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# A Special Education Potpourri

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## No Legal Advice

I am an attorney  
but nothing I say today is giving specific legal advice. I am  
just sharing with you information about special education  
laws and guidance.

There are often no clear bright line answers in the law –  
everything is fact dependent.

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## What is Special Education Potpourri?

- Hot Topics
  - Struggles of Advocacy – Why?
  - What resources are available to you!
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## Hot Topics

- Disciplinary Removal
  - Moving to a new school
  - Full Continuum of Placement not available
  - New 504 Regulations
  - New Graduation Advice – students on OAAP
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### Disciplinary Removals

A Manifestation Determination Review must be conducted within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct.

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### Disciplinary Removals

- What is a change in placement?
  - The removal is for more than 10 consecutive days or
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### Disciplinary Removals

- The child has been subjected to a series of removals that constitute a pattern:
    - The series of removals constitute a total of more than 10 school days in a year;
    - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - Length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another.
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### It all Depends....

- Is Transportation suspension considered a disciplinary removal?
  - Is in-school suspension a “change of placement”?
  - Is shortening a school day a disciplinary removal?
  - Is putting a child on virtual learning a disciplinary removal?
  - Calling to pick up your child a disciplinary removal?
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### Moving to a new School District?

- When making a change, there are some things to keep in mind:
    - It is the responsibility of the school to begin providing services.
    - Ed Plan can take time to transfer the IEP
    - Do everything you can to help the new school get a copy of the old IEP. Get a current copy of the IEP from the old school.
    - Don't forget to tell the school your child is on an IEP.
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### Full Continuum of Placement

- Districts are required to have a full continuum of Placement for the needs of the children in their district.
  - If the child is not doing well in the current placement:
    - Would a smaller classroom with individual support be more appropriate?
    - Discipline, removals home, shortened school days, direct instruction.
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## Continuum

LEAST RESTRICTIVE

- ↓ Regular Class
- ↓ Regular Class/ Co-teaching/ support services
- ↓ Consulting Assistance
- ↓ Itinerant Assistant
- ↓ Resource Room
- ↓ Self-Contained/some mainstreaming
- ↓ Full Time Self-Contained
- ↓ Special Day School
- ↓ Residential School
- ↓ Homebound Instruction
- ↓ Hospital/Institution

MOST RESTRICTIVE

- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- Special Classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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## New 504 Regulations

- Coming soon to a school district near you. Expected by June or August this year.

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## New Cases

- Perez v. Sturgis Public Schools,
- Supreme Court case
- Decision on March 21, 2023

Expanded options for parents in seeking redress from the Courts for children in special services. Now can proceed directly to Federal Court when a parent is seeking only money damages for ADA and Title II claims without exhausting the claim in a Due Process Hearing.

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### What Changed?

- Under IDEA, money damages are not allowed.
  - Relief is compensatory education
  - Goal is to obtain services for the child.
  - Enter through the Due Process Hearing System.
  - DPH gives voice to the parent.
- Title II and ADA seeks money damages.
  - For issues which permit money damages
  - Example: discrimination
  - No voice for a parent.

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### Keep in Mind....

- Exhaustion is a very tricky issue. There are two supreme court cases that address exhaustion. *Fry v Napoleon Community Schools*, 580 U.S. 154 ( 2017)
- It matters where you take your case.
- However – Lets try and settle you issues through talking it out!

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### What Makes Advocacy so Hard?

- Comments and thoughts.
- IEP Reasonable Calculated at the time it is written to provide some educational benefit in light of the child's individual circumstances.

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Who Ya' Gonna Call?

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