

Disciplinary Removal of Students with Disabilities

When a special education student is subject to a disciplinary removal from school (suspension or expulsion) that constitutes a change in placement, the student's Individual Education Program (IEP) team shall be convened. A change in placement occurs when a student is suspended or expelled for more than 10 consecutive school days, or has accumulated removals of more than 10 school days in a school year that constitute a pattern of exclusion because the student's behavior is substantially similar to the student'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 student is removed, and the proximity of the removals to one another. At least one team member who is knowledgeable about the student's disabling condition shall be present at this meeting. The purpose of the team meeting is to determine if there is a causal relationship between the student's behavior and his/her disabling condition. This meeting shall be documented and shall occur no later than 10 school days after the decision to remove the student in a manner that causes a change in placement. The IEP team shall review all relevant information in the student's file, including the IEP, and teacher and parent observations and answer the following questions:

1. Was the student's behavior caused by or did it have a direct and substantial relationship to his/her disability?
2. Was the student's behavior the direct result of the district's failure to implement the student's IEP?

If the IEP team determines that the answer to either of these two questions is yes, then the behavior in question shall be determined to be related to (a manifestation of) the student's disability. If the IEP team determines that the answer to both of these two question is no, then the behavior in question shall be determined to not be related to (not a manifestation of) the student's disability:

A. Behavior Is Not a Change in Placement or Is Not Related to the Disability

1. If the removal is not a change of placement, the removal may be administered to the student as with a non-disabled student.
2. If the removal is a change of placement and the IEP team determines the behavior is not a manifestation of the student's disability, the removal may be administered to the student as with a non-disabled students. However, the following procedures shall be employed:
 - a. The school district shall provide written notice to the parents about the intent to implement a disciplinary removal that constitutes a change the placement of their child and shall provide parents with a copy of their procedural rights.

- b. The school district shall convene an IEP meeting to discuss the student's disciplinary removal and to develop a plan to provide a level of services that allows the student to access the general education curriculum, although in another setting; to progress toward IEP goals; and to receive behavioral intervention services and modifications designed to address the behavior violation so that it does not recur during the removal period.
- c. If parents request a hearing to contest the school district's decision, then the student is returned to his/her pre-discipline placement until the hearing is over, except as may otherwise be ordered by a judge or an administrative law judge and except in the case of removals covered by section C, below.

B. Behavior Is Related to the Disability

If the student's misconduct is found by the IEP team to be a manifestation of the student's disability, the disciplinary removal must be terminated and the student returned to his or her IEP placement unless a judge or an administrative law judge orders otherwise, the IEP team agrees to change the placement, or the infraction is covered in section C, below.

The IEP team must:

- a. conduct a functional behavioral assessment and implement a behavioral intervention plan for the student; or
- b. if a behavioral intervention plan has already been developed, review the existing plan and modify it as necessary to address the behavior.

The IEP team should also consider whether the current program and placement are appropriate to the student's needs in light of the fact that the student has engaged in misconduct that is a manifestation of his or her disability in this program and placement.

C. Discipline for Drugs, Weapons, or Serious Bodily Injury

Regardless of whether the misconduct is, or is not, determined to be a manifestation of the student's disability, school personnel may remove a student from his or her current placement and place the student in an interim alternative educational setting for the same amount of time that a non-special education student would be subject to removal, but for no more than 45 school days, for the following types of misconduct:

1. possessing or carrying a weapon to school, on school premises, or to a school function (a “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 2.5 inches in length)
2. knowingly possessing or using illegal drugs or selling or soliciting the sale of a controlled substance while at school, on school premises, or at a school function; or
3. inflicting serious bodily injury upon another person while at school, on school premises, or at a school function (“serious bodily injury” means a bodily injury that involves a 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 function)

The interim alternative educational setting is determined by the IEP team and must allow the student to participate in the general education curriculum, although in another setting; to progress toward IEP goals; and to receive behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. The IEP team shall also conduct a functional behavioral assessment and implement a behavioral intervention plan, or review and modify as needed any existing plan.

The student remains in the interim alternative educational setting (for up to 45 school days) and is not returned to the pre-misconduct placement during any due process hearing.

D. Services Following Ten School Days of Removal Without a Change in Placement

After a special education student has been removed from his or her current placement for ten school days in a school year and is subject to a current removal that is not for more than ten consecutive school days and is not a change of placement, the student is entitled to receive educational services. Such services are determined by school district personnel in consultation with at least one of the student’s teachers and must enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward IEP goals.

1. Section 504 students who commit current violations involving illegal drug use or use of alcohol are subject to disciplinary removals to the same extent and under the same conditions as non-disabled students; and
2. If a Section 504 student's team determines as a result of a manifestation determination that the student's behavior is unrelated to his/her disability, the school district may impose a disciplinary removal of the student as it would a non-disabled student for similar behavior, with no duty to provide services during the course of the removal unless non-disabled students would receive services in similar circumstances.

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