News from the MLPP
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Suspending Elementary School Students: *What the Medical Provider Needs to Know*

by Jay Sicklick, MLPP Director

The MLPP has recently received a spate of referrals from clinical providers whose elementary school patients, some as young as five years old, were suspended due to conduct issues at school. Many of the children were identified as special education students, but a number of the children were not. In this article, we examine the legal and educational implications of suspending small children for behavioral actions in the elementary school setting. Here are six questions that we've fielded in recent months regarding this issue:

1. Can an elementary school suspend a child as young as five or six for behavioral actions?

Technically, the local school district, or local educational authority (LEA) has the legal right to suspend any enrolled student who violated the LEA's code of conduct. Districts must inform students and their parents on an annual basis of any changes in student disciplinary policies, and the LEAs must inform a student's parents of any disciplinary action taken against a child within twenty-four hours of the disciplinary action. LEAs are free to suspend students, including students identified as special education students, for up to, and including, ten days, as long as the suspension does not exceed ten days, or the aggregate number of individual suspensions for similar conduct does not exceed ten days.

2. Should the school be suspending a child as young as five or six for behavioral issues?

The answer is unequivocally NO!
We firmly believe that under no circumstances should an elementary school be suspending kindergarteners or first graders for behavioral infractions. The use of suspensions as a punitive tool serves no legitimate educational purpose in dealing with the situation at hand. Children as young as five, six or seven should be evaluated, assessed and treated in an appropriate manner to determine how they can best be educated in the school setting. Suspending young children acts as a crutch for LEAs that are unable to provide appropriate services to children at risk, and further serves to disrupt households that can ill afford to take time off to care for suspended youngsters.

3. What can I do, as a pediatric practitioner, if my young school-aged patient is repeatedly being suspended at school for behavioral conduct?

First, ask the parent if the child has been identified as a special education student. If she has not been identified, discuss the importance of school intervention with the parent and determine whether the school has taken the necessary steps to identify the child as a potential special education student. Remember – not all children with behavioral issues are eligible for special education services under the Individuals with Disabilities Education Act (IDEA). In order for the child to be determined eligible under IDEA, the child must be diagnosed with a specific disability, and that disability must affect educational performance, resulting in the need for special education and related services. If the child has not been identified, and you, as the practitioner, believe that the child meets the criteria for disability as defined under IDEA (e.g. ADD/ADHD, Intellectual Disability, Learning Disability, Serious Emotional Disturbance, etc.), advise the parent to request an evaluation by the school, including a behavioral assessment.

4. What are functional behavioral assessments and behavioral intervention plans?

Identified special education students who present with behavioral difficulties should be formally assessed through a functional behavioral assessment (FBA) performed by the school district, at the district's expense. School personnel trained in behavioral management techniques should conduct the FBA in order to develop a comprehensive behavioral intervention plan (BIP) to address the student's behavioral issues.A valid and appropriate BIP is a necessary part of an individualized education plan (IEP), and should be implemented for every student where the LEA is utilizing suspension as a remedy for behavioral outbursts.

5. Can the school personnel call a parent to "pick up" a child at school for behavioral reasons?

NO! Under no circumstances should a parent be the first line of defense for schools to utilize when a child acts out or behaves in a manner that is inappropriate. Calling a parent is an indication that the school and IEP team have not thoroughly engaged their resources to implement a BIP to address the student's behavioral needs. Calling the parent of a kindergartner or first grader serves no purpose other than to disrupt the child's educational experience, and places an enormous burden on the parent or guardian. If the parent *is* called to pick a child up from school for behavioral concerns, the school must indicate that this unscheduled "pick up" constitutes a suspension pursuant to state law, and advise the parent in writing of such a suspension.

6. What can you do, as a pediatric practitioner, to stop this practice of young student suspensions and parent "pick ups?"

Inform the parent or legal guardian that they should immediately seek legal/ advocacy assistance to ensure that the school stops this practice. In the meantime, the practitioner can ask the parent to supply a copy of any paperwork issued by the school to determine if a valid behavioral intervention plan has been implemented.

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Suspending Elementary Students
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Where can I learn more?

