

SPED COMPLIANCE:
WHEN THINGS DON'T WORK!

Dispute Resolution
Discipline for Students with
Disabilities

The 300's Indicators

NEW DIRECTORS' ACADEMY PRESENTATION

July 2016 Missouri Department
of Elementary and Secondary Education

Welcome to our session about the Discipline Process for Students with Disabilities. We will be describing and discussing both the process and the compliance requirements to ensure that students with disabilities who are disciplined will receive appropriate due process under the Individuals with Disabilities Education Act (IDEA). Today we will be reviewing the legal requirements for the discipline process as well as **sharing model forms** and flow charts to help you understand and follow the process. In addition, we will be using real-life situations to illustrate the process and documentation requirements. Finally we will be providing resources and answering your questions.

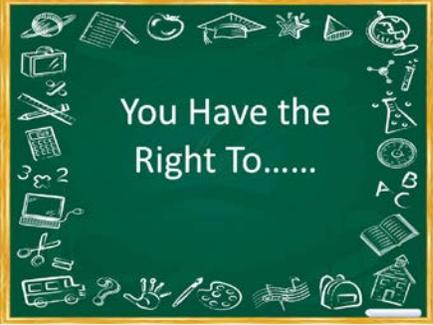
Session 4: Learning Objectives

- Know about the complaint process in IDEA and the implications for LEAs
- 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



These are the learning objectives for Session 4. . . As you can see we have lots of information to cover. So let's get started. . .

Slide 3



You Have the
Right To.....

Parental Rights

**Creating a Balance of Power Between
Schools and Parents. . .**

The image shows a green chalkboard with a white border of various educational icons including a microscope, pencil, graduation cap, star, triangle, clock, calculator, keyboard, scissors, computer monitor, question mark, hand, paint palette, musical notes, backpack, and schoolhouse. The text 'You Have the Right To.....' is written in the center. Below the chalkboard is a blue bar with the text 'Parental Rights' and a green bar to its left. Below that is a white bar with the text 'Creating a Balance of Power Between Schools and Parents. . .'. The entire slide has a light beige background with horizontal lines.

First, let's look at the parental rights which provide the "rules" for the balance of power between schools and parents . . .

Procedural Safeguards

<p>Explains the parent/guardian's rights under IDEA in regards to:</p> <ul style="list-style-type: none">■ Written Notice and Consent■ Independent Educational Evaluation■ Access to Records■ Confidentiality of Information■ Destruction of Records■ Parent Participation■ Mediation prior to filing due process■ Discipline■ Private School placement by Parents■ The Complaint System (Mediation, Child Compliant, Due Process, Civil Action)	<p>A copy must be provided:</p> <ul style="list-style-type: none">□ Annually□ Upon initial referral or parental request for evaluation□ Upon a disciplinary change of placement; and□ Upon request by the parent
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One of the basic requirements of the IDEA is the provision of the Procedural Safeguards to parents/guardians. This document explains their rights in regards to the special education process under IDEA. As you can see by this slide, these rights fall into 10 basic categories

A copy of state approved procedural safeguards must be given to parents one time each school year. In addition, a copy shall also be given for the additional reasons stated here. The most recent update for procedural safeguards was made August, 2009. Be sure to destroy any copies dated prior to that date. A copy of the most recent procedural safeguards is included in your packet.

Parents must be provided a copy in their native language. If you need a copy in the language of the parent you are working with, contact DESE Compliance – Office of Special Education.

Parent Bill of Rights

- A Missouri state law requirement (162.850 RSMO).
- One page document that summarizes key parent/guardian rights contained in IDEA
- LEAs must provide to parents when:
 - a child is determined eligible for special education services or,
 - when an initial Individualized Education Program (IEP) is developed and,
 - whenever the Procedural Safeguards Notice is provided to parents

In Missouri there is a “companion” document to the Procedural Safeguards titled the Parent Bill of Rights. This became law in January 2010 as a result of a grassroots campaign from parents of children with disabilities in Missouri. The Parent Bill of Rights is a one page document that summarizes key parent/guardian rights contained in the IDEA.

LEAs must provide the Parent Bill of Rights to parents in 3 specific situations:

1. a child is determined eligible for special education services or,
2. when an initial Individualized Education Program (IEP) is developed and,
3. whenever the Procedural Safeguards Notice is provided to parents

A copy of the Parent Bill of Rights can be found in your packet.



Now we're going to talk about the Complaint System. This is the process that the IDEA provides to parents and LEAs to use when disagreements cannot be worked out through the IEP process. This system is described in the Procedural Safeguards as well as the State Plan for Special Education in MO. There are three options in the Complaint System: Mediation, Child Complaints and Due Process.

Slide 7

Comparing the systems	Mediation	Child Complaint	Due Process
Format?	Informal Confidential	Formal Confidential	Formal Confidential
Who decides?	Supports mutual problem solving	Assistant Commissioner of SpEd makes final determination	Solution ordered by hearing officer from the Administrative Hearing Commission
How long does it take?	Mediation session less than a day	Process may take several weeks	Hearing may last several days and process may take several months
How is information gathered?	Supports open communication	Communication with investigator	Witnesses testify under oath
How is decision made?	Agreements made jointly	Determined by allegations	Law-based solution
Agreement?	If no agreement reached, can pursue other complaint systems	Decision of Assistant Commissioner of SpEd is final	Decision binding; however, can be appealed to state or federal court
Timeline to complete process?	Must be completed in 30 days	Must be completed in 60 days unless an extension is needed to determine the facts	Can be completed in 45 days but usually takes approximately 6 months
Legal representation?	Attorneys cannot participate	Attorneys neither required nor prohibited	Although not required, parties are often represented by attorneys
Format of process?	Parties meet face to face for an informal discussion	Parties do not meet, investigator requests information from both sides and independently reviews it	Parties meet face to face in adversarial setting

A copy of this chart is located in your Compliance packet. It includes a brief summary of some, but not all, of the differences between mediation, a child complaint, and a due process complaint. This is a very useful resource to have available when you're faced with a parent filing a complaint. Another good reference for an explanation of the complaint process is the Procedural Safeguards Notice which can be found on the Department's web site.

As you can see, the options in the complaint system move from informal and relatively quick in mediation to very formal and lengthy for due process. Also note that the decision of how the resolve the complaint moves from the parties closest to the situation (parents and LEA staff) in mediation to objective third parties (an investigator or administrative hearing judge) for child complaints and due process. This movement from lowest level of conflict resolution to highest level of conflict resolution is also seen in when attorneys can be involved in the process and the level of the adversarial relationship between the two parties.

IDEA encourages LEAs and parents to work cooperatively in resolving disputes at the lowest level of conflict resolution. This is why the Department will pay for mediation prior to the parent filing a child complaint or due process.

Facilitated IEPs: A NEW Option to Resolve Disputes

- IEP Facilitation is . . .
 - The use of a NEUTRAL facilitator to help make the IEP meeting more effective
- IEP Facilitation Is used when . . .
 - Conflicts or disagreements are likely to arise
 - History of contentious relationships
 - Discussions tend to waiver from student-focus
 - IEP team members need to focus on content rather than process



IEP Facilitation is a process that is being used in 38 states across the country and Missouri will join that group beginning mid-August this year as we offer IEP Facilitation state-wide during the 2016-17 school year.

IEP Facilitation is the process of utilizing a skilled and trained **neutral** facilitator to lead the IEP meeting when both the parent/guardian and school district agree that the IEP could benefit from a facilitator leading the IEP.

Either the parent or the school district can initiate the request, and both must agree to the use of the facilitator.

The facilitator is a **neutral** party who has no agenda other than to assist the group in reaching consensus and assure that the focus of the meeting stays on the student and their needs.

IEP Facilitation can be used when there is a history of contentious relationships and can be used before the relationship has a chance to fray.

