



Individuals With Disabilities Education Act (IDEA) Discipline Requirements

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Individuals With Disabilities Education Act (IDEA) Discipline Requirements

This document outlines the requirements of the *Individuals with Disabilities Education Act* (IDEA) for the following circumstances:

- Disciplinary removals of 10 school days or less.
- Disciplinary removals of more than 10 consecutive school days due to a violation of the school's code of student conduct.
- Disciplinary removals of more than 10 cumulative school days (non-consecutive) due to a violation of the school's code of student conduct.
- Disciplinary removals due to special circumstances: If a student carries a weapon, knowingly possesses or uses drugs, or inflicts serious bodily injury upon another person.
- Protections for students not determined eligible for special education and related services.
- Appeals for parents or districts if they disagree with a decision.

The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS), recently released [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#), which replaces the previous discipline question and answer released in 2006. In addition to the IDEA discipline requirements, this document will include information from the 2022 Question and Answers. General education and special education staff and administrators are encouraged to familiarize themselves with the IDEA discipline requirements and the expectations as laid out in the 2022 Question and Answer document, to ensure students with disabilities are provided the discipline protections they are entitled to under the IDEA.

Introduction

Discipline decisions have consequences. A Michigan study showed students who receive one out-of-school suspension incident (based on 1-3 days each suspension) in ninth

grade are a quarter less likely to graduate high school, a third less likely to enter college, and more than twice as likely to drop out of high school.

Students with disabilities who receive four or more out-of-school suspensions in the ninth grade are less than half as likely to graduate from high school and enroll in college. These same students are four times as likely to drop out of high school.

The IDEA specifically requires the individualized educational program (IEP) Team to consider the use of positive behavioral interventions and supports for any student with a disability whose behavior impedes their learning or that of others. 34 CFR.

§300.324(a)(2)(I). Upon repeated incidents of student misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the student's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of students with disabilities and ensure a free appropriate public education (FAPE) are appropriately implemented to avoid an overreliance on, or misuse of, exclusionary discipline in response to a student's behavior. Question A-6 from [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions. July 19, 2022 \(PDF\)](#)

In addition to following the IDEA discipline requirements for children and students with disabilities, 3-26 years of age, districts must also follow the requirements for disciplining all students under the [Michigan Revised School Code](#) (MCL 380.1308-1311a).

Definition of a Disciplinary Removal

A disciplinary removal occurs when a student is excluded from his or her current placement, as written in the individualized education program (IEP), due to a violation of the student code of conduct and the student is not afforded the opportunity to:

- Continue to be involved in and make progress in the general education curriculum;
- Receive the instruction and services specified on the IEP; and
- Participate with nondisabled students to the extent the student would have in his or her current placement.

Although the IDEA does not define an informal removal, OSERS has provided a definition in the 2022 Question and Answer. According to OSERS, an Informal removal means action taken by school personnel in response to a student's behavior that excludes the student for part or all the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the student with a disability from class or school without invoking IDEA's disciplinary procedures.

Informal removals are subject to IDEA's requirements to the same extent as disciplinary removals by school personnel using the school's disciplinary procedures. Informal removals include administratively shortened school days when a student's school day is reduced by school personnel, outside of the IEP Team meeting and placement process, in response to the student's behavior. Question C-6 from [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions. July 19, 2022 \(PDF\)](#)

Disciplinary Removals of 10 School Days or Less

Students may be removed for up to 10 days in a school year.

School personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement). 34 CFR §300.530(b)(1)

Disciplinary Removals of More Than 10 Consecutive School Days Due to a Violation of the School's Code of Student Conduct

A change of placement occurs when a student has been removed for more than 10 consecutive school days.

After the 10th consecutive day of removal, the school district must:

1. **Provide services:** The school district must provide the student with educational services (determined by the IEP Team) to participate in the general education

curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. 34 CFR §300.530(d)(5)

2. **Provide notice and procedural safeguards:** The school district must provide notice* and procedural safeguards to parents about the change of placement on the date the decision is made to make a removal that constitutes a change of placement. 34 CFR §300.530(h) and 34 CFR §300.504
3. **Conduct a manifestation determination review (MDR):** The school district must conduct an MDR within 10 school days of the decision to change the placement. The parent, school district, and relevant members of the student's IEP Team (as determined by the parent and the school district) meet and review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or if the conduct in question was the direct result of the school district's failure to implement the IEP. 34 CFR §300.530(e)

