

I. Overview of Procedural Safeguards

A. General. Disciplinary actions give students with disabilities extra legal protections when the discipline constitutes a change in placement. If a student violates the Student Code of Conduct, before consequences or punishment are imposed, the principal/designee must consider whether the student:

- Has an IDEA or Section 504 disability; or
- Is a student who is “thought to have a disability.”

While all students may be disciplined, the placement of students with disabilities cannot be “changed” when the offense is directly related to his/her disability or when the IEP or Section 504 plan is not implemented, *except in the case of emergency circumstances (drugs, weapons, significant bodily injury)*. See Section II for more information about emergency circumstances.

B. Determining Change in Placement. A change in placement is a legal term that applies to the situations described below. A student’s school suspension that occurred in a LA local education agency (LEA) during the same school year of transfer into another LA LEA “counts” and is added to any additional suspensions in the new school.

1. More than 10 Consecutive Days of Suspension, i.e., Expulsion

Any suspension that is for more than 10 consecutive days is considered to be a change in placement.

2A. More than 10 Total Days of Suspension in One School Year. Option 1

A series of suspensions with days that total more than 10 total school days in a school year is a change in placement.¹ The special education chairperson, with assistance and documentation from the Administration/Disciplinarian, monitors the number of days each student has been suspended. Students with disabilities who have not reached this 10-day threshold may be suspended under the procedures that apply to all students.

2B. More than 10 Total Days of Suspension in One School Year. Option 2

A series of suspensions with days that total more than 10 total school days in a school year may be a change in placement.² The special education chairperson, with assistance and documentation from the Administration/Disciplinarian, monitors the number of days each student has been suspended. Students with disabilities who have not reached this 10-day threshold may be suspended under the procedures that apply to all students.

¹ In-school suspension and suspension from the bus may constitute a suspension to the extent they impact implementation of a student’s IEP. See additional information on the next page.

² In-school suspension and suspension from the bus may constitute a suspension to the extent they impact implementation of a student’s IEP. See additional information on the next page.

FACTORS FOR DETERMINING PATTERN OF SUSPENSIONS

Substantially Similar Behavior. Is the student’s behavior substantially similar to the behavior for which the student has previously been suspended? (Factors may include same type of behavior, same victim, same class, same day of the week or same time of day, etc.) If the answer is **yes**, continue with the following analysis:

Other Pattern Considerations. Consider such factors as:

- Length of each suspension, e.g., 1 day, 4 days, etc.
- Total cumulative days of suspensions, e.g., 11 days, 20 days, etc.
- Proximity of (time between) suspensions, e.g., 1 week apart, 2 months apart, etc.

A pattern is more likely to exist when the facts in each factor are more extreme, e.g., longer suspension lengths, more cumulative days of suspension and fewer days between each suspension. Also, consider whether the suspensions are: from the same class on a regular basis; on the same day of the week; at the same time of day; for the same activity; involving same staff or other students.

Consistent Decision-Making. Determining whether a pattern exists is very subjective. Thus, school staff should consult with their central administrator to ensure that factors are considered consistently across schools.

The *Determining a Pattern of Suspensions Worksheet*, Appendix A or B should be used to document consideration of this issue whenever a student’s suspension has surpassed 10 cumulative days for the year.

- 3. Additional Considerations.** The following considerations apply to in-school suspension; a suspension or removal for a portion of the school day; and for suspensions from transportation.
 - a. In-school Suspension.** An in-school suspension will not be considered as a suspension for the above purposes as long as a student is given the opportunity to continue to: appropriately participate in the general curriculum; receive IEP specified services; and participate with nondisabled children to the extent (s)he would have in the current placement. Any in-school suspension that does not meet this standard must be considered as a suspension for purposes of these procedures.
 - b. Suspension/Removal for Portion of School Day.** Students sent home from school in the morning because of misconduct is considered to have a full-day suspension. Students sent home in the afternoon is considered to have a half-day suspension. These conditions apply unless the student’s BIP specifically calls for the student to receive a shortened school day when certain behaviors are exhibited.³
 - c. Bus Suspension.** The following standards apply based on whether transportation is a related service on the IEP:
 - 1) Bus Transportation Is IEP Service.** When transportation is an IEP service, a student’s removal from the bus is considered to be a suspension **unless** transportation is provided in some other way. In this case, transportation has been determined to be necessary for the student to access educational services.

³ Note: The Student Information System allows only the entry of suspension for a full day; half days are not permitted. Thus, there may be a difference between a student’s actual total number of suspension days and the total recorded on the System. The student’s “actual” full time equivalent days of suspension, however, are relevant to the application of these standards. Schools are strongly encouraged to enter suspension data in “real time.”