IEP Facilitation is All About the Process

- P = participation & prevention
- R = resolution of conflicts
- O = organization
- C = collaboration & consensus
- E = efficiency
- S = shared decision-making
- S = student focus & success!

A can of WD-40 multi-use product and a roll of grey duct tape are positioned to the right of the list. The WD-40 can is blue and yellow with a red cap. The duct tape is grey with a white paper backing.

IEP Facilitation is ALL about the process. You have several print materials in your folder and these will explain in more detail how an IEP Facilitator can be requested. During last school year, MO DESE conducted a pilot with selected school districts and collected data from parents, students, schools and administrators. Data collected told us that both parents and districts were encouraged by the results of the IEP meeting, felt their concerns were addressed and while not necessarily “thrilled and delighted” will all aspects of the IEP meeting, were satisfied with the final product and felt they could both support and implement the IEP.

	
	Discipline for Students with Disabilities
	Legal Considerations Key Terms and Concepts The Discipline Process

Now let's talk about discipline for students with disabilities. In this section we will cover the legal considerations and foundations as well as key terms and concepts that impact discipline decisions. Finally, we will run through the discipline process . . .

Why It Matters?

<p>Process:</p> <ul style="list-style-type: none">□ Following the discipline process ensures the student's rights under IDEA are protected□ Involves a process of analysis and decisions that takes a child's disability into consideration	<p>Accountability:</p> <ul style="list-style-type: none">□ District's core data reporting includes discipline data□ Monitored by the Department and OSEP■ Annual Discipline Review for SPP 4A / 4B
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Some people believe that students with disabilities CANNOT be disciplined – that is simply NOT true. Yes, there are certain protections afforded to students with disabilities but these protections and processes were developed to ensure that the student's rights under IDEA were not lost when they break school rules and are disciplined by the LEA. There are two parts to consider when disciplining students with disabilities – the process and accountability.

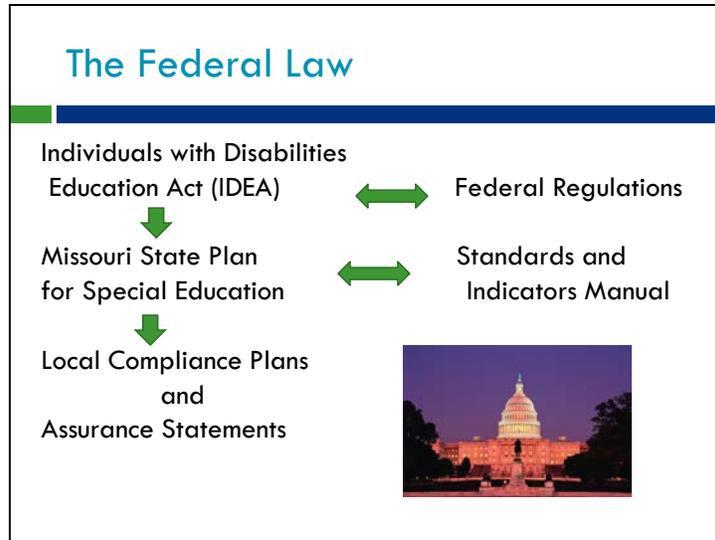
When disciplining students with disabilities, there are specific steps that must be followed which involve an analysis of the incident along with additional discipline data and then making a decision based on that analysis and documenting that decision. We will spend quite a bit of time discussing the process and the documentation of disciplining students with disabilities as these are key in maintaining compliance with IDEA.

It is important to note that school districts are required to collect and report data about discipline to the Department of Elementary and Secondary Education for both students with and without disabilities. The report must include both Out of School Suspension (OSS) and In School Suspension (ISS). This data must be reported by race/ethnicity as well. The data that each school reports is then analyzed to determine if there is disproportionate representation based on races and/or disability in the actual discipline imposed in each district. If disproportionality is found, the district must conduct a review of their policies, practices and procedures to determine if these are contributing to the disproportionality. If noncompliance is found, changes must be made in those policies, practices and/or procedures. Each year, all of this data on disproportionality must be reported by the State to the Office of Special Education Programs (OSEP) for State Performance Plan indicators 4A and 4B.

Discipline and the Law

A photograph of a wooden gavel resting on a document, symbolizing law and discipline. The gavel is positioned diagonally across the page, with its head resting on the document. The document appears to be a legal or official document, with some text visible but mostly illegible due to the angle and focus. The lighting is warm, highlighting the texture of the wood and the paper.

Let's start by looking at the laws that directly affect disciplining students with disabilities.



As you remember from previous sessions, the IDEA is the federal law that governs everything we do in special education. The federal regulations help explain the law. The Missouri State Plan for Special Education describes how the IDEA will be enacted in our state with the Standards & Indicators manual providing guidance and further explanation. Finally, each LEA has a Local Compliance Plan that outlines how the IDEA and the MO State Plan will be implemented at the local level. The LEA makes an annual assurance that they will follow the IDEA.

Missouri State Law

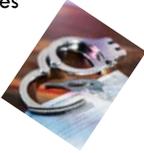
- Safe Schools Act
 - Sections 160.261–160.272 of the Revised Statutes of Missouri
 - Passed in 1996
 - Applies to all students
 - Provisions
 - Written Policy / Definitions
 - Reporting



There is also a MO law that affects special education. The Safe Schools Act, contained in sections 160.261–160.272 of the Revised Statutes of Missouri, was originally passed in the Legislature and signed into law by the Governor in 1996. The main provisions of the Safe Schools Act fall into two categories – written policy / definitions and reporting. The act requires each local school board to establish a written discipline policy. The policy must include definitions of key terms and the policy must provide for a one-year suspension or expulsion of a student who brings a weapon to school in violation of school policy. The policy must require administrators to report acts of school violence to district employees with a “need to know” and administrators must report to law enforcement any students’ acts that would constitute a felony if committed by an adult. Let’s take a few minutes to look at some of the key terms in the Safe Schools Act.

Violent Behavior

- 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



The first key term is “violent behavior” . . . As you can see the behavior could occur both ON or OFF of school grounds and there are specific legal charges that are associated with the term “violent behavior.”

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 !

The second key term in the Safe Schools Act is “Serious Bodily Harm” which means a serious bodily injury which involves . . . (read slide)

IDEA uses the term “Serious Bodily Injury” instead of “serious bodily harm. For that reason these terms are sometimes used interchangeably.

It is important to remember that a trip to the emergency room does NOT necessarily mean the person has sustained a serious bodily injury resulting in serious bodily harm.

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.



The final key term is “Weapon”. A weapon is defined as a 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. Each of these weapons is described and defined in the Missouri Revised Statutes.

It is easy for administrators to assume that they know what a weapon is – for example, a “knife.” In Missouri the legal definition of a “knife” in terms of being a weapon is 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. For discipline purposes, “knife” does not include ordinary pocketknives with blades less than four inches in length.

As you can see it is important to know the legal definitions when making discipline decisions about students.

School Board Policy

- Seclusion and Restraint
 - Found in the Student section of the policies
 - Usually recorded as “Policy JGGA”
 - Includes . . .
 - Terms and definitions
 - Procedures for use
 - Staff training requirements

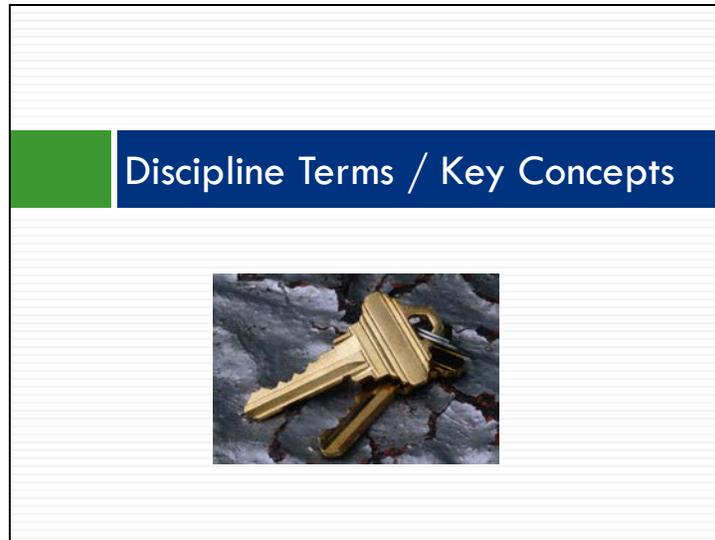


It is also important to be aware of your school board policy in regards to discipline. Every school district in Missouri has a school board policy for the use of seclusion and restraint. This is required under Missouri State law and affects both students with and without disabilities.

