

Discipline Children with Disabilities

- Case by Case Basis
- Short-term Suspensions
- Long-term Suspensions
- Special Circumstances

Hello my name is Cynthia Quetsch with DSE. The Individuals with Disabilities Education Act (IDEA) was reauthorized and signed into law on December 3, 2004 and final federal regulations were published on August 14, 2006. After publication of the final federal regulations, the State of Missouri revised State Regulations and the Compliance Program Review Standards and Indicators Manual and numerous model forms. This presentation, **Discipline for Children with Disabilities** is one in a series of trainings to inform the field of the major changes in state and federal regulations and the implementing changes made in the Compliance Standards and Indicators Manual and the state model forms.

Today, I will talk about what it means to consider the unique circumstances of a child with a disability and how the discipline assigned to that child must be decided on a case by case basis.

I will also explain what constitutes a short-term suspension and a long-term suspension and what action steps should be taken in each one of those scenarios.

Finally, I will talk about special circumstances, when disciplining a child with a disability and the steps that must be taken in those special circumstances.

What is Discipline?

- Removal from the current educational placement in response to a violation of the student code of conduct
 - To an interim alternative educational setting
 - To another setting
 - Suspension

- When is a removal a change of placement?
 - It is for more than 10 consecutive school days or
 - A series of removal that exceed 10 days cumulatively and constitute a pattern

The only form of discipline relevant to this discussion is a removal from the current educational placement to another setting. Time out, detention, community service, Saturday school, in school suspension or other restrictions of privileges are not subject to the requirements relating to discipline under the IDEA unless the IEP specifically precludes these or addresses these (in which case the IEP provisions must be implemented).

Removal from the educational placement is not considered a change of placement unless it lasts for longer than 10 consecutive school days or there have been a series of removals that total more than 10 school days within the school year and create a pattern of suspension.

The district determines on a case by case basis if the pattern of removals is a change of placement. Students or parents can contest a change of placement through the due process hearing system.

Case-by-Case Basis

- Should the discipline be the same for all students?
 - No, the school should consider the unique circumstances of each child with a disability when determining appropriate discipline.

Should the discipline be the same for all students? The IDEA regulations permit school personnel to consider any unique circumstances on a case by case basis when determining whether a change of placement is appropriate for a child with a disability. The same discipline may not be appropriate for all students, even students involved in the same incident. Factors that a district can consider include a child's discipline history, ability to understand consequences, expression of remorse, and support provided to the child before the violation of the student code of conduct.

However, the consideration of the unique circumstances do not permit the school personnel to make decisions inconsistent with the provisions of the IDEA. Any action taken must be consistent with the IDEA regulations. A school can not unilaterally decide a change of placement for a child. The procedures for change of placement require the IEP team to make that determination.

Short-term Suspensions

- What constitutes a short-term suspension
 - Less than 10 days and no change of placement
- What education services must be provided when child with a disability is short-term suspended?
 - None
- What must a public agency do when a child with a disability is short-term suspended but has been suspended cumulatively more than 10 days?
 - Provide services starting on day 11

What constitutes a short-term suspension? A suspension that is less than 10 school days that is not a change of placement.

What education services must be provided when a child with a disability is short-term suspended? For suspensions less than 10 days the school is not required to provide services unless services would be provided to a child without a disability who has been similarly removed.

What must a public agency do when a child with a disability is short-term suspended but has been suspended cumulatively more than 10 days? Multiple suspensions of less than 10 days can be imposed but once the child has been removed from a placement for a total of 10 school days in the same school year the district must on the 11th day provide services if the school administrator in consultation with the child's teacher determine services are needed. Those services include educational services to permit the student to participate in the general education curriculum and progress toward IEP goals. The services to be provided are determined by school personnel, not the IEP team, in consultation with at least 1 of the child's teachers.

