

Q & A: Discipline for Students with Disabilities

Frequently Asked Questions

The information below should not be relied upon as a comprehensive or definitive response to your specific situation. This document may not include a complete rendition of applicable state and federal regulations.

1. Does a student with a disability have different legal protections (i.e., due process rights) related to discipline issues than a student without a disability?

A student with a disability has specific due process protections under federal and state regulations when disciplined than a student without a disability. The SPPS "Discipline Guidelines for Students with Disabilities under State Laws and Federal Requirements" chart outlines these due process protections. 34 C.F.R. 300.530; Minn. Stat. 121A41, subd. 10

2. What does the term "change of placement" mean related to dismissals/suspensions of a student with a disability due to a discipline problem?

"Change of placement" when disciplining a student with a disability is a legal term that indicates that the student has reached the maximum number of days (i.e., 10 school days) in a school year that the student can be dismissed or suspended without due process (i.e., manifestation determination, provision of alternative educational services, etc.).

Change of placement in this context is not about changing schools or programs. It is about the student being denied special education services and FAPE. The regulation is not intended to mean that a student with a disability should change his or her school or program placement because of a discipline problem. The special education placement of a student with a disability is only done based on the individual needs of the student and it is an IEP team decision. No one member of the IEP or school administrator can make the decision to change the special education placement or level of service for a student with a disability. It is solely the responsibility of the IEP team to make decisions regarding placement. A school administrator can "transfer" a student with a disability to a different school in the school district where the student can receive special education services with the level of special education service(s) in the designated setting (e.g., general or special education) that is on the student's IEP.

Once the student has reached the 11th cumulative or consecutive day of dismissal and suspension, the "placement" is considered changed under the regulations because the student has not received the legally mandated special education services and a free appropriate public education (FAPE). At this point, the regulations require that the due process rights of the student must be followed including a manifestation determination, alternative educational services in an interim alternative educational setting, etc. for every day of suspension for the remainder of the school year.

34 CFR § 300.536

3. How many days can a student with a disability be suspended for each incidence of misconduct?

The school administrator should follow the current SPPS *Rights & Responsibilities Handbook* and be aware of the due process legal requirements when a student with a disability reaches the 11th day of cumulative or consecutive suspensions. After the 11th day of cumulative or consecutive suspensions, the student must receive alternative educational services in an interim education setting to enable the student to participate in the general education curriculum and make progress toward meeting goals and objectives on his or her IEP. (See #8 and #12 below.)

After 10 consecutive or cumulative days of suspension, a student with a disability may be suspended for up to 10 consecutive days for a suspension as long as the student is receiving the alternative educational services in an interim alternative educational setting while suspended. After the designated days of suspension, the student must be immediately returned to his or her former special education setting. A student cannot be placed in an interim educational setting beyond 10 days while waiting for a school change or a change in special education setting.

4. When dealing with a disciplinary action, when is the district required to provide a copy of the procedural safeguards to the parents of a special education student?

On the same date the district decides to make a removal that constitutes a change of placement (i.e., after 10 cumulative or consecutive days in a school year) of a student with a disability because of a violation of a code of student conduct.

34 C.F.R. § 300.530(h); 34 C.F.R. § 300.504(a)(3).

5. What is a manifestation determination (MD)?

Within 10 school days of a change in placement (i.e., upon the 11th day of dismissal/suspension and every day of subsequent dismissal/suspension in a school year), a manifestation determination must be conducted. The manifestation determination requires the district representative, the special education student's parent/guardian, a teacher and other

relevant members of the IEP team to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- b. If the conduct in question was the direct result of the district's failure to implement the IEP. 34 C.F.R. § 300.530(e).
 - The determination as to whether the behavior is a manifestation of the student's disability must be done as a team process. The team should answer the questions on the MD form to make the determination. No one member of the team including the district representative can unilaterally make the determination.
 - If the behavior that gave rise to the violation of the school code of conduct is determined to be a manifestation of the student's disability and the student is to be removed from the school setting, the IEP team must conduct a Functional Behavioral Assessment (FBA) and develop a positive behavior intervention plan (BIP). If a FBA and BIP have already been completed, the IEP team must review the BIP and modify it, as necessary, to address the behavior and return the student to the school placement from which the student was removed.
 - If needed, the parent and school district can agree to a change of placement as part of the modification of the BIP. The student can receive alternative educational services in an Interim Alternative Education Setting. This service must begin the first day of removal following the 10 cumulative or consecutive days of dismissal/suspension and continue up to 10 school days when the student must be allowed to return to the special education setting on the student's IEP. In other words, the alternative educational services must not wait until the MD meeting takes place but immediately when the 11th day of removal is reached. 34 CFR § 530(f)
 - If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except the student must continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP; and receive, as appropriate a functional behavioral assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(a)(2) and (d); Minn. Stat. § 121A.43(d).

