

Billings School District 2

STUDENTS

Student Discipline: Due Process

Discipline Procedure for Special Education Students (SPED)

Eligibility

For discipline purposes, a student with a disability includes:

1. A child identified as eligible to receive special education services under IDEA; or
2. A child who the District has knowledge was a child with a disability before the behavior that precipitated the disciplinary action occurred as defined below:
 - a. The responsible adult has expressed concern in writing (unless the responsible adult does not know how to write or has a disability that prevents a written statement) to personnel of the school that the child is in need of special education and related services;
 - b. The behavior or performance of the child demonstrates the need for such services;
 - c. The responsible adult of the child has requested an evaluation;
 - d. The teacher of the child, or other personnel of the school, has referred the child due to concerns about the behavior or performance of the child to the pre-referral team or district administration.

The District would not be deemed to have knowledge as outlined above if the child had either been evaluated and determined not to be a child with disabilities or it was determined that an evaluation was not necessary and the responsible adult was provided notice of this determination.

If the District does not have knowledge that the student is a child with a disability prior to taking disciplinary measures against the child, the student may be subjected to the same disciplinary measures as those applied to children without disabilities who engaged in comparable behaviors. However, 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 must be conducted in an expedited manner. Pending the results of the evaluation, the child remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

School Authority to Discipline

All students with disabilities are subject to suspension (ten (10) days or less) on the same grounds as regular education students without the provision of services. The same policies, procedures, rules, and handbooks apply to students with disabilities as to regular education students unless otherwise indicated in the student's Individual Education Plan (IEP). Removal for ten (10) days or less from the current educational placement does not indicate a change of placement.

Accumulative suspensions are defined to include:

1. Suspensions of no more than ten (10) school days per year;
2. In-school suspensions if the child is not afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the IEP services, and continue to participate with children to the extent they would in their current placement;
3. Portions of the day that a child is suspended; and
4. Bus suspensions, if transportation is identified as a related service on the IEP and no alternative transportation is provided.

Removal from Current Educational Placement

School authorities may suspend a student for additional days (accumulations of more than 10 days) for separate incidents as long as those removals do not constitute a change in placement (as described in the following section). The administrator should consider the following factors and determine that they do not indicate a series of removals that constitute a pattern:

1. How long was each removal?
2. What is the total amount of time the child is removed?
3. What is the proximity of the removals to one another?
4. Were the behaviors the same or similar?
5. Did the behavior meet the same purpose for the student (common cause of behaviors)?
6. When and how often has the IEP team been reconvened to adjust or modify the Functional Behavioral Assessment, behavioral objectives, or behavior intervention plan on the IEP?
7. What provision of preventive behavior interventions has been provided to the child?

The following steps must be initiated before the student reaches the tenth (10th) day of removal in a given year:

1. Conduct a functional behavioral assessment;
2. Develop and implement behavior interventions. If the student already has a behavior plan, the plan will be reviewed and modified as appropriate.
3. Reconvene the IEP team; and
4. Provide services to the child to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the child's IEP. The administrator must consult with the child's special education teacher (underwriter) to make the determination of the level of services needed.

If deemed necessary by any member of the IEP team, the above steps must be initiated for any subsequent removal from school beyond 10 days in the same school year.

Change of Placement

A change of placement for SPED students is defined as suspensions that within one school year:

1. Aggregate more than ten (10) days which creates a series or pattern of exclusions; or
2. Are longer than ten (10) consecutive days.

When the District recommends suspensions constituting a change in placement, they must:

1. Notify the responsible adult (the same day that the decision to take action is made) of their procedural safeguards and its intent to initiate the process to remove the child from the last approved IEP site of service for more than ten (10) school days. The written notice shall be in accordance with state and federal regulations and include the procedural safeguards under Individuals with Disabilities Education Act (IDEA). The responsible adult will be notified, in writing, at least 48 hours prior to the meeting(s), unless mutually agreed to by the responsible adult and the school.
2. The responsible adult may request a postponement of the meeting for up to three (3) additional school days from the date of the proposed IEP meeting. The student's suspension may remain in effect during this postponement.
3. Conduct a functional behavioral assessment and develop and implement behavior interventions. If the student already has a behavior plan the plan will be reviewed and modified as appropriate.
4. Conduct a Manifestation Determination IEP prior to the tenth (10th) day of suspension to determine if the behavior(s) is/are a manifestation of the disability. The purpose of the IEP is to determine causal relationship and is not to decide if the misconduct occurred.

