



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

August 21, 2009

Rotimi Owoh, Esq.
The Law Office of Rotimi Owoh
100 Overlook Drive, 2d Floor
P.O. Box 2439
Princeton, New Jersey 08540

Dear Mr. Owoh:

This is in response to your June 7, 2009 letter to the Office of Special Education Programs (OSEP) in which you request clarification regarding the disciplinary provisions in Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask:

"Does the result of Manifestation Determination conducted by school districts have to be in writing *even* if the final and ultimate decision made by the special education team members was/is to suspend a student with a disability for only 5 days (less than 10 days) for possession of weapon on school property?"

"Is a school district required to send a written notice of the result of Manifestation Determination to a parent *even* (*[the final and ultimate* decision made by the special education team members is to suspend a special education student for only 5 days (less than 10 days) for possession of weapon on school property?"

Your letter refers to the length of the disciplinary removal, and not the result of the determination made in accordance with 34 CFR §300.530(c) of *whether the* conduct in question was *a manifestation of the child's disability*. A local educational agency (LEA) is not required to conduct a manifestation determination under 34 CFR. §300.530(e) unless it is contemplating a disciplinary removal that constitutes a disciplinary change of placement. Under 34 CFR §300.536, a disciplinary change of placement is a disciplinary removal of more than 10 consecutive school days or a series of removals that total more than 10 school days in a school year that constitute a pattern of removals. if the LEA determines that a child with a disability should be removed for 5 school days in a school year under 34 CFR §300.530(b) or (g), and this short-term removal was the first time the child with a disability was removed in the school year, the LEA would not be required to conduct a manifestation determination under 34 CFR §300.530(e).

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.

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If you have further questions, please do not hesitate to contact Susan Falkenhan, the New Jersey State contact at 202-245-7242, or by email at Susan.Falkenhan@ed.gov, or Dr. Deborah Morrow at 202-245-7456, or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Patricia J. Guard". The signature is written in a cursive style with a large initial "P".

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Director of Special Education