THE DISCIPLINE PROCESS
FOR
STUDENTS WITH DISABILITIES

NEW DIRECTOR’S ACADEMY PRESENTATION

July 25, 2013
Missouri Department of Elementary and Secondary Education
Learning Objectives

- Know the legal basis for disciplining students with disabilities in order to protect their rights
- Understand terminology related to the discipline process
- Be able to document discipline decisions (both what they are and how they were made)
- Be able to apply the discipline process in making individual student discipline decisions
- Know where to get additional assistance and resources
Disciplining Students with Disabilities

- Following the discipline process ensures the student’s rights under IDEA are protected
- Involves a process of analysis and decisions
- District’s core data reporting includes discipline data
- Monitored by the Department and OSEP
  - Annual Discipline Review for SPP 4A / 4B
Discipline and the Law
The Law

Individuals with Disabilities Education Act (IDEA)

Missouri State Plan for Special Education

Local Compliance Plans and Assurance Statements

Federal Regulations

Standards and Indicators Manual
Missouri State Law

Safe Schools Act

Sections 160.261–160.272 of the Revised Statutes of Missouri

Passed in 1996

Applies to all students

Provisions

- Written Policy / Definitions
- Reporting
Violent Behavior

- The exertion of physical force by a student with the intent to do serious bodily harm ...to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities.

No student shall be readmitted or enrolled if charged with or convicted of any of the following serious offenses:

- First or Second degree murder
- First degree assault
- Forcible rape or sodomy
- Statutory rape or sodomy
- Robbery or Arson in the first degree
- Distribution of drugs to a minor
Serious Bodily Harm

Means a **serious bodily injury** which involves—

- a substantial risk of death
- extreme physical pain
- protracted and obvious disfigurement
- protracted loss or impairment of the function of a bodily member, organ, or mental faculty

As distinguished from a **bodily injury** which 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!

Emergency Room visit does not equal serious bodily injury!
Weapon

- Firearm, blackjack, explosive weapon, firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun, and a switchblade knife.

- See the *Missouri Revised Statutes* for the exact definition of each of these weapons (Section 571.010)

- Knife: any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person.
Discipline Terms / Key Concepts
What is DISCIPLINE?
- Removal from the current educational placement in response to a violation of the student code of conduct
  - To another setting
  - To an interim alternative educational setting
  - Out of School by suspension or expulsion

When is a removal a CHANGE OF PLACEMENT?
- More than 10 consecutive school days
  OR
  - A series of removals that exceed 10 cumulative school days and constitute a pattern
Key Concepts: ISS / OSS

- **In-School Suspension (ISS)**
  - Does not count towards change of placement so long as student still receives special education and related services described in IEP

- **Out of School Suspension (OSS)**
  - Always counts toward change of placement
  - Bus suspensions count IF student misses school
  - ISS can become OSS in certain situations
Key Concepts: Short-term / Long-term

- **Short-term Suspension**
  - \[ \leq 10 \text{ days and no change of placement} \]
  - First 10 days = NO services required
  - >10 days cumulative in school year and no pattern = services considered beginning on 11th day

- **Long-term Suspension**
  - More than 10 consecutive days OR >10 days cumulative and a pattern
Greater than 10 days **Consecutively**

= Change of Placement
Greater than 10 days **cumulatively** with a PATTERN = Change of Placement

![Grid with Xs indicating pattern](image)

District personnel determined a pattern **DOES** exist
Actions Required for Long-term Suspensions

- MUST provide parents with Procedural Safeguards
- MUST hold Manifestation Determination meeting to determine if conduct is related to the child’s disability
  - If behavior is related to disability, the student CANNOT be long-term suspended
  - If behavior is NOT related to disability, student CAN be long-term suspended
    - Services required beginning on 11th day EVEN IF conduct is unrelated to the disability
The Discipline Decision Process
45- Day Suspension
(Drugs/Weapons/Serious Bodily Injury)

Total number of OSS days for this infraction = 45

Is this a 45-day suspension for drugs, weapons, or serious bodily injury?

YES
Proceed to Section E of the State Discipline Documentation form

NO
Is this a 45-day suspension for a dangerous/violent student?

YES
Proceed to Section F of the State Discipline Documentation form

NO
Proceed to Section B of the State Discipline Documentation form

Is the total number of days for this infraction greater than 10 days?

YES
Enter the number of OSS days or this infraction:
Enter total number of OSS days this school year prior to this infraction:
Add these two numbers to obtain the TOTAL number of days of OSS this school year:

NO
Is the TOTAL number of days of OSS this school year greater than 10?

YES
Has a pattern been created?

YES
Proceed to Section B of the State Discipline Documentation form

NO
Proceed to Section A of the State Discipline Documentation form

STOP. No special procedures required.
SECTION E
45 School Day Interim Alternative Educational Placement (IAEP) –
Weapons/Drugs/Serious Bodily Injury

Documentation is present that on the date on which the decision to make a removal that constitutes a change of placement was made:

☐ The parent was notified of the decision
☐ Parent was provided a copy of the Procedural Safeguards

Documentation is present that within 10 school days after the date of the decision to take the disciplinary action, relevant members of the IEP team met to:

☐ Conduct a Manifestation Determination. Go to Section B.

Documentation is present that relevant members of the IEP team determined the conduct was:

☐ Not a manifestation of the disability. Go to Section C.

OR

☐ A manifestation of the disability. Go to Section D.
SECTION B
Documentation of MANIFESTATION DETERMINATION

☐ Documentation is present that within 10 school days of any decision to implement a long-term suspension, the local educational agency, the parent and relevant members of the IEP team met to conduct a manifestation determination.

Manifestation Determination meeting

Step 1.
Team reviewed the following:

- All relevant information in the student’s file ☐ yes ☐ no
- Child’s IEP ☐ yes ☐ no
- Any teacher observations ☐ yes ☐ no
- Relevant information provided by parents ☐ yes ☐ no

Step 2.
Team determined that:

- Conduct in question was caused by, or had a direct and substantial relationship to the child’s disability ☐ yes ☐ no
  OR
- The conduct in question was the direct result of the LEA’s failure to implement the IEP ☐ yes ☐ no

Finding of the team:

☐ Conduct is not a manifestation of the disability. Go to Section C.
☐ Conduct is manifestation of the disability. Go to Section D.
SECTION C
(Long-term suspension—conduct was not a manifestation of the disability)

Documentation is present that:

☐ Relevant IEP team members found the conduct was not a manifestation of the disability.

☐ The IEP team determined placement.

School personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities except that the IEP team must determine services that will enable the child to:

• Continue to receive educational services to continue to participate in the general education curriculum, although in another setting.

• Progress toward meeting goals in the IEP.

• Receive, as appropriate, a functional behavioral assessment (FBA) and behavior intervention services and modifications designed to address the behavior violation so that it does not recur.

☐ Parent provided with prior written Notice of Action for change of placement/services

☐ Parent provided a copy of the Procedural Safeguards
SECTION D
(Long-term suspension—conduct is manifestation of the disability)

Documentation is present that:

☐ Relevant IEP team members found the conduct a manifestation of the child’s disability

Step 1.
The IEP team:

☐ conducted a functional behavioral assessment (FBA)

  OR

☐ FBA was conducted prior to this behavioral incident

Step 2.
The IEP team:

☐ Developed a behavior intervention plan (BIP)

  OR

☐ Reviewed an existing BIP

  AND/OR

☐ Modified an existing BIP, as necessary, to address the behavior related to this incident
Step 3.

☐ Agency returned child to the placement from which the child was removed

OR

☐ Parent and LEA agreed to a change of placement as part of the modifications of the BIP

OR

☐ In the case of a 45 school day placement for drugs, weapons, or serious bodily injury:
   ☐ Continued the child’s placement in the interim alternative educational setting
   AND
   ☐ Determined services that would enable the child to
     ● Continue to participate in the general education curriculum, although in another setting.
     ● Progress toward meeting goals set out in the IEP
     ● Receive, as appropriate, behavior intervention services and modifications designed to address the behavior violation so that it does not recur

Documentation is present that:

☐ Parent provided with a prior written Notice of Action for change of placement/services, when required
Case #1: Edward

Edward is a 10th grader with an educational identification of Emotional Disturbance. He also has a medical diagnosis mood disorder. Edward tends to act out and/or become severely withdrawn and angry with peers and he is failing most of his academic subjects. Edward’s file contains an FBA and a BIP, in addition to his IEP.

- 45-day suspension for bringing a gun to school, showing it to another student and making a threat about using it to shoot another student.

What now?
Case #2: Allen

Allen is a 11th grader with an educational identification of Specific Learning Disability in Reading Comprehension and Written Expression. He is a popular student and has no history of behavior problems.

- 45-day suspension for removing a hunting rifle from his truck and showing it to a friend during the lunch shift in the school parking lot.
Suspension of Greater than 10 days CONSECUTIVELY

Total number of OSS days for THIS infraction = __15__

Is the total number of days for this infraction greater than 10 days?