Manifestation Determination

The Manifestation Determination IEP team must base its decisions on recent information that will include but is not limited to:

1. Review of educational records;
2. Review of the student's school progress in regard to the student's Individualized Education Program (IEP) and placement and whether the IEP services were provided;
3. Review of the student's discipline or behavioral records, including behavioral objectives, behavior interventions or plans;
4. Recent evaluation and diagnostic results (conducted within the last three years), including relevant information supplied by the responsible adult of the child;
5. Observations of the child;
6. Review the child's functional behavioral assessment (mandated for IDEA identified students only); and
7. Review or develop a behavioral intervention plan that will address the problem behavior(s).

The Manifestation Determination IEP team must consider the following standards when making the determination of manifestation:

1. The current IEP and placement were appropriately developed and implemented;
2. That the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

3. That the child's disability did not impair the child's ability to control the behavior subject to disciplinary action.

If any of the before mentioned standards were determined to be unmet, the behavior must be considered to be a manifestation of the child's disability. The team will also take immediate and necessary steps to remedy those deficiencies.

If the Manifestation Determination IEP team determines that the behavior is a manifestation of the child's disability, due process hearing cannot occur, and the IEP team must review (prior to the tenth day of suspension) and adjust the IEP to include the review of a behavior plan so that the behavior will not recur. The IEP team may also identify an alternative educational placement for the child. If the responsible adult consents, the child may be moved.

If the IEP determines that the behavior is not a manifestation of the disability for an IDEA identified student, the District may proceed with a due process hearing and impose its regular discipline, unless the responsible adult appeals the manifestation determination. If the District initiates disciplinary procedures applicable to all children, the District shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the hearing officer making the final determination regarding the disciplinary action.

If the responsible adult disagrees with the IEP team decisions on the identification, evaluation or appropriateness of the program/placement, the responsible adult may request a due process hearing. In this event, the policies, procedures, rules, and handbooks governing discipline of special education students will be followed. The responsible adult must receive the OPI brochure, "Parental Rights in Special Education."

If the responsible adult refuses to consent to an interim placement change and the School District believes the student is dangerous to him/herself or others, the District may seek a temporary restraining order (TRO) from a court of competent jurisdiction. If the court denies the TRO, the policies, procedures, rules, and handbooks governing discipline of special education students will be followed.

Functional Behavior Assessment (FBA)

For IDEA identified students, the school will conduct an FBA within 10 business days:

1. When the child is removed for more than 10 school days in a school year; and
2. When the child is subjected to a disciplinary change of placement.

The District's developed FBA does not require parental consent to complete because the information is a review and compilation of existing data.

Behavior Intervention Plans

If an IDEA child already has a behavior intervention plan prior to the behavior that resulted in the removal, the IEP team shall meet to review the plan and its implementation, and, modify the

plan and its implementation as necessary to address the behavior. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

Appeal and Stay Put

If the responsible adult of an IDEA qualified child challenges and requests a due process hearing with the Office of Public Instruction in relationship to the following circumstances:

1. Removal from current educational placement for more than 10 days; or
2. Manifestation determination; or
3. The change of placement decision;

the child is returned to the last approved placement, unless the student is placed in an Interim Alternative Educational Placement (IAEP):

If the child has been placed in an IAEP, the child must remain in that interim placement pending the results of an expedited due process hearing or until the expiration of the time period (45 days), whichever occurs first, unless the District and the responsible adult agree otherwise. When a student is placed in an IAEP and the District proposes to change the child's placement after the expiration of the interim placement and the responsible adult disagrees and due process is requested, the child must be returned to the last agreed IEP placement (prior to the interim alternative placement) if that placement expires. An exception is when the school has requested and been granted an extension. The responsible adult is not afforded stay put or IDEA due process rights for suspension of the first 10 days or less, but has general notice and appeal rights available to all students subject to suspension.