Your school board policies can be found online on the district’s webpage or in the office of the superintendent at the school district. School board policies are divided into sections and the Seclusion and Restraint policy is located in the Student section. Since the many school districts use the model policies developed by the Missouri School Boards Association, the Seclusion and Restraint policy is indexed as policy JGGA .

Missouri state law requires that the Seclusion and Restraint policy includes terms and definitions, specific procedures that must be followed when using seclusion and/or restraint, as well as a description of how staff will be trained on the use of seclusion and restraint.

Each district’s policy is unique. It is VERY important that you are aware of and follow your LEA’s board policy on the use of seclusion and restraint.



The slide features a white background with a blue horizontal bar across the middle. The text "Discipline Terms / Key Concepts" is written in white on the blue bar. To the left of the bar is a green square. Below the bar is a photograph of several keys lying on a dark, textured surface.

Our next topic will help us all be “on the same page” as we discuss discipline for students with disabilities. It is VERY important to understand the terms used in association with disciplining students with disabilities as well as several of the key concepts about discipline included in the IDEA.

The Basics . . .

- 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

First, the only form of discipline for students with disabilities that is relevant to this discussion is a removal from the current educational placement to another setting where the student does not receive the special education and related services described in the student's IEP. Time out in the student's classroom, detention, community services, Saturday School, or other restrictions of privileges are not subject to the requirements relating to discipline under IDEA unless the student's IEP specifically precludes these or addresses these. In that situation, the IEP provisions must be implemented.

Removal from the educational placement is not considered a change of placement unless it lasts longer than **10 school days**. This is why it is referred to as "Long Term Suspended." This can be more than 10 consecutive school days - for example, a student receives 11 days in a row of Out of School Suspension for fighting in the cafeteria. OR there can be a series of removals that total more than 10 cumulative school days and these removals create a pattern of suspension. The district determines on a case-by-case basis whether a pattern of suspension has been created. For example, a student receives 8 days of out of school suspension for bullying a classmate after being previously out of school suspended for 5 days for bullying a different classmate the month before. We will talk more about the difference between Short-term and Long-term suspensions in just a minute and provide additional examples.

Key Concepts: ISS / OSS for Determining a Change of Placement

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

But first we need to look at some of the key concepts when disciplining students with disabilities. First, let's address the difference between in-school and out-of-school suspension.

In-school suspensions or ISS means that a student is removed for disciplinary reasons from their assigned classroom and schedule to some type of school staff supervised setting during the school day. ***It can be called "being assigned to the ISS program", "temporary attendance at the Alternative School", "being sent to the Recovery Room," or some other similarly named "room" or "program" – the key is that the student is removed from their current educational program to another setting for disciplinary reasons.*** Many school administrators prefer to use ISS as it keeps the student in school and provides supervised time to make-up school work and keep current on assignments while the student is assigned ISS. ISS does not count towards change of placement so long as the student with a disability still receives special education and related services as described in their IEP is **provided by a special education teacher or related services staff**.

Out-of-school suspension or OSS, by contrast, means a student is removed from the current educational setting for a set period of time for disciplinary reasons. OSS days always count toward a change of placement since, by definition, the student is not at school and cannot receive their special education and related services as described in their IEP. The key for OSS is that the suspension results in the student with a disability NOT receiving the services required by their IEP. That is why bus suspensions count as OSS for students with disabilities IF transportation is listed as a related service for the student regardless of whether or not the

student attends school during the bus suspension. And it is why the parent picking the student up early at the school's request for discipline reasons is considered OSS as well.

So the next logical question is "Is there ever a time when ISS becomes OSS?" The answer is "YES". ISS settings are considered general education settings. When a student with a disability is in ISS, they must still receive their special education and related services as described on the IEP in order for the ISS to be considered "ISS" and not count towards a change in placement. Remember the key is that if the disciplinary action results in the student with a disability not receiving the special education and related services and maintaining the current placement required by the IEP, then no matter what you call it – it is OSS and that day counts toward a change of placement.

Key Concepts: Short-term / Long-term

<ul style="list-style-type: none">□ Short-term Suspension<ul style="list-style-type: none">■ ≤ 10 days and no change of placement■ First 10 days = NO services required■ >10 days cumulative in school year and no pattern = services must be <u>considered</u> beginning on 11th day	<ul style="list-style-type: none">□ Long-term Suspension<ul style="list-style-type: none">■ More than 10 consecutive days <u>OR</u> >10 days cumulative and a pattern
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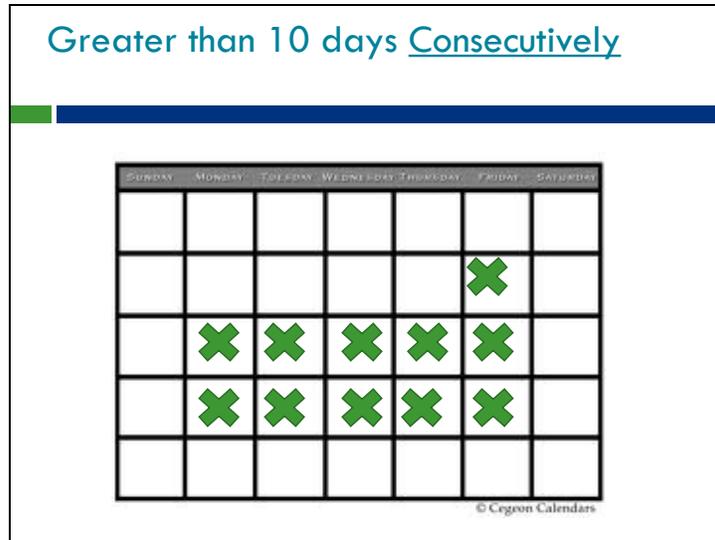


Now let's discuss the difference between a **short-term** suspension and a **long-term** suspension.

So, what constitutes a short-term suspension? Any suspension that is less than or equal to 10 school days during a school year that is not a change of placement. What educational services must be provided when a student with a disability is short-term suspended? For suspensions of 10 days or less in a school year, the LEA is NOT required to provide services unless services would be provided to a student without a disability who has been similarly removed.

However, if the short-term suspension results in the student being suspended greater than 10 days in a school year, even when no pattern of suspensions has been established, the LEA MUST CONSIDER providing services beginning on day 11. School personnel, in consultation with at least one of the student's teachers, determines the extent to what services are required beginning on the 11th school day and thereafter, and the location of those services. If services are provided they must permit the student to participate in the general education curriculum and progress towards IEP goals. Sending missed assignments and homework to a student with a disability who is suspended is NOT providing services. Remember that the services to be provided are determined by school personnel in consultation with at least one of the student's teachers – not the parent or the IEP team.

Now let's focus on long-term suspensions. So, what constitutes a long-term suspension? Any suspension for disciplinary reasons that exceeds 10 consecutive school days in a school year OR any suspension that exceeds 10 cumulative school days in a school year where a pattern of behavior is established triggers a change of placement and is considered a long-term suspension. Let's look at these two situations more closely. . .



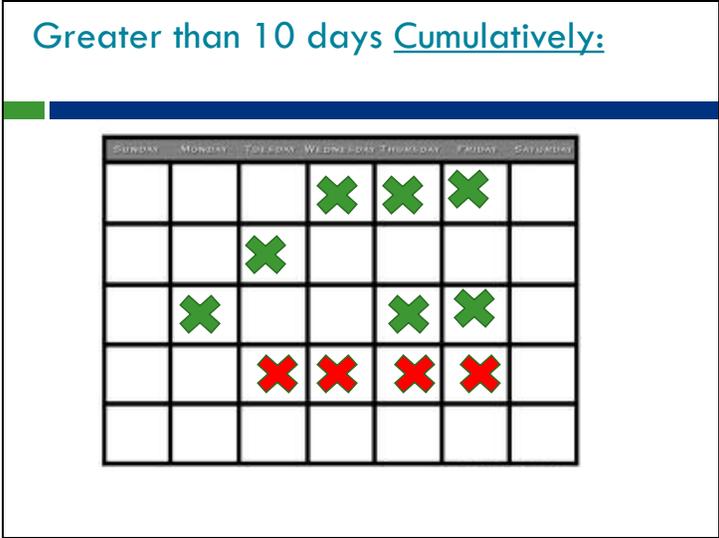
This slide shows a removal of MORE than 10 consecutive school days and is . . .

Greater than 10 days Consecutively
= ALWAYS a Change of Placement

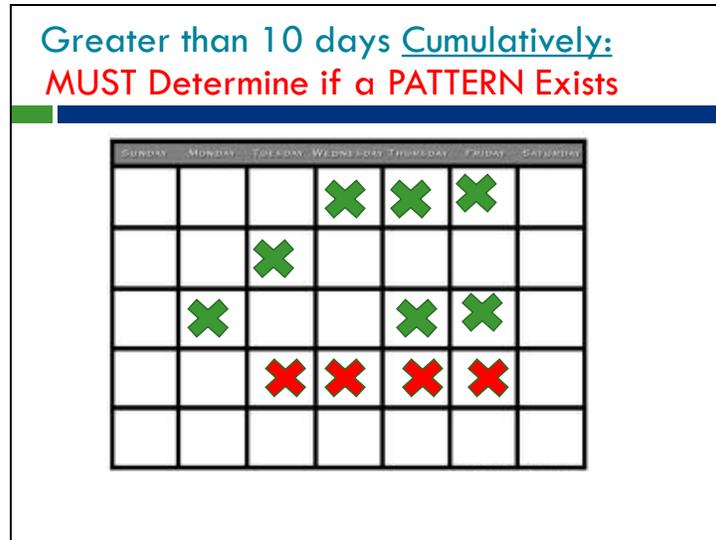
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					X	
	X	X	X	X	X	
	X	X	X	X	X	

© Cegron Calendars

ALWAYS considered a Long-term suspension and a CHANGE OF PLACEMENT . . .



This slide shows a removal for MORE than 10 cumulative school days. It becomes a bit more complicated to discipline the student now because the school staff must determine if the most current suspension shown in RED is a short-term or a long-term suspension.



When the removal is for MORE than 10 cumulative school days, the key factor is whether or not a PATTERN has been created by the suspensions.

If a pattern exists, then the final suspension is considered a LONG-TERM suspension.

And if a pattern does NOT exist, then the final suspension is considered a SHORT-TERM suspension.

So. . . just how is a pattern determined?

Is it a “Pattern” of Suspensions?

- >10 days cumulatively in the school year
- Behavior must be substantially similar to behavior in previous disciplinary incidents
- Additional Factors to be considered. . .
 - Length of each removal
 - Total amount of time of the removals
 - Proximity of the removals to one another

There are three key Factors that must be considered in making the determination of whether or not a “pattern” exists. These include the following:

First, the series of removals must total more than ten (10) school days cumulatively in a school year.

Second, the child’s behavior must be substantially similar to the child’s behavior in the previous incidents that resulted in the series of removals;

and, finally, school staff must consider additional factors such as the length of each removal, the total amount of time the child has been removed from their current educational setting, and the proximity of the removals to one another.

It is important to remember that the school staff, not the parents, must determine if a pattern of suspensions exists. However, if the parent disagrees with the school staff’s determination, that determination is subject to review through due process and judicial proceedings.

Is it a “Pattern” of Suspensions?



- >10 days cumulatively in the school year
- Behavior must be substantially similar to behavior in previous disciplinary incidents
- Additional Factors to be considered. . .
 - Length of each removal
 - Total amount of time of the removals
 - Proximity of the removals to one another

 **School staff**
determine if a pattern exists.

It is important to remember that the school staff must determine if a pattern of suspensions exists. If the parent disagrees with the school staff’s determination, that determination is subject to review through due process and judicial proceedings.

Actions Required for Long-term Suspensions

- **MUST provide parents with Procedural Safeguards**
 - When the decision is made to long-term suspend the student
- **MUST hold a Manifestation Determination Meeting to determine if conduct is related to the child's disability**
 - Within 10 school days of the decision

So what are the immediate steps that the LEA must take when long-term suspending a student?

First, on the date the decision is made to long-term suspend a student, the district must notify the parent of that decision and provide them with a copy of the procedural safeguards.

Then within 10 school days of the decision to make a change of placement, the district and relevant members of the IEP team along with the parents of the student **MUST** meet to determine if the conduct resulting in the disciplinary action was caused by or had a direct and substantial relationship to the child's disability or if the conduct was a result of the district's failure to implement the IEP. This meeting is known as the Manifestation Determination meeting.

The Manifestation Determination Meeting

- **WHEN** is it held?
 - Within 10 school days of decision to long-term suspend



First, when is a manifestation determination required? We found that most districts seemed to understand that every disciplinary action of more than 10 days consecutively is a long-term suspension and **MUST** have a manifestation determination meeting. However, when the greater than 10 days was cumulative in a school year, districts had much more difficulty in making a determination of whether or not this was considered a long-term suspension. We found this is because school districts are unclear for how to ascertain if the removals for cumulative days constitute a pattern of suspension resulting in a long-term suspension. Documentation showed, more often than not, that many districts automatically conducted a manifestation determination regardless of whether it was a short-term or long-term suspension.

The key is that manifestation determinations are required **ONLY** when the disciplinary action results in a change of placement. And a change of placement occurs when a student is removed from their educational placement for more than 10 days. And for cumulative days, there must be a pattern for the greater than 10 days to be considered a change of placement. Remember that the LEA is who determines if there is a pattern and that decision must consider:

- Are the behaviors that led to each suspension substantially similar?
- What is the total amount of time suspended?
- What is the proximity of the suspensions/infractions to each other?

So, to determine if a pattern exists, the LEA should be looking at the current and prior discipline reports for the student.

Finally, districts often forget that the timeline for conducting a manifestation determination meeting is 10 school days from the date of the decision to long-term suspend the student – NOT calendar days. Since building administration can only assign 10 days of OSS, the potential change of placement occurs only for cumulative 10 day situations with a pattern. The other potential time this decision would occur is when the superintendent recommends an extension to the 10 days of OSS assigned by the principal. In both situations, the IEP team must decide what services are required and where those services will take place.

The Manifestation Determination Meeting

- WHEN is it held?
 - Within 10 school days of decision to long-term suspend
- WHO attends?
 - LEA representatives
 - Parents
 - Relevant members of the IEP team



Next, who must be invited to a manifestation determination meeting? The required members are the LEA representative, parents of the child, and relevant members of the IEP team. Relevant members would be expected to include, at a minimum, the special education teacher.

The Manifestation Determination Meeting

- **WHEN** is it held?
 - Within 10 school days of decision to long-term suspend
- **WHO** attends?
 - LEA representatives
 - Parents
 - Relevant members of the IEP team
- **WHAT** to consider?
 - Student's file, the IEP, teacher observations and relevant information provided by parents



Next, WHAT documentation must be considered when making a manifestation determination?