When the behavior is a manifestation of the disability, the IEP Team must:

1. **Return the student to previous placement:** The student must return to the placement identified in the IEP, unless the parent and school district agree on a change of placement as part of a modification of the behavior intervention plan, unless the behavior is one of the special circumstances in 34 CFR §300.530(g).
2. **Remedy deficiencies of IEP implementation:** If the school district did not implement the student's IEP, take immediate steps to remedy those deficiencies (examples: compensatory services, revision of the IEP, additional behavioral supports).
3. **Address the behavior:** The IEP Team conducts a functional behavioral assessment and implements a behavior intervention plan, or reviews and revises the existing behavior intervention plan. The functional behavioral assessment does not need to be conducted again if one has already been done.

34 CFR §300.530(e)(3)(f)

When the behavior is NOT a manifestation of the disability:

1. **Apply discipline procedures:** School personnel may apply the same discipline procedures in the same manner and for the same duration as are applied to nondisabled students.

2. **Provide services:** The student must be provided educational services (as determined by the IEP Team and documented in an IEP or IEP amendment) to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.
3. **Consider a functional behavioral assessment:** Ensure the student receives, as appropriate, a functional behavioral assessment (unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred), behavior intervention services, and modifications designed to address the behavior violation so that it does not occur again.

34 CFR §300.530(c)(d)

Disciplinary Removals of More Than 10 Cumulative School Days (Non-Consecutive) Due to a Violation of the Code of Student Conduct

When a student is removed for discipline for more than 10 cumulative school days in a school year, the school must determine whether the removal constitutes a change of placement on a case by case basis.

A change of placement occurs if the student has been subjected to a series of removals that constitute a pattern because:

1. The series of removals total more than 10 school days in a school year;
2. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
3. Additional factors exist, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

34 CFR §300.536(a)(2)

When the removals constitute a change of placement:

1. **Provide services:** The student must be provided educational services (as determined by the IEP Team and documented in an IEP or IEP amendment) to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals. 34 CFR §300.530(d)(5)

2. **Provide notice and procedural safeguards:** The school district must provide notice and procedural safeguards to parents about the change of placement on the date the decision is made to make a removal that constitutes a change of placement. 34 CFR §300.530(h) and 34 CFR §300.504
3. **Conduct a manifestation determination review (MDR):** The school district must conduct an MDR within 10 school days of the decision to change the placement. The parent, school district, and relevant members of the student's IEP Team (as determined by the parent and the school district) meet and review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or if the conduct in question was the **direct result** of the school district's failure to implement the IEP. 34 CFR §300.530(e)

When the behavior is a manifestation of the disability, the IEP Team must:

1. **Return the student to previous placement:** The student must return to the placement identified in the IEP, unless the parent and school district agree on a change of placement as part of a modification of the behavior intervention plan, unless the behavior is one of the special circumstances in 34 CFR §300.530(g).
2. **Remedy deficiencies of IEP implementation:** If the school district did not implement the student's IEP, take immediate steps to remedy those deficiencies (examples: compensatory services, revision of the IEP, additional behavioral supports).
3. **Address the behavior:** The IEP Team conducts a functional behavioral assessment and implements a behavior intervention plan, or reviews and revises the existing behavior intervention plan. The functional behavioral assessment does not need to be conducted again if one has already been done.

34 CFR §300.530(e)(3)(f)

When the behavior is NOT a manifestation of the disability:

1. **Apply discipline procedures:** School personnel may apply the same discipline procedures in the same manner and for the same duration as are applied to nondisabled students.
2. **Provide services:** The student must be provided educational services (as determined by the IEP Team and documented in an IEP or IEP amendment) to

participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.

3. **Consider a functional behavioral assessment:** Ensure the student receives, as appropriate, a functional behavioral assessment (unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred), behavior intervention services, and modifications designed to address the behavior violation so that it does not occur again.

34 CFR §300.530(c)(d)

When the removals do NOT constitute a change of placement:

School personnel, in consultation with one or more of the student's teachers, determine the extent to which services are needed for the student to participate in the general education curriculum and to make progress on his or her IEP goals, although in another setting. 34 CFR §300.530(d)(4)

Disciplinary Removals Due to Special Circumstances

School districts may remove a student to an interim alternative educational setting for not more than 45 school days for special circumstances without regard to whether the behavior is a manifestation of the student's disability.

Special circumstances include:

1. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function.
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function.
3. Inflicts serious bodily injury upon another person while on school premises or at a school function.

34 CFR §300.530(g)

When placing a student in an interim alternate educational setting (IAES), follow the same procedures for a student removed for more than 10 consecutive school days, including conducting a manifestation determination review:

1. **Provide services:** The student must be provided educational services (as determined by the IEP Team and documented in an IEP or IEP amendment) to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals. 34 CFR §300.530(d)(5) The student must also receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. These services may be provided in an IAES. 34 CFR §300.530(d)(2)
2. **Provide notice and procedural safeguards:** The school district must provide notice and procedural safeguards to parents about the change of placement on the date the decision is made to make a removal that constitutes a change of placement. 34 CFR §300.530(h) and 34 CFR §300.504
3. **Conduct a manifestation determination review (MDR):** The school district must conduct an MDR within 10 school days of the decision to change the placement. The parent, school district, and relevant members of the student's IEP Team (as determined by the parent and the school district) meet and review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or if the conduct in question was the direct result of the school district's failure to implement the IEP. 34 CFR §300.530(e)

When the behavior is a manifestation of the disability, the school district must:

1. **Return the student to previous placement:** The student must be returned to the placement from which they were removed unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.
2. **Remedy deficiencies of IEP implementation:** If the school district did not implement the student's IEP, take immediate steps to remedy those deficiencies (examples: compensatory services, revision of the IEP, additional behavioral supports).

3. **Address the behavior:** The IEP Team conducts a functional behavioral assessment and implements a behavior intervention plan, or reviews and revises the existing behavior intervention plan. The functional behavioral assessment does not need to be conducted again if one has already been done.

34 CFR §300.530(e)(3)(f)(g)

When the behavior is NOT a manifestation of the disability:

1. **Apply discipline procedures:** School personnel may apply the same discipline procedures in the same manner and for the same duration as are applied to nondisabled students.
2. **Provide services:** The student must be provided educational services (as determined by the IEP Team and documented in an IEP or IEP amendment) to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.
3. **Consider a functional behavioral assessment:** Ensure the student receives, as appropriate, a functional behavioral assessment (unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred), behavior intervention services, and modifications designed to address the behavior violation so that it does not occur again.

34 CFR §300.530(c)(d)

Protections for Students Not Determined Eligible for Special Education and Related Services

A student who is removed for discipline for more than 10 days in a school year may have protections, even if the student is not eligible for special education at the time of the removal.

A student who has not been determined to be eligible for special education and related services who has violated a code of student conduct, may assert discipline protections including the MDR under 34 CFR §300.530(e) if the district had knowledge the student has a disability before the behavior resulting in disciplinary action occurred. The district must be deemed to have knowledge if any of the following occurred before the behavior that resulted in disciplinary action:

1. The parent expressed concern in writing to supervisory or administrative personnel of the school district or intermediate school district, or a teacher of the student, that the student is in need of special education and related services.
2. The parent of the child requested an evaluation pursuant to 34 CFR §§300.300-300.311.
3. The student's teacher or other personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or other supervisory personnel of the school district or intermediate school district.

The school district is not considered to have knowledge if:

1. The parent did not allow an evaluation of the student.
2. The parent refused services.
3. The student was found to not be a student with a disability after an evaluation.

34 CFR §300.534(a)(b)(c)

When the district is deemed to have knowledge that a student is a student with a disability, within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of conduct, the district, the parent, and relevant members of the student's IEP Team (as determined by the parent and the district) must conduct a manifestation determination review. The IDEA does not include an exception that would give the district additional time to complete an evaluation of the student's eligibility under IDEA prior to conducting the manifestation determination review.

When conducting the MDR, the district, the parent and relevant members of the IEP Team must review all relevant information in the student's file, including any teacher observations and any relevant information provided by the parent, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's suspected disability. Because the district has not yet developed an IEP for the student, the district would be unable to determine whether the student's conduct was the direct result of the district's failure to implement the student's IEP.

