

Behavior, Discipline and Students with Disabilities

Eric M. Kestin
School Administration Consultant
October 4, 2023



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Overview

- Basics
- Code of Conduct
- Disciplinary Removals
- Other Considerations
- Key Takeaways
- Resources



BACK TO BASICS

Basics



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

BIP

- **BIP = Behavioral Intervention Plan**
- **The IEP Team makes a plan that helps a child learn new skills and provides supports to address the student's behavioral needs**


FBA

- **FBA = Functional Behavioral Assessment**
- **The IEP Team finds out what makes the child keep doing problem behaviors and how to help the child learn how to behave differently**
- **Typically precedes developing positive behavioral intervention strategies; only required in certain circumstances**


MD - MDR

- MD = Manifestation Determination
- MDR = Manifestation Determination Review
- Process used to determine whether the behavior that resulted in the proposed disciplinary change of placement is a manifestation or result of the student's disability.

Placement

- **Placement:** The child's setting (regular education classroom, resource room, special-education classroom, etc), and the school building the child attends for receiving special education
 - **Change of Placement**
- 

Positive Behavioral Supports or Interventions

- The problem behavior is replaced with new and more appropriate behaviors that achieve the same purpose.
 - Focus on (1) modifying the environment to try to prevent challenging behaviors; and/or (2) addressing behavior programmatically by teaching replacement behaviors and skills.
- 

Behavior



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Behavior

- **If the student's behavior impedes his or her learning or the learning of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior**

Behavior


- 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
- OSEP Guidance: [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA'S Discipline Provisions](#), July 19, 2022 (See Question A-6)

Code of Conduct



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Student #1 (no IEP)

- Student does not have a disability
 - District has no reason to know that student may have a disability (See 34 CFR 300.534 (c))
 - District follows school policies
- 

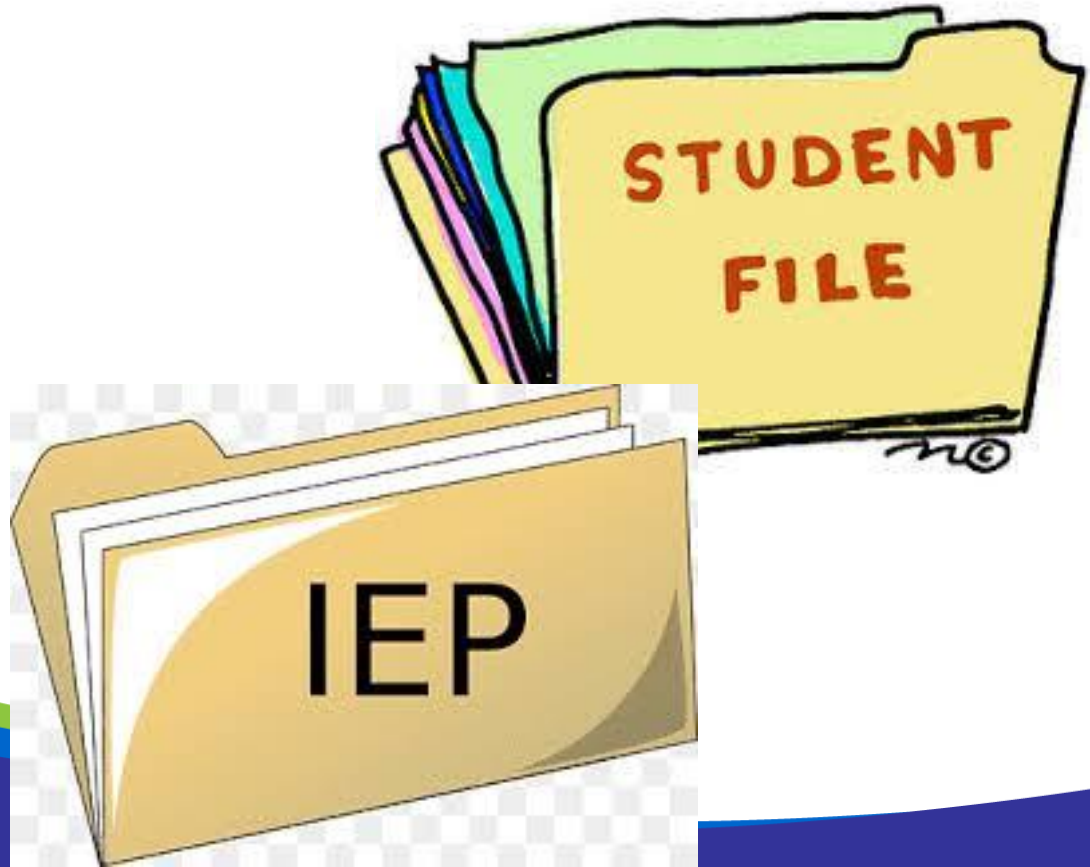
Student #2 (no IEP)

- Student does not have an IEP
- District has no reason to know that student may have a disability
- District follows school policies
- District asked to evaluate student to see if they have a disability AFTER conduct - District MUST evaluate

