

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

NEW GUIDANCE FOR SCHOOLS FROM THE DOE

It has not been a slow start to the year for the United States Department of Education! Since January, various departments of the DOE have released new guidance documents for schools, a couple of which are of particular note to our charter and non-charter public school clients.

Disciplining Students with Disabilities

On January 29, 2019, the Office of Special Education and Rehabilitation Services of the DOE released [this letter](#), which answers questions about discipline for any student whose school is deemed to “have knowledge” that the student has a disability. As you know, if a school is deemed to have knowledge that a student is a student with a disability, that student is entitled to the protections of the Individuals with Disabilities Education Act (“IDEA”), including those limiting how and when a school may discipline the student. For example, before a school can impose discipline that will constitute a “change in placement”, the school must conduct a manifestation determination review (“MDR”) with respect to a student protected by IDEA in order to evaluate whether the behavior prompting the discipline is a manifestation of the student’s disability. Conducting an MDR is tricky when a school is deemed to have knowledge that a student is a student with a disability but has not yet conducted an evaluation of the student’s disability: how can a school evaluate whether a student’s behavior is a manifestation of his or her disability if the school does not yet understand the nature of the disability? The DOE addresses these (very valid) concerns in this letter.

Balancing Student Privacy Rights with Student Safety

On February 12, 2019, the Privacy Technical Assistance Center of the DOE [released this guidance document](#) addressing how the Family Educational Rights and Privacy Act (“FERPA”) applies to the disclosure of student record information to school security units, law enforcement entities, school resource officers, and other schools. For example, it explains who may be considered a “school official” to whom disclosure may be made without student or parental consent under FERPA. While this guidance document is very thorough and helpful, schools should be aware of the heightened protections that the Massachusetts Student Record

Regulations give to student records: even if a school may disclose a student record under FERPA, the Massachusetts Student Record Regulations may prohibit the disclosure.

If you have any questions about student discipline, special education, or the disclosure of student record information, please do not hesitate to reach out to Attorneys Elka Sachs (esachs@kb-law.com) or Allison Belanger (abelanger@kb-law.com).

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