

DISCIPLINE OF STUDENTS WITH DISABILITIES

New Director Academy August 2020

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 **as 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 transportation is a related service on the IEP
- 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 as long as the student with a disability still receives special education and related services as described in their IEP which 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 on the IEP. Regardless of whether or not the student attends school during the bus suspension, if the district is not fulfilling their obligation to provide a way for the student to get to school, the IEP is not being implemented so therefore, it is counted as OSS. In order to NOT count a suspension from the bus as OSS, when transportation is listed as a related service, the district would need to find a way to meet it's obligation to transport the student. That may look like putting the student on a different bus, paying the parent to transport the student or providing the transportation in some other way. If a parent is asked to pick up a student early, at the school's request for discipline reasons, this is also considered OSS.

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

□ Short-term Suspension

- ≤ 10 days total in school year
- First 10 days = NO services required
- >10 days **cumulative** in school year and no pattern = school staff must determine the extent to which services are needed beginning on 11th day

□ Long-term Suspension

- More than 10 **consecutive** days OR >10 days cumulative and a pattern



AND DOCUMENT



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** determine the extent to which services are needed 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 suspensions is established triggers a change of placement and is considered a long-term suspension. Let's look at these two situations more closely. . .

Is it a “Pattern” of Suspensions?



- >10 days cumulatively in the school year
 - Who’s paying attention to this?

- If the behavior is 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 to long term suspend.

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

□ 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 suspended
- IEP team must. . .
 - Conduct or review an FBA of the student
 - Develop or review/revise a BIP for the student
 - Make a placement decision
 - Return child to current placement with BIP in place
 - Change placement with BIP in place
 - 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
 - Provide parent with PWN for change of placement, if appropriate

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 suspended
- 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/BIP if appropriate
 2. Provide parent with PWN 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 Prior Written Notice describing the action along with an explanation of the basis for the action.

Let's Consider....

- Brad is a 6th grade student with a Learning Disability in Basic Reading Skills
 - Sept. 10 he gets caught skipping school-3 days OSS
 - Nov. 15 he calls the teacher a bad name-5 days OSS
 - Feb. 25 he gets in a fight in the hall-10 days OSS

- What do we do?? Let's walk through the form.

Do we want to do this example at the end....or do we want to do these in the middle?

Ask yourself these questions:

1. Is the Feb. 25 suspension a long or short term suspension?

Short term

1. Does the student have any other days of OSS this school year?

Yes-currently has 8. This suspension puts him over 10 cumulatively.

1. Is there a pattern?

Is the behavior substantially similar? Are the lengths of removal similar? Are they close together? What is the total amount of time removed?

Now what....

4. If not a pattern, he is suspended. School personnel consider the extent to which services are required and what they will look like if so.

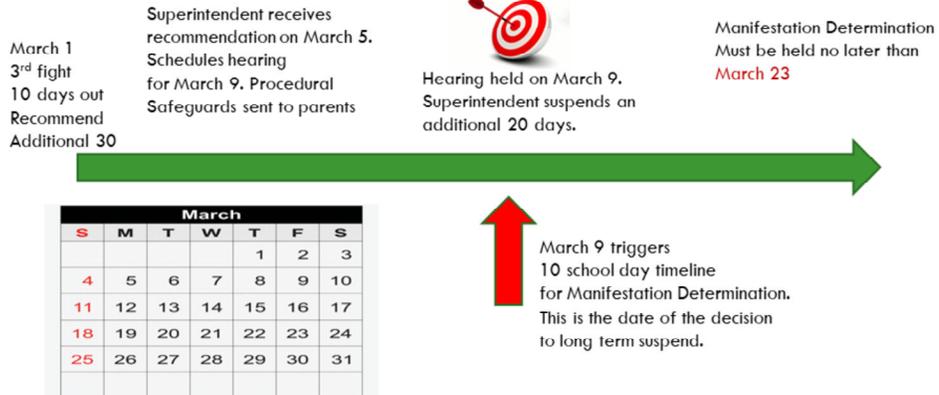
5. If we determine there IS a pattern, what do we do? Who is determining this? (School personnel determine if there is a pattern. Long term rules kick in. Manifestation Determination within 10 school days of the decision to long term suspend)

- a. Suspended 10 days on Feb. 25. Within 10 school days from Feb. 25 you have to do a manifestation determination meeting.
- b. Decisions about placement and services will vary depending on the outcome of the manifestation determination.

What if pattern exists and the 10 school days for manifestation determination occur after the student is back at school? You hold the MD as soon as possible within the 10 days and determine whether or not the student requires compensatory services for the time he was out and was not provided services.

Let's Consider...

Jack is an 8th grade boy who receives special ed services for an Other Health Impairment. He got into his third fight this school year on March 1. He is suspended for 10 days by the building administrator with a recommendation to the Superintendent for an additional 30 days. By what date do we have to do the Manifestation Determination?



Pretend Jack has received in school suspensions with services provided up until this point. Use your form.

