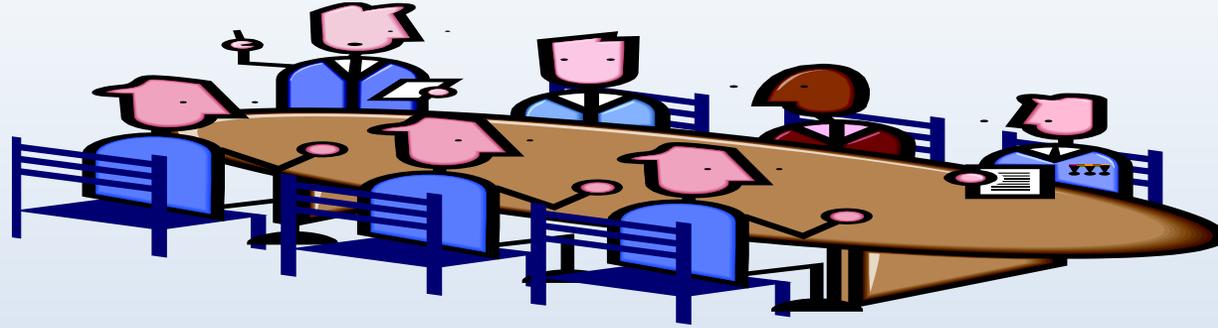


Discipline & Disabilities: Rules, Requirements, and Supports

**Beyond the Basics Workshop
South Carolina School Boards Association**

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- **Any disciplinary action taken against a student with a disability who qualifies for special education and related services must be consistent with the Individuals with Disabilities Education Act (IDEA).**
- **No one person can unilaterally decide to change the placement of a student with a disability to another setting.**
 - **This applies to the**
 - **superintendent,**
 - **principal or assistant principal,**
 - **disciplinary hearing officer,**
 - **assistant superintendent for student services,**
 - **special education director,**
 - **etc.**



The IDEA procedures for changing a student's placement for disciplinary reasons require the involvement of student's individualized education program (IEP) team and a determination by the IEP team that the change of placement is appropriate.

- **What is the role of the disciplinary hearing officer with regard to placement decisions concerning students with disabilities?**
- **Can a student's IEP team overrule a recommendation by the disciplinary hearing officer?**
- **What is the role of the local school board with regard to placement decisions concerning students with disabilities?**
- **Can a student's IEP team overrule a recommendation by the local school board?**

DISCIPLINE

School Districts or Agencies May Impose :

Short-term removals of 10 cumulative or 10 consecutive school days or less during the school year without the requirement to provide educational services.

34 C.F.R. § 300.530(b)(1)

WHAT CONSTITUTES A SHORT-TERM DISCIPLINARY REMOVAL?

- **Suspensions, removals, and exclusions from school that total less than 10 cumulative days and do not result in a change of placement.**
- **School districts must document all disciplinary removals in the student information system.**

IS THERE A VIOLATION OF THE IDEA?

A student with a learning disability, who has already been suspended for 4 days, intimidates and harasses another student for several days and finally screams and curses at the other student in the cafeteria. The students exchange blows. The student with a disability is sent home for 10 days without services.

YES, BECAUSE...

This 10-day removal from school without services makes a total of 14 days of removal without services. This is more than the 10 days without services that the IDEA allows.

WHAT IS A LONG-TERM REMOVAL THAT CONSTITUTES A CHANGE IN PLACEMENT?

A disciplinary removal for more than 10 consecutive school days is a change in the student's placement.

34 C.F.R. § 300.536

WARNING:

The IDEA disciplinary procedures do not permit the repeated disciplinary removal of a student for 10 consecutive school days or less as a means of avoiding a change in placement. School districts or agencies may not continuously remove the student for small amounts of time to get around the rules.

(5+5+7+3 =20 days and equals a change in placement)

CHANGE IN PLACEMENT

34 C.F.R § 300.536

- **Removals are also a change in placement when the removals constitute a pattern**
 - A series of removals for more than 10 cumulative school days;
 - The student's behavior is substantially similar to the behavior in previous incidents that resulted in the series of removals; and
 - Because of the length of each removal, the total amount of time of each removal, and the proximity of the removals to each other.

If it's a pattern . . .