Since the purpose of the meeting is determine whether the student's disability had a direct and substantial relationship to the violation of school conduct, or if the conduct in question was a direct result of the LEAs failure to implement the IEP. It would be important to look at:

The child's IEP

Teacher observations

Relevant information provided by the parents

The most recent evaluation report

The results of any functional behavior assessments and/or behavior intervention plan

Discipline history

The Manifestation Determination Meeting

- WHEN is it held?
 - Within 10 school days of decision to long-term suspend
- WHO attends?
 - LEA representatives
 - Parents
 - Relevant members of the IEP team
- WHAT to consider?
 - Student's file, the IEP, teacher observations and relevant information provided by parents
- WHY?
 - Is there a direct and substantial relationship between behavior and disability
 - Did behavior result from not implementing the IEP?



Based upon a review of this information the team determines if the conduct is or is not a manifestation of the disability by answering the following questions:

1. Is there a direct and substantial relationship between the behavior resulting in the disciplinary action and the student's disability?
2. Did the behavior resulting in the disciplinary action result from the IEP not being implemented as written – be sure to look at services, accommodations/modifications, special considerations, and the BIP.

Conduct IS Related to the Disability

- Student **CANNOT** be long-term suspend
- IEP team must. . .
 1. Conduct or review an FBA of the student
 2. Develop or review/revise a BIP for the student
 3. Make a placement decision
 - a) Return child to current placement with BIP in place
 - b) Change placement with BIP in place
 - c) In case of 45 day suspension for drugs, weapons, or serious bodily injury, continue the placement in the interim alternative educational setting determined by LEA

If the conduct IS related to the disability, no long term suspension can occur. The LEA must conduct or review a functional behavior assessment and then develop or review/revise a behavior intervention plan for the student. At that point the LEA must either return the student to the placement from which he/she was removed OR the parent and LEA must agree to a change of placement as part of the IEP / BIP process.

If the student was long-term suspended for drugs, weapons or serious bodily injury for 45 days, the student can continue to remain in that placement even if the conduct was found to be a manifestation of the student's disability.

Conduct IS NOT Related to the Disability

- Student **CAN** be long-term suspend
- LEA may apply the same discipline consequences as peers
- IEP team must. . .
 1. Determine services and placement beginning on the 11th day that allow the student to. . .
 - a) Receive educational services to continue to participate in general education just in an alternate setting during the suspension
 - b) Progress towards IEP goals
 - c) Receive an FBA if appropriate
 2. Provide parent with NOA for change of placement

If the conduct is NOT related to the disability, the LEA can impose the same disciplinary consequences as they would for a student without a disability. However, the IEP team must determine the setting and the appropriate services needed to enable the student with a disability to continue in the general education curriculum and to progress toward meeting IEP goals in the new setting while the student is being disciplined. The student must receive an FBA if appropriate. Because this is a disciplinary change of placement, the parent must be provided with a Notice of Action describing the action along with an explanation of the basis for the action.

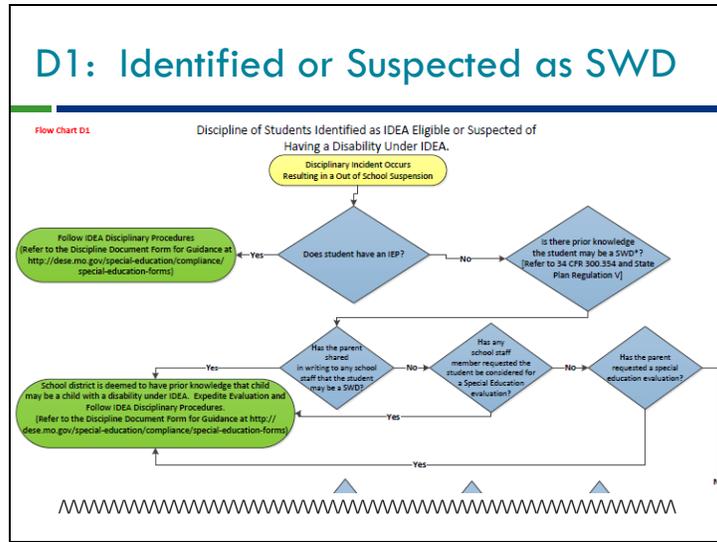
Resources for Discipline Decisions

- Discipline Flow Chart (D1/D2)
- Model Discipline Documentation Form and Discipline Flow Chart
 - Step-by-Step guide to document decisions
- Discipline Decision Maker Chart
 - Discipline decisions related to students with disabilities ALWAYS require a team approach
 - Different discipline options have different **required** team members
- Bus Suspensions and OSS

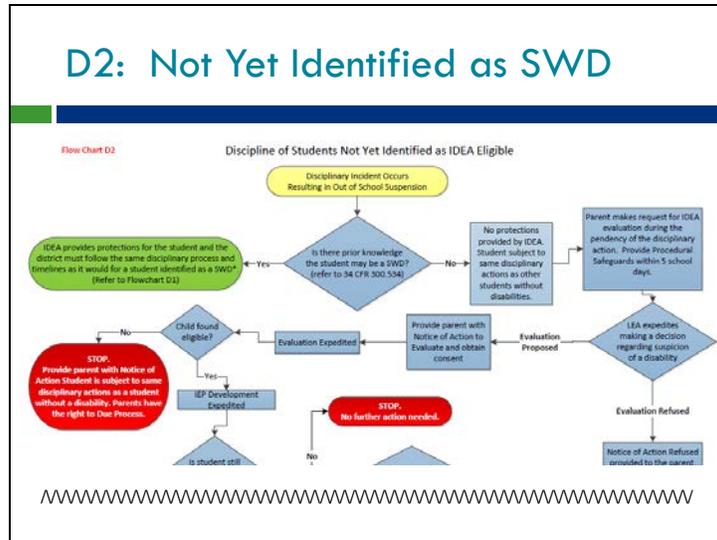
This slide shows several of the resources developed by the Compliance Section to assist LEA staff in making compliant discipline decisions.

Let's take a quick look at the Discipline Flow Chart and Discipline Documentation Form from the back cover of the Participant Notebook . . .

<briefly go over the Discipline Documentation Form>



In the “world” of special education discipline, students fall into two categories: students already identified or suspected of being a student with as disability (as shown on this flow chart) . . .



Or students not yet identified as a student with a disability. DESE has developed two flow charts to assist LEA staff to follow the IDEA discipline process and remain in compliance. It is suggested that special education staff as well as general education staff who work with discipline have access to and use these flow charts when disciplining students.

Type of discipline procedure occurring	Who is involved in implementing the discipline decisions
Cumulative short term suspensions >10 days in a school year	School personnel in consultation with at least one of the child's teachers
Conducting a manifestation determination	The local education agency (LEA), the parent and relevant members of the IEP team
Long term suspension – conduct was not a manifestation of the disability	School personnel and relevant IEP team members
Long term suspension – conduct is manifestation of the disability	School personnel and relevant IEP team members
45 day IAEP – weapons/drugs/serious bodily injury	School personnel
45 day removal – violent/dangerous student	Designated school personnel must file for an expedited due process hearing

This slide shows the Discipline Decision Maker Chart. As you can see from this chart, making decisions about how to implement the discipline ALWAYS involves more than one person. Who is involved in the decision making process will depend up on the type of discipline procedure that is occurring.

WHEN DOES BUS SUSPENSION COUNT AS OUT OF SCHOOL SUSPENSION (OSS) FOR STUDENTS WITH IEPs?		
Student is suspended off bus and the student's IEP shows transportation as....	And the student....	Does the day count as OSS?
Related service	Does not attend school	Yes
Related service	Attends school because parent provides transportation	Yes
Related service	Attends school because parent provides transportation and the school reimburses (or offers to reimburse) the parent for providing the "transportation service"	No
Not a related service	Does not attend school	No If student misses greater than 10 days due to bus suspension, the IEP team should reconvene to discuss behavioral concerns on bus and consider transportation as a related service

This slide shows the Department's chart developed to assist LEAs to make compliant decisions regarding bus suspension and OSS. All of these resources are located on the DESE website on the Compliance Section's Forms page.