Student #3 (no IEP)

- District knows student may have a disability
- District is “deemed to have knowledge” if BEFORE misconduct occurs: (See 34 CFR 300.534(b))
 1. Parent expresses concern, in writing, to appropriate school staff that student needs special education and related services; OR
 2. Parent requested an evaluation of the student; OR
 3. Teacher or other school personnel expressed specific concern to director of special education or school supervisor about a pattern of student’s demonstrated behavior

Student #4 (IEP)



Code of Conduct Violations



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Disciplinary Removals



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Disciplinary Removals

- A removal occurs any time a student is taken out of their educational environment (general or special) as a disciplinary consequence
- This includes such things as: loss of recess privileges, loss of lunch privileges, removal from a single class, in-school-suspension, out-of-school suspension, or expulsion

Disciplinary Removals


- **Students with IEPs can be removed from school for up to 10 cumulative school days in a school year for a violation of a code of student conduct, before the special education “discipline requirements” apply**
- **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**

Disciplinary Change of Placement



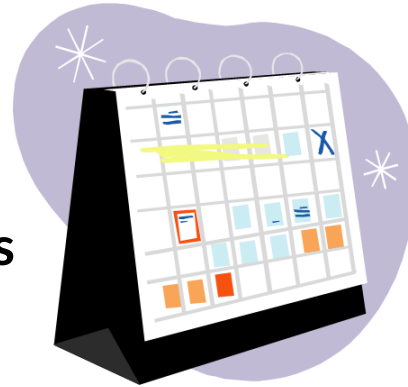
WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

DISCIPLINARY Change of Placement

- **Student removed from their current educational placement for more than ten consecutive school days due to their conduct/behavior**
 - **Student experiences a series of removals due to their conduct/behavior that constitute a pattern and exceeds ten days**
- 

Counting Days


- **Definition of School Day**
- **Suspension**
- **Partial day Removals/Suspensions**
- **Bus Suspension**



Is there a pattern?

- 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 of previous removals

Is there a pattern?

- The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement
 - Determination may be reviewed through due process proceedings
 - See 34 CFR 300.536
- 


No Pattern: Now What? (34 CFR 300.530)

- School can proceed with removal
- Student must continue to receive educational services:
 - Enable child to continue to participate in general education curriculum, and
 - Progress toward meeting IEP goals
- Services may be provided in an alternative setting
- School decides the services that are needed


DISCIPLINARY Change of Placement

- **Change of Placement**
 - Student is removed for more than 10 consecutive days;
OR
 - School determines there is a pattern of removals
- **Additional protections for student/Requirements for district**


Disciplinary Change of Placement: Now What?

- **Notification (34 CFR 300.530(h))**
 - **Manifestation Determination (34 CFR 300.530(e))**
 - **Educational Services Continue (34 CFR 300.530(d))**
- 

Manifestation Determinations

- **When:** required when there is a disciplinary change in placement
 - **Purpose:** Determine if the conduct is due to the student's disability
 - **Timeframe:** Within 10 school days
- 

Manifestation Determinations


- **Who:** The school district, the parent, and relevant members of the IEP team
 - **What:** 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

How: 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 district's failure to implement the IEP**

Decision: NOT a manifestation

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

Decision: Is a manifestation

- **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**

AND

- **Return the student to the placement from which they were removed; unless: 1) parent agrees; or 2) special circumstances exist**

Special Circumstances



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Interim Alternative Educational Setting

- School may change placement in the following situations:
 - Weapons
 - Illegal drugs or controlled substances
 - Serious bodily injury
- 45 school days
- IEP Team determines setting

Weapons

- **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**

Illegal Drugs

- Means a controlled substance unless the controlled substance is legally possessed and used pursuant to a prescription
 - 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 marijuana, cocaine, heroin, LSD, other “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
- Most injuries by a student of another student, teacher, or administrator are NOT “serious bodily injury”

Parent Rights



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

- **Due Process Hearing (expedited when discipline matter)**
 - The district hold resolution meeting within 7 calendar days
 - Hearing conducted within 20 school days of request,
 - Decision issued within 10 school days after hearing
 - Student remains in the setting where they were placed until the hearing is complete or original removal period expires, whichever occurs first
- **IDEA Complaint**
- **Mediation**

Key Takeaways



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

- **Special Education requirements apply if student already has an IEP or school is deemed to know student may have a disability BEFORE violation of code of conduct occurs**
- **Removals matter / Disciplinary Change of Placement (10 days)**
- **Different rules for weapons, drugs, & serious bodily injury**
- **As a parent, you have rights and resources**

Resources



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Resources

- DPI [Special Education in Plain Language](#) handout
- DPI Information Update Bulletin 06.02: [Legal Requirements Relating to Disciplining Children with Disabilities](#)
- DPI Information Update Bulletin 07.01: [Addressing the Behavioral Needs of Students with Disabilities](#)
- DPI Information Update Bulletin 14.02: [Manifestation Determination](#)

Thank you

Eric Kestin

eric.kestin@dpi.wi.gov

608-224-5340



WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent