



The Individuals with Disabilities Education Act
Discipline Regulations

for Students with Disabilities

Policy Papers in Education

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Providing policy guidance to local school districts on important topics
State Superintendent, Dr. Wayne G. Sanstead

This discipline policy paper, based on federal regulations, has been updated to reflect the changes in the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004). When local discipline policies are developed by each school district, these federal regulations must be incorporated.

Holding All Students Accountable For School Rules

All students, including students with disabilities, deserve safe, well-disciplined schools and orderly learning environments. Teachers and school administrators should have the tools they need to assist them in preventing misconduct and discipline problems, and to address those problems as they arise. There must be a balanced approach to the issue of discipline of students with disabilities that reflects the need for orderly and safe schools and the need to protect the rights of students with disabilities to a free appropriate public education.

Students have the right to an appropriately developed Individualized Education Program (IEP) with well-designed behavior intervention strategies. (OSEP 97-7).

All students need to be held accountable for their behavior. If the student’s disability and the student’s behavior are somehow related, a different method may be used to hold the student accountable. If a student with a disability is subject to unfair treatment just because of his or her disability, discrimination has occurred. Thus, school officials need to ensure that discipline is not applied in a discriminatory manner, which is a violation of the student’s civil rights.

If the IEP team determines it is appropriate, the same disciplinary procedures may be used with students who do not have disabilities. In such cases, the school’s local disciplinary policy should

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be included in a student's IEP or included in a written plan under Section 504. Under these circumstances, if a misbehaving student with a disability is disciplined, that disciplinary procedure should not be different from that used with students who do not have disabilities and who are disciplined for similar misbehavior.

When a student has a disability that prevents him or her from understanding or responding appropriately to a school rule or a component of a discipline code, exceptions must be incorporated into the student's IEP or written plan under Section 504. The purpose of this is to meet each of the student's educational needs resulting from the student's disability, including behavioral needs.

Behavior Intervention Plans - We also recognize, though, that as a matter of practice, it makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change in placement. In fact, the Act emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP Team consider, as appropriate, and address in the child's IEP, "the use of positive behavioral interventions, and other strategies to address the behavior." (See section 614(d)(3)(B)(i) of the Act). This provision should ensure that children who need behavior intervention plans to succeed in school receive them. *8/14/06 Federal Register, Vol.71, No. 156, page 46721.*

Important concepts of the IDEA 2004 Amendments

1. Current regulations reflect the authority of school personnel to make case-by-case determinations. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct.

For more information regarding what constitutes a change of placement see page 7.

2. The regulations include a provision (§300.536) that reflects the U.S. Department of Education's longstanding definition of what constitutes a "change of placement" in the disciplinary context. Multiple short-term removals for separate incidents of misconduct are permitted to the extent removals would be applied to children without disabilities as long as those removals do not constitute a change of placement (§300.536). If a child is removed for more than 10 consecutive school days in a school year, this is a change of placement. If the child is removed for more than 10 cumulative school days in a school year and the removals collectively constitute a change of placement (see page 7 for change of placement definition), procedures for long-term removal must be conducted.

3. On the eleventh cumulative day that a child with a disability has been removed from school, services must be provided to the extent necessary to enable the child to continue to appropriately progress in the general education curriculum and appropriately advance toward the goals in the child's IEP.
4. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability for incidents involving weapons, drugs, or serious bodily injury. This means a child may be placed in an interim alternative educational setting regardless of the outcome of the manifestation determination.

For more information regarding weapons, drugs, and serious bodily injury see page 10.

5. Within 10 school days of any decision to change the placement of a child with a disability, the school district, the parent, and relevant members of the child's IEP Team must review all relevant information in the student's file. This information includes: the child's IEP; any teacher observations; and any relevant information provided by the parents. The outcome of this review is to determine:
 - if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
 - if the conduct in question was the direct result of the school district's failure to implement the IEP.

For more information regarding manifestation determination see page 8.

6. A hearing officer may order a change in placement to an interim alternative educational setting if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others (§300.532 (b)(2)(ii)). School officials have the authority to ask an impartial state-approved hearing officer to extend for an additional 45 school days, the interim alternative educational placement of a student with a disability when they believe that the student's return to general education may be likely to result in injury to the student or others.
7. The SEA or school district must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing (§300.532 (c)(2)).