It's a change
in placement

NOTICE REQUIREMENT

On the date that the decision is made to impose a disciplinary removal that constitutes a change in placement for a student with a disability, the school district or agency must notify the parents of that decision, and provide the parents the procedural safeguards notice described in

34 C.F.R. § 300.504.

34 C.F.R. § 300.530(h)

NOTICE REQUIREMENT

If the student violates the code of conduct by getting into a fight with another student, stealing, throwing a chair at a staff member, or some other act and the school sends home a notice that the student is suspended and referred for expulsion or is suspended for a number of days that will put the student over the 10-cumulative day mark, then the school must provide the parent with a copy of the procedural safeguards notice on that same day.

- **Can a principal, assistant principal, director of the alternative school, or other school district personnel call a parent to pick up a student with a disability from school because of a violation of the code of conduct?**
- **Are personnel required to document each time that the parent is called to pick the student up from school?**

What if the student is placed at home by a school administrator or disciplinary hearing officer for more than 10 consecutive school days?

The student must—

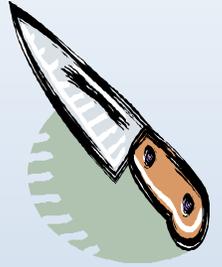
Continue to receive educational services, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

The student must—

Receive, as appropriate, a functional behavioral assessment (FBA), behavioral intervention services and modifications, that are designed to address the behavioral violation so that it does not recur.

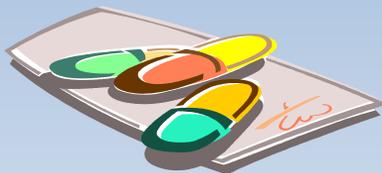
DISCIPLINARY PROCEDURES

(SPECIAL CIRCUMSTANCES)



School personnel are permitted to order a change in a student's placement to an interim alternative educational setting (IAES) for not more than 45 school days for weapons or drug offenses, regardless of whether the behavior is a manifestation of the disability.

34 C.F.R. § 300.530(g)



DISCIPLINARY PROCEDURES

School personnel are permitted to order a removal to an IAES for not more than 45 school days if a student inflicts serious bodily injury upon another person while at a school function.

SERIOUS BODILY INJURY

Defined in 20 USC § 1365(g) to mean

- 1) a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or**
- 2) protracted loss or impairment of the function of a bodily member, organ or faculty.**

VIOLATION OR NOT?

A student with a disability, who receives services through a resource service delivery model, (3 periods a day of specialized instruction) disturbs class. He has had 8 days of out-of-school (OSS) suspension already this year. The student is assigned to in-school-suspension (ISS) for 3 days with the special education teacher seeing him for 1 period a day.

YES, BECAUSE

- **The IEP specifies 3 hours of special education services a day – not 1 hour a day.**
- **These days will count as OSS days, unless the special education teacher instructs him for 3 hours a day and the student is allowed to also progress in his general education classes.**

**WHAT ARE THE STANDARDS FOR
CONDUCTING MANIFESTATION
DETERMINATION REVIEWS
(MDRs)?**

WHEN IS A MDR REQUIRED?

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of conduct, the school district or agency, the parent, and relevant members of the student's IEP team must review all relevant information in the student's file, including the student's IEP, teacher observations, and any relevant information provided by the parents to determine if the conduct in question is a manifestation of the student's disability.

34 C.F.R. § 300.530(e)

WHAT IS THE PURPOSE OF THE MDR?

- To determine if the student's behavior is related to the student's disability.
- To determine if the student's behavior is a result of the failure to implement the student's IEP.

WHO PARTICIPATES IN THE MDR?

The parent and relevant IEP team members, as determined by the parent and the school district or agency.

WHAT IS CONSIDERED DURING THE MDR?

- **The special education, related services, supports, aids, accommodations, modifications, and other requirements in the student's IEP.**
- **Teacher observations, evaluative data, relevant information provided by the parent, any other relevant information that is available about the student's disability, conduct, and the incident.**

THE MDR PROCEDURES

The team must consider 2 questions:

- 1) Was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability?
- 2) Was the conduct in question a direct result of the school district's or agency's failure to implement the student's IEP?

