characteristics are disciplined more often than their peers, said Julie Hall-Panameño, director of the [Educational Equity Compliance Office](#) for the [Los Angeles \(Calif.\) Unified School District](#). Schools should be collecting data about the use of exclusionary practices that take students out of the instructional environment, she said. "Look for patterns, for instance, where students with disabilities are more frequently referred to the office," she said.

Since undergoing a corrective action plan with OCR four years ago regarding its disciplinary policies and procedures, LAUSD has made [changes to correct districtwide disparate discipline](#), Hall-Panameño said.

"We've revisited our discipline foundation policy and focused on schoolwide positive behavior supports and restorative justice practices to get away from punitive responses that result in exclusion," she said.

Specifically, the district removed a policy of suspending students engaged in infractions that were characterized as "willful defiance," she said. "That can come up when staff are dealing with a student with ADD where a lack of focus or conduct might easily be categorized as 'willful defiance,'" she said. "Train school staff to address behaviors proactively and to teach students the skills that they need to behave in a situation, instead of disenfranchising students by having them excluded from school," advised Hall-Panameño.

**•Offer consistent but flexible disciplinary response.** Be aware of whether a student involved in a single problem incident has an IEP or Section 504 plan, Fay said. The student's team should be notified if a pattern of behavior starts to occur, she said. However, when there's a single incident involving "behavior that's outside normal behavior for that child, then we don't have the data to quickly make a link that it's caused by disability," she said. Administrators have the authority to determine discipline that does not result in a change of placement, she said.

In these situations, use the same standards for investigating incidents involving students with or without disabilities, she said. Look at past incidents and consider what type of intervention or consequences were used for other students involved in similar situations, she said.

"There also has to be a balance between trying to provide consistency in the response ... with still having a degree of flexibility to respond to situations," Fay said. For instance, you can consider factors such as the nature of the offense, context, prior disciplinary record, and student conduct during the investigation process to distinguish between two students involved in the same incident, she said. In *Northshore*, the students received different consequences because they played very different roles in the incident, not because of one student's disability, Fay said.

**•Investigate parent claims and be transparent.** Do not discuss other students involved in the incident with parents, Fay said. If a parent makes a claim that their child received disparate discipline, inform them of your district's formal grievance procedures, Fay said. Conduct an investigation into whether disparate discipline occurred and inform the parent of your findings and any necessary remedies, Fay said.

Be transparent about your investigation into disciplinary incidents from the beginning, she said. Reinforce that the disciplinary process and standards are the same for all students even if the results are different for each student involved, she said. Remind parents that, "We can make distinctions between and among students based on a number of factors, such as their role in the misconduct," she said.

See also:

- [Revamp district code of conduct to improve conditions for learning](#) (Jan. 15)
- [Researchers find racial, disability disparities in school discipline](#) (March 17)
- [OCR, DOJ urge districts to review discipline policies for racial bias](#) (Jan. 8, 2014)

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