There is nothing in IDEA that would prevent the district from conducting the MDR in connection with its evaluation and eligibility determinations, so long as the MDR is

conducted within 10 school days of the decision to change the student's placement due to the violation of the school's code of student conduct. When the district cannot conduct or finish the evaluation before the timeline for conducting a MDR, it would still need to convene a group of knowledgeable persons, as determined by the parent and the district, to conduct the MDR even though the district has yet to make its eligibility determination. 34 CFR §300.534(a). In such cases, the group would likely consider the information that served as the district's basis of knowledge that the student may be a student with a disability under IDEA, such as concerns expressed by a parent, a teacher, or other district personnel, including any pattern of behavior demonstrated by the student, the student's suspected disability, and the relationship of the student's behavior to the suspected disability. Based upon its review and consideration of the available information, the group would determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's suspected disability. 34 CFR §300.530(e).

When a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the school district must:

1. Conduct an expedited evaluation: Complete a thorough evaluation in an expedited manner, which means that the evaluation should be conducted in a shorter time period than the typical evaluation conducted within 30 school days from receiving parental consent. While the evaluation is ongoing, school personnel may apply the same discipline procedures as are applied to nondisabled students.
2. Keep the student in the educational placement determined by school authorities: Until the evaluation is completed, the student remains in the educational placement, determined by the school authorities, which can include suspension or expulsion, without educational services.

Take action based on evaluation results: If the student is determined to be a student with a disability and eligible for special education, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services including the IDEA discipline protections. (See previous sections for removals of more than 10 consecutive days, for removals of more than 10 non-consecutive days, or removals due to special circumstances involving weapons, drugs, or injuries.)

34 CFR §300.534(d)(2)

When the school DOES NOT have a basis of knowledge and no disability is suspected:

School personnel may apply the same discipline procedures in the same manner and for the same duration as are applied to nondisabled students. 34 CFR §300.534(d)(1)

Interim Alternative Education Setting

An interim Alternative Education Setting (IAES) is an appropriate setting determined by the student's IEP Team or an administrative law judge in which the child is placed for no more than 45 school days. This setting enables the child to continue to receive educational services so as to enable them to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a functional behavioral assessment (FBA), and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

While IDEA does not specify the alternative setting in which educational services must be provided in an IAES, the determination of an IAES must be selected to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. This determination will depend on the circumstances of each individual student's case.

Generally, the appropriateness of an IAES will depend on individual circumstances. For removals under 34 CFR §300.530(c), (d)(5), and (g), the student's IEP Team, which includes the parent, determines the appropriate IAES. 34 CFR §300.531. 34 CFR §300.530(d) states that an appropriate IAES must be selected "so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP." Therefore, the IEP Team likely will need to consider other options beyond "home instruction" when determining the appropriate IAES.

For a student who has been removed from their current educational placement for disciplinary reasons, home instruction could be delivered through a virtual, in-person, or hybrid approach. Virtual home instruction or hybrid instruction could be additional options for an IEP Team to consider when determining the appropriate IAES for a student with a disability as long as the services allow the student to continue to

participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP.

However, districts should be cautious about excluding a student with a disability from their regular educational program to provide virtual instruction for the sole purpose of responding to a student's behavior. Removing a student from the regular education program without ensuring behavioral supports have been made available throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and denial of FAPE.

Appeal

The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 531, or the manifestation determination under 34 CFR §300.530(e), or a district believes that maintaining the current placement of the student is substantially likely to result in injury of the student or others, may appeal the decision by requesting a hearing. 34 CFR §300.532(a)

When an appeal under 34 CFR §300.532 has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR §300.530(c) or (g), whichever occurs first, unless the parent and the school district agree otherwise. 34 CFR §300.533

Discipline Resources

[Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions. July 19, 2022 \(PDF\)](#)

[United States Department of Education Office of Special Education and Rehabilitative Services, Dear Colleague Letter, August 1, 2016](#)

[Michigan Administrative Rules for Special Education \(MARSE\) With Related IDEA Federal Regulations \(PDF\)](#)

[Guidance for Notice \(PDF\)](#)

[Manifestation Determination Review \(PDF\)](#)

[Alternatives to Suspensions and Expulsions Toolkit](#)

*Endnote

Notice is required throughout the IDEA discipline requirements. The content required in notice is found in 34 CFR §300.503:

- A description of the action proposed or refused by the district;
- An explanation of why the agency proposes or refuses to take action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parents of the child with a disability have protection under the procedural safeguard;
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA; and
- A description of the other factors that are relevant to the agency's proposal or refusal.