

## **DISCIPLINE FOR STUDENTS WITH DISABILITIES**

Students with disabilities are subject to the discipline rules adopted by the board of school trustees and, therefore, may be suspended or expelled for any violation(s) of such rules for which nondisabled peers could also be suspended or expelled. In accordance with I.C. 20-33-8 and 511 IAC 7-15, administrators may take the following discipline actions:

### **REMOVAL UP TO TEN (10) CONSECUTIVE INSTRUCTIONAL DAYS**

A student with a disability may be removed from school for up to ten (10) consecutive instructional days for a violation of school rules. Removal for any part of an instructional day constitutes a day of removal. A removal constitutes a suspension as defined at IC 20-33-8-7 and the student with a disability must be afforded the same suspension due process procedures as are provided to nondisabled students.

A short-term removal of a student pursuant to the student's individualized education program (IEP) is not a removal. An in-school suspension is not considered a removal as long as the student has the opportunity to progress appropriately in the general education curriculum, receives the special education services specified in the student's IEP, and participates with nondisabled students as the student would have in the student's current placement. If bus transportation is part of the student's IEP, a suspension from the bus is considered a removal unless the school provides transportation in an alternative manner.

Educational services do not have to be provided to the student with a disability during the first ten (10) cumulative days of removal if educational services are not provided to nondisabled students who have been similarly suspended.

### **SERIES OF REMOVALS**

Additional removals of up to ten (10) consecutive instructional days for each separate act of misconduct are permissible in the same school year as long as the removals do not constitute a pattern of removals that results in a change of placement. If a student with a disability is removed for more than ten (10) cumulative instructional days in a school year, school officials must determine if a change of placement has occurred. A change of placement may occur if the series of removals exceeds ten (10) cumulative instructional days, the student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in removals, and the proximity of the removals are close in time. If the student's parent disagrees with the school's decision as to whether there is a change of placement, the parent may request mediation and/or an expedited due process hearing.

If the removals exceed ten (10) cumulative instructional days, but do not constitute a change of placement, educational services must be provided to the student, beginning on the eleventh (11<sup>th</sup>) cumulative instructional day of removal. School personnel, in consultation with at least one (1) of the student's teachers, determine the extent to which services are needed to enable the student

to continue to participate in the general education curriculum and progress toward meeting the goals of the student's IEP.

If a pattern of removals constitutes a change of placement, the student must be afforded the due process procedures below.

### **REMOVALS THAT RESULT IN A CHANGE OF PLACEMENT**

A change of placement occurs when a student with a disability has been removed from school for more than ten (10) consecutive instructional days or a series of removals exceeds ten (10) cumulative instructional days and constitutes a pattern that results in a change of placement. When a decision is made to make a removal that constitutes a change of placement, the principal must notify the parent of the student of the decision on the date that the decision is made. The parent must also be provided with the notice of procedural safeguards described in 511 IAC 7-37-1.

Within ten (10) instructional days of the decision to remove the student, the case conference committee must meet to conduct a manifestation determination. If the case conference committee determines that the student's conduct was a manifestation of the student's disability, the student may not be disciplined and the student must return to the placement from which the student was removed unless the parent and school agree to a change in the student's placement. The case conference committee must also either conduct a functional behavioral assessment and develop a behavioral intervention plan for the student or if a behavioral intervention plan is already in place, the case conference committee must review the plan and modify it, if necessary, to address the student's behavior.

If the case conference committee determines the conduct of the student was not a manifestation of the student's disability, the student may be disciplined consistent with the due process procedures for nondisabled students. The parent of the student may request mediation and/or an expedited due process hearing to challenge the manifestation determination of the case conference committee.

If the student has been removed from school pending the due process proceedings, the student must return to the placement from which the student was removed after ten (10) consecutive instructional days unless the parent of the student and school agree otherwise or an expulsion examiner orders a continuation of the removal in accordance with IC 20-33-8-23.

If a change of placement is ordered, the student must be provided educational services during the period of the removal. The case conference committee must determine the appropriate services that will be provided that will enable the student to continue to participate in the general education curriculum, although in another setting, progress toward meeting the goals of the student's IEP, and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the student's behavior.

