

MUSER – Disciplinary Removals

Section XVII, Discipline of Children with Disabilities (pg 187-196)

- Removal from current placement
 - Child who violates code of conduct may be removed from current placement for not more than 10 consecutive school days to appropriate interim alternative educational setting, another setting, or suspension. May be additional removals of not more than 10 days in the same school year for separate incidents of misconduct. (MUSER XVII.1.B(1))
 - Change in placement (MUSER XVII.7) (34 CFR 300.536)
 - The removal is for more than 10 consecutive school days; **or**
 - The child has been subjected to a series of removals that constitute a pattern—
 - Because the series of removals total more than 10 school days in a school 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**
 - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
 - Special Circumstances (MUSER.XVII.1.G)
 - Student may be removed to an interim alternative educational setting for not more than 45 school days without regard to manifestation determination if the child:
 - Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an SAU;
 - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an SAU; or
 - Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an SAU.
- Services during removal for 10 school days (**not** more than 10 consecutive school days, **not** change of placement)
 - After a child has been removed from current placement for 10 school days (**MUSER does not specify consecutive days here**) in the same school year, services must be provided during any subsequent days of removal. (MUSER XVII.1.B(2))
 - Education services to enable the child to continue to participate in the general education curriculum and progress in IEP goals. (MUSER XVII.1.D(4))
 - School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed. (MUSER XVII.1.D(4))
 - If the SAU provides services to all children who have been removed for 10 school days or less, those services must also be provided to a child with a disability removed for 10 school days or less. (MUSER XVII.1.D(3))
- Change of placement (MUSER XVII.7) (34 CFR 300.536)
 - Manifestation Determination
 - Within 10 days of removal that results in change of placement, IEP team must review all relevant information in student's file and determine if conduct was caused by, or had a direct and substantial relationship to, the child's disability (MUSER XVII.1.E(1)(a)) or was the direct result of the SAU's failure to implement the IEP (MUSER XVII.1.E(1)(b)).
 - If direct result of failure to implement the IEP, the SAU must take immediate steps to remedy those deficiencies. (MUSER XVII.1.E(3))

- If not determined to be manifestation of disability (MUSER.XVII.1.C) or weapon, drugs, serious bodily injury (MUSER.XVII.1.G)
 - Education services to enable the child to continue to participate in the general education curriculum and progress in IEP goals. (MUSER XVII.1.D(1)(a))
 - Child must receive, **as appropriate**, a functional behavior assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (MUSER XVII.1.D(1)(b))
 - If determined to be manifestation of disability (MUSER XVII.1.E)
 - SAU must conduct a functional behavioral assessment and implement a behavioral intervention plan (MUSER XVII.1.F(1)(a)), **or**
 - If an FBA was already conducted prior to change of placement (MUSER XVII.1.F(1)(a)) and behavioral intervention plan has been developed, plan must be reviewed and modified, as necessary, to address the behavior. (MUSER XVII.1.F(1)(b))
 - Child must be returned to placement from which they were removed, unless parent and SAU agree to change of placement as part of modification of behavioral intervention plan. (MUSER XVII.1.F(2))
 - Exception for weapon, drugs, serious bodily injury. (MUSER XVII.1.G)
 - Notification (MUSER XVII.1.H)
 - On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the SAU must notify the parents of that decision, and provide the parents the procedural safeguards.
 - Placement during appeal (MUSER XVII.4) (34 CFR 300.533)
 - When an appeal has been made by either the parent or the SAU, the child must remain in the interim alternative educational setting pending the decision of the hearing officer.
- Protections for Children Not Determined Eligible for Special Education and Related Services (MUSER XVII.5) (34 CFR 300.534)
 - A child who has not been determined to be eligible for special education may assert any of the protections provided if the public agency had knowledge that the child was a child with a disability before the behavior occurred. (MUSER XVII.5.A)
 - Basis of knowledge (MUSER XVII.5.B)
 - The parent expressed concern in writing that the child is in need of special education and related services
 - The parent requested an evaluation
 - The teacher or other personnel of the SAU expressed specific concerns about a pattern of behavior
 - Exception if the parent has not allowed evaluation or refused services or if the child was evaluated and found not eligible for services as a child with a disability. (MUSER XVII.5.C)
 - If evaluation is requested during removal: (MUSER XVII.5.D(2))
 - Evaluation must be conducted in an expedited manner
 - Child remains in the educational placement determined by school authorities
 - This can include suspension or expulsion without educational services
 - If the child is determined to be a child with a disability, the agency must provide special education and related services in accordance with MUSER XVII.