The Discipline Decision Process

GUIDED PRACTICE



Now it is time to actually make some decisions regarding the discipline process in our guided practice activity . . .

FIRST YEAR DIRECTORS:

- Divide the class into four groups.
- Each group gets one of the Cases (#1 - #4) and a copy of the Discipline Documentation Form.
- Have each group discuss and complete the Discipline Documentation Form for their case
- Have each group share out their case and rationale for their decisions. Note correct answers are shown on slides following each case.

NOTE: Post version w/o case study and answers and then re-post w/ case study and answer slides after NDA

CASE #1: Robert

Robert is an 5th grader who receives special education services for sound system disorder.

- Sept 3 – Throwing food in cafeteria; 1 day of OSS
- Nov 25 – Pulled fire alarm; 5 days of OSS
- April 10– Insubordination; 1 day of OSS



Let's take a moment to look at the first scenario. Robert is an 5th grade student who receives special education services under SSD. He was suspended for 1 day shortly after the start of the new school year for throwing food in the cafeteria. Then right before Thanksgiving he pulled the fire alarm in the hallway and received 5 days of OSS for that infraction. In the spring he was insubordinate to one of his teachers which earned himself 1 day of OSS. This totals 7 days of out of school of school suspension.

Let's look at the discipline documentation form to see what action, if any, is required on behalf of the school district.

Slide 43

1. Number of OSS days for this infraction 1
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 6

4. Total number of OSS days this school year (1 + 3) 7 

5. Total OSS days (Line 4) is greater than 10?
 Yes, proceed to next question.
 No—STOP. No special procedures required.



Discuss slide

CASE #2: Kimmie 

Kimmie is an 7th grader who receives special education services under Other Health Impaired. She has medical diagnoses of nephritis, asthma, and ADHD.

- Sept 3 - Threw food in cafeteria; 1 day of OSS
- Dec 5 - Cursed at the math teacher and walked out of class; 2 days of OSS
- Feb 14- Tore up the decorations for the Sweethearts dance; 1 day of OSS
- April 6 – Hit a student in the head with a text book; 5 days of OSS
- May 12 – Shoved a student in her locker; 5 day of OSS

The next scenario involves a middle school student. Shortly after the start of the school year Kimmie received 1 day of OSS for throwing food in the cafeteria. In December, she received 2 days of OSS for cursing at the math teacher and for walking out of his class. On Valentines day Kimmie was mad at her boyfriend and tore up the decorations for the Sweethearts dance. She was given 1 day of OSS for that infraction. In the spring she hit a student in the head several times with her math book earning herself a total of 5 days of OSS. Right before the end of the school year she shoved a girl in a locker. This infraction earned Kimmie another 5 days of OSS. This gives Kimmie 14 days of cumulative suspensions for this school year.

Using the discipline documentation form let's walk through the steps.

1. Number of OSS days for this infraction 5
Is the total number of days for this infraction greater than 10?
 Yes. Go to #2.
 No. Go to #3.

3. Number of OSS days this school year **prior** to this infraction 9

4. Total number of OSS days this school year (1 + 3) 14

5. Total OSS days (Line 4) is greater than 10?
 Yes, proceed to next question.
 No—STOP. No special procedures required.

6. Has a pattern been created?
In determining if a pattern has been created, school staff must consider the following:

- *If the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and,*
- *Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

No. Proceed to Section A.
 Yes. Go to Section B. (Manifestation Determination)

As I just said, Kimmie has been suspended for this infraction for 5 days and previously suspended for 9 days for a cumulative suspension totaling 14 days. It was determined that no pattern of suspension occurred because the behaviors she has been exhibiting are not substantially similar to one another, the length of time for each suspension has varied from 1 day to 5 days of OSS, and although the last two incidents are a little over a month apart the other incidents have occurred in the Fall, right before winter break and early spring. Therefore, the team must proceed to section A of the 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 which 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: On May 12th for 5 days
- Extent to which the student has been removed previously: Total of 9 days previously suspended. Suspensions occurred on Sept 9, Dec 5, Feb 14, April 5
- Student's needs and educational goals: Kimmie has disabilities, Asthma, and ADHD. She receives services under Other Health Impaired

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: Kimmie will receive 5 hours of homebound instruction for 4 days

Date of Decision: 05 / 12 / 2014

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

NAME	ROLE
Debbie Director	Director of Special Education
Susan Speakeazy	Principal/LEA
John Doe	Regular Education Teacher
Jane Dowd	Special Education Teacher
Jimmie Johns	Parent

This is where school personnel in consultation with at least one of Kimmie's teachers' has to determine whether or not Kimmie needs any services during her suspension. There are some factors that they have to consider when making this decision.

The first factor is, the length of the removal. In this case, on May 12th Kimmie was suspended for 5 days

The next factor deals with the extent to which Kimmie has been removed previously. As you know, Kimmie has been cumulatively suspended for 14 days this school year. The slide shows the specific dates and length of removal for each suspension.

The last factor deals with her needs and educational goals. In this case, Kimmie has several medical diagnoses and is receiving services under OHI. Therefore, the individuals involved made the decision to provide 5 hours of homebound instruction to Kimmie for 4 days.

It's important to carefully and accurately document decisions made through this process including the names and roles of the individuals involved in making the decision. And of course, document the date the decision was made.

Case #3: Charlie

Charlie is an 9th grader who receives special education services for a specific learning disability in reading fluency. He has no history of behavior problems.

- Feb 10 – Cursed at he computer teacher when caught stealing software from computer lab; 3 days OSS
- March 1 - Confronted a paraprofessional in the hallway and called her inappropriate names; 5 days OSS
- March 21 –Confronted the same paraprofessional in the hallway, called her names, and pretended to hit her; 5 days OSS



Let's look at another scenario. For Charlie, he has been cumulatively suspended 13 days this school year. Note that the original incident was for stealing and cursing at a teacher while the two subsequent infractions have involved inappropriate language and actions and were related to the paraprofessional in some way.

1. Number of OSS days for this infraction 5
Is the total number of days for this infraction greater than 10?
 Yes. Go to #2.
 No. Go to #3.

3. Number of OSS days this school year prior to this infraction 8

4. Total number of OSS days this school year (1 + 3) 13

5. Total OSS days (Line 4) is greater than 10?
 Yes, proceed to next question.
 No—STOP. No special procedures required.

6. Has a pattern been created?
In determining if a pattern has been created, school staff must consider the following:

- *If the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- *Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

No. Proceed to Section A.
 Yes. Go to Section B. (Manifestation Determination)

For Charlie you can see at the top that he was suspended for 5 days for this infraction. He was previously suspended for 8 bringing his total to 13 days this school year. This is where the team has to determine if a pattern had been created or not. In this case, the team agreed a pattern had been created because the proximity of the removals has been over the past 6 weeks and the behaviors have been pretty similar to one another because of the inappropriate language towards persons in authority. Therefore, the next step in the process is to conduct a manifestation determination to determine if the behavior in question is related to his disability or not.

SECTION B	
Documentation of MANIFESTATION DETERMINATION	
<input checked="" type="checkbox"/>	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.
<u>Manifestation Determination meeting:</u>	
<u>Step 1:</u>	
Team reviewed the following:	
• All relevant information in the student's file	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
• Child's IEP	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
• Any teacher observations	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
• Relevant information provided by parents	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<u>Step 2:</u>	
Team determined that:	
• Conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
• The conduct in question was the direct result of the LEA's failure to implement the IEP.	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Finding of the team:	
<input checked="" type="checkbox"/>	Conduct is not a manifestation of the disability. Go to Section C. 
<input type="checkbox"/>	Conduct is manifestation of the disability. Go to Section D.