- 2) **Bus Transportation Is Not IEP Service.** When transportation is not an IEP service, the student's removal from the bus is NOT considered to be a suspension. In this case the student/parent have the same obligations for the student to get to and from school as any nondisabled peers suspended from the bus. However, school officials should consider whether the bus behavior is similar to classroom behavior that IS addressed in an IEP and whether the bus behavior should be addressed in the IEP or through a BIP.

Monitoring Suspensions - Principals must have procedures in place to monitor and cumulatively total all suspensions for students with disabilities.

C. Determining Manifestation Determination & Services.

1. **Manifestation Determination.** Within 10 days of any decision resulting in a change of placement the LEA representative, parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA representative) must meet and determine whether the student's behavior is a manifestation of his/her disability using the Manifestation Determination form. The procedures below are used to make this determination.

a. Making the Decision

- 1) **Review Relevant Information.** The team participants review all relevant information in the student's file, including the IEP. If the IEP was not implemented, the team documents why it was not implemented and whether the failure to implement the IEP impacted the student's behavior.
- 2) **Observe Behavior.** The team also reviews documentation of staff observations regarding the student's behavior. This should include an analysis of the student's behavior across settings and times throughout the school day.
- 3) **Information from Parents.** The team reviews any relevant information provided by the parents.
- 4) **Ask Two Questions to Determine Manifestation.** The team must consider the two questions below to determine if a student's behavior was manifested by his/her disability.

- a) **Relationship of Behavior to Misconduct.** Was the conduct caused by or directly and substantially related to the student's disability?

Consider whether the behavior in question has been consistent and/or has an attenuated association with the disability:

- **Consistent Behavior.** Behavior that has been consistent across settings and across time may meet this standard.
- **Attenuated Association.** Behavior that is not an attenuated association, such as low self-esteem, to the disability would not have a direct and substantial relationship to the student's disability.

- b) **IEP Implementation.** Was the conduct a direct result of the school's failure to follow the student's IEP? If so, the principal must ensure that immediate steps are taken so that the identified deficiencies are remedied.

- d. **Behavior Is Manifestation of Disability.** If the relevant members of the IEP team answers yes to either question, then the student's behavior is a manifestation of his/her disability. In this case:

- 1) **Return to Placement.** Unless the IEP team agrees to a change of placement as part of the modification of the BIP, the school must return the student to the placement from which (s)he was removed. Note: this provision does not apply to students involved with weapons, drugs or serious bodily injury. (See Section II.)
- 2) **FBA & BIP.** The IEP team must conduct or review a functional behavioral assessment (FBA) and create a behavior intervention plan (BIP) addressing ways that the school can help the student with the conduct at issue. If the student already has a BIP, it must be reviewed and modified to address how the school can better assist the student with the conduct at issue. **Note:** If the FBA requires a new assessment of student behavior, parental consent is required.

e. Behavior is NOT Manifestation of Disability

- 1) **Same Consequences.** If the IEP team members agree that the student's conduct was not a manifestation of his/her disability, then the student may be subject to the same consequences as all students.⁴
- 2) **Required Services.** A student with a disability who is removed from his/her current placement must receive the following services beginning on the 11th day of *cumulative* suspensions during the school year. The IEP team:
 - a) **Identifies Services.** Identifies and documents educational services the students will receive to enable the student to continue to participate in the general education curriculum, although in another setting (e.g., an interim alternative educational setting (IAES), etc.) and to progress toward meeting the goals set out in the student's IEP; and
 - b) **Develops/Reviews FBA/BIP.** Provides, as appropriate, an FBA and BIP services and modifications, which are designed to address the behavior violation so that it does not recur.
 - c) **Considers Need for More Restrictive Services.** May convene and modify the student's IEP. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

II. Weapons, Drugs or Serious Bodily Injury: Emergency Procedures

In circumstances related to a student's use of weapons, drugs or imposition of serious bodily injury, school officials may remove a student for 45 school days by following the procedures below.

A. Criteria for Emergency Removal.

1. **Weapons.** A student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the school's jurisdiction.

A weapon is a device, instrument, material or substance animate or inanimate that is used for or is readily capable of causing death or serious bodily injury (excluding pocket knife with a blade of less than 2 ½ inches in length); firearms, including a starter gun; the frame or receiver of such a weapon; a muffler or silencer;

⁴ If a parent disagrees with the team's decision that the behavior was not a manifestation of the student's disability or with the interim alternative educational services or location, the parent may request an expedited due process hearing to challenge this finding. If the Hearing Officer agrees with the parent, the student will remain in the school where the offense was committed unless the parent and the school agree otherwise.

any destructive device including any explosive incendiary or poison gas bombs, grenades, rockets, missiles and mines; does not include antique firearms.