- YES
  - Is this a 45 day suspension due to drugs, weapons or serious bodily injury?
    - YES
      - Proceed to Section E of the State Discipline Documentation form
    - NO
      - Is this a 45 day suspension for a dangerous/violent student?
        - YES
          - Proceed to Section F of the State Discipline Documentation form
        - NO
          - Proceed to Section B of the State Discipline Documentation form

- NO
  - Enter the number of OSS days or this infraction:
  - Enter total number of OSS days this school year prior to this infraction:
  - Add these two numbers to obtain the TOTAL number of days of OSS this school year:

Is the TOTAL number of days of OSS this school year greater than 10? (STOP. No special procedures required.)

- YES
  - Has a pattern been created?
    - YES
      - Proceed to Section B of the State Discipline Documentation form
    - NO
      - Proceed to Section A of the State Discipline Documentation form
- NO
  - Proceed to Section B of the State Discipline Documentation form
Case #3: Charlie

Charlie is a 6th grader who receives special education services for a learning disability in reading. He has no history of behavior problems.

- Feb 10 – Caught stealing software from computer lab; given 3 days OSS
  - Returned to the classroom to gather belongings and confronted teacher, calling her names, threatening to “cut her”, and pretending to swing his fist toward her.
  - Was given an additional 10 days OSS, bringing his total to 13 days

Is Charlie’s conduct related to his disability?
Suspensions of Less than 10 Days CUMULATIVELY

Total number of OSS days for THIS infraction = ___5__

Is the total number of days for this infraction greater than 10 days?

Enter the number of OSS days or this infraction:

Enter total number of OSS days this school year prior to this infraction:

Add these two numbers to obtain the TOTAL number of days of OSS this school year:

STOP. No special procedures required.

Total number of OSS days this school year = ___8__

Is the TOTAL number of days of OSS this school year greater than 10?
Special Education Discipline Documentation Form
(Use for Out of School Suspension [OSS] Only)

Student Name: ___________________________ Date of infraction: _____/_____/_____

Description of Infraction: ________________________________________________
_____________________________________________________________________
_____________________________________________________________________

1. Number of OSS days for this infraction _________________
Is the total number of days for this infraction greater than 10?
☐ Yes. Go to #2.
☐ No. Go to #3.

2. Is this a 45 school day suspension or interim alternative placement for drugs/weapons/serious bodily injury or for a violent/dangerous student?
☐ Yes for drugs/weapons/serious bodily injury. Go to Section E.
☐ Yes for a violent/dangerous student. Go to Section F.
☐ No. Go to Section B. (Manifestation Determination)

3. Number of OSS days this school year prior to this infraction _________________
Case #4: Jenna

Jenna is a 8th grade student with an educational identification of Other Health Impairment due to a medical diagnosis of ADHD. Jenna has had the following behavior infractions and suspensions this school year:

- Nov 7 – 5 days for fighting
- Feb 21 – 3 days for vandalism
- April 1 – 1 day for purposely overflowing sinks and toilets in restrooms

What happens next?
Suspension that results in more than 10 cumulative days (OSS), but NO change of placement

Total number of OSS days for THIS infraction = __5__

Is the total number of days for this infraction greater than 10 days?

NO

Enter the number of OSS days or this infraction: _____
Enter total number of OSS days this school year prior to this infraction: _____
Add these two numbers to obtain the TOTAL number of days of OSS this school year: _____

Is the TOTAL number of days of OSS this school year greater than 10? 

NO

STOP. No special procedures required.

Has a pattern been created?

YES

NO

Proceed to Section B of the State Discipline Documentation form

Proceed to Section A of the State Discipline Documentation form

Refer to Section A of the State Discipline Documentation form

YES

NO

Proceed to Section B of the State Discipline Documentation form

Proceed to Section A of the State Discipline Documentation form

Proceed to Section E of the State Discipline Documentation form
SECTION A

Removal of a student over ten school days when no long-term suspension is involved (no pattern created)

☐ School personnel, in consultation with at least one of the child’s teachers, determines the extent to what services are required on the 11th school day and thereafter in which the child is in OSS for this infraction and the location of those services.