Definition of “days”

School Day is defined as any day, including a partial day, that students are in attendance at school for instructional purposes. The term school day has the same meaning for all students in school, including students with and without disabilities.

Business Day is defined as Monday through Friday except for federal or state holidays.
(§300.9 Day; business day; school day)

Both “cumulative days” and “consecutive days” are used within the discipline regulations when removals of a student are discussed. In the context of removals, **cumulative days are defined as** all days collectively added up within the school year. **Consecutive days are defined as** successive school days or school days in a row (i.e. Monday through Friday and the next week Monday through Friday).

Short-Term Removal (10 days or less)

Removal for 10 cumulative school days or fewer in a school year:

- Does not require educational services to the child if services are not provided to a child without disabilities who has been similarly removed;
- Does not constitute a change of placement;
- Does not require a manifestation determination; and
- Does not require a functional behavior assessment or a positive behavior intervention plan.

Be proactive. If there is any indication that sometime during the school year the student may be removed beyond a total of 10 school days, look ahead to the next steps that will be necessary. For a student getting close to 10 cumulative school days of removal, the law does not require the following steps. However, a judicious, proactive approach to the situation would be to convene the IEP team to:

- Evaluate the student’s academic progress and the appropriateness of the IEP;
- Conduct a functional behavioral assessment if none has been done; and
- Develop or revise the student’s behavior intervention plan.

Suggested Steps For Students Removed For 10 Days or Less

When removing a student with a disability for 10 days or less, **follow the local school district policy**. In addition consider following these suggested steps:

1. Conduct investigation of incident(s) subject to disciplinary action. Document information.
2. Examine all information. Review child's file to determine:
 - a. If child is a child with a disability under the IDEA or Section 504 and there is a behavior intervention plan in place. If so, carefully review the plan for information that may help in knowing how to approach the situation; OR
 - b. If child may be "a child not yet identified" and the school district had knowledge that the child was a child with a disability, assert the protections provided under the IDEA regulations (§300.534). See page 12 for details on what constitutes a school district having knowledge.
3. Inform student of rights, responsibilities, consequences and procedures.
4. Call parent(s).
5. Conduct informal hearing as outlined by the local district policy. Explain the incident(s) subject to disciplinary action to the student. If the student denies the incident(s), provide an explanation of the evidence and allow the student an opportunity to respond.
6. If warranted, impose short-term removal of 10 school days or less with appropriate documentation.

School personnel have the authority to call police if a crime has been committed. The school district 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 it reports the crime. The school district reporting a crime may transmit copies only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). According to FERPA, school districts must seek parental consent prior to transmitting special education records to authorities. (For more information on FERPA, see 34 CFR, part 99.)

Long-Term Removal (more than cumulative 10 days)

Legal requirements for long-term removals remain more complex. The Supreme Court has stated that due process protections must be more rigorous for students with disabilities students facing a long-term removal of more than 10 cumulative days.

**Steps To Follow For Students Removed More Than 10 Days
which would constitute a change in placement**

The following procedures must be followed as outlined in the IDEA §§ 300.530-300.536.

1. The school must first determine that the removal of this student constitutes a change in placement. (§300.536(b))
2. On the date that decision is made, the school must notify the parents of that decision and **they must be given *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards (June 2007)***. (§300.530 (h))
3. Within 10 school days of any decision to change the placement of a child with a disability, the school, the parent, and relevant members of the child's IEP Team must meet to conduct a manifestation determination. The team must review all relevant information and, at all points of this meeting, consider parent input and concerns. (§300.530 (e)(1)).

Conduct a manifestation determination (See page 8 for specific steps on conducting a manifestation determination) (§300.530(e)).

- A. If the **behavior was** caused by, or had a direct and substantial relationship to, the student's disability or was the direct result of the local educational agency's failure to implement the IEP, immediately return the student to his or her current educational placement. (Exceptions would include: if parent and the district otherwise reach an agreement, removal to an interim alternative educational setting (IAES) for drugs/controlled substances, weapons, serious bodily injury, or removals to an IAES by an impartial hearing officer). Behavior and consequences must be addressed as part of the positive behavior intervention plan:
 - a. Review or develop a functional behavior assessment.
 - b. Review or develop a positive behavior intervention plan to address ways to keep the behavior from reoccurring.
 - c. Decide on the appropriate IAES if necessary
- B. If the **behavior was not** caused by, or did not have a direct and substantial relationship to the student's disability, or was not the direct result of the local educational agency's failure to implement the IEP, the relevant disciplinary procedures (i.e. suspension or removal) may be applied to the student in the same manner they would be applied to students without disabilities.