6. When must a Functional Behavior Assessment (FBA) be developed?

An IEP team must be convened to develop an FBA that must be completed within 30 school days after parent consent when a student is:

- Removed for more than 10 consecutive or cumulative school days for conduct that is a manifestation of the student's disability, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred. 34 C.F.R. § 300.530(e)(1), (f)
- Removed for more than 10 consecutive or cumulative school days for conduct that is not a manifestation of the student's disability, if the IEP team determines it is appropriate. 34 C.F.R. § 300.530(d)(ii)
- Placed in an interim alternative educational setting for not more than 45 school days for behavior involving a dangerous weapon, illegal drugs or infliction of serious bodily injury, if the IEP team determines it is appropriate 34 C.F.R. § 300.530(d)(ii)
- If a FBA and BIP are already in place prior to the behavioral incident that resulted in the change of placement occurred, then the IEP team must review the BIP and modify it as necessary to address the behavior. 34 C.F.R. § 300.530(f)(1)(ii)

7. What is a Behavior Intervention Plan (BIP)?

The IEP team must develop an appropriate behavioral intervention plan to address the behavior and ensure that those interventions are implemented. The BIP identifies target behaviors from the FBA, strategies for changing the behavior, and instructional in replacement behaviors. 34 C.F.R. § 300.530(f)(1)(i)

8. What is an Interim Alternative Educational Setting (IAES)?

An interim alternative education setting is a setting that a student with a disability is moved to on a temporary basis for every dismissal/suspension beyond 10 days in a school year or if a student with a disability violates a SPPS code of conduct that warrants removal from school. The interim alternative educational setting must allow the student with a

disability to: (1) continue to participate in the general education curriculum, (2) make progress towards meeting IEP goals and objectives and (3) receive services designed to prevent the behavior from recurring.

34 CRF § 300.530(g); 34 CFR 300.350(1)(4)

9. Under what conditions can an IAES be used with a student with a disability?

An IAES can ONLY be used when a "change of placement" has occurred for a student with a disability. A change of placement is a legal term used when a student:

- Has been dismissed or suspended for 10 consecutive or cumulative days in a school year and it is the 11th or any subsequent dismissals/suspensions for the remainder of a school year.
- Has been subjected to a series of removals that constitute a pattern (i.e., the behavior is substantially similar to the student's behavior in previous incidents that resulted in removal; additional factors such as the length of each removal, the total amount of time the student has been removed and the proximity of the removals to one another).
- Has engaged in the following behavior that are deemed "special circumstances" where the student can automatically be removed for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability.
 - Carries or possesses a dangerous weapon to or at school, in school premises, or to or at a school function under the jurisdiction of the school district;
 - Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district;
 - Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district.

10. What constitutes serious bodily harm?

The term serious bodily harm means bodily injury which 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 mental faculty.

18 U.S.C. § 1365(h)(3)

11. What actions must be taken in the event a student with a disability needs an IAES?

- Beginning on the 11th day of dismissal/suspension and every subsequent day of dismissal/suspension for the remainder of a school year, IAES must be put in place immediately for the student.
- It is the responsibility of the team and school administrators to identify staff to carry out the alternative educational services in an Interim Alternative Educational Setting. It is not acceptable to have the student wait until the specific IASE is determined, a teacher has been identified or a MD meeting takes place. No break in service is allowed after the 10th day of dismissal/suspension.

12. What are alternative educational services?

- Alternative educational services are services provided to a student with a disability for all dismissals/suspensions after 10 cumulative or consecutive days in a school year or if the student is removed from school for up to 45 days for weapons, drugs or serious bodily harm.
- Alternative educational services are not only homebound services. Alternative educational services may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation standards although in a different setting.

Minn. Stat. § 121A.41, Subd. 11

13. Is there ever a circumstance in which a student with a disability can be unilaterally moved to a different setting without the determination of the IEP team?

If a student with a disability engages in one of the three "special circumstances" involving a dangerous weapon, illegal drugs or serious bodily harm, the student can be removed from the school setting without benefit of due process. A manifestation determination meeting must be held.