Long-Term Suspension

- What constitutes a long-term suspension?
 - More than 10 consecutive days or
 - 10 days cumulative with a pattern
- What is a pattern of suspension?
 - Repeated suspensions with common factors
- What are the immediate steps a public agency must take when long-term suspending a student?
 - Hold a manifestation determination meeting

What constitutes a long-term suspension? A change of placement that exceeds 10 consecutive school days or suspensions in excess of 10 school days cumulatively in a school year where a pattern of suspension is created. A long term suspension or an expulsion is a change of placement.

What is a pattern of suspension? Factors to consider to determine if there is a pattern include length of each removal, total amount of time a child is removed, proximity of the removals to one another and whether the behavior is substantially similar to the child's behavior in the previous incidents that resulted in a series of removals,

What are the immediate steps a public agency must take when long-term suspending a student? Within 10 days of the decision to make a change of placement the district, the parents and relevant members of the IEP team must meet to determine if the conduct in question 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. If the conduct is related to the disability no long term suspension may occur. If the conduct is unrelated the IEP team must determine the setting and the appropriate services needed to enable the child to continue in the general educational curriculum and to progress toward meeting IEP goals in the new setting. On the date the decision is made to long term suspend a student the district must notify the parent of the decision and provide them with procedural safeguards.

Manifestation Determination

- When must a Manifestation Determination be held?
 - Within 10 days of a disciplinary change of placement
- Who must attend a Manifestation Determination meeting?
 - Parent, district, relevant IEP members

When must a Manifestation Determination be held? Within 10 days of any decision to change a placement of a child with a disability because of a violation of a code of student conduct.

Who must attend a Manifestation Determination meeting? The district, the parent, and relevant members of the IEP team.

- What is the purpose?
 - Determine if the behavior was related to the disability or
 - Was a result of the failure to implement the IEP
- What information is reviewed?
 - IEP, teacher observations, parent information

What is the purpose? To determine if the conduct was caused by or had a direct and substantial relationship to the child's disability or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

What information is reviewed? The IEP, teacher observations, relevant information provided by the parent, any other relevant information in the file or information about the incident.

Behavior Is A Manifestation of the Disability

- What steps are taken if the behavior is found to be a manifestation of the disability?
 - No suspension or expulsion
 - Implement a behavior intervention plan

- What if the behavior is a manifestation of the disability but is a behavior that falls under special circumstances?
 - Student placed in an interim alternative educational setting

What steps are taken if the behavior is found to be a manifestation of the disability? Most importantly, the long term suspension or expulsion cannot occur. The IEP team conducts a functional behavioral assessment and implements a behavioral intervention plan for the child. If the child already has a behavior intervention plan the IEP team must review it and modify it to address the behavior violation so it does not recur. The child must be returned to the placement from which they were removed unless the parent and district agree to a change of placement as a part of the modification to the BIP.

What if the behavior is a manifestation of the disability but is a behavior that falls under special circumstances?

If the child has a weapon at school or a school function or has, used, sold or solicited the sale of illegal drugs, or has inflicted serious bodily injury upon another person the student may be removed to an interim alternative educational setting determined by the IEP team for up to 45 school days. The decision to remove the child is made by the school personnel. The interim alternative educational setting is determined by the IEP team.

Behavior is NOT a Manifestation of the Disability

- What steps are taken when the behavior is not a manifestation of the disability?
 - Discipline imposed with services

- Is a FBA or BIP required?
 - Yes, if appropriate

What steps are taken when the behavior is not a manifestation of the disability? The student may be disciplined in the same way a student without disabilities would be disciplined. This would include a long term suspension or an expulsion. However the student must continue to receive educational services that enable them to continue to participate in the general education curriculum and continue to progress toward meeting IEP goals. The IEP determines what those services will be.

If the parent disagrees with the determination that the behavior was not a manifestation of the disability or with the decision regarding placement the parent has the right to request an expedited due process hearing.

Is a FBA or BIP required? Yes, if appropriate. The BIP is designed to address the behavior violation so it does not occur again. If the student already has a BIP the IEP team can review the plan and modify it as necessary to address the behavior involved in the disciplinary action.