2. **Drugs.** 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 under the school’s jurisdiction;

A controlled substance is a drug or other substance in the Federal Code that does not include a substance legally used and possessed under the supervision of a licensed health-care professional.

- Possession of alcohol and tobacco does not fall under “controlled substance.” Therefore, the principal cannot move a student to an IAES for possession of these items under this section. Instead, the removal is subject to the procedural safeguards applicable to other types of misconduct.

3. **Serious Bodily Injury.** A student inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the State or an LEA.⁵

Serious bodily injury involves 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.

B. Removal

1. **General.** The school may immediately remove the student for up to 45 school days to an IAES. Because drugs, weapons and serious bodily injury are so dangerous to a safe school climate, a school may remove a student under these circumstances for 45 school days regardless of whether the team believes that the behavior is a manifestation of the student’s disability.

The 45 school days do not include those days the school is not in session, e.g., Spring Break. The IEP team may specify a removal for fewer days than the maximum 45 days.

- C. **Action during Removal.** During the 45 school day period, the school must convene a meeting to determine whether the student’s behavior is a manifestation of his/her disability. (See Section I.C. above for more information about the manifestation determination process.)

1. Behavior IS Manifestation of Disability

- a. **FBA/BIP.** As discussed above, the IEP team must conduct or review an FBA and create a BIP addressing ways that the school can help the student with the conduct at issue. If the student already has a BIP, it must be reviewed and modified to address how the school can better assist the student with the conduct at issue. Note: if the FBA requires a new assessment of student behavior, parental consent is required.
- b. **Reevaluation.** The student may be referred for a reevaluation.
- c. **More Intensive Services.** The IEP team may meet to consider more intensive special education services upon the expiration of the 45 day IAES or sooner.

2. Behavior is NOT Manifestation of Disability

⁵ To comply with the law, a 45 school day emergency removal for serious bodily injury must be extremely serious, i.e., requiring medical treatment.

- a. **Disciplinary Hearing.** If all team members determine that the conduct was not a manifestation of the student's disability, then the 45 school day emergency placement may proceed to a disciplinary proceeding afforded to all students.
- b. **FBA/BIP.** The student must receive, as appropriate, an FBA and BIP services and modifications, which are designed to address the behavior related to the disciplinary violation so that it does not recur.

III. Appeals

A. Reasons for Requesting an Expedited Due process Hearing

1. **Parent Disagreement.** Parents who disagree with the appropriateness of the alternative placement or remedial disciplinary setting or services may request an expedited due process hearing.
2. **School Considers Student to be Dangerous.** If a school has documented reasons to believe that keeping the student in his/her current school is **substantially likely to result in injury to the student or to others**, the school should request an emergency hearing for the purpose of transferring the student to an IAES for up to 45 school days. *Note: this standard is not as high as serious bodily injury; it does **not** allow for an immediate 45 school day removal.*

B. Authority of Hearing Officer

1. A hearing officer may:
 - a. Return the student to the placement from which the student was removed if the hearing officer determines that the removal did not comply with these procedures or that the student's behavior was a manifestation of the student's disability; or
 - b. Order a change of placement to an IAES for not more than 45 school days if maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
2. The school may repeat its request for an expedited hearing if it believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

C. Expedited Due Process Hearing Procedures.

1. An expedited hearing must occur within 20 school days of the date the request is filed. The hearing officer must make a determination within 10 school days after the hearing.
2. Unless the parents and school personnel agree in writing to waive the resolution meeting or agree to mediate the dispute:
 - a. A resolution meeting must occur within seven days of receiving notice of the hearing request; and
 - b. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.
3. Evidence not disclosed to the other party three business days before the hearing is excluded, unless the parties agree otherwise.

Expedited due process hearing decisions are appealable to state or federal court.

D. Placement during Appeal of Discipline Decision

1. **Weapons, Drugs or Serious Bodily Injury.** The student remains in the IAES pending the decision of the hearing officer or until the expiration of the 45-day or code violation time period (if less than 45 school days), whichever occurs first, unless the parent and school personnel agree otherwise.
2. **Behavior Not Manifested by the Student's Disability.** The student remains in the IAES pending the decision of the hearing officer or until the expiration of the 45-day or code violation time period (if less than 45 school days), whichever occurs first, unless the parent and school personnel agree otherwise.
3. **Behavior Is Manifested by Student's Disability but Belief Behavior is Substantially Likely to Cause Injury.** The student remains in the placement (s)he was in at the time of the behavior in question unless the parent and school personnel agree otherwise.