Can you do the MD before March 9? NO! At this point, the student is NOT long term suspended.

Can you do the MD anytime on or after March 9? Yes, you do not have to wait the entire 10 days as long as you do it before the 10 school days are up.

Other Discipline Options Under IDEA	
<p>45 School Day Removal to an Interim Alternative Placement for Drugs/Weapons/Serious Bodily Injury</p> <p>Use definitions outlined in the 2004 IDEA revisions</p>	<ul style="list-style-type: none"> • Parents notified of this on the date of the decision to use this removal • Procedural Safeguards given • Manifestation Determination held within 10 school days of decision • IEP team determines interim alternative placement, which remains in place regardless of manifestation determination.
<p>45 School Day Removal for Violent/Dangerous Student</p>	<ul style="list-style-type: none"> • For use if LEA believes maintaining the child's original placement is substantially likely to result in injury to the child or others and should only be done in consultation with district leadership and district legal counsel. • LEA must file a request for an expedited due process hearing with DESE to seek a 45 school day Interim Alternative Placement • Notify parents of this decision on day decision is made • Provide Procedural Safeguards • Hearing officer determines Interim Alternative Placement <p>**Another option is to file a court injunction for removal of a dangerous, violent student but again, district legal counsel will need to be involved.</p>

Districts do have a couple of other options for discipline under IDEA when specific conditions have been met. If students violate the code of conduct for drugs, weapons or causing serious bodily injury to themselves or others, school authorities have the option to remove the student to an interim alternative educational setting for not more than 45 days, regardless of whether or not the behavior is a manifestation of the student's disability. In this situation, the building administrator has the right to make this placement determination, but the IEP team is the entity which decides on the location of the placement. To use this option, the following steps are followed: The administrator imposes this discipline option. Parents are informed of this decision on the day of the decision. They are provided a copy of the procedural safeguards. A manifestation determination meeting is held, but as noted earlier, the decision one way or the other does not affect the IAES determination. The IEP team then determines what setting the student will be in for those 45 days, including what services will be provided to the student. In the event that the parent disagrees with that setting and files for due process or if after the original 45 days, the LEA feels and can prove that there is a substantial likelihood that the student is a danger to himself or others, the LEA can request an expedited due process hearing to ask a hearing officer to determine that the student must remain in an interim alternative educational setting for 45 days. In this case, the hearing office determines the setting of this placement. In a very rare instance, the district also has the option to file for a court injunction to either remove a student from the school setting or keep a student out of the school setting. All of these options will likely require consultation with your district attorney.

Stay Put

- Occurs when parents or LEA request a due process hearing regarding the disciplinary action to challenge the manifestation determination or a placement decision.
- If parents challenge the manifestation determination, stay put is out of school suspended.
- If parents challenge the placement when the behavior is a manifestation, stay put is the placement determined by the IEP team.
- If parents challenge the placement and or setting of a 45 day IAES, stay put is the IAES which was determined by the IEP team.
- If the LEA challenges a decision to maintain the current placement, stay put is the IAES determined by the IEP team

This is complicated and is probably best to work with your school district attorney in these situations. Parents and LEA's have the right to due process in the discipline process. Parents can file for due process if they disagree with the manifestation determination or the placement decision made as a result of the manifestation determination or in an interim alternative educational setting determination. If the parent is challenging the manifestation determination (and that generally happens if the decision was that the behavior was NOT a manifestation of the disability), stay put is out of school suspended. If the parent is challenging the placement determination when the behavior WAS a manifestation of the disability, since 2004 stay put is the placement determined by the IEP team and NOT returning the student to the original placement from which he was removed. If the parent is challenging the placement determination in the case of an interim alternative education setting decision, stay put is the IAES determined by the IEP team. That same thing is true if the LEA challenges a due process decision to return the child to their original placement. Stay put is in the placement setting determined by the IEP team.

Activity directions

- Divide participants into 4 small groups
- Each group is given a different scenario and a Discipline Documentation worksheet to complete based on that scenario
- Groups will work together using resources given and personnel within the room to complete their scenario
- Share out as time allows

Allow 10 minutes of the activity or less depending on time available.

Resources for Discipline Decisions

Missouri Sample Forms

- Alternate Assessment
 - [Alternate Assessment Checklist](#)
 - [Alternate Assessment Guidance Document](#)
 - [Alternate Assessment Flow Chart](#)
- [Description of Areas to be Assessed and Known Tests to be Used Documentation Form](#)
- Discipline
 - [Discipline Documentation Form](#) - revised 10/13/2017
 - [Discipline Process Flowchart](#) - revised 10/18/2017
 - [Discipline Decision Maker Chart \(under construction\)](#)
 - [Discipline of Students Identified as IDEA Eligible or Suspected of Having a Disability Under IDEA \(Flow Chart D1\)](#)
 - [Discipline of Students Not Yet Identified as IDEA Eligible \(Flow Chart D2\)](#)
 - [Discipline: Bus Suspension and OSS Chart](#)