34 C.F.R. § 300.530(e)(i) and (ii)

OTHER QUESTIONS TO CONSIDER

- **Is the student able to control this behavior for an extended period of time?**
- **Is there any indication that the student made a choice to engage in the misconduct? For example, did the student tell others that he or she planned to commit the offense a day or two before engaging in the behavior?**
- **Is the student's FBA and BIP appropriate and updated to address these behaviors?**
- **Is the student's IEP meeting each of his or her needs?**
- **Are school personnel implementing the student's IEP and BIP with fidelity?**

DO NOT

- **Make automatic assumptions concerning the relatedness of the behavior and the student's disability simply based on the student's category of disability.**
- **Refuse to consider information brought to the table by outside service providers, the parents, or outside evaluators.**

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILITY?

If the participants determine that the behavior is a direct result of the school district's or agency's failure to implement the student's IEP, the school district or agency must take immediate steps to remedy the deficiencies.

34 C.F.R. § 300.530(e)(3)

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILITY?

Either:

- 1) Conduct a functional behavioral assessment (FBA), if one was not previously done, AND implement a behavioral intervention plan (BIP); or**
- 2) If a BIP was already in place before the conduct occurred, you must review the BIP and modify it as necessary to address the behavior that resulted in the need to conduct a MDR.**

34 C.F.R. § 300.530(f)(1)

WHAT IS THE PURPOSE OF A FBA?

- **What are the antecedents to the student's behavior ?**
- **What was the purpose of the student's behavior?**
 - **To obtain something**
 - **To avoid or escape something**
- **How do we change or reduce the negative behavior?**

FOUR POSSIBLE REASONS FOR NONCOMPLIANT BEHAVIOR:

- 1. Attention**
- 2. Power**
- 3. Revenge**
- 4. Given-up**

WHAT IS THE PURPOSE OF THE BIP?

- Reduce or eliminate the motivation to exhibit the negative behavior.
- Replace the negative behavior with a positive behavior.
- Prevent the negative behavior from recurring.

- **What if there is a BIP, but the student's behaviors are the same or the behaviors are escalating?**
- **Can we use the school resource officer as a way to deal with the student when he "gets out of hand?"**
- **Can we just move the student to a home-based placement and provide five hours of instruction per day?**

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILITY?

Stay Put Applies:

Return the student to the placement from which he or she was removed, unless the parent and the school district or agency agree to change the student's placement as a part of the modification to the BIP. Expulsion is not allowed.

34 C.F.R. § 300.530(f)(2)

IS THE SCHOOL DISTRICT TAKING A CHANCE?

A student with attention deficit hyperactivity disorder who is placed as a student with an Other Health Impairment (OHI) gets in an argument in the cafeteria. The argument escalates to a fight and an administrator gets hit when he tries to break up the fight. At the MDR it is determined that the student was not administered his medication by the school nurse and the escalation was substantially related to the disability. The student is removed from the building.

YES, BECAUSE

The behavior is substantially related to the disability.

- The student must remain in the current placement, unless the parent and school agree to change the placement.**
- The IEP team must meet to develop or modify the IEP, the FBA, and the BIP.**

PROHIBITION OF MANDATORY MEDICATION

Personnel in the local educational agency may not require a student to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. § 801 et seq.) as a condition of attending school or receiving an evaluation to determine eligibility for special education services.

IS A MDR REQUIRED EVERY TIME THE SCHOOL DISTRICT WANTS TO SUSPEND A STUDENT?

Answer: Any time the student is suspended after 10 school days, a new MDR is required, even if it's for the same type of misconduct.

EDUCATIONAL SERVICES DURING A DISCIPLINARY CHANGE OF PLACEMENT

(Placement in an IAES, expulsion, and multiple suspensions)

When a student's placement is changed for disciplinary reasons, the school district or agency must provide services to the extent necessary to enable the student to continue to appropriately participate in the general education curriculum, although in another setting, and appropriately progress toward the goals in his or her IEP.

34 C.F.R. § 300.530(d)(1)

EDUCATIONAL SERVICES DURING A DISCIPLINARY CHANGE OF PLACEMENT

Students with disabilities who are suspended or expelled from their current placements in public schools are still entitled to receive related, transition, and counseling services, etc.

WHAT DOES THIS MEAN?

- **If a student is moved to the alternative school what services must be provided?**
- **If a student is moved to a home-based placement, what services must be provided?**
- **Is it sufficient or appropriate to only provide speech-language services or resource services?**

HOME-BASED PLACEMENT FOR DISCIPLINARY REASONS

The student's IEP team must determine the appropriate amount of special education and related services and be able to explain how each decision was made relative to the specific student.

DURING THE MEETING THE IEP TEAM MUST

- Engage in a serious discussion concerning the need to change each student's placement;
 - *What supports and services may allow the student to stay in the regular school setting?*
 - *What other accommodations and modification have we not offered?*
- Consider the amounts and types of services each student needs during his or her change in placement to continue to progress in the general education curriculum and continue to receive the services and modifications described in each student's IEP that will enable him or her to meet the goals set out in his or her IEP.

ADDRESSING THE BEHAVIOR

- Provide, as appropriate, a FBA, behavioral intervention services, and modifications that are designed to address the behaviors that led to the student's violation of the code of conduct so that the behaviors do not recur.
- Consider what strategies, supports, services, and modifications are necessary to address the behaviors that led to the behavior that resulted in the proposal to change the student's placement.

ADDRESSING THE BEHAVIOR

- Can a school administrator, disciplinary hearing officer, or local school board prohibit a student with a disability from returning to school until the student has a written statement from a physician stating the student is not a threat to the health and safety of other students?
- Can a school administrator, disciplinary hearing officer, or local school board prohibit a student with a disability from returning to school until the parent takes the child to receive mental health counseling?

34 C.F.R. §300.530(d)(2)

WHAT IF THE PARENT DISAGREES WITH THE MDR RESULTS?

The parent may request an expedited due process hearing to challenge the results of the MDR.

- The hearing must be conducted within twenty school days and the decision must be rendered within 10 school days after the hearing.
- A resolution meeting must occur within 7 calendar days of receiving notice of a due process hearing to challenge the MDR results.

CAN THE PARENT DISAGREE WITH THE MDR RESULTS, BUT AGREE WITH THE DETERMINATION THAT THE STUDENT VIOLATED THE CODE OF CONDUCT?

Yes. The parent can acknowledge the student committed the act that he or she is accused of committing, but still request an expedited due process hearing to challenge the results of the MDR.

IN-SCHOOL SUSPENSIONS

(P. 46715 of the comments to the federal IDEA '04 regulations)

In-school suspensions (ISS) are not counted toward the student's days of out-of-school suspension (OSS), as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified in his or her IEP, and continue to participate with students without disabilities to the extent that he or she would in the current (regular) placement.

ISS – Office for Civil Rights (OCR) Rulings

The OCR notes in its investigations that unless the nature and quality of the educational services provided during ISS are comparable to the nature and quality of education previously provided to a student with a disability, an ISS is an exclusion.

DISCIPLINE

(P. 46715 of the comments to the federal IDEA '04 regulations)

School districts or agencies should consider whether behavioral problems on the bus are similar to behavioral problems in the classroom and whether the student's behaviors on the bus should be addressed in the student's IEP or BIP.

STUDENTS NOT YET IDENTIFIED

A student who was not previously determined eligible for special education and who has violated the disciplinary code can assert the protections of the IDEA, if the district knew or should have known that the student was a student with a disability before the behavior occurred.

If the parents refused to allow the school district or agency to evaluate the student, the student does not get these protections.

34 C.F.R. § 300.534(a)

BASIS OF KNOWLEDGE

The school district or agency must be deemed to have knowledge that the student is a student with a disability, if before the behavior that precipitated the disciplinary action occurred, the parent took any one of the steps listed in 34 C.F.R. § 300.534.

What happens if a student with a disability who was expelled from another school district, or had a pending expulsion, moves to another school district?

The student's IEP team must determine the student's services and placement and address the behavior that led to the recommendation for the student's expulsion in the previous school district in an effort to ensure that the behavior does not recur.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

20 U.S.C. § 1415(k)(6)(B); 34 C.F.R. § 300.535(b)(2)

- The LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.**
- However, an agency reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that the Family Educational Records and Privacy Act (FERPA) permits the transmission.**

OFF-CAMPUS ACTIVITY

- **Off-campus related discipline policies should be in writing.**
- **Look at whether the student's conduct was directly related to a school activity.**

A school administrator may want to discipline a student for setting a fire at another student's house after a fight between the students at school. The school administrator may fear the incident will spill over into the school environment and cause further disruption.

- **A MDR is still required if there is a recommended change in placement.**

Questions