IV. Students Without IEPs or Section 504 Plans "Deemed to Have a Disability"

In some cases, a student without a disability will be deemed to have a disability. The criteria for making this determination and the applicable procedures relevant to such a finding are discussed below.

A. Knowledge of suspected disability (Thought to be a student with a disability)

There are certain circumstances that would indicate a school had knowledge that a student might (or is thought to) have a disability prior to the violation of the disciplinary violation. The following three situations give rise to such legal evidence:

1. **Evaluation Requested.** The parent requested an evaluation.
2. **Written Concern.** The parent expressed concern in writing to the student's teacher or school administration about the student's need for special education and related services
3. **Specific Concerns by Staff about Pattern of Behavior.** The student's teacher or other school staff told school supervisory personnel of specific concerns about the student's pattern of behavior.

If any of the three factors above are present, then school officials consider disciplinary action as if the student has a disability.

B. NOT Deemed To Have Knowledge. This provision does not apply if:

1. Parent did not consent to an initial evaluation of the student
2. Parent refused special education and related services for the student **or**
3. The student was evaluated and was determined not to have disability.

If any of these three circumstances exist, the student may be subjected to the same disciplinary measures applied to those without disabilities engaging in similar behaviors.

The US Department of Education's comments to the IDEA states: a public agency will **not** be considered to have a basis of knowledge merely because a child receives services under the coordinated, early intervening services of the IDEA law UNLESS a parent or teacher of a child receiving early intervening services expresses a concern, in writing, to appropriate agency personnel that the child may need special education and related services.

C. School Personnel Have No Knowledge and Parent Subsequently Requests an Evaluation

If the parent requests an evaluation for a suspected disability after the student is sent to an IAES, the school must conduct an expedited evaluation at parental request. However, the student remains in placement, including an IAES, during the evaluation. If the student is found to have a disability, an IEP must be developed.

The IEP team must then conduct a **manifestation determination**. If the behavior is manifested by the student's disability, the team reconsiders the student's placement in light of the new information

V. Referral to and Action by Law Enforcement and Judicial Authorities

- A. Reporting Crimes.** Nothing in this part prohibits school personnel from reporting a crime committed by a student 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 student with a disability.
- B. Transmittal of Records.** School personnel reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. Records must be transmitted only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

VI. Application of Section 504 and ADA

Generally, students with disabilities eligible for services only under Section 504/ADA (i.e., need related and supplementary aids and services only) are entitled to the procedural safeguards specified in this section. An exception to this general rule applies to students with behavior that is not a manifestation of his/her disabilities. In this case, these students are entitled to those services normally available to nondisabled students who are suspended or removed pursuant to the school's *Code of Student Conduct*.

Appendix A. Determining Change of Placement Worksheet

Student Name _____ ID _____

School _____ Disability _____ Grade _____ Date _____

Determining if Pattern of Suspensions Exists For Students Suspended for More than 10 Cumulative School Days in School Year and NO Special Circumstances Apply (i.e., weapons, drugs or severe bodily injury)

Description of behavior related to disciplinary action:

Description of prior behavior:

Was behavior in question substantially similar to the student’s behavior in previous incidents?

Yes No If “yes,” continue to determine if there’s a pattern. If “no” the behavior is not part of a pattern.

For all suspensions, attach dates of suspensions and number of days for each suspension & determine:

1. What is the cumulative number of days for all suspensions combined? _____ days

2. How many days of suspension were ordered for each separate incident?

3. What period of time separated each period of suspension? (days, weeks, months)

CONCLUSION: Pattern of Suspensions Exists NO Pattern of Suspensions Exists

Basis for Decision:

Individual Completing Review: _____ Title: _____

Consultation with: _____ Title: _____

Appendix B. Determining Change of Placement Worksheet

Student _____ School _____ School Year _____

Grade: _____ Page _____

Change in Placement Chart: To Determine if Series of Suspensions Constitute a Pattern (Consider offenses, length of each, total number & proximity?)

Date of Decision	Type of Behavior	Result	Removal?		No. Days	SY Total of Removal Days	Behavior Location	Day of Week & Time	Teacher or Staff Person	Victim & Other Perpetrators	Placement Change?	Date Parent Notified	Manifestation?
			Yes	No									