Special Circumstances for Long-Term Suspension

- What are special circumstances?
 - Weapons, drugs, serious bodily injury
- What discipline can be imposed in special circumstances?
 - 45 day interim alternative educational placement

What are special circumstances? As I mentioned briefly earlier, If the child carried a weapon to school, has a weapon at school or at a school function, knowingly has or used illegal drugs, or sells or solicits the sale of a controlled substance at school, on school premises or at a school function or has inflicted serious bodily injury upon another person while at school, on school premises or at a school function the school personnel may remove a student to an interim alternative educational setting determined by the IEP team for up to 45 school days.

Weapons, illegal drugs and serious bodily injury are all defined in the state plan. A weapon is a dangerous weapon used for or capable of inflicting death or serious bodily injury. Serious bodily injury is an injury with a substantial risk of death, extreme physical pain, loss or impairment of the function of a bodily member, organ or mental faculty or obvious disfigurement.

What discipline can be imposed in special circumstances? The student can be removed to an alternative educational setting chosen by the IEP team for not more than 45 school days. The student can be removed to the alternative setting whether or not the behavior is a manifestation of the disability. On the date the decision is made to take that action the parent must be notified and provided with the Procedural Safeguards statement.

However, a district could immediately impose a long term suspension or expulsion without going through the 45 school day interim alternative placement if the parent and IEP members determine the conduct is unrelated to the disability. Or, the school can stack the long term suspension on top of the 45 school day interim alternative placement.

Dangerous and Violent Students with Disabilities

- How can the safety of all students be ensured if a child with a disability is likely to injure herself/himself or others?
 - Remove the child from the school

- Can a school report a crime committed by a child with a disability?
 - Yes

How can the safety of all students be ensured if a child with a disability is likely to injure herself/himself or others?

The student can be removed from the school.

The 45 school day interim alternative placement can be renewed through additional due process hearings if the student is deemed dangerous.

Can a school report a crime committed by a child with a disability? Yes. An agency reporting a crime shall ensure that copies of the special education and disciplinary records of the child are transmitted to the appropriate authorities.

- What steps can be taken to remove a child with a disability who is likely to injure herself/himself or others?
 - Obtain a court injunction or
 - Initiated an expedited due process hearing or
 - Long term suspension or expulsion if not related to the disability or
 - Change of placement through the IEP process

What steps can be taken to remove a child with a disability who is likely to injure herself/himself or others? There are 4 options: 1) The district could obtain a court injunction removing the student from the school. 2) The school could initiate an expedited due process hearing to obtain an order for a 45 school day interim alternative educational setting. 3) If the conduct is unrelated to the disability the student can have a long term suspension or expulsion. 4) A change of placement could be initiated through the IEP process to a more restrictive environment based on the educational needs of the student.

Knowledge of Disability

- When is a public agency deemed to have knowledge that a child is a child with a disability?
 - Parent expressed concern in writing
 - Parent requested an evaluation
 - Teacher or staff have expressed a concern
- When is a public agency deemed NOT to have knowledge that a child is a child with a disability?
 - Evaluation showed no disability
 - Parent refused an evaluation
 - District determined evaluation was not needed and gave parents a notice of action

Students who have not been identified as disabled may be subjected to the same disciplinary methods as children without disabilities unless the district has prior knowledge of the disability. However if a district has knowledge that the child has a disability the student receives the disciplinary protections for children with disabilities.

When is a public agency deemed to have knowledge that a child is a child with a disability? If the parent has expressed concern in writing to a teacher or administrator that the child needs special education services or the parent has requested an evaluation, or the student's teacher or other staff have expressed specific concerns about a pattern of behavior to the director of special education. If the student is in the process of being evaluated and violates the code of conduct the evaluation should be expedited.

When is a public agency deemed NOT to have knowledge that a child is a child with a disability? If the school district has conducted an evaluation and determined the child was not a child with a disability or has determined that an evaluation was not necessary and gave a notice of action refused to the parent or if the parent did not permit an evaluation or refused services.

What about a child who is receiving early intervening services? Provision of early intervening services does not automatically mean the district has a basis of knowledge that the child has a disability. However, if the parent or teacher expresses a concern in writing that the child may need special education services the public agency will be deemed to have knowledge that the child is or may be a child with a disability.

- What about a child who is receiving early intervening services?
 - Does not mean the district had knowledge of a disability
- What happens if a student violates the code of conduct while they are in the process of being evaluated for a disability?
 - Disciplined as a child with disability
 - Manifestation determination can be held after the evaluation is completed

What about a child who is receiving early intervening services? Provision of early intervening services does not automatically mean the district has a basis of knowledge that the child has a disability. However, if the parent or teacher expresses a concern in writing that the child may need special education services the public agency will be deemed to have knowledge that the child is or may be a child with a disability.

What happens if a student violates the code of conduct while they are in the process of being evaluated for a disability? The student is disciplined as if s/he was a child with a disability. However there can be no long term suspension or manifestation determination because the child's disability, if any, has not been identified. The evaluation process needs to be completed and if the child does not have a disability additional discipline can be imposed. If the child does have a disability a manifestation determination should be done and additional discipline, if any, administered in accordance with the result of the determination.

Stay-Put in Today's Public Agency Setting

- What is stay-put?
 - Child remains in the current educational setting

- How does it apply to discipline?
 - Child remains in the 45 day interim alternative educational placement during appeal of the discipline or manifestation determination

What is stay-put? Stay put is the process by which a child remains in the current educational setting during the pendency of any proceedings (due process hearing or court proceedings) under the IDEA unless the district and parent agree to a different placement. Stay put does not apply when a child complaint is filed.

How does it apply to discipline? Stay put also applies to 45 school day placements in an alternative setting. If a parent requests a due process hearing regarding the disciplined action to challenge the interim alternative educational setting or the manifestation determination the student remains in the interim alternative educational setting pending the hearing decision or until the expiration of the time period for the interim alternative placement whichever comes first.

Be Pro-Active

- What can public agencies do to meet the needs of children with disabilities who are struggling with behavior problems?
 - Institute school wide Positive Behavioral Support programs
 - Work with the Regional Professional Development Centers
 - Train staff to perform FBA and develop BIP

What can public agencies do to meet the needs of children with disabilities who are struggling with behavior problems?

Investigate and implement whole school systems of behavior intervention. One of the more effective systems is School Wide Positive Behavioral Supports (PBS). Each of the regional Professional Development Centers have PBS consultants. Very soon the Division of Special Education will have a website with information and links to PBS resources.

Schools should ensure that staff are trained in conducting functional behavior assessments and in developing effective behavior intervention plans. IEP teams should be trained to conduct manifestation determinations. Finally, be sure that any staff involved in the discipline of students understand the discipline requirements of students with disabilities under the IDEA.

Additional Resources

- Resources on Discipline are available on the DESE website at <http://www.dese.mo.gov/divspeced/Compliance/Guidance/Discipline.htm>
 - Q & A on Discipline
 - Overview sheet on Discipline under IDEA
 - Checklist for Discipline Procedures

Additional resources on discipline of students with disabilities are available on the DESE website. These provide a short practical review of the law that can serve as a quick reference when a situation actually arises.

- Resources and handouts for each of the presentations in the series can be found at the following website
<http://www.dese.mo.gov/divspeced/Compliance/index.html>.
- The Division of Special Education welcomes questions that participants may have after viewing the presentations. Questions can be submitted to the following mailbox webreplyspe@dese.mo.gov or by calling the Division of Special Education at 573-751-0699.

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We hope you enjoy this series of trainings and find the information useful in your role as an educator, parent, advocate or other individual interested in the education of children with disabilities.

Other topics in this series are:

Discipline for Children With Disabilities

Data Collection and Reporting Overview

Finance of Special Education

The Special Education Process and Changes in IDEA

The Complaint Process

Administration of Special Education

Response to Intervention/ Early Intervening Services

Transition

Thank you for taking the time to learn about Discipline for Children with Disabilities.