



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 21 2012

Mr. Ed Sarzynski
P.O. Box 660
Binghamton, New York 13902-0660

Dear Mr. Sarzynski:

This is in response to your letters to Patricia Guard, former Deputy Director of the Office of Special Education Programs (OSEP). I apologize for the delay in our response. Your letter asks three questions related to OSEP's *Questions and Answers on Serving Children with Disabilities Eligible for Transportation (Questions and Answers on Transportation)*, specifically related to our response to question H-1: If transportation is included in the individualized education program (IEP) for a child with a disability who has documented behavioral concerns on the bus, but not at school, when may a school district suspend the child from the bus for behavioral issues and not provide some other form of transportation to and from school?¹ Your questions and our responses are below.

Question 1: If transportation is in the student's IEP, and if a suspension from the mode of transportation of greater than 10 school days is imposed without a manifestation determination but the student's parent or other adult voluntarily has transported the student to the school or educational program during the suspension, has there been any substantive violation of IDEA [Part B of the Individuals with Disabilities Education Act]? Although a related service in the IEP (transportation) may have been temporarily affected by the suspension, there has been no change in the educational services to which the student was entitled under these circumstances.

OSEP's Response: Generally, a school district is not relieved of its obligation to provide special education and related services at no cost to the parent and consistent with the discipline procedures just because the child's parent voluntarily chooses to provide transportation to his or her child during a period of suspension from that related service.

As explained in response to Question H-1 of the Department's *Questions and Answers on Transportation*, when transportation is included in the child's IEP, a bus suspension must be treated as a removal under 34 CFR §300.530 and all of the IDEA's discipline procedures applicable to children with disabilities apply. If a student is suspended from transportation included in the IEP for more than 10

¹The document *Questions and Answers on Serving Children with Disabilities Eligible for Transportation* can be found at: <http://idea.ed.gov/explore/view/pl/%2Croot%2Cdynamic%2CQaCorner%2C12%2C>

consecutive school days that suspension constitutes a change of placement. 34 CFR §300.536(a)(1). In the scenario you describe, such a change of placement would trigger the requirement for a manifestation determination. 34 CFR §300.530(e). That is, within 10 days of the decision to suspend the student from his IEP-prescribed transportation services for more than 10 consecutive school days, the local educational agency (LEA), parent, and relevant members of the IEP Team must convene to determine whether the conduct that resulted in the suspension was a manifestation of the child's disability, using the process described in 34 CFR §300.530(e). Additionally, if the child's behavior resulting in the bus suspension is a manifestation of the child's disability, consistent with 34 CFR §300.530(f)(1), the school district must conduct a functional behavioral assessment, unless it has already done so, and implement a behavioral intervention plan for the child. If the child already has such a plan, the school district must review and modify it, if necessary, to address the behavior.

Question 2: In determining whether the 10 school days threshold has been met necessitating a manifestation determination regarding a suspension from the bus, is a school district required to include any previous suspensions from instruction?

OSEP's Response: As stated above, within 10 school days of any decision to change the placement of a child with a disability due to disciplinary removals, the school district must convene the appropriate group to conduct a manifestation determination. 34 CFR §300.530(e). A change of placement due to disciplinary removals is defined in 34 CFR §300.536 and means a removal for more than 10 consecutive school days or, as determined on a case-by-case basis, a series of removals that constitute a pattern because: (1) the series total more than 10 school days in a school year; (2) the child's behavior is substantially similar to the behavior of previous incidents that resulted in the series of removals; or (3) of additional factors such as length of each removal, total amount of time the child has been removed and the proximity of the removals to one another. Therefore, all disciplinary removals, including disciplinary suspensions from instruction, must be considered in determining whether the child's current removal from IEP-prescribed transportation services constitutes a change in placement due to a pattern and whether a manifestation determination is required.

Question 3: Regarding a contemplated suspension from instruction, is a school district required to include any previous bus suspensions in determining whether the 10 school days threshold has been met?

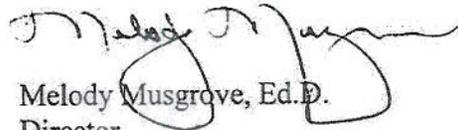
OSEP's Response: As described above, in determining whether the current disciplinary removal from instruction constitutes a change of placement due to a pattern of disciplinary removals under 34 CFR §300.536(a)(2), the school district would need to consider any previous suspensions from IEP-prescribed transportation services.

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Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope this information is helpful. If you have additional questions, please feel free to contact Ms. Angela Tanner-Dean at 202-245-6320, or by email at Angela.Tanner-Dean@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", written over a circular stamp or mark.

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: State Director of Special Education