



*from Equip for Equality's Legal Advocacy Program*

# **EFE FACT SHEET – Special Education**

## **Discipline in Special Education**

### **Brief Overview of Discipline Procedures under IDEA 2004**

#### **Introduction**

IDEA 2004 added “serious bodily injury” to the list of occurrences (including drugs and weapons) which entitle a school district to impose an automatic 45 day removal from school. IDEA 2004 also clarified that 45 days means school days, not calendar days. All students removed from school for any length of time are to receive services to prevent a recurrence of whatever caused the removal. Positive behavioral supports are now to be considered when a student’s behavior impedes his/her learning or that of others.

#### **Discipline For Students with Disabilities under the IDEA 04 20 USC1400**

If a student engages in behavior that is a violation of the school code the following should occur.

#### **If the Student has an IEP**

- All students with an IEP regardless of whether their behavior is a manifestation of their disability or not, are entitled to receive a free appropriate public education (FAPE), including related services to enable the student to participate in the general curriculum, and to progress towards his/her IEP goals
- The district must notify the parents of any disciplinary action to be taken on the day the decision is made to discipline the student.
- The district must provide the parents a copy of the procedural safeguards.
- The district is not required to follow listed consequences in a student handbook.
- The district may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. This addition to the law clarifies that district’s are not required to follow disciplinary measures that it believes are not appropriate for this student but can instead evaluate each situation on a case-by-case basis and consider the unique circumstances.
- If appropriate, to the extent that these measures are applied to non-disabled students, the district may, for up to ten school days:
  - remove the student to an Interim alternate educational setting,
  - another setting,
  - or suspend the student.
- Behavioral intervention services and modifications to prevent the behavior from recurring are to be added to the students’ IEP if the student is suspended.

## **Suspension for more than 10 school days/Expulsion**

If the district suspends the student for more than 10 school days, changes his/her placement for more than ten school days, or notifies the parent of possible expulsion, the district must hold a Manifestation Determination Review to determine if the student's behavior is a manifestation of the student's disability. Regardless of this decision, the student's IEP services must be provided to the student.

### **Manifestation Determination Review (MDR)**

- The MDR conference must be held within ten days of a decision to change the child's placement because of a violation of a code of student conduct.
- This meeting is held only when a student is removed from school for more than ten days.
- Purpose: At this meeting the team must decide whether the student's behavior was a manifestation of his disability. To decide this, the team must do the following:
  - Review all relevant information in the student's file including;
    - the IEP
    - teacher observations and,
    - parent informationTo determine if the conduct was,
  - caused by
  - had a direct and substantial relationship to the child's disabilityOR  
Was the direct result of the school district's failure to implement the IEP.

### **If the student's behavior IS a manifestation of the disability**

- Functional Behavioral Analysis (FBA) must be conducted or reviewed.
- behavioral intervention plan (BIP) must be implemented and reviewed
- Return student to placement he was in prior to the suspension
- Student may only be moved from previous placement with parents' agreement.

### **If the determination is that behavior is NOT a manifestation of the disability**

- Discipline measures may be applied using the same procedures and in the same manner and duration as for students without disabilities.
- FAPE must be provided, though it can be provided in an interim alternative educational setting.
- A student's placement can be changed in his IEP as a result of a behavior that was not a result of his/her disability.

### **Up to 45 School Day Removal to IAES ("Interim Alternative Education Setting")**

- Manifestation is not relevant in this situation
- IAES is determined by the IEP team.

### **Drugs**

If a student 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 that student may be removed to an IAES for up to 45 school days. Illegal drugs means, "a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Act or under any other provision of Federal law.

## **Weapon**

If a student carries or possess a weapon to or at school, on school premises, or to or at a school function the student may be removed to an IAES for not more than 45 school days. The same meaning as 'dangerous weapon' under section 930(g)(2) of title 18, United States Code. "The term 'dangerous 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 1/2 inches in length."

## **Serious Bodily Injury**

If a student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function the student may be removed to an IAES for up to 45 school days. 18 U.S.C. 1365 (h)

### ***Serious bodily injury 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; and

### **the term "*bodily injury*" does not qualify for 45 day removal. It means—**

- a cut, abrasion, bruise, burn, or disfigurement;
- physical pain;
- illness;
- impairment of the function of a bodily member, organ, or mental faculty; or
- any other injury to the body, no matter how temporary.

## **Appeal**

- Parents may appeal if they disagree with
  - Manifestation determination or,
  - Any decision about placement
- School district may appeal if it believes
  - the student's old placement is substantially likely to result in injury to the student or others

## **Hearing Officer authority**

- to return the student to the placement from which the student was removed
- send a student to an IAES for 45 school days

## **Placement during hearing**

- Student stays in IAES during hearing until
- decision is provided, or
- until the 45 school day interim timeframe ends.

The student is removed from IAES based on the earlier of the two options.

## **Hearing**

- expedited
- Hearing within 20 days of filing
- Decision within 10 days of hearing

## **Police**

Districts are not prohibited from reporting a crime committed by a child with a disability. The

district must provide the law enforcement agency with copies of the student's special education and disciplinary records.

### **Student does not have an IEP**

If school district "knew or should have known" the child qualified for special education then the student receives the protections of the IDEA

### **"Knowledge" is shown by any of the following**

- Before the behavioral incident in question the parents expressed concern in writing to supervisory or administrative personnel of the school district including that the child needed special education and related services
- Parent requested an evaluation
- Teacher or other personnel expressed concerns to the special ed director or other supervisory personnel about a pattern of behavior.

### **The student does not receive IDEA protections if**

- The parents refused an evaluation
- The district evaluated and found the student not eligible
- If a student does not qualify for IDEA protections but an evaluation is requested then it must be expedited.
- the student's IEP services must be provided to the student regardless of the student's placement.



### **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](mailto:Contactus@equipforequality.org)

[www.equipforequality.org](http://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.

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