

Discipline of Students with Disabilities

**Code of Conduct Violations by Students with Disabilities, Resulting
In Disciplinary Consequences of Ten (10) School Days or Less**

Student commits code of conduct violation for which the disciplinary consequence would result in removal from the student's placement for ten (10) consecutive days or less.



School personnel may assign the consequence applicable to non-disabled students for a similar period of time, not to exceed ten (10) consecutive school days. 34 CFR 300.520(a)(1)(i)



During the first ten (10) cumulative school days of removal in one (1) school year, the school does not have to provide any services to the student if non-disabled students would not receive services. 34 CFR 300.121(d)(1).



School personnel may continue to remove the student for disciplinary reasons for up to ten (10) school days at a time throughout the same school year for separate incidents of misconduct, so long as the removals do not constitute a change of placement under 34 CFR 300.519(b) and are those which would be applied to non-disabled students. 34 CFR 300.520(a)(1)(i).



A series of disciplinary removals, each for ten (10) consecutive school days or less, may result in a change of placement if they cumulate to more than ten (10) school days in one (1) school year. School personnel should analyze the length of each removal, the proximity of the removals to each other, and the total amount of time the child is removed. 34 CFR 300.519(b). If a removal would result in a change of placement, a manifestation determination review (MDR) must first be done. 34 CFR 300.523(a).

Beginning with the 11th day of disciplinary removals in a school year, educational services must be provided. 34 CFR 300.520(a)(1)(ii); 34 CFR 300.121(d)(2)(i)(A). If the removal does not result in a change of placement, school personnel, in consultation with the student's special education teacher, determine the services to be provided. 34 CFR 300.121(d)(3)(i).

The educational services to be provided must meet the standard of enabling the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. 34 CFR 300.121(d)(3)(i).

Beginning with the 11th day of disciplinary removals in a school year, the IEP Team must address behavioral issues. If the removal does not result in a change of placement, the IEP Team must meet within ten (10) business days of first removing the student for more than ten (10) school days in a school year, to develop a plan to conduct a functional behavioral assessment, if one was not conducted before the behavior that resulted in the removal. 34 CFR 300.520(b)(1)(i).

After the functional behavioral assessment is completed, the IEP Team meets as soon as practicable to develop a behavioral intervention plan to address the behavior and implement the plan. 34 CFR 300.520(b)(2).

If the student's IEP already includes a behavior intervention plan, within ten (10) business days of first removing the student for more than ten (10) school days in a school year, the IEP Team must meet to review the behavior intervention plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. 34 CFR 300.520(b)(1)(ii).

If the student is assigned subsequent disciplinary removals in a school year for ten (10) days or less that do not result in a change of placement, the IEP Team members (including the parent) informally review the behavior intervention plan and its implementation to determine if modifications are necessary. 34 CFR 300.520(c)(2).

If one or more team members believe modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team deems necessary. 34 CFR 300.520(c)(2).

Code of Conduct Violations by Students with Disabilities for Which Recommended Disciplinary Consequences Would Result in Change of Placement for More Than Ten (10) School Days (Excluding Drug and Weapon Offenses)

Student violates code of conduct, and the recommended disciplinary consequence would result in a removal from the current educational placement for more than ten (10) consecutive school days (alternate placement, expulsion). This constitutes a change of placement. 34 CFR 300.519(a).

The recommended disciplinary consequence may be for a removal from the current educational placement for less than ten (10) consecutive school days, but may constitute a change of placement because the student has already been removed for disciplinary reasons for ten (10) or more school days in the current school year, and the length of each removal, their proximity to each other and the total amount of time the student has been removed result in a change of placement. 34 CFR 300.519(b).

School personnel may remove from current educational placement for ten (10) school days or less (34 CFR 300.520(a)(1)(i)) and recommend further discipline according to the code of conduct. (The ten-(10)-day-or-less alternative must be one equally applicable to non-disabled. See pp. 1-2 for educational services to be provided during a short removal.) If a criminal act has been committed, charges may be filed, and law enforcement authorities to whom the crime was reported must be provided special educational and disciplinary records to the extent disclosure is permitted by FERPA. 20 USC 1415(k)(9), 34 CFR 300.529.

At the time decision is made to take this action, school personnel must notify parent of decision and provide procedural safeguards notice in 34 CFR 300.504. 20 USC 1415(k)(4)(A)(i), 34 CFR 300.523(a)(1).

Within ten (10) business days, IEP Team and other qualified personnel must meet and review relationship between disability and the behavior subject to disciplinary action (manifestation determination review-MDR). 20 USC 1415(k)(4)(A), 34 CFR 300.523(a)(2)(b). If there has been no previous functional behavior assessment and creation of a behavior intervention plan, the IEP Team must develop an assessment plan. 34 CFR 300.520(b)(1)(i). As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. 34 CFR 300.520(b)(2). If the IEP contains a behavior intervention plan, the IEP Team reviews the plan and its implementation and modifies them as necessary to address the behavior. 34 CFR 300.520(b)(1)(ii).

