

**UPDATED**

for the ADA  
Amendments Act

**What Do I Do When™ . . .**

**The Answer Book  
on Section 504  
Third Edition**

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**LRA**  
Publications

## 16. Is an in-school suspension for more than 10 days a significant change in placement?

It might be. The critical question is whether the in-school suspension (ISS) is the educational equivalent of an out-of-school suspension, that is, whether the student is denied educational services during the period of suspension. *See, e.g., Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138 (OCR 2009) (for purposes of Section 504, an in-school suspension does not count toward a pattern when the services provided are comparable to those provided prior to the suspension). An ISS may constitute a significant change in placement if it results in an interruption in the services or educational program that the district must provide to the student with a disability. *Greenville County (SC) Sch. Dist.*, 17 IDELR 1120 (17 EHLR 1120) (OCR 1991).

In *Chester County (TN) School District*, 17 IDELR 301 (17 EHLR 301) (OCR 1990), OCR opined that, unless the nature and quality of the educational services provided during in-school suspensions (ISS) are comparable to the nature and quality of education previously provided to a student with a disability, an ISS is an exclusion.

The complainants in *Chester County* charged that the district failed to comply with the manifestation determination requirement of 34 CFR 104.35(a) when it imposed an ISS, the duration and timing of which would have been a significant change in placement, had the student been given an out-of-school suspension instead. After investigation, however, OCR concluded that the district's ISS program did not exclude students with disabilities from educational services.

As the district explained to OCR, the ISS program was designed to be an alternative to an out-of-school suspension, allowing sanctioned students to remain on campus and keep up with classwork. Students with disabilities assigned to ISS reported to an ISS alternative classroom staffed by a certified special education teacher. The student's regular and special education teachers forwarded lesson plans to the ISS classroom teacher, who distributed assignments and provided instruction to the students. The student's IEPs also were provided to ISS personnel.

Based on the above recitation, OCR determined that the nature and quality of educational services provided in the ISS alternative program were comparable to the nature and quality of educational services regularly provided to special education students. Even the student receiving a 28-day in-school suspension was, accordingly, not excluded from an appropriate education for those days spent in the ISS program.

Reaching the same result in *Broward County (FL) School District*, 36 IDELR 159 (OCR 2001), OCR found that when the student was sent to the office or received ISS, he was placed in a study carrel outside the assistant principal's office where he worked on classwork and was monitored by the special education specialist and the assistant principal. "The student was not denied services, FAPE was continued, and his placement was not altered."

Similarly, a combined 19 days of in-school and out-of-school suspensions during the school year was not considered a significant change in placement for the student in *Chicago (IL) Public Schools*, 45 IDELR 227 (OCR 2007). Here, the student received a total of five days of out-of-school suspension during the 2004-05 school year. During those five days, she received no educational services. She also received 14 days of in-school suspension. During those 14 days, she was provided all services required by her IEP. The special education teacher who provided services to the student in the regular education classroom also came to the room in which in-school suspensions were served to provide required services to the student. The only days in which the student did not receive services as a result of disciplinary action taken by the district were the five days of out-of-school suspension. OCR determined that the 14 days of in-school suspension and five days of out-of-school suspension did not constitute a significant change in the student's placement. Accordingly, the district was not required to conduct a reevaluation.

Note, too, that under Section 504 a district has as much flexibility to assign a student to ISS for more than 10 consecutive school days as it has to impose an out-of-school suspension of a similar length. That is, if the district complies with the procedural safeguards of 34 CFR 104.36 and conducts a reevaluation, including a manifestation determination (34 CFR 104.35) that indicates the misconduct was not related to the disability, it may assign the student to an ISS program that does not offer FAPE for a long-term period.

For example, in *Millcreek Township (PA) School District*, 16 IDELR 741 (16 EHLR 741) (OCR 1989), OCR found that the district followed proper evaluation and placement procedures before instituting in-school suspensions, and provided adequate prior notice to the parents of their procedural rights. Thus, the district complied with Section 504 when it placed a student with learning disabilities on in-school suspension for more than 10 consecutive school days.

### **17. Must a school conduct a manifestation determination before long-term suspending or expelling a student with a disability on account of possession of illegal drugs?**

One might be tempted to think that 29 USC 705(20)(C)(iv) exempts discipline for illegal drug possession from Section 504 procedures to the same extent as it does illegal drug use. But a careful reading of that section indicates a big difference in how a district must handle the drug user, as opposed to the drug dealer:

For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any [student with a disability] *who currently is engaging in the illegal use of drugs* or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities [emphasis added]. Furthermore, the due process procedures [at 34 CFR 104.36] shall not apply.

The statutory section conditions exemption from Section 504 protection upon the student with a disability being currently engaged in the illegal use of drugs. Of course, a student, whom the district wishes to discipline for use of illegal drugs, is almost certainly properly classified as currently so engaged. As a result, the district can sanction him to the same extent as it would a nondisabled student. *See, e.g., Appoquinimink (DE) Sch. Dist.*, 40 IDELR 157 (OCR 2003) (Section 504 is not violated when a district takes disciplinary action pertaining to the use of illegal drugs by a student with a disability, so long as the discipline is the same as is taken against students who do not have disabilities).

But a student with a disability who is charged by the district with possession of drugs might not necessarily be a current illegal drug user. In *OCR Staff Memorandum*, 17 IDELR 609 (17 EHLR 609) (OCR 1991), OCR outlined, for its staff, the impact of the Americans with Disabilities Act (ADA) on the Section 504 regulations and policies regarding individuals who engage in the illegal use of drugs as opposed to those who merely possess them:

[Possession of illegal drugs . . . does not result in a loss of protections unless the [disabled] student is also currently using drugs.] For example, if [school officials] find illegal drugs in the locker of a [student with mental retardation], they may discipline that student as if he had no [disability] only if they can also show that he is currently using drugs. Otherwise they must provide a reevaluation to determine, among other things, whether the misbehavior was a manifestation of the [disability], as required by current Section 504 policy.

Additionally, assuming a student who is addicted to drugs is a current user, he also is not eligible for other (nondiscipline related) protections under Section 504 on that basis. 29 USC 705(20)(C)(i).