

**SPECIAL  
POINTS OF IN-  
TEREST:**

- For transfer students with 504 Plans, schools can decide whether to implement the current plan or evaluate
- Special Education teams must be consulted if a Title IX complaint involves a student with a disability
- Parents can agree to extend a unilateral 45 day placement
- Manifestation determinations are not always necessary for 504 students in possession of or using illegal drugs or alcohol

**INSIDE THIS  
ISSUE:**

Transfer Students	P. 1, 5
Title IX and the IDEA	P. 1, 3
Case Law Update	P. 2
What Do You Think?	P. 4

## TRANSFER STUDENTS

The IDEA fairly clearly outlines a school district's responsibility for a student who transfers into the District from either in state or out of state with an IEP.

Pursuant to Section 1414, in the case of a child with a disability who transfers from one PA school districts to another, the receiving PA school district shall provide such child with FAPE, including services comparable to

those described in the previously held IEP, in consultation with the parents until such time as the District adopts the previously held IEP or develops, adopts, and implements a new IEP. For students transferring from outside of PA, the District must also provide the child with FAPE, including comparable services described in the current IEP until the District conducts an evaluation

and develops a new IEP.

Section 504, however, is not as clear. Section 504 only requires the a District ensures that all qualified students with disabilities in the District receive FAPE, which extends to students who move into the district with a 504 plan in place. The Office for Civil Rights (OCR) has provided some guidance on this issue.

[Read More about OCR's Guidance on 504 Transfer Students on page 5](#)

---

## How the New Title IX Regulations Affect Special Education

The U.S. Department of Education released final Regulations on April 19, 2024 for Title IX, the federal civil rights statute that prohibits discrimination on the basis of sex in education programs. While the Regulations do not speak in depth on how Title IX and the IDEA or Section 504 interact, there are a few new references to special education students who are involved in Title IX Complaints and requirements for IEP or 504 Teams if that should occur. Those new provisions will be outlined in this article. .

[See Title IX Regulations Impacting Special Education on page 3](#)

## CASE LAW UPDATE

### **Jordan L. v. East Stroudsburg**

#### **Area School District**

**M.D. PA**

#### **45 Day Placement/Manifestation Determination**

**Issue:** High School student's grandparents, who are also his legal guardian challenged the decision of a hearing officer that the District's manifestation determinations and alternative placements were appropriate.

**Facts:** Jordan L. is a former student in the District who qualified for special education services based on a learning disability, ADHD and autism. Student had accumulated 15 days of suspension when he brought a weapon to school. The District suspended Jordan for an additional 5 days and held a manifestation determination. The parties agreed that this was not a manifestation of Jordan's disability and he was placed at Colonial Academy run by the District's IU.

Before the end of the 45 day placement, grandfather met with the principal and verbally agreed to extend the placement to the end of the marking period. No NOREP was issued reflecting this agreement, but a NOREP was issued at the end of extension for Jordan's return to the high school. Grandmother signed the NOREP in agreement.

Less than a month after he returned to the high school, Jordan sent a threatening text message a student threatening to shoot up the school and murder another student. He was suspended and a manifestation determination meeting was held. He was Court placed at George Jr. Republic and the District expelled him for one year.

**Request for a Hearing:** The following summer grandparents filed for due process. They made two arguments: 1) that Jordan was denied FAPE due to untimely and inappropriate manifestation determination; and 2) Jordan was denied FAPE due to the extension of the 45 day placement without issuing a NOREP.

**Analysis:** Grandparents appealed the hearing officer's decision finding in favor of the School District. Grandparents argue that the first manifestation determination was untimely because Jordan already had 20 days of suspension when the meeting was held. However, the Court held that the manifestation determination meeting was proper in that it was held within 10 days of the date Jordan brought a knife to school.