School personnel may also consider unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other legal requirements under the regulation, is appropriate for a student with a disability

who violates a code of student conduct. However, the "other requirements" of the due process legal requirements do not allow an up to 45 day interim alternative setting except under the three allowable circumstances involving a dangerous weapon, illegal drugs, or serious bodily harm. 34 C.F.R. § 300.530

14. Can a student with a disability be dismissed or suspended and placed in an interim alternative educational placement of up to 45 days for behaviors other than weapons, illegal drugs or inflicting serious bodily harm?

A student with a disability can be removed to an interim alternative educational setting after 10 consecutive or cumulative school days of dismissal or suspension. The student can only be placed in an interim alternative education placement for up to 10 consecutive school days before the student must be returned to his or her regular educational setting.

A student with a disability can be removed from his or her current school placement and placed in an alternative educational placement for up to 45 days without benefit of due process only for weapons, illegal drugs and inflicting serious bodily harm. 71 Fed. Reg. 46723

15. What counts as a dismissal or suspension? What if a parent agrees to pick up their child from school when there is a discipline issue?

There is no provision for sending a student home or any other nonstandardized treatment of a discipline issue for a student with a disability. If a student with a disability has a discipline issue, the school district discipline guidelines and the special education due process requirements must be followed. If a student is "sent home" and misses special education services and does not receive FAPE for even part of a school day, it must be counted as one of the 10 days of removal from school.

16. Does a suspension from the bus count against the 10 days of dismissal/suspension from school for a student with a disability?

If a student with a disability has special transportation needs on his or her IEP, then the bus suspension would be counted in the 10 days of removal if the student does not attend school by an alternative means of transportation by the parent. If transportation is on the student's IEP, then the student is being denied access to special education services and FAPE. If bus transportation is not part of the student's IEP, a bus suspension is not counted in the 10 days of removal.

17. Does in-school suspension count against the 10 days of removal?

An in-school suspension is not counted against the 10 days of removal as long as the student with a disability is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the student's IEP and continue to participate with nondisabled student to the extent he or she would have in the current placement. 44 C.F.R. § 300.350(b); 71 Fed. Reg. 46715 (August 14, 2006)

18. If a student with a disability changes schools, programs or school districts in a school year does the current setting have a right to new 10 days of dismissal/suspension for the remainder of the school year?

Only 10 cumulative or consecutive days of dismissal or suspension are allowed before entering due process for each school year even if the setting or school changes.

19. What are the requirements for completing a mental health screening?

- If a student's total days of removal from school exceeds ten cumulative days in a school year, the school district shall make reasonable attempts to convene a meeting with the student and parent/guardian before subsequently removing the pupil from school and, with the permission of the parent or guardian, arrange for a mental health screening for the student. The purpose of this meeting is to attempt to determine the student's need for assessment or other services or whether the parent/guardian should have the student assessed or diagnosed to determine whether the student needs treatment for a mental health disorder.
- The district is not required to pay for the mental health screening.

20. Can discipline procedures used with a student with a disability be used for a student without a disability?

There is no provision in the regulations to follow the due process requirements for a student with disability when disciplining a student without a disability. It may be considered a violation of the rights of a student without a disability to be treated as a student with a disability.

21. Are there any circumstances where discipline procedures for a student with a disability could be used for a student without a disability?

Under the regulations, a student with a "suspected disability" is entitled to the same protections as students who have an identified disability. In general, a student with a "suspected disability" is a student who is being referred for a special education evaluation or is in the process of an evaluation but has not yet been formally identified as having a disability.

34 CFR 300.534(b)

22. What are the consequences if discipline requirements for a student with a disability are not followed?

If the school district does not follow the due process discipline requirements for a student with a disability, the parent has a right to file a complaint to the Minnesota Department of Education or request a due process hearing. If the school district is found in error, the district may be required to carry out a corrective action plan that could involve delivery of compensation education services, a financial settlement, training of staff, etc.

23. What is required to return a student to school from a homebound or an interim alternative educational setting?

- The interim alternative education setting must be written into a new IEP prior to the student being moved to that setting. The IEP must indicate the start and stop dates for the interim alternative education setting or homebound services. It is imperative that students be returned to the appropriate school setting by the date that the interim or homebound services are set to end. The IEP manager is responsible for monitoring all aspects of the IEP and make sure that the IEP is in compliance.
- The student cannot be denied from re-entering school after completing a dismissal/suspension or IAES by requiring an intake meeting or meeting with parent. Once the student has satisfied the dismissal/suspension or IAES conditions the student has the right to return to school.

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