

9 Things Every Parent Should Know About the “10 Day Rule”

Sometimes, a little knowledge is a dangerous thing. Consider, for example, the widespread belief that there is a ten day limit on the number of days that a child with disabilities can be suspended from school. As with many widespread beliefs, the common version of the rule is only partially true. Here are nine things that every parent should know about the so-called “ten-day” rule and the laws governing the suspension of children with disabilities who are entitled to services under IDEA:

1. **There is no such rule.** At least since the 2004 amendments to the IDEA, the “ten day” rule is not a rule at all. Provided that school districts are not discriminating on the basis of disability, they have the right to suspend IDEA-entitled children with disabilities for more than ten days in the course of a school year.
2. **There are steps the school must take if the suspension is for more than ten consecutive days.** If a school district suspends an IDEA-entitled child for more than ten consecutive schooldays, there are certain procedural steps that it must take. It must treat the suspension as a change of placement, it must give notice to the parents, and it must convene a manifestation conference to determine if the conduct giving rise to the suspension was a manifestation of the child’s disability.
3. **If the eleventh day of suspension is not consecutive, there is a question, not a rule.** If a school district suspends an IDEA-entitled child for less than ten days, but does so more than once so that the total number of days of suspension during the school year exceeds ten, there may or may not be a change of placement requiring notice to the parents and a manifestation conference. The answer to this question depends upon whether or not a judge will determine that the series of suspensions “constitute patterns” based on “factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.” This is a subjective rule, meaning that how it will be applied depends upon who is applying it.
4. **Parents need a BETTER ANSWER.** In the case of non-consecutive suspensions, one Administrative Law Judge has commented that the subjectivity of the 10-day rule creates a “Catch-22” for school district personnel, who will not know if the eleventh day of suspension has triggered the parental notice and manifestation determination requirements until after a judge has decided the question. It also appears that it creates a “Catch-22” for parents, too. If school districts charges ahead without notice, parents are not protected against the eleventh day of suspension; they are merely given the opportunity to try the issue before a judge. A better answer must be found.
5. **A BETTER ANSWER: Focus on the needs of your child.** The so called 10-day rule triggers certain procedural protections for parents. Pursuing those procedural protections, however, can put technicalities ahead of your child’s interests. A better answer is to focus on the needs of your child.
6. **Request a new evaluation.** Parents do not need to wait three years for a re-evaluation of their child. They can request a new evaluation any time there is good reason to do so. The evaluation questions should include: (a) Is the conduct giving rise to the suspensions a manifestation of my child’s disability? (b) Is the current educational program appropriate to my child’s behavioral needs?
7. **Call for an IEP Meeting.** If your IDEA-eligible child is being suspended from school on a repeated basis, the IEP team should meet to consider whether the program for that child is appropriate. This is true whether or not the suspensions constitute a change in placement.
8. **Insist upon education from and after the eleventh day.** Parents should respond to the eleventh day of suspension by advocating for the continued provision of educational services. The reason is that, while the law permits an eleventh day of removal from the child’s educational environment, it also mandates the continued provision of services. According to the U.S. Office of Special Education Programs, “For a child

who has been removed from his or her current placement for more than 10 school days in a school year, the [school district] must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP."

9. **Better yet, don't wait until the eleventh day.** If the parents focused on the needs of the child, there is no need to wait until the eleventh day to request a new evaluation. There is no need to wait to call an IEP meeting. As soon as it reasonably appears that your child's program is not meeting your child's needs, you can act.

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