Factors considered in making this decision include:

- length of the removal: ______________________
- extent to which the student has been removed previously: ______________________
- student’s needs and educational goals: ______________________

Decision: ☐ Services are NOT required on the 11th day of school and thereafter

Plan: __________________________________________________________________________

☐ Services ARE required on the 11th day of school and thereafter

Plan: __________________________________________________________________________

Date of Decision: _____/_____/_____

Name(s) and role(s) of individual(s) making the decision:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ROLE</th>
</tr>
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<tbody>
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<td></td>
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</tbody>
</table>
CASE #5: Robert

Could the LEA determine that the following removals constitute a pattern and, thus, a change of placement:

- Sept 3 – 1 day for throwing food in cafeteria
- Oct 15 – 1 day for throwing food in cafeteria
- Nov 20 – 5 days for pulling fire alarm
- Feb 1 – 2 days for fighting in class
- April 10 – 2 days for setting off sprinkler system with a lighter
Suspension that results in more than 10 cumulative days (OSS) and IS a change of placement

**Special Education Discipline Process**

- Total number of OSS days for this Infraction = 5
- Is the total number of days for this infraction greater than 10 days?
  - NO
  - Enter the number of OSS days or this infraction: 5
  - Enter total number of OSS days this school year prior to this infraction: 7
  - Add these two numbers to obtain the TOTAL number of days of OSS this school year: 12
  - Is the TOTAL number of days of OSS this school year greater than 10?
    - YES
      - Has a pattern been created?
        - NO
          - STOP. No special procedures required.
        - YES
          - Proceed to Section B of the State Discipline Documentation form
    - NO
      - Proceed to Section A of the State Discipline Documentation form

- Is this a 45 day suspension due to drugs, weapons or serious bodily injury?
  - YES
    - Proceed to Section E of the State Discipline Documentation form
  - NO
    - Proceed to Section F of the State Discipline Documentation form

- Is this a 45 day suspension for a dangerous/violent student?
  - YES
    - Proceed to Section B of the State Discipline Documentation form
  - NO
    - Proceed to Section C of the State Discipline Documentation form

_DRAFT June 7, 2013_
Case #6: Lori

Lori is an eleven-year-old in the 5th grade. She was identified with a specific learning disability in math calculation in 3rd grade. She receives special education services in the regular classroom for math. She has a history of behavior difficulties, dating back to 1st grade.

- Sept 1 – 2 days for refusing to work in science class; directed profanity at teacher
- Oct 5 – 3 days for making threatening remarks toward peer
- Oct 11 – 3 days for telling a sexual joke directed at the PE teacher
- Nov 1 – 3 days for knocking books out of another student’s hands and pushing the peer to the ground
Avoiding Common Mistakes
TOP 5 TEACHABLE MOMENTS

Discipline
1. Provide Services When Needed

>10 days Consecutively 
or
>10 days Cumulatively (with pattern)

- MUST provide services beginning on Day 11
- The IEP team determines the services and location

>10 days Consecutively or
>10 days Cumulatively (without pattern)

- School personnel along with at least one of the student’s teachers determines the extent to which services are required on the 11th day and thereafter . . .
- Factors to consider include
  - length of the removal
  - extent to which the student has been removed previously
  - student’s needs and educational goals.
2. Provide the Right Type of Services

Must decide . . .

- What services to provide
- Where to provide the services
- When to provide the services
- How to handle a delay in starting to provide services
3. Have the Right People Making the Discipline Decisions

- ALWAYS document the name and role of persons involved in making decisions related to discipline for students with disabilities
- Discipline decisions related to students with disabilities ALWAYS require a team approach
  - Different discipline options have different required team members
<table>
<thead>
<tr>
<th>Type of discipline procedure occurring</th>
<th>Who is involved in implementing the discipline decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cumulative short term suspensions &gt;10 days in a school year</td>
<td>School personnel in consultation with at least one of the child’s teachers</td>
</tr>
<tr>
<td>Conducting a manifestation determination</td>
<td>The local education agency (LEA), the parent and relevant members of the IEP team</td>
</tr>
<tr>
<td>Long term suspension – conduct was not a manifestation of the disability</td>
<td>School personnel and relevant IEP team members</td>
</tr>
<tr>
<td>Long term suspension – conduct is manifestation of the disability</td>
<td>School personnel and relevant IEP team members</td>
</tr>
<tr>
<td>45 day IAEP – weapons/drugs/serious bodily injury</td>
<td>School personnel</td>
</tr>
<tr>
<td>45 day removal – violent/dangerous student</td>
<td>Designated school personnel file for an expedited due process hearing</td>
</tr>
</tbody>
</table>
4. Know When and How to Conduct a Manifestation Determination

- When must one must be conducted
  - Student removed for > 10 days consecutively
  - Student removed for > 10 days cumulatively with a pattern

- What documentation to look at
  - To determine if a pattern
  - To determine if a manifestation