Please call our MLPP offices for consultation:
Jay Sicklick: 860-714-1412
Gladys Nieves: 860-545-8581

Additional information can be found at:
Connecticut State Department of Education/Special Education: *www.state.ct.us/sde/deps/special/index.htm*

Special Education Resource Center: *www.ctserc.org*

United States Office of Special Education: *www.ed.gov/about/offices/list/osers/osep/index.html*

Connecticut Parent Advocacy Center: *www.cpacinc.org*

Wrightslaw: *www.wrightslaw.com*

We'd like to hear from you!

To submit questions *for the next edition of MLPP News, or to refer a case to the MLPP:*

jsicklic@kidscounsel.org (860-714-1412)
gnieves@ccmckids.org (860-545-8581)

For information about the Medical-Legal Partnership Project, go to www.ccmckids.org/mlpp or www.kidscounsel.org/aboutus_programs_mlpp

MLPP is a joint medical-legal collaboration between the Center for Children's Advocacy, Connecticut Children's Medical Center, Saint Francis Hospital and Medical Center, Charter Oak Health Center, and Community Health Services.

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MLPP Case Spotlight – Jenny's Case: Access to Specialized Medical Tests

Case Spotlight highlights a recent *MLPP* case to illustrate how the *MLPP* works with clinical partners to improve health outcomes for children at risk. The following case demonstrates the collaborative efforts of a pediatric primary care provider whose patient required a costly but beneficial diagnostic test:

Jenny, a five year old girl, is treated at a local primary care center in Hartford. After presenting for several years with physical impairments and debilitating symptoms, Jenny's primary care pediatrician suspected that Jenny suffered from a rare disease that affects her central nervous system. After several consultations with Jenny's mother, the pediatrician requested a complicated and expensive diagnostic test to confirm her suspicions regarding Jenny's condition. Despite the medical need for such a test, Jenny's Medicaid managed care insurance company (MCO) informed the pediatrician that the MCO would not pay for these specialized diagnostic tests on the grounds that such tests were not covered under Jenny's managed care plan. After an unsuccessful attempt to appeal this denial over the phone, the pediatrician consulted with and referred Jenny's case to the MLPP for further advocacy.

Working with the pediatrician, the MLPP provided guidance and assistance for Jenny. First, the MLPP drafted a letter on Jenny's behalf indicating that the specialized tests were medically necessary for her care and treatment, and the MCO's denial of such tests violated federal and state law. Second, the MLPP director worked with the pediatrician to informally advocate with several MCO administrators, with the implicit assumption that the MCO's failure to reverse its decision would result in further legal action on Jenny's behalf. After one day of advocacy, the MCO reversed its course and agreed to pay for the specialized tests. The pediatrician performed the requisite preliminary tests and sent the samples out to the specialized lab for further evaluation.

This case demonstrates how the MLPP's on-site advocacy resulted in an immediate reversal of an insurance company's initial denial. Clinicians should be aware that all Medicaid/HUSKY A coverage denials are subject to appeal, and that most denials are inappropriate if the treatment/care is "medically necessary" for the pediatric patient.

Practitioners with questions about this issue should contact the MLPP Director Jay Sicklick at (860)714-1412 or *jsicklic@kidscounsel.org*; or Gladys Nieves, MLPP Senior Staff Attorney, at the Connecticut Children's Medical Center at (860) 545-8581 or *gnieves@ccmckids.org.*

Legislative Healthcare Advocacy for Children: We Want to Hear from You

The 2007 session of the state's General Assembly runs from January 3, 2007 through June 6, 2007. The *MLPP*, along with its pediatric and family medicine clinical partners, is actively developing its legislative agenda, and would like to hear from clinicians about potential legislative issues, and ways the *MLPP* can collaborate with providers to improve children's health through legislative advocacy.

Issues on the MLPP agenda include: greater access to specialty services provided under the state's HUSKY plan; broadening reimbursement under the state's Title XIX program for therapeutic services to children outside of the home; and, expanding transportation access to HUSKY A families.

We welcome suggestions from pediatric providers in areas covering health, education, benefits, and disability law.

Please contact Jay Sicklick at *jsicklic@kidscounsel.org,* or (860)714-1412.