For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline, such as evaluation and diagnostic results, including such results and other relevant information from the parent, observation of the student, and the student's IEP and placement. The misbehavior is not a manifestation of the disability, if the IEP Team finds that in relationship to the misbehavior subject to discipline:

- The IEP and placement were appropriate;
- Consistent with the content of the student's IEP and placement, special education services, supplementary aids, and behavior intervention strategies were actually provided;
- The disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
- The disability did not impair the ability of the student to control the misbehavior.

20 USC 1415(k)(4)(C), 34 CFR 300.523(c).



If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. 34 CFR 300.523(d). If IEP Team identified deficiencies in IEP, placement, or implementation, it must take immediate steps to remedy. 34 CFR 300.523(f).



If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student, except that the student must continue to be provided a free appropriate public education. 20 USC 1415(k)(5)(A); 20 USC 1412(a)(1)(A). 34 CFR 300.121(a); 34 CFR 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. 20 USC 1415(k)(5)(B); 34 CFR 300.524(b).



Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer, who applies the same standards as the IEP Team. 20 USC 1415(k)(6), 34 CFR 300.525(a), (b).

Parent may appeal decision to place student in forty-five-(45)-day interim placement. The hearing is expedited before a special education hearing officer, who applies the standards regarding a dangerous student in 34 CFR 300.521. 20 USC 1415(k)(6)(B)(ii), 34 CFR 300.525(b)(2).

When a parent requests a hearing in a drug or weapon case to challenge the interim alternative placement or the manifestation determination, student remains in interim placement until decision of hearing officer or forty-five (45) days expires, whichever comes first, unless the parent and school agree otherwise. 34 CFR 300.526(a). Then student returns to current placement (defined as placement prior to interim alternative educational setting). School can ask for expedited hearing before special education hearing officer to prevent this return, if the student is substantially likely to injure self or others. 34 CFR 300.526(b),(c). The hearing officer applies the standards in 34 CFR 300.121. 34 CFR 300.526(c). Hearing officer can order another placement for up to forty-five (45) days. 34 CFR 300.526(c))(3). This procedure may be repeated as necessary. 20 USC 1415(k)(7), 34 CFR 300.526(c)(4)

The standard the educational services must meet is to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. 34 CFR 300.121(d)(2)(i)(B); 34 CFR 300.524(a). The IEP Team must determine what services are necessary to meet this standard. 34 CFR 300.121(d)(3)(ii).

Drug and Weapon Offenses by Students with Disabilities

Student carries weapon to school, or possesses, uses, sells, or solicits sale of illegal or controlled substance on school property or at a school function.

School personnel may remove from current educational placement for ten (10) school days or less, and recommend further discipline according to the code of conduct. 20 USC 1415(k)(1)(A)(i); 34 CFR 300.520(a)(1)(i). (The ten-(10)-day-or-less alternative must be one equally applicable to non-disabled students. See pp. 1-2 for education services to be provided during a short removal.) If a criminal act has been committed, charges may be filed, and special education and disciplinary records shall be transmitted to law enforcement authorities to whom the crime was reported, to the extent disclosure is permitted by FERPA. 20 USC 1415(k)(9); 34 CFR 300.529.

At time decision is made to take this disciplinary action, school personnel must notify parent of decision and provide procedural safeguards notice in 34 CFR 300.504. 20 USC 1415(k)(4)(A)(i); 34 CFR 300.523(a)(1).

Within ten (10) business days, IEP Team must meet and may extend the removal by placing student in appropriate interim alternative educational setting applicable to non-disabled student for same amount of time non-disabled student would be assigned, but not more than forty-five (45) calendar days. 20 USC 1415(k)(1)(A)(ii) and (3)(A); 34 CFR 300.520(a)(2); 34 CFR 300.522(a). IEP Team must review the behavior intervention plan, if one exists, and its implementation and modify, as necessary, to address behavior. 34 CFR 300.520(b)(1)(ii). If there has been no previous functional behavioral assessment and creation of behavior intervention plan, IEP Team must develop assessment plan. 20 USC 1415(k)(1)(B); 34 CFR 300.520(b)(1)(i). As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. 34 CFR 300.520(b)(2). The IEP Team and other qualified personnel must review the relationship between disability and the behavior subject to disciplinary action (manifestation determination review-MDR). 20 USC 1415(k)(4)(A); 34 CFR 300.523(a)(2),(b).

Illegal drug - controlled substance. Excludes legally used and possessed prescription drugs. 20 USC 1415(k)(10)(B); 34 CFR 300.520(d)(2).

Controlled substance - drug or substance in 21 U.S.C. § 812(c), Schedules I-V. 20 USC 1415(k)(10)(A); 34 CFR 300.520(d)(1).

Weapon - A firearm and more. Something used for or readily capable of causing death or serious bodily injury. Excludes pocket knife with blade of 2½ inches or less. 20 USC 1415(k)(10)(D); 34 CFR 300.520(d)(3).

