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D) FORTY-FIVE (45) SCHOOL DAYS

This is a change from calendar days to school days. School personnel may remove a child with a disability to an interim alternative setting (IAES) determined by the IEP Team for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:

This one is new.

- Has inflicted *serious bodily injury* upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district. 20 U.S.C. 1415(k)(1)(G);(k)(1)(H)(2).

"Serious bodily injury" means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. 18 U.S.C. 1365(h)(3).

The LEA may order the IAES "without regard to whether the behavior is determined to be a manifestation of the child's disability." 20 U.S.C. § 615(k)(1)(G). The IEP team still determines the IAES. 20 U.S.C. § 615(k)(2).

E) APPEAL

The new standard removes the burden on the LEA to show likelihood by "substantial evidence." It also eliminates requirement that hearing officer consider appropriateness of the current placement and use of supplementary aids and services.

F) STAY-PUT IN DISCIPLINE

When an appeal is requested on a disciplinary action, either by the parent, or by a school, "the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first." Section 615(k)(4)(A).

- The new law makes the disciplinary setting the stay-put placement if the parent requests a hearing to challenge the placement or manifestation determination.
- The law also requires that this type of hearing be "expedited," meaning that it take place within 20 school days and result in a decision within 10 school days thereafter. Section 615(k)(4)(B).

G) STUDENTS NOT YET ELIGIBLE

Revised: Teachers or staff must have expressed specific concern "directly" to special education directors or other supervisors about "a pattern of behavior demonstrated by the child." Section 615(k)(5)(B)(iii).

The new law also clarifies that schools cannot be "deemed to have had knowledge of the child's potential disability" when the parents have refused evaluation of the child, refused services under IDEA, or when the child is evaluated and determined not to be eligible. 20 U.S.C. (K)(5)(C).

The new law eliminates "behavior or performance of the child demonstrates a need for such services".

Keep in mind; neither the statute nor the proposed regulations impose absolute limits on the number of days that a student can be removed from their current placement in a school year. Limitations in the statute and regulations about the amount of time that a student can be removed from their current placement only come into play when schools are not able to work out an appropriate placement with the parents of a student who has violated a school code of conduct.

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