Grandparents also contend that the determinations were improper because the District did not answer every question on PATTAN's manifestation determination worksheet. However, the Court found that the only two questions that legally must be answered are whether the conduct in question was caused by, or had a direct and substantial relationship to the child's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP. There is no legal requirement that any other questions have to be answered. The Court found that the Team, including grandparents had a lengthy conversation and reached meaningful conclusions regarding the two questions.

The Court also rejected grandparents' argument that the extension of the 45 day placement was improper because there was no NOREP and no hearing officer decision. Grandmother now claimed that grandfather was not Jordan's guardian and therefore did not have the authority to agree to extend the placement. She produced no documentation however to support this argument. Further, he had previously signed documents on Jordan's behalf with no argument from the grandmother. Therefore, despite no NOREP documenting the extension, the Court found that Jordan's grandfather was aware of and agreed to the extension. Additionally, even if a NOREP was required, it was a procedural error that did not result in a denial of FAPE for Jordan.

Both the hearing officer and court found that grandparents were active participants in all decisions that were made and did not disagree with any decisions made for Jordan at the time. The Court therefore upheld the decision in favor of the District.



## Title IX and the IDEA

*(Continued from page 1)*

**34 C.F.R. 106.8(e): Consultation With IEP Team Members:** This is a new provision added to the Title IX Regulations. It does not establish a bright-line rule for determining how Title IX intersects with a school district's obligations under the IDEA or Section 504. However, it does identify new procedures that a school must follow when a Title IX complaint involves a student with a disability.

Pursuant to the Regulations, if either the complainant or the respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more members of the student's IEP Team or Section 504 Team to determine how the school will also comply with the IDEA and Section 504 while implementing the Title IX grievance procedure.

The sections does not outline how a district will accomplish this; but presumably this means that the Team must ensure that discipline procedures are followed; procedures to change educational placements are followed; and that the student continued to receive FAPE during the Title IX process. Additionally, this consultation should also include a discussion on whether the student should be reevaluated or the IEP should be revised.

**34 C.F.R. 106.44(g): Supportive Measures:** When a Title IX Complaint is brought to the attention of the Title IX Coordinator, supportive measures are required to be offered to both the complainant and the respondent. Supportive measures can include counseling, extending deadlines or other course adjustments, modifying work or class schedules, mutual restrictions on contacts between the parties, or increased security. Supportive measures

are non-disciplinary and non-punitive.

The new Regulations provide that if the complainant or respondent is an elementary or secondary school student with a disability, the Title IX Coordinator must seek guidance on the implementation of supportive measures from one or more members of the student's IEP team or Section 504 team.

**34 C.F.R. 106.44(h): Emergency Removals:** The revised revision still allows an LEA to remove a respondent from its education program or activity on an emergency basis following an individualized safety and risk analysis. In the official comments to the 2024 regulations, the Department of Education addressed how this relates to special education rights under the IDEA and Section 504.

The Department of Education said that the emergency removal provision of Title IX does not modify or change any rights that students with disabilities might have under the IDEA, Section 504 or the ADA. This includes the right to a manifestation review prior to changing a disabled student's educational placement, even in emergency situations.

Accordingly, the Department recognizes that an LEA may need to treat emergency removals of students with disabilities differently than emergency removals of nondisabled students. It also provides that Title IX does not require an LEA to remove a respondent student with a disability if the team determines that the threat posed by the student is a manifestation of the student's disability.

Based on these new provisions, Special Education Directors should become familiar with these requirements for students with disabilities.

## WHAT DO YOU THINK?

John is a senior in your District with a 504 Plan for ADHD. It is reported that John was smoking marijuana in the bathroom. John is called to the office. His eyes are bloodshot and he is very groggy and slurring his speech. After some questioning, he admits to having a vape with marijuana in it and hands it over. Your District is cracking down on vaping in school, especially when it contains marijuana and you are moving for an expulsion. Parents claim that this is related to his ADHD disability and ask for a manifestation determination meeting. Are you required to hold one?



- A. Yes: a manifestation determination is always required under Section 504 prior to an expulsion.
- B. No: manifestation determinations are not required under Section 504.
- C. No: Possession and use of an illegal drug exempts a student from 504 protections.

