



**Key points:**

- Review records to determine source of student's misbehavior
- Gauge student's progress with interventions, in-school suspensions
- Prioritize communication with parents to ward off disputes

**Investigate root of misconduct to rule out prior knowledge of disability**

A kindergartner accumulates a number of suspensions for failing to follow directions, acting distracted, and talking during lessons. With intervention, he makes academic and behavioral progress.

But then, over the course of a month, he becomes insubordinate, yells at his teacher, and hides under desks, prompting the educator to evacuate the classroom.

The teacher attributes the child's misconduct to his young age, lack of school readiness, and difficulty coping with his parents' divorce.

The charter school's disciplinary committee decides in December that the student should be suspended for the rest of the school year.

The child's parents claim that the school denied their child FAPE for imposing disciplinary measures without affording him protections under the IDEA. They claim the school should have conducted an evaluation.

The ALJ in *Pointe Educational Services*, [12 ECLPR 102](#) (SEA AZ 2015), disagreed. Believing that the district had no basis of knowledge that the child had a disability, the ALJ determined that the child could receive the same discipline a child without a disability would receive.

Don't get drawn into a similar dispute. Review the child's disciplinary history to determine if the behaviors leading to his manifestation determination review are new and likely short-lived. Examine the effect of interventions and whether they have been delivered with fidelity. Assign in-school suspensions when necessary. Maintain communication with the child's parents to stay abreast of what is happening at home.

"I was a little surprised by the outcome of this case," said Michelle Laubin, a school attorney at [Berchem, Moses & Devlin PC](#). "If I were presented with a similar child with academic and behavioral difficulties -- tantrums, hiding under the desk, running around the room -- I would question when you have a responsibility to refer the child. I would be hard-pressed to say no to a referral."

Another district may want to bring everyone together for an IEP team meeting to discuss the teacher's professional judgment about the child's challenges, Laubin said.

"All of this information about the parents' divorce and the child's not attending preschool would be examined by that multidisciplinary team," she said. "In an ideal world, that's what would have happened here."

Take these steps:

- **Review records:** The IDEA asserts that a district can be deemed to have a basis of knowledge of a child's disability if the child's teacher has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other district supervisory personnel. [34 CFR 300.534](#) (b)(3). If a teacher believes a pattern of behavior is just situational, as in the Arizona case, look into the child's disciplinary history to confirm this before meting out discipline you would give to a student without a disability, said Anne Littlefield, a school attorney at [Shipman & Goodwin LLP](#). If a teacher believes the student's behaviors can be linked to his parents' divorce, for example, it's important to understand whether the student exhibited those behaviors in the years before the parents' rift. "You want to show that you tried to understand better what was driving the child's behavior," Littlefield said.

- **Gauge effectiveness of interventions:** Consider positive interventions and supports if you are considering disciplining a student for acting out and you don't think he has a disability, Littlefield said. "You can offer counseling or some other type of supports and it wouldn't have to be through the IDEA or Section 504," she said. You can implement positive behavioral interventions and supports in general education.

- **Consider alternatives to suspension:** Recognize that you may have set the student up for failure by constantly removing him from the classroom, Laubin said. "The more you suspend young children in particular from school because of behavioral issues, the more you deprive them from learning the behaviors you want them to demonstrate," she said. "You reduce their ability to attain the skills." Assign in-school suspensions when necessary so the student can continue to learn and you can see what difficulties he may have outside his traditional classroom, Laubin said.

- **Prioritize communication with parents:** Find out if the student's parents have been seeing similar behaviors at home, what interventions have worked, what interventions haven't worked, and how long the family has been trying to intervene, Littlefield said. "Good communication with the home is best practice," she said. "Everybody can be out in front of it before it mushrooms into something problematic in terms of long-term exclusion. Or, if it turns out there is a disability, you can get it into the [communication] pipeline sooner."

See also:

- Fact or Fiction: [Manifestation determinations](#) (Feb. 24)
- [Reconsider placement after manifestation determination review](#) (Jan. 9)
- [Q&A: Clarify when, how to properly impose, rescind suspensions](#) (Sept. 12)

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