As appropriate:

 - a. Review or develop a functional behavior assessment.
 - b. Review or develop a positive behavior intervention plan to address ways to keep the behavior from reoccurring.
 - c. Decide on the appropriate IAES if necessary.

4. On the 11th school day that a student is removed from his or her current placement, services must be provided to allow for the student to appropriately progress in the general education curriculum and advance toward achieving the goals in the child's IEP. If the removal is determined to be a change in placement the IEP team meets to determine the services that will be provided. If the removal does not constitute a change in placement, the extent to which services are needed is determined by school personnel, with consultation from at least one of the child's teachers (§300.530 (d)).

Change of Placement

Two terms that may need to be clarified are the child's current educational placement and change of placement. The **child's current educational placement** is decided by the IEP team at least annually, or whenever the IEP document is reviewed. The decision is based on the Least Restrictive Environment (LRE). This means to the maximum extent appropriate, the child shall be educated with children who are nondisabled. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

A **change of placement** occurs when the child is taken out of his/her current educational placement for more than 10 consecutive school days or if the removals constitute a pattern as described in the previous paragraph of this section.

If the school district administrator determines there is a change of placement, the procedures described in Long-Term Removal (page 5) must be followed. The long-term removal procedures include discussing the child's current educational placement and if the placement is the most appropriate for the child.

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. The child is subjected to a series of removals that constitute a pattern:
 - Because the series of removals total more than 10 school days in a school year,
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Frequent and repeated removals from school for the same or similar offenses can reveal a pattern of exclusion. These patterns of exclusion could suggest that school personnel are indirectly making changes of placement without going through the IEP process if the exclusions meet the criteria described under change in placement (§300.536). Such changes of placement made unilaterally by school personnel are illegal under the IDEA 2004. (Exceptions to this rule are situations involving drugs, weapons, and serious bodily injury).

Manifestation Determination

Within 10 school days of the decision to remove the student from their current placement the parent, the school district and relevant members of the IEP team must convene a meeting to make a manifestation determination. Parents must be given the procedural safeguards on the date the decision to take action is made. A manifestation determination is the process of determining the relationship between a student's disability and conduct.

The purposes of the manifestation determination are:

- To ensure the student is not being suspended or removed for behaviors that are related to his or her disability;
- To determine if a disciplinary action may be imposed to the same extent as for a student without a disability; and
- To ensure the school identifies any deficiencies in the student's IEP, placement or implementation and takes immediate steps to remedy those deficiencies.

Steps To A Manifestation Determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team must:

1. Consider, in terms of the behavior subject to disciplinary action, all relevant information including:
 - Evaluation results,
 - Diagnostic results,
 - Relevant information supplied by the parents of the child,
 - Observations of the child,
 - The child's IEP, and
 - The child's placement; **AND**

2. Determine:

- if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **OR**
- if the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability, if the school district, the parents and relevant members of the child's IEP team determine that either of the above conditions was met. (§300.530 (e))

3. IF YES, the behavior is a manifestation of the disability the team must:

- Review or complete a functional behavior assessment.
- Review or develop a positive behavior intervention plan. The plan must address ways to keep the behavior from reoccurring. The consequences for the behavior will be determined by the positive behavior intervention plan. The intent of these requirements is to ensure that appropriate supports and strategies are in place to prevent the reoccurrence of the behavior.
- Return the child to the placement from which the child was removed, unless the incident involved weapons, drugs, serious bodily injury or the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan. (§300.530 (f)(2))

4. IF NO, the behavior is not a manifestation of the disability:

- The child may be disciplined in the same manner as children without a disability,
- The team must complete, as appropriate, a functional behavioral assessment, and behavioral intervention plan and necessary modifications, that are designed to address the behavior violation so that it does not recur. (§300.530 (d)(1)(ii)),
- Appropriate educational services must be provided, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's IEP. (§300.530(d)(1)(ii)).

Removal for Weapons, Drugs, or Serious Bodily Injury by school personnel

School personnel may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 school days, if:

- The child carries a weapon to school or to a school function under the jurisdiction of the State or a local educational agency; or
- The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the State or a local educational agency, or
- The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or a school district. (§300.530 (g))

Remember that the safeguards and procedures for long-term removal (more than 10 days) must still be followed.

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)].

Illegal drug means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code which states:

The term “weapon” means a weapon, device, instrument, material or substance animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Serious Bodily Injury means:

- Substantial risk of death,
- Extreme physical pain,
- Protracted and obvious disfigurement, or
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

From: 18 U.S.C. § 1365 (h)(3)

Removal by a hearing officer

An impartial administrative hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 school days. The hearing officer, in an expedited due process hearing, may:

- Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sec. 300.530 or that the child's behavior was a manifestation of the child's disability; or
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (§300.532(b)(2))

A school district may choose to first utilize the IEP process to discuss changing a student's placement if it determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others. If the IEP process does not result in a change in placement the school district can request that a hearing officer order a change in placement. A hearing officer may choose to have a student removed to an IAES. However, the IEP team determines IAES placement and what services are necessary (§300.531).

An interim alternative education placement (IAES) is a temporary placement. At the end of the removal the student is returned to his prior placement, unless the parents and LEA agree to a different placement that will meet the student's needs. If the parents and LEA are unable to reach an agreement and school officials believe that the student's return to his prior placement is likely to result in injury to the student or others, they have the authority to ask a hearing officer to extend the IAES placement for an additional 45 school days.

Appeals

If the child's parents disagree with the outcome of the manifestation determination or with any decision regarding placement for discipline reasons the parents may request an expedited hearing. While awaiting the hearing, the child is to remain in the IAES pending the decision of the hearing officer or until the expiration of the time period provided, whichever occurs first, unless the parents and the school district agree otherwise.

Protections for Children ‘Not Yet Eligible’ for Special Services

A child who has not yet been determined to be eligible for special education and related services under this part, and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in the IDEA 2004 if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A school district is said to have had knowledge that a child had a disability if:

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; or
2. The parent of the child requested an evaluation of the child; or
3. The teacher of the child, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (§300.534).

An exception:

School district would not be deemed to have knowledge if--

1. The parent of the child has not allowed an evaluation of the child or has refused services; or
2. The child has been evaluated and determined to not be a child with a disability under this part.

Informal conversations about students with potential needs for special education and related services do not constitute knowledge that the student may need services if not currently identified.

If it is deemed that the school district did not have knowledge that the child may have a disability:

- The child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.

If it is deemed that the school district did have knowledge that the child may have a disability:

- Evaluation of the child shall be conducted by the agency including information provided by the parents to determine if the child does have a disability.
- If the child does have a disability, the agency shall provide special education and related services.

Removal Definitions

Which removals count toward the 10 days in a school year?

- Bus suspension - If transportation services are necessary for the student to benefit from special education services and the transportation services are part of the IEP, then that service is a related service. A day of suspension from riding the bus is thus counted the same as a day of out-of-school suspension, unless the school district provides another means of transportation. If the bus transportation is not part of the student's IEP, a bus suspension would not be counted as a day of out-of school suspension. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child. *8/14/06 Federal Register, Vol.71, No. 156, page 46715.*
- In-school suspension – An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified on his or her IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. *8/14/06 Federal Register, Vol.71, No. 156, page 46715.*
- Partial days of suspension – Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement. *8/14/06 Federal Register, Vol.71, No. 156, page 46715.*
- Mid-year transfer –Removals while attending a previous school district would count toward the 10 day cumulative limit in the same school year for a student who transfers to a new school district within that current school year.

Additional Resources

<http://www.dpi.state.nd.us/>

North Dakota Department of Public Instruction.

<http://www.dpi.state.nd.us/speced/resource/conflict/index.shtm>

North Dakota conflict resolution website

<http://idea.ed.gov/explore/home>

This site provides a searchable index of federal statute, regulations and commentary.

<http://www.ed.gov/about/offices/list/ocr/index.html?src=mr>

Office for Civil Rights.

<http://www.cec.sped.org/>

Council for Exceptional Children.

www.PBIS.org

The OSEP Center on Positive Behavioral Interventions and Supports (PBIS).