Although Section 504 does not use the term "manifestation determination" it does provide that students with disabilities cannot be punished for manifestations of their disability. OCR has interpreted this to mean that districts are required to hold manifestation determinations if discipline is planned that will constitute a change in educational placement. However, Section 504 specifically exempts protections for student who are currently using, possessing or distributing illegal drugs. Therefore in most situations involving use or possession of drugs, manifestation determinations for Section 504 students are not required. Remember that manifestation determinations are required under the IDEA for possession or use of drugs, even when the District can unilaterally invoke a 45 day placement. The Answer is C!

\*\* always consult your solicitor for disciplinary issues!

## 504 Transfer Students

<b>TEAM CONSIDERATIONS</b> <b>(For Both In State and Out of State Transfers)</b>	
<b>Review incoming 504 Plan and supporting documentation</b>	<ul style="list-style-type: none"> <li>• Should be conducted by a group that includes people knowledgeable about the meaning of the evaluation data</li> <li>• Is the team able to determine the child's disability and needs based on the information provided?</li> <li>• Determine if the information provided is sufficient for the team to make decisions regarding accommodations for the child</li> </ul>
<b>Determine whether the plan is appropriate</b>	<ul style="list-style-type: none"> <li>• Based on the information provided, the team should determine whether the current plan provides reasonable accommodations to allow the child to receive FAPE</li> <li>• Does the plan meet the student's identified needs?</li> </ul>
<b>Decide whether to implement the plan</b>  <p style="text-align: center;"><b>OR</b></p>	<ul style="list-style-type: none"> <li>• If the team decides that the plan provides reasonable accommodations to meet the student's needs, the plan should be implemented.</li> </ul>
<b>Decide to Evaluate the Child</b>	<ul style="list-style-type: none"> <li>• If the team determines that the 504 plan is not appropriate evaluate the child</li> <li>• Determine if the child has a disability that is substantially limiting access to education</li> <li>• Determine the needs of the child</li> <li>• Determine what accommodations the student needs to access his education</li> </ul>
<b>Decide whether to implement the existing 504 Plan While Evaluation is Pending</b>	<ul style="list-style-type: none"> <li>• OCR infers that this is the choice of the school district</li> <li>• If the current accommodations are reasonable and can be implemented, lean toward implementation</li> <li>• If the current accommodations are unreasonable, it may not be possible to implement the plan</li> </ul>
<b>Complete the process in a timely manner</b>	<ul style="list-style-type: none"> <li>• OCR provides no specific timeline on completing this process</li> <li>• OCR will look at this on a case by case basis but will consider the reasonableness of any delaying in the process</li> <li>• DOCUMENT any delays and the reasons why the delay occurred</li> </ul>



# Andrews & Price, LLP

1500 Ardmore Boulevard  
Suite 506  
Pittsburgh, PA 15221

Phone: 412-243-9700  
Fax: 412-243-9660  
E-mail: [tandrews@andrewsandprice.com](mailto:tandrews@andrewsandprice.com)

If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

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.



**Tri-State Area School Study Council**  
Department of Administrative and Policy Studies  
School of Education  
University of Pittsburgh

230 S. Bouquet Street  
4302 Wesley W. Posvar Hall  
Pittsburgh, PA 15260  
Phone: (412) 648-7175  
Fax: (412) 648-7185

## TRI-STATE AREA SCHOOL STUDY COUNCIL

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.

Tri-State was founded in 1948 by Dr. Maurice Thomas. Since its inception, Tri-State has provided a wealth of comprehensive technical assistance, strategic planning, and employment searches to school districts in the Western Pennsylvania region. Tri-State's vast knowledge and experience base draws upon a membership of 100+ school districts and a team of leaders and consultants with rich backgrounds in education, including former school superintendents and professors of education.

Nolan Baker  
PH: (412) 389-4957

## *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.*