

# Discipline and Students with Disabilities

Additional questions can be sent to [cwilson@cjr1.org](mailto:cwilson@cjr1.org).



# Disciplining Students with Disabilities

- Like all students, those with disabilities can be suspended or expelled for violating the school's code of conduct. However, IDEA provides some additional procedures that schools must follow when disciplining students with disabilities. These procedures were put into IDEA to prevent schools from suspending or expelling students without considering the effects of the child's disability.
- These procedures are different depending on:
  - the length and type of disciplinary action the school proposes to take;
  - the nature of the conduct that led to the disciplinary action; and
  - whether the conduct is found to be connected to the student's disability.



# IDEA Discipline Rules

- **For disciplinary actions lasting 10 school days or less:**
- A student with a disability who has an IEP in effect can be disciplined like any other student who violates the school code of conduct.
- During the time the student is in the disciplinary setting, the school is not required to provide any educational services (including special education) to the student, unless the school district provides educational services to non-disabled students in the same circumstances.
- Parents may request that the school continue educational services for the student during the time of the disciplinary action or somehow allow the parent to facilitate the student's completion of school work. While the school is not required to grant such requests, many will agree so that the student doesn't fall behind.



# Discipline Rules...Continued

- **For Disciplinary actions resulting in removal of more than 10 school days in the same year (whether or not the days are consecutive):**
- The school must provide special education services that allow the student to:
  - continue to participate in the general education curriculum, although in another setting; and
  - progress toward meeting the goals outlined in the student's IEP.



# Disciplinary Actions

- If the action **does not result in exclusion** from school for more than 10 consecutive school days **and** does not constitute a change of placement (i.e., when there is evidence that there is a pattern of exclusions that do not exceed 10 school days), school personnel, in consultation, must determine what services the student should be provided.
  - (Note: A “change of placement” occurs when the student is excluded from his/her current placement for more than 10 consecutive school days in a school year or upon the 11th school day that a child is excluded from his current placement when there is evidence of a pattern of a “series of removals.”)



# Disciplinary Actions

- If the disciplinary action **results in an exclusion** from school that is a change of placement, the student's IEP team must meet to determine the exact educational services needed while the student is assigned to the interim alternative education setting.
  - Interim Alternative Educational Settings
    - In-school Suspension
    - Out-of-school Suspension
    - Alternative Educational Setting



# Disciplinary Actions

- Within 10 days from the beginning of a disciplinary action **that results in an exclusion that exceeds 10 school days**, the school district, the parents, and relevant members of the student's IEP team must meet to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability. (Manifestation Determination Meeting)
- The team must also determine if the conduct was the direct result of the school's failure to implement the student's IEP, including a behavior intervention plan. If the group decides that the student's behavior was a direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies and **return the student to his/her original placement.**



# Series of Short Removals

- When frequent disciplinary actions add up to more than 10 school days in a school year, such removals may constitute a “pattern.” A pattern is indicated when the student’s behavior and the length of removal is the same or similar to previous incidents, and the incidents are in close proximity to one another. A pattern of removals of 10 days or less, once they total more than 10 school days, carries the same requirements as a removal of more than 10 days and is considered a change of placement for the student. The school has the responsibility for making a determination about whether a pattern constitutes a change of placement on a case-by-case basis.



# **“Manifestation Determination” – How Is Behavior Related to Disability?**

- In making the manifestation determination, the team (comprised of school personnel, the student’s parents, and other relevant members of the student’s IEP team) will review:
  - The student’s IEP
  - The student’s behavior intervention plan
  - Any teacher observations
  - Any relevant information provided by the parents



# Manifestation Determination

- Under IDEA 2004, the presumption of a connection between behavior and disability no longer exists. Now, the team is required to answer these questions:
- Considering the behavior subject to discipline, review the student's behavior to determine if it was caused by, or had a direct and substantial relationship to, the student's disability. For example, a student's low self-esteem, while possibly a by-product of a learning disability, is not alone sufficient to be considered a basis for finding a direct relationship between the student's disability and behavior.
- Did the school fail to follow a portion of the IEP including a behavior intervention plan in a manner that directly caused the misconduct?



# Finding of Manifestation

- If the behavior is found to be directly related to the student's disability, the IEP team must plan for a functional behavioral assessment and the development of a behavior intervention plan based on the results of that assessment. If the student already had a behavior intervention plan in place, the IEP team must review if the plan was being followed and revise it as needed to address the problem behavior that led to this disciplinary action.
- If the team finds that the student's behavior was related to the disability or an improperly implemented IEP, the student is returned to the original education setting unless the parents agree to a new placement as part of the behavior intervention plan.



# Finding of No Manifestation

- For students whose behavior was not directly related to the disability, the same disciplinary actions can be imposed as those imposed on a non-disabled student. Such action could include expulsion. However, if the student is expelled from school, the student must continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals set out in the IEP.
- For students whose behavior is not determined to be directly associated with their disability, the IEP team should nonetheless consider the need for a functional behavioral assessment and behavior intervention plan.



# Special Circumstances

- Certain offenses can lead to a student being moved to an interim alternative educational setting for up to 45 school days even if the conduct is determined to be related to the student's disability. Removing a student for these offenses does not require parent permission or agreement, nor does it require any involvement by a hearing officer or other impartial third party.
- These offenses are:
  - **Weapons**
    - If a student carries or possesses a weapon:
      - On the way to or at school
      - On school premises
      - At a school function



# Special Circumstances

- **Drugs**

- If the student knowingly possesses or uses illegal drugs or sells or solicits the sale of illegal drugs:
  - While at school
  - At a school function

- **Serious bodily injury**

- If a student has inflicted serious bodily injury upon another person:
  - While at school
  - On school premises
  - At a school function

- On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards.



# Protection for Students not yet Eligible for Special Education

- Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to students without disabilities if the public agency did not have prior knowledge of the disability. If the public agency is deemed to have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action, the student may assert any of the protections for students with disabilities in the area of discipline. The public agency has knowledge of the disability when:
  - (1) The parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the student; or,



# Protections...Continued

- (2) The parent has requested an evaluation; or,
  - (3) The student's teacher or other school staff has expressed specific concern about a pattern of the student's behavior directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.
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- A public agency would not be deemed to have knowledge that the student is a student with a disability if the public agency conducted an evaluation and determined that the student was not a student with a disability; or determined that an evaluation was not necessary and provided proper Notice of Action Refused prior to the behavior incident; or, if the parent of the student has not allowed an evaluation of the student pursuant to IDEA or has refused services.



# Protections...Continued

- If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming the public agency is not deemed to have knowledge that the student is a student with a disability prior to the behavior that precipitated the disciplinary action), the student remains in the educational placement determined by the public agency, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, the public agency shall provide special education and related services and follow all required procedures for disciplining students with disabilities.



# **REPORTING CRIMES COMMITTED BY STUDENTS WITH DISABILITIES**

- Nothing in this part shall be construed to prohibit a public agency from reporting crimes, to appropriate law enforcement and judicial authorities, or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by students with disabilities. An agency reporting a crime shall ensure copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. Transmittal of records must be in accordance with Family Educational Rights and Privacy Act (FERPA).



