

This handout is based on federal regulations implementing Individuals with Disabilities Education Act (IDEA 2004).

DISCIPLINE UNDER IDEA 2004

There are several discipline options available under IDEA. These include:

1. Ten school days or less: short term suspensions, placement in an appropriate interim alternative educational setting, or placement in another setting, all for 10 school days or less;
2. 45 School Days for weapons/drugs/serious bodily injury: placement for 45 school days in an appropriate interim alternative educational setting, for possession of weapons; or use, possession, sale, or solicitation of a sale of drugs; or infliction of serious bodily injury;
3. 45 School Day hearing officer Order for dangerous and violent students: Quasi - Injunction as the result of a due process hearing, for dangerous and violent students, placing student in a 45 school day alternative educational placement;
4. Court Injunction: Extent and duration of injunction determined by court for dangerous and violent student.
5. Long-term suspension or expulsion: suspensions in excess of 10 consecutive days, or in excess of 10 cumulative days if a pattern of suspension is created, if the student's conduct is determined unrelated to the disability;

Below is a description of the specific discipline provisions in IDEA 2004.

NOTE: Services must be provided to students with disabilities who are suspended for more than 10 days in a school year if school personnel, in consultation with at least one of the student's teachers, decide services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and continue to progress toward meeting IEP goals. However, if such suspensions which exceed 10 days in a school year are long-term suspensions or disciplinary changes of placements, then the IEP team must decide upon continued services and the student's continued services must continue to allow participation in the general education curriculum, and continue to progress toward meeting IEP goals.

- I. Ten school days or less: A student may be removed from his placement by the school district's designee, to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension without the provision of educational services, for not more than 10 school days.
- II. 45 school days: A student's placement may be changed for not more than 45 school days by the school district's designee, to an appropriate interim alternative educational setting, if: 1. the student carried or possessed a weapon at school, on school premises, or to a school function; or 2.

knowingly possessed or used illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or 3. inflicts serious bodily injury upon another person while at school, on school premises, or at a school function. A parent must be immediately notified of the decision to take this disciplinary action and provided a copy of the procedural safeguards.

III. Dangerous Students: If the school district believes a student will injure himself or others, the school district has the right to initiate an expedited due process hearing to obtain an Order to change the student's placement. The parent must be notified immediately by the district of the decision to take this action and provided a copy of the procedural safeguards. At that hearing, the hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer:

- determines the school district has demonstrated that maintaining the current placement of such student is substantially likely to result in injury to the student or others;
- determines that the interim alternative educational setting enables the student to continue to participate in the general curriculum and continue to progress toward IEP goals.

IV. Manifestation Determination: No later than ten school days after the date on which the decision to take a disciplinary action involving long-term removal from the child's placement (for more than 10 consecutive days or in excess of 10 days cumulatively if a pattern of suspension is created), or implement a disciplinary change of placement, the relevant member(s) of IEP team and the parent shall determine whether there is a relationship between the student's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the disability, disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities. However, in that event the student must continue to receive educational services which enable them to continue to participate in the general education curriculum and continue to progress toward meeting IEP goals. If a parent disagrees with a determination that the student's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation, the parent has the right to request an expedited due process hearing. If the behavior is determined to be a manifestation of the disability, no long-term suspension or expulsion may be implemented.

A. Factors for members of IEP team to consider after review of all relevant information in the student's file and any relevant information provided by the parent:

- If the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct was the direct result of the school's failure to implement the IEP.

V. Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP): If the conduct is not a manifestation of the student's disability, the student shall receive, as appropriate, a FBA (see suggestions and explanation at end of document) and a BIP (see suggestions and explanation at end of document) designed to address the behavior. If the student already has a BIP, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the

disciplinary action. In cases where the behavior is determined to be a manifestation of the child's disability, the child shall receive a FBA, unless one has already been conducted, and behavior intervention services and modifications, designed to address the behavior violation so that it does not recur.

VI. Access to Services: Any interim alternative educational setting determination involving a disciplinary change of placement (a long-term suspension):

- will be made by the IEP team
- must be selected to enable the student to continue to participate in the general curriculum and to continue to progress toward the IEP goals.

VII. "Stay-put" under disciplinary actions:

If a parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination, the student will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise).

Notes:

1. A functional behavioral assessment can be a formal or informal assessment to identify the function or purpose the behavior serves for the student so that classroom interventions and behavior support plans can be developed to improve behavior. The assessment could include observations of the behavior, and interviews with family, teachers, and the student, so as to determine the frequency, antecedent and response of the targeted behavior.
2. A behavior intervention plan could include:
 - A. A definition of the target behavior in observable terms;
 - B. Identification of goals that address the behavior (increase, decrease behavior);
 - C. A clear statement of the objective(s) for the student;
 - D. Evaluation criteria of plan and schedule for evaluation;
 - E. CAP (criteria for acceptable performance);
 - F. An outline of interventions, instruction (curricula), and resources that will be utilized to implement the plan;
 - G. A description of inservice of staff who will implement and monitor plan; and
 - H. A statement of each person's responsibility in implementing the plan.
3. Alternative Educational Settings may include alternative schools, in-school suspension, homebound services, or other settings as determined by the IEP team.