When conducting a manifestation determination the LEA, parent, and relevant members of the IEP team have to review all relevant information in the student's file, the child's IEP, any teacher observations, and any relevant information provided by the parents. The team also has to determine if the conduct in question was caused by the child's disability and if the conduct in question was result of the LEA's failure to implement the IEP. If the student had a BIP the team also has to look at if the BIP was implemented as well. When a BIP is developed it becomes part of a student's IEP.

After reviewing the information the team made the decision that the behaviors Charlie exhibited were not related to his specific learning disability in reading fluency. The team made this decision because these incidents did not occur during the time in which reading instruction occurred or a time where he was asked to use his reading skills. Therefore, the conduct is not a manifestation. This requires the team to proceed to section C of the discipline documentation form.

SECTION C	
(Long-term suspension—conduct was not a manifestation of the disability)	
Documentation is present that:	
<input checked="" type="checkbox"/>	Relevant IEP team members found the conduct was not a manifestation of the disability.
<input checked="" type="checkbox"/>	The IEP team determined placement (except for a 45 day interim alternative educational setting that is an LEA decision) 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:
	<ul style="list-style-type: none">• 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.
<input checked="" type="checkbox"/>	Parent provided with prior written Notice of Action for change of placement/services
<input checked="" type="checkbox"/>	Parent provided a copy of the Procedural Safeguards
<i>Updated July 1, 2014</i>	
<i>Page 3 of 3</i>	

Because Charlie’s conduct was found to not be related to his disability school personnel may apply the same disciplinary procedures to Charlie as they could for a student without a disability. However, the IEP team has to determine services that will enable Charlie to –

- Continue to receive educational services to continue to participate in the general education curriculum, although it could be in another setting
- To progress toward meeting his IEP goals
- 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.

Finally, if a change of placement or services occur the parent must be provided with prior written Notice of Action and a copy of the procedural safeguards.

Case 4: Lori



Lori is an 11th grade student. She was identified with an Intellectual Disability in 3rd grade. She has a history of emotional and behavior difficulties, dating back to 1st grade. Her IEP includes a BIP based on an FBA conducted last school year after an incident of inappropriate comments and touching of another student.

- Sept 1 – Refused to work in science class; directed profanity at the teacher; given 2 days of OSS
- Oct 5 – Made inappropriate sexual remarks toward a student; given 3 days of OSS
- Oct 11 – Told a sexual joke directed at the PE teacher when BIP was not being implemented; given 3 days of OSS
- Nov 1 – Knocked books out of another student's hands, pushed the student to the ground, and made several inappropriate sexual comments to the student; given 5 days of OSS

The last scenario is a little different. In this scenario most of Lori's behaviors are substantially similar to one another, the incidents occurred between September 1 to November 1 and the total amount of time suspended ranges from 2-5 days.

1. Number of OSS days for this infraction 5
Is the total number of days for this infraction greater than 10?
 Yes. Go to #2.
 No. Go to #3.

3. Number of OSS days this school year prior to this infraction 8

4. Total number of OSS days this school year (1 + 3) 13

5. Total OSS days (Line 4) is greater than 10?
 Yes, proceed to next question.
 No—STOP. No special procedures required.

6. Has a pattern been created?
In determining if a pattern has been created, school staff must consider the following:

- *If the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- *Additional factors such as length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

No. Proceed to Section A.
 Yes. Go to Section B. (Manifestation Determination)

Lori has been suspended for a total of 13 days during the school year.

Can the LEA determine that the removals constitute a pattern and, thus, a change of placement?

SECTION B	
Documentation of MANIFESTATION DETERMINATION	
<input checked="" type="checkbox"/> 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.	
<u>Manifestation Determination meeting:</u>	
<u>Step 1:</u>	
Team reviewed the following:	
<ul style="list-style-type: none">• All relevant information in the student's file	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<ul style="list-style-type: none">• Child's IEP	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<ul style="list-style-type: none">• Any teacher observations	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<ul style="list-style-type: none">• Relevant information provided by parents	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<u>Step 2:</u>	
Team determined that:	
<ul style="list-style-type: none">• Conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<ul style="list-style-type: none">• The conduct in question was the direct result of the LEA's failure to implement the IEP.	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
<u>Finding of the team:</u>	
<input type="checkbox"/> Conduct is not a manifestation of the disability. Go to Section C.	
<input checked="" type="checkbox"/> Conduct is manifestation of the disability. Go to Section D.	

In this case, Lori has an intellectual disability coupled with a history of emotional and behavior problems. . . And the team determined that the conduct in question is a manifestation of Lori's disability.

Just like we did for Charlie, the team had to review all relevant information in Lori's file, her IEP, any teacher observations, and any relevant information provided by Lori's parents. The team also has to determine if the conduct in question is related to the disability and if the conduct happened because of the LEAs failure to implement the IEP. Remember that the BIP is part of Lori's IEP so, in this case, since the BIP was not implemented during one of the incidents, the conduct is considered a manifestation of Lori's disability. As a result of this decision we have to go to section D of the discipline documentation form.

SECTION D (Long-term suspension—conduct is manifestation of the disability)	
Documentation is present that:	
<input checked="" type="checkbox"/>	Relevant IEP team members found the conduct a manifestation of the child's disability
<input checked="" type="checkbox"/>	The IEP team:
<input type="checkbox"/>	Conducted a functional behavioral assessment (FBA)
OR	
<input checked="" type="checkbox"/>	FBA was conducted prior to this behavioral incident
<input checked="" type="checkbox"/>	The IEP team:
<input type="checkbox"/>	Developed a behavior intervention plan (BIP),
OR	
<input checked="" type="checkbox"/>	Reviewed an existing BIP,
AND/OR	
<input checked="" type="checkbox"/>	Modified an existing BIP, as necessary, to address the behavior related to this incident
<input checked="" type="checkbox"/>	The IEP team made the following placement decision:
<input checked="" type="checkbox"/>	Agency returned child to the placement from which the child was removed.
OR	
<input type="checkbox"/>	Parent and LEA agreed to a change of placement as part of the modifications of the BIP.
OR	
<input type="checkbox"/>	In the case of a 45 school day placement for drugs, weapons, or serious bodily injury:
<input type="checkbox"/>	Continued the child's placement in the interim alternative educational setting as determined by the LEA.
AND	
<input checked="" type="checkbox"/>	Determined services that would enable the child to:
<input type="checkbox"/>	Continue to participate in the general education curriculum, although in another setting.
<input type="checkbox"/>	Progress toward meeting goals set out in the IEP
<input type="checkbox"/>	Receive, as appropriate, behavior intervention services and modifications designed to address the behavior violation so that it does not recur
Documentation is present that:	
<input type="checkbox"/>	If the IEP team determines a change of placement/services is required, parent is provided with a prior written Notice of Action for the proposed change of placement/services.

Since relevant members of the IEP team found the conduct to be a manifestation of Lori's disability the IEP team must decide if they need to conduct a FBA or if one has already been developed, review the existing BIP or modify the existing BIP to address the behavior related to this incident. In this case, the IEP team decided, since a new FBA was conducted prior to the behavior incident, to review/revise Lori's existing BIP. In addition, the IEP has to make placement decisions. The options include returning Lori to the placement from which she was removed or, if the parent and LEA agree, change her placement as part of the modification of the BIP. In this case, the team decided to strengthen her BIP by increasing the frequency of behavior monitoring from daily to hourly and leave her in her current placement, for now.

Since no change of placement or services has occurred, no NOA is required to be provided to the parents.

Avoiding Common Mistakes



Now that you have a good understanding of the discipline process and the multiple options available for outcomes, lets take a few minutes to talk about how to avoid common mistakes. We like to talk about these mistakes in terms of . . .



The top 6 teachable moments for school staff when dealing with discipline!