- Timeline for conducting meeting
  - School days NOT calendar days
5. Follow ALL of the Steps in the Discipline Process

Don’t skip steps
Don’t stop before you’re done with all the steps
Document decisions!
Count OSS days accurately
Know Your Resources
Department Contact Information

☐ Call Special Education Compliance
  PHONE: 573-751-0699
  FAX: 573-526-5946

☐ Email Special Education Compliance
  secompliance@dese.mo.gov

☐ Access the Special Education Compliance website
  http://dese.mo.gov/divspeced/Compliance/
Special Education Compliance

New Updates

Transition from First Steps to Early Childhood Special Education
As a joint effort First Steps (Part C) and Special Education Compliance (Part B) personnel, the Office of Special Education is offering a webinar on Transition from First Steps to Early Childhood Special Education. The webinar will be presented January 25 from 10:30 a.m. to 12:00 p.m. and will focus on the transition procedures and timelines for children moving from First Steps to ECSE. This webinar will include a live Q&A about issues discussed in the presentation.

More information

Update to the Revisions of the Standards and Indicators
We regret that there was an error made in the recent revisions of the Standards and Indicators.
Special Education Discipline Process

Total number of OSS days for this infraction = _____

- YES
  - Is this a 45 day suspension due to drugs, weapons or serious bodily injury?
    - YES
      - Proceed to Section E of the State Discipline Documentation form
    - NO
      - Is this a 45 day suspension for a dangerous/violent student?
        - YES
          - Proceed to Section F of the State Discipline Documentation form
        - NO
          - Proceed to Section B of the State Discipline Documentation form

- NO
  - Is the total number of days for this infraction greater than 10 days?
    - YES
      - Enter the number of OSS days or this infraction: _____
        - Enter total number of OSS days this school year prior to this infraction: _____
        - Add these two numbers to obtain the TOTAL number of days of OSS this school year: _____
    - NO
      - Is the TOTAL number of days of OSS this school year greater than 10”
        - YES
          - Has a pattern been created?
            - YES
              - STOP. No special procedures required.
            - NO
              - Proceed to Section B of the State Discipline Documentation form
        - NO
          - Proceed to Section A of the State Discipline Documentation form
Special Education Compliance
Program Review Standards and Indicators

Missouri Department of Elementary and Secondary Education
Office of Special Education

Revised July 2013

MISSOURI STATE PLAN FOR SPECIAL EDUCATION

Regulations Implementing Part B of the Individuals with Disabilities Education Act
Also available on the Web . . .

Special Education Compliance

News and Updates

IMACS

New Assistant Director of Compliance
Nancy Thomas has accepted the position of Assistant Director of Compliance, Part B, in the Office of Special Education replacing Ginger Henry.

Compliance/Range of Minutes
the U. S. Department of Education, Office of Special Education Programs (OSEP) takes a dim view of using a range of minutes for specific special education services listed in the IEP.
Compliance Staff

Vacant, Director, Special Education Compliance Parts B & C

Phone: 573-751-0699, Fax: 573-526-5946 Web Inquiries: secompliance@dese.mo.gov

Part B - Ages 3-21
- Nancy Thomas, Assistant Director
- Julie Bower, Supervisor
- Samantha Boucher, Supervisor
- Rick Lewis, Supervisor
- Corina Henderson, Supervisor
- Donna Catt, Supervisor
- Jennifer Moreland, Supervisor
- Margaret Wimer, Program Analyst

Part C - Ages Birth to 3
- Pam Schroeder, Assistant Director
- Sara Massman, Supervisor
- Margaret Wimer, Program Analyst

Complaint System
- **Child Complaints**
  - Pam Schroeder, Assistant Director
  - Nancy Thomas, Assistant Director
  - Jennifer Moreland, Supervisor
  - Wanda Allen, Legal Assistant

- **Due Process**
  - Vacant, Director
  - Wanda Allen, Legal Assistant

Educational Surrogate Program
IMACS, Web, and Data Technical Assistance
- Sandy Kliethermes, Program Supervisor
- Margaret Wimer, Program Analyst
RPDC- Compliance Consultants

CONSULTANTS

- Lois Jones
- Rodney Cook
- Joetta Walter
- Susan Borgmeyer
- Jennifer McKenzie
- Tiffiney Smith

Updated 7/1/13
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QUESTIONS?
THE DISCIPLINE PROCESS FOR STUDENTS WITH DISABILITIES

Missouri Department of Elementary & Secondary Education

Office of Special Education

TOP 10 by 20

MISSOURI PROUD

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