### **REMOVAL FOR WEAPONS, ILLEGAL DRUGS, OR SERIOUS BODILY INJURY**

If a student with a disability carries a weapon (including a firearm) to school or a school function, knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled

substance while at school or a school function, or inflicts serious bodily injury on another person while at school or a school function, the principal may remove the student to in an interim alternative educational setting for up to forty-five (45) instructional days without regard to whether the student's behavior is a manifestation of the student's disability. The student's parent must be notified of the removal on that day and be provided a notice of procedural safeguards.

A case conference committee must determine the interim alternative educational setting and the appropriate services the student will receive in the alternative educational setting. The services must enable the student to continue participating in the general education curriculum, although in another setting, progress toward meeting the goals of the student's IEP, and include, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the student's behavior. The parent of the student may request mediation and/or an expedited due process hearing to challenge the interim alternative educational setting, but during any such appeal, the student remains in the interim alternative educational setting.

Within ten (10) instructional days of the decision to remove the student, the case conference committee must meet to conduct a manifestation determination. If the case conference committee determines that the student's conduct was a manifestation of the student's disability, the student remains in the interim alternative educational setting. The case conference committee must also either conduct a functional behavioral assessment and develop a behavioral intervention plan for the student or if a behavioral intervention plan is already in place, the case conference committee must review the plan and modify it, if necessary, to address the student's behavior.

If the case conference committee determines the conduct of the student was not a manifestation of the student's disability, the student may be disciplined consistent with the due process procedures for nondisabled students. The parent of the student may request mediation and/or an expedited due process hearing to challenge the manifestation determination of the case conference committee. During any such appeal, the student remains in the interim alternative educational setting.

If a change of placement is ordered, the student must be provided educational services during the period of the removal. The case conference committee must determine the appropriate services that will be provided that will enable the student to continue to participate in the general education curriculum, although in another setting, progress toward meeting the goals of the student's IEP, and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the student's behavior.

### **SUBSTANTIAL LIKELIHOOD OF INJURY TO STUDENT OR OTHERS**

If a student with a disability has been removed from school and the school believes returning the student to the educational placement the student was in prior to the removal is substantially likely to result in injury to the student or others, the school may request an expedited due process hearing to determine an appropriate placement for the student. An independent hearing officer may order a change of placement to an interim alternative educational setting for up to forty-five (45) instructional days if the hearing officer determines that maintaining the student's current placement is substantially likely to result in injury to the student or to others.

School officials may also seek injunctive relief from a court to remove a student with disabilities from school or to change a student's educational placement if the school believes that maintaining the student in the student's current placement is substantially likely to result in injury to the student or others.

### **PROTECTIONS FOR STUDENTS WHO ARE BELIEVED TO BE STUDENTS WITH A DISABILITY**

If school officials have knowledge that a student, not yet identified as a student with a disability, is a student with a disability, the student is entitled to the protections above.

A school is deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action, one of the following has occurred: (1) the parent of the student has expressed concern in writing to licensed personnel that the student is in need of special education and related services; (2) the parent or school official has requested an evaluation; or (3) school personnel have expressed specific concern about a pattern of behavior directly to supervisory school personnel. A school is deemed to not have knowledge that a student is a student with a disability if one of the following has occurred: (1) the parent has not allowed an evaluation of the student; (2) the parent has refused special education services; (3) the school conducted an evaluation and determined that the student is not a student with a disability; and (4) the parent has revoked consent for special education services.

If school officials do not have knowledge that a student is a student with a disability, the student may be disciplined. If a referral is made for an evaluation of the student during the disciplinary period, the evaluation must be conducted in an expedited manner. The student remains in the educational placement determined by school officials, which may include suspension or expulsion without educational services. If the student is determined to be a student with a disability, the school shall provide special education and related services to the student in accordance with Article 7.

Legal Reference:     20 U.S.C. §1415  
                              I.C. 20-33-8-1 et. seq.  
                              34 C.F.R. 300.530 – 300.537  
                              511 IAC 7-44-1 et seq.

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