1. Provide Services When Needed

>10 days Consecutively or >10 days Cumulatively (with pattern)	≤ 10 days Consecutively or >10 days Cumulatively (without pattern)
<ul style="list-style-type: none">• MUST provide services beginning on Day 11• The IEP team determines the services and location 	<ul style="list-style-type: none">• School personnel along with at least one of the student's teachers determines the <u>extent to which services are required</u> on the 11th day and thereafter . . .• Factors to consider include<ul style="list-style-type: none">• length of the removal• extent to which the student has been removed previously• student's needs and educational goals.

Number 1: Provide services when needed.

Remember that IF the disciplinary action last for more than 10 consecutive days OR more than 10 cumulative days in a school year WITH a pattern, the student MUST be provided services beginning on day 11 even if the behavior is determined to NOT be related to the student's disability. This is because student's with disabilities are entitled to FAPE. Even though the school can impose the same disciplinary action for the same duration as given to nondisabled peers, it is up to the IEP team to decide what services are required for the student to continue to participate in the general education curriculum and progress towards meeting goals in their IEP and the location of those services.

Now let's look at the opposite situation. For any disciplinary action less than 10 consecutive days OR greater than 10 cumulative days in a school year without a pattern, the district determines the extent to which services are required beginning on day 11. The LEA must consider on a case-by-case basis the length of removal, the extent to which the student has been previously suspended and well as the student's needs and educational goals. Some students will require services; others will not. This is not a one-size-fits-all decision. It is recommended that the rationale for the decision that a pattern does not exist be documented since the parent has the right to file due process if they disagree with the conclusion of the LEA.

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

Number 2: Providing the right type of services.

Special education services means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Specially designed instruction refers to adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

Homework allows the student to apply the information learned through the services provided. When the definition of special education services is compared to the purpose of homework, it is clear that homework, by itself, is NOT a service; rather it is a support provided after the certificated teacher has provided the instruction.

It is the responsibility of the designated people to determine the location of the services that will be provided to a student with a disability who has been consecutively suspended greater than 10 days in a school year or cumulatively suspended greater than 10 days in a school year with a pattern. Services do not have to be provided in the home. For example, school districts can provide services at the local library, on campus before or after school, if appropriate, or at the local jail, if allowable. The site selected depends on the unique needs of the child.

If for some reason there is a delay in the provision of services, it is the responsibility of the IEP team to determine if any compensatory services are owed to the child with a disability. The team has to determine if the delay in providing services negatively impacted the provision of FAPE.

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



Number 3: Make sure to have the right people involved in making the discipline decisions.

Always document the name and role of persons involved in making decisions related to implementing discipline for students with disabilities and be sure that the right group of people are involved in the decision making – different discipline situations have different required team members. When it comes to students with disabilities, it is never wise to have just one person making the decision. It is extremely important that administrator's become familiar with the discipline process under IDEA and understand its implications when assigning discipline. It becomes an especially difficult situation when a superintendent is wanting to assign a 180 day suspension and the team determines that the behavior resulting in the disciplinary action IS a manifestation of the child's disability and the student must be returned to the original educational placement.

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



Number 4: Know when and how to conduct a manifestation determination.

First, when is a manifestation determination required? We found that most districts seemed to understand that every disciplinary action of more than 10 days consecutively MUST have a manifestation determination meeting. However, when the greater than 10 days was cumulative in a school year, districts had much more difficulty. Also as a result of the discipline review, we found that school districts are unclear for how to ascertain if the removals for cumulative days constitute a pattern of suspension. Documentation showed, more often than not, that many districts automatically conducted a manifestation determination regardless of whether it was a short-term or long-term suspension.

The key is that manifestation determinations are required ONLY when the disciplinary action results in a change of placement. And a change of placement occurs when a student is removed from their educational placement for more than 10 days. And for cumulative days, there must be a pattern for the greater than 10 days to be considered a change of placement. Remember that the LEA is who determines if there is a pattern and that decision must consider:

- Are the behaviors that led to each suspension substantially similar?
- What is the total amount of time suspended?
- What is the proximity of the suspensions/infractions to each other?

So, to determine if a pattern exists, the LEA should be looking at the current and prior discipline reports for the student.

What documentation do you look at during a manifestation determination? At this point, the team is determining whether the student's disability had a direct and substantial relationship to the violation of school conduct, or if the conduct in question was a direct result of the LEAs failure to implement the IEP. It would be important to look at:

- The child's IEP

- Teacher observations

- Relevant information provided by the parents

- The most recent evaluation report

- The results of any functional behavior assessments and/or behavior intervention plan

- Discipline history

Based on this information the team determines if the conduct is or is not a manifestation of the disability.

Finally, districts often forget that the timeline for conducting a manifestation determination meeting is 10 school days from the date of the decision to long-term suspend the student – NOT calendar days. Since building administration can only assign 10 days of OSS, the potential change of placement occurs only for cumulative 10 day situations with a pattern. The other potential time this decision would occur is when the superintendent recommends an extension to the 10 days of OSS assigned by the principal. In both situations, the IEP team must decide what services are required and where those services will take place.

5. Know When to Conduct or Review a Functional Behavioral Assessment

- FBA is only **REQUIRED** when conduct **IS** a manifestation of the student's disability
- **MAY** conduct an FBA when conduct **IS NOT** a manifestation of the student's disability **IF APPROPRIATE** to address the behavior resulting in the disciplinary action so that it does not recur

Number 5: Know when to conduct a functional behavioral assessment or FBA.

Remember that an FBA is only **REQUIRED** when conduct **IS** a manifestation of the student's disability.

However, the LEA **MAY** conduct an FBA when conduct **IS NOT** a manifestation of the student's disability **IF APPROPRIATE** to address the behavior resulting in the disciplinary action so that it does not recur.

It is very important to be proactive when dealing with behavior that results in OSS because students cannot benefit from specialized instruction and have access to the general education curriculum if they are not in school.

6. Follow ALL of the Steps in the Discipline Process

Don't skip steps

Don't stop before you're done with all the steps

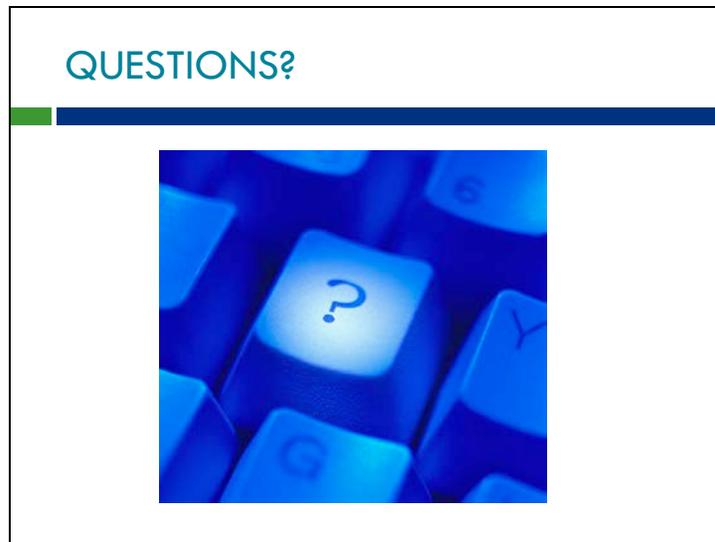
Document decisions

Count OSS days accurately



And finally, Number 6: Follow ALL the steps in the discipline process.

One of the easiest ways to follow the discipline process is to use the state discipline documentation form or a district made discipline form. This ensures that you don't skip steps and complete all of the required steps. Remember to document, document, document! All decisions must be documented. Finally be sure to count OSS days accurately. As was said previously, if a student is given ISS and does not receive any services, that is considered OSS.



Now it is time for questions. Please note there is a recorded webinar covering the topic of discipline at the website noted on the slide.

Department Contact Information

- Call Special Education Compliance
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- Email Special Education Compliance
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- Access the Special Education Compliance website
<http://dese.mo.gov/divspeced/Compliance/>



AGAIN. . . There are multiple ways to contact the Department. Please contact us if you have questions or need assistance! We are here to help you stay in compliance!

Have a wonderful school year!!