Interim Alternative Educational Placements (IAEP) for IDEA Eligible Students

The District may change site of services to an Interim Alternative Educational Placement without the responsible adult's consent in the following cases for a comparable period of time to the discipline of students without disability of 45 school days or less in the following situations:

1. Student knowingly possesses, uses, solicits, or sells a weapon, illegal drugs, or controlled substances while at school or a school function; and
2. Student will likely be injured or will cause injury.
 - a. The District requested and was granted an expedited impartial due process hearing officer's order (as outlined under Due Process below).
 - b. If the District requests and is denied IAEP by the due process hearing officer, the District requests and is granted a temporary restraining order (TRO) from a court of competent jurisdiction.

The policies, procedures, rules, and handbooks governing discipline of students with disabilities will be followed and the student will remain in the student's last approved IEP placement if the ruling/order is not obtained.

When the school has determined and/or obtained a ruling or order in the above cases that an alternative placement is needed and concluded a Manifestation Determination IEP, the IEP team will meet, review and modify the IEP, and determine the setting of the IAEP.

Alternative Placements

The District is required to provide qualified students with disabilities (IDEA) with a Free Appropriate Public Education that will enable the child to:

1. Continue to participate in the general curriculum, and
2. To review those services and modifications, including those described in the child's IEP, that will enable the child to meet the goals set out in the IEP, and
3. Include services and modification designed to address the behavior subject to discipline so that it does not recur.

IDEA eligible students may be placed in alternative placements with written consent from the responsible adult unless an IAEP placement outlined above applies.

Due Process and Expedited Due Process for IDEA Identified Students

Due process and expedited due process proceedings must follow the federal and state guidelines.

The state level appointed due process hearing officer may expeditiously order a change in the placement of a child with disability to an appropriate interim alternative placement setting for not more than 45 school days if the school has:

1. Demonstrated by substantial evidence (beyond a preponderance of evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
2. Considered the appropriateness of the child's current placement;
3. Made reasonable efforts to minimize the risk of harm in the child's current placement;
4. Determined the IAEP setting proposed by the administration who has consulted with the child's special education teacher (underwriter) meets the requirements of an IAEP as outlined above.

Law Enforcement and Judicial Authorities

Nothing in policies, procedures, rules, and handbooks prohibits the school or district from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with disability.

The school reporting a crime committed by a child with a disability shall ensure that copies of special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports crime. The school may transmit those records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

Cross References:

2161	Special Education
3300	Student Discipline: Consequences for Violations of Student Rules, Responsibilities, and Code of Conduct
3350	Student Discipline: Due Process
3350-P1	Detention
3350-P2	Suspension and Expulsion
3350-P3	Discipline Procedure for Special Education Students (SPED)
3350-P4	Discipline Procedure for 504 Students
6430	Development of Administrative Procedures

Legal References:

§ 20-5-101, MCA	Admittance of child to school
§ 20-5-102, MCA	Compulsory enrollment and excuses
§ 20-5-103, MCA	Compulsory attendance and excuses
§ 20-5-201, MCA	Duties and sanctions
§ 20-5-202, MCA	Suspension and expulsion
§ 20-4-302, MCA	Discipline and punishment of pupils – definition of corporal punishment
§20-7-401, et seq. MCA	Special Education for Exceptional Children
A.R.M. 10.16.3007	Special Education
20 U.S.C. 1400, et seq.	Individuals with Disabilities Education Act
34 CFR 300.519-521	Procedural Safeguards

Tinker v. Des Moines Ind. Sch. Dist., 89 S.Ct. 733 (1969)

Policy History

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