



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – Special Education

Discipline- Suspension & Alternative School Placements in IDEA 2004

Introduction

This fact sheet is intended to provide more detail about the effects of suspension, alternative placement and expedited due process procedures and as a supplement to A Brief Overview of Discipline Procedures under IDEA 2004.

- Students with disabilities who are eligible for Special Education are protected from improper discipline by law.
- All schools are required to have policies and procedures on how to approach and handle difficult behaviors.
- Your school district is required to provide you with a copy of their policies on how they will approach student behaviors at least once a year.

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In-School Suspension

- **In-School Suspension** is served on the school premises.
- A student is not considered **suspended** when his/her Individual Educational Plan (IEP) addresses the behavioral issue(s) through the educational program and services.

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Out of School Suspension

- Students with disabilities may be **suspended** for up to 10 consecutive days for each separate incidence of misconduct.
- **Out-of-School Suspensions** may be given so long as the removal from the school does not constitute a change in the student's school placement.
- A change in school placement occurs if the removal is for more than 10 consecutive days or if the removal shows an ongoing pattern.
- If the student is receiving Special Education services and is **suspended**, the school district must either meet to review the Behavioral Intervention Plan that is in place or call an IEP meeting to develop a Behavioral Intervention Plan to address any of the student's challenging behaviors.
- The Behavioral Intervention Plan must include a Functional Behavioral Analysis (FBA). An FBA is a functional assessment of the relationship between the student's behavior and the student's school environment. *See below for more explanation of Functional Behavior Analysis.*
- Each time the student is **suspended** after the first incident, the IEP team should review the Behavioral Intervention Plan.

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Bus Suspension

- A student may be **suspended** from the bus in excess of 10 days for safety reasons.

- However, any **suspension** from transportation resulting from the student's inability to attend his/her school program is considered a suspension from school.
- If the school district **suspends** a student from the bus for more than 10 days and the student is unable to attend school, this would be considered a change in school placement.

Interim Alternative Educational Setting (IAES)

- Under certain circumstances, a student may be immediately removed to another school setting.
- If a student with a disability inflicts serious bodily harm, brings a weapon to school or to a school function, possesses or uses illegal drugs, or sells or solicits the sale of these drugs at school, the school may place the student in an **IAES** for up to 45 days.
- Serious Bodily Harm is defined as: (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; and (d) protracted loss or impairment of the function of a bodily member, organ, or mental function.
- A due process hearing officer can also place a student in an **IAES** if the school can prove at an expedited hearing, that the student is a danger to him/herself or to others.
- If the student is to be moved to an **IAES**, the IEP team, of which the parent or guardian is an equal member, will determine the school placement.
- The **IAES** placement must allow the student to continue receiving services listed in his/her IEP.
- Even though the student is in an **IAES**, he/she must be able to participate in the general curriculum and make progress towards meeting the goals on his/her IEP.
- The **IAES** must also address the behavioral needs of the student.

Manifestation Determination Review

- If the school district decides to suspend the student or place him/her in an **IAES**, the school must (1) notify the student/parent/guardian of the action it intends to take and (2) inform the student/ parent/guardian of their rights.
- Within 10 school days, the school district must hold a meeting to determine if there is a relationship between the student's disability and behavior. The Individual Educational Plan (IEP) team is invited to the meeting.
 - At this meeting, the IEP team first reviews the student's current Case Study Evaluation (CSE), IEP and school placement.
 - The student/parent and/or guardian may provide any additional information or evaluations.
 - The law also requires that the person(s) making the final discipline decision have a copy of the student's Special Education and disciplinary records to review and consider.
 - Next, the IEP team must determine whether the student's conduct resulted from a failure to implement the current IEP including whether they should also decide if the school failed to implement the Behavioral Intervention Plan, if any.
 - Then, the IEP team must consider if your child's disability was related to the behavior. If the team determines there is a relationship between the behavior and the disability, the determination is made that the behavior was a manifestation of the student's disability.
- When it is decided that the behavior was a manifestation of the student's disability and the team determines that he/she cannot follow the district's behavior policy, the student's Behavioral Intervention Plan should be discussed and revised (if necessary).

- If there is not Behavioral Intervention Plan, then a plan should be written into the IEP.
- Before agreeing that the student can follow the school district's behavior policies, the student, parent and/or guardian should obtain a copy of the policy and review the policy, keeping in mind the characteristics of the student's disability.
- If the IEP team determines that the behavior was not related to the student's disability, the school district might use the same discipline procedures used for students without disabilities.
- For a student with an IEP, the Individuals with Disabilities Education Act (IDEA) states that the student who is **suspended** or **expelled** must be provided services according to his/her IEP.

Functional Behavioral Analysis and Behavioral Intervention Plan

- A **Functional Behavioral Analysis** is an evaluation that is conducted to study the relationship between the student's behavior and what's happening in the environment.
- Research shows that all behavior has a function, to either produce a positive feeling, or to prevent an unpleasant situation or outcome. For example, sometimes a student will act out to get the teacher's attention, which can be positive, or become disruptive, knowing that he or she will be removed from the classroom, and in order to avoid doing something the student does not like.;
- A **Functional Behavioral Analysis** of the student's behavior will look at the antecedents (what happens before the behavior), the behavior (how the student acts or what the student does), and the consequences (what happens as a result of the behavior).
- This will help the parents and the school to develop a Behavioral Intervention Plan that is more likely to succeed in teaching the student's more positive behaviors. Such plans may include changing or adapting the student's environment, creating reward systems to motivate the student to choose other behaviors, or both.
- Behavioral interventions are designed to influence an individual's actions or behaviors. Positive interventions are designed to develop or strengthen alternative or more appropriate behaviors. The student's **Behavioral Intervention Plan** will be included as a part of his/her Individual Educational Plan (IEP) and must include the following:
 - Summary of the findings of the **Functional Behavioral Analysis**;
 - Summary of the prior interventions implemented;
 - Description of any behavioral interventions to be used (positive interventions);
 - Identifying the measurable behavioral changes expected and how they will be evaluated;
 - Identifying a schedule for a review of the intervention's effectiveness; and identifying ways the student's behavioral progress will be communicated between the parents/guardians and the school.

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Expedited Due Process

- The School District must provide you with information on free or low cost legal services providers when you request.
- If you disagree with the decision of the Individual Educational Plan (IEP) team and believe that the student's behavior was a manifestation of his/her disability, or you disagree with the school's decision to remove the student from his/her current placement, the student, parent, and/or guardian may request an expedited due process hearing.
- Put your request in writing and send it, return receipt requested, to the superintendent of the student's school district. Include in your letter:

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- Why you believe the action taken by the school is not supported by substantial evidence;
 - All documentation you have to support your position;
 - Whether you are represented by legal counsel or intend to obtain legal counsel;
 - The matters you believe are in dispute;
 - The specific relief you seek (what you want to happen);
 - Names of all witnesses you intend to call to testify at the hearing;
 - Contact information of the student, parents, and/or guardian;
 - School the student is currently attending; and
 - Your signature and the date you are signing the letter.
- When the school district receives your request, they must arrange for an **expedited due process** hearing.
 - The School District arranges for the **expedited due process** hearing by forwarding the request to the Illinois State Board of Education (ISBE) within 5 days of receiving your request.
 - Upon receipt of the request, the Illinois State Board of Education (ISBE) appoints a hearing officer from a rotating appointment system. The hearing officer will contact you 1 day after he/she is appointed and set a hearing date for no later than 4 days after contacting the student/parent/guardian and the school.
 - The parties (generally the parent/guardian and the school district) must disclose any evidence that is intended to be submitted into the hearing record no later than 2 days before the hearing. Be sure to be forthright regarding your evidence and witnesses or you may not be allowed to present them at the hearing. The same rule applies to the school district. The length of the hearing will not exceed 2 days unless there is a good reason.
 - During the hearing, the parties have the right to:
 - Be represented by legal counsel (at their own expense);
 - Present evidence and confront and cross-examine witnesses;
 - Request certain witnesses be excluded from the hearing until called to testify, unless the exclusion serves to exclude an individual designated to assist that party or its representative in the presentation of the case (your expert, for example, may not be excluded);
 - Obtain a written or electronic verbatim record of the proceedings (the hearing);
 - Obtain a written decision within 2 days after the conclusion of the hearing.
 - Until the hearing is complete, the student may remain in the **IAES** unless the student/parent/guardian and the school come to some other agreement about placement.
 - Whether or not due process procedures have been completed, the student will return to his/her prior school placement (e.g. return to school) after 45 days in the **IAES**. If the school district believes that it is dangerous for your child to return to school, at that time, they may request an **expedited due process** hearing.
 - If the parent/guardian doesn't understand the hearing officer's decision, they may write to the hearing officer to request clarification. The request must be submitted within 5 days of receiving the decision. Your request must specify the portions of the decision for which clarification is sought, and must be mailed to all parties involved in the hearing including the Illinois State Board of Education (ISBE). The hearing officer must respond to the request for clarification within 10 days.
 - The student/parent/guardian and school district have the right to appeal the decision to the state or federal court.

- Nothing in the law prohibits the school district from getting a court injunction to have the student removed from school, if the school district concludes that the student is a danger to him/herself or others. In this event, the student/parent/guardian is entitled to notice and a hearing before a judge, before the decision is made.

Due Process

If you disagree with the student's IEP or the **suspension** decisions made about the student's school placement and/or services, or want to change any part of the student's IEP then you can within 2 years prior to the date of the request:

- File an internal complaint;
- Ask for mediation; or
- Request a due process hearing.

You may do this by writing to:

Illinois State Board of Education
Special Education Compliance Division
100 North First Street
Springfield, IL 62777-001

For more information, See *Equip for Equality's Conflict Resolution Fact Sheet*.

Special Education Resources:

- The Illinois State Board of Education (ISBE) website is: www.isbe.state.il.us
- ISBE's telephone numbers for information and technical assistance:
1-866-262-6663 (Springfield) or 1-312-814-2220 (Chicago)



DO YOU HAVE A QUESTION?

Contact Equip for Equality (all services are free of charge):

800.537.2532 (voice) or 800.610.2779 (TTY)

Contactus@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.

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