

Behavior, Discipline, and Students with Disabilities

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Overview

- Behavior
- Disciplinary Removals
- Change of Placement
- Manifestation Determinations
- Interim Alternative Educational Setting
- Resources

Behavior

- If the student's behavior impedes their learning or the learning of others, the individualized education program (IEP) team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior
- IEP Process

OSEP Dear Colleague Letter

August 1, 2016

- Failure to address the behavioral needs of a student with a disability can result in both a denial of Free Appropriate Public Education (FAPE) and a denial of placement in the least restrictive environment
- If a student already has behavioral supports, but there are repeated behavioral incidents and/or disciplinary removals, the IEP team should be reconvened to review and revise, if appropriate, the IEP
- <https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-ensuring-equity-and-providing-behavioral-supports-to-students-with-disabilities/>

OSEP Dear Colleague Letter August 1, 2016

- **Behavioral needs should be addressed through goals and specially designed instruction to support the goals**
- **Supports can include specially designed instruction, related services, supplementary aids and services, and program modifications or supports for school personnel**

Disciplinary Removals

- **Students with IEPs can be removed from school for up to 10 cumulative schools' days in a school year for a violation of a code of student conduct, before the special education “discipline requirements” apply**
 - *But remember the OSEP Dear Colleague Letter!***
- **After 10 cumulative school days, services must be provided so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals**

Counting Days

- **Definition of School Day**
- **In-school Suspension**
- **Partial-day Suspension**
- **Bus Suspension**



Disciplinary Change of Placement

- A change of placement occurs if the removal is for more than 10 consecutive days; or
- The student has been subjected to a series of removals that constitute a pattern because;
 - The series of removals total more than 10 school days in a school year;
 - The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - Of such additional factors as the length of each removal, the total amount of time removed and the closeness in time

Decision to Change Placement

- If there is a decision to change the placement because of a violation of a code of student conduct;
- Parents must be notified of the decision and provided a procedural safeguards notice
- Services are determined by the student's IEP team
- A manifestation determination is required

Manifestation Determinations

- **A manifestation determination is only required in situations that constitute a disciplinary change in placement**
- **Manifestation Determinations must be made within 10 school days of any decision to change the student's placement because of a violation of a code of student conduct**

Manifestations Determinations (Continued)

- The school district, the parent, and relevant members of the IEP team determine whether the conduct is a manifestation of the child's disability
- In making the determination, all relevant information in the student's file must be reviewed, including the IEP, teacher observations, and information provided by the parents

Manifestation Determinations (Continued)

- The conduct must be determined to be a manifestation of the student's disability if it is determined that:
 - The conduct was caused by, or had a direct and substantial relationship to, the student's disability; or
 - The conduct was the direct result of the agency's failure to implement the IEP

When the behavior is a manifestation of the child's disability

- The student must be returned to the placement from which the student was removed (certain exceptions apply)
- Conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP)
- If a BIP already has been developed, review the BIP and modify as necessary to address the behavior

When the behavior is not a manifestation of the child's disability

- The school district may proceed with the change in placement
- Services must be provided as determined by the IEP team

Exception/Interim Alternative Educational Setting

- Up to 45 school days
- Only for:
 - Weapons
 - Illegal drugs or controlled substances
 - Serious bodily injury

Definitions

- **Weapon:** weapon, device, instrument, material or substance, animate or inanimate, used for, or is readily capable of, causing death or serious bodily injury. Does not include a pocketknife with a blade of less than 2 ½ inches
- **Drugs:** “controlled substance”; illegal drug = controlled substance
 - Does not include tobacco or alcohol
 - Does not include over-the-counter medicine
 - Does not include prescription meds if used pursuant to the Rx
 - Does include “illegal street drugs” and/or prescription drugs not used pursuant to an Rx

Seriously Bodily Injury

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

Disagreement with Manifestation Determination or Disciplinary Removal

- Parent may appeal by requesting a due process hearing
- The school district must hold a resolution meeting within 7 calendar days of receiving notice
- An expedited hearing must be conducted within 20 school days of receiving the hearing request, and a decision must be issued within 10 school days following the hearing
- Student remains in the removed setting until the hearing is completed or until the original removal period expires, whichever occurs first

Protections for Children Not Yet Eligible for Special Education

- District must have knowledge that the student was a student with a disability prior to the behavior that led to the disciplinary action
- The district does not have knowledge if
 - The student's parent did not consent to an evaluation or refused special education services; or
 - The student was evaluated and determined not to be a student with a disability

Protections for Children Not Yet Eligible for Special Education

- A district must evaluate a student referred for special education during a period of disciplinary removal
- The evaluation must be conducted in an expedited manner

Resources



- Special Education Index
<http://dpi.wi.gov/sped/a-z>
- Bulletin 06.02 (Legal requirements relating to disciplinary children with disabilities)
- Bulletin 07.01 (Addressing the Behavioral Needs of Students with Disabilities)
- Bulletin 14.02 (Manifestation Determination)