The forty-five-(45)-day alternative interim placement must:

- Enable student to progress in general curriculum, although in another setting.
- Enable the student to continue to receive those services and modifications, including those described in the student's IEP, that will enable the student to meet the goals set out in that IEP; and
- Include services and modifications designed to address the drug or weapon offense so that it does not recur. 20 USC 1415(k)(3)(B); 34 CFR 300.522; 34 CFR 300.121(d)(2)(ii).

Comments to regulations: Students may be subject to multiple forty-five-(45)-day interim placements for separate drug and weapon offenses. The forty-five-(45)-day interim placement may be completed even if drug or weapon offense was manifestation of disability. If misbehavior was not a manifestation of disability, regular disciplinary consequence can be applied in addition to forty-five-(45)-day interim placement.

For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline, such as evaluation and diagnostic results, including such results and other relevant information from the parent, observation of the student, and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that, in relationship to the misbehavior subject to discipline:

- The IEP and placement were appropriate;
- Consistent with the content of the student's IEP and placement, special education services, supplementary aids and services, and behavior intervention strategies were actually provided;
- The disability did not impair the ability of student to understand the impact and consequences of the misbehavior; and
- The disability did not impair the ability of the student to control the misbehavior.

20 USC 1415(k)(4)(C); 34 CFR 300.523(c).



If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. 34 CFR 300.523(d). If IEP Team identifies deficiencies in IEP, placement, or implementation, it must take immediate steps to remedy. 34 CFR 300.523(f).

OR

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student, except that the student must continue to be provided a free appropriate public education. 20 USC 1415(k)(5)(A); 20 USC 1412(a)(1)(A). 34 CFR 300.121(a). 34 CFR 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. 20 USC 1415(k)(5)(B); 34 CFR 300.524(b).

Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer, who applies the same standards as the IEP Team. 20 USC 1415(k)(6); 34 CFR 300.525(a), (b).

If IEP Team finds no manifestation and changes placement to comply with the disciplinary recommendation, parent may appeal the placement decision. The hearing is expedited before a special education hearing officer. 20 USC 1415(k)(6)(A); 34 CFR 300.525(a)(2).

During appeals, stay put applies. 34 CFR 300.524(c). If child is substantially likely to injure self or others in the current placement, the school can request an expedited hearing and request the hearing officer to remove to an interim alternative educational placement for up to forty-five (45) days. Standards to be met are those in 20 USC 1415(k)(2) and 34 CFR 300.521.

The standard the education services must meet is to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. 34 CFR 300.121(d)(2)(i)(B); 34 CFR 300.524(a).

The IEP Team must determine what services are necessary to meet this standard. 34 CFR 300.121(d)(3)(ii).

Students Dangerous to Self or Others

IDEA discipline procedures are followed for a non-drug or weapon or offense, the penalty for which would result in expulsion or removal from the student's placement for more than ten (10) school days.

IEP Team meets, determines no manifestation and recommends discipline proceed. Parent disagrees and requests a due-process hearing. Stay put applies, and child stays in the current placement, unless school acts to change the placement. 34 CFR 300.524.



School requests hearing officer to change the placement during the pendency of the hearing, because of the likelihood of injury to self or others. 20 USC 1415(k)(2); 34 CFR 300.521.



Hearing officer holds expedited hearing to consider request. School has burden of proof to show by more than a preponderance of the evidence that maintaining the child in the current placement is substantially likely to result in injury to self or others. 20 USC 1415(k)(2)(A), (10)(D); 34 CFR 300.521(a). Hearing officer must also:

- consider the appropriateness of the current placement.
- consider whether the school has made reasonable effort to minimize the risk of harm in the current placement, including the use of supplemental aids and services.
- determine that the interim alternative setting proposed by the school personnel, in consultation with special education teacher
 - ♦ enables the student to participate in the general curriculum, although in another setting;
 - ♦ enables the student to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and
 - ♦ include services and modification designed to address the behavior so that it does not recur.

20 USC 1415(k)(2); 34 CFR 300.521(b),(c),(d); 34 CFR 300.522(b); 34 CFR 300.121(d)(2)(ii)(B).

If parent appeals forty-five-(45)-day interim alternative placement by IEP Team in drug or weapon case, hearing officer applies these standards in expedited hearing. 20 USC 1415(k)(6)(B)(ii); 34 CFR 300.525(b)(2).

If all requirements are met, hearing officer may order a change of placement to the interim alternative educational setting for up to forty-five (45) days. 20 USC 1415(k)(2); 34 CFR 300.521.



Student returns to his or her current placement (the placement prior to the interim alternative educational setting) at end of forty-five (45) days, if no decision has been issued by hearing officer in pending due-process hearing. If school believes it would be dangerous for student to return to current placement while hearing is still pending, school may request another expedited hearing to again place student in forty-five-(45)-day interim placement while hearing continues to be pending. 34 CFR 300.526(b), (c)(4). Hearing officer holds same type of hearing initially held when hearing officer ordered first forty-five-(45)-day interim placement. 20 USC 1415(k)(7); 34 CFR 300.526. Any subsequent forty-five-(45)-day interim setting must meet the standards in 34 CFR 300.522.

Procedure History:

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