



DISCIPLINE AND BEHAVIOR

Discipline and the IDEA Student

IDEA outlines discipline provisions for students served in special education. If behavior challenges have been addressed through the IEP, things may be easier to resolve in the event of the student breaking school rules or not following the school code of conduct. IDEA protects the student from losing the right to FAPE because of behavior. If a student has behavior problems, IDEA outlines procedures that can be used to address the student's needs through special education services. The purpose of addressing behavior in the IEP and providing positive behavioral supports is to teach the student skills for behaving appropriately and to prevent problems from occurring. If behavior challenges have been addressed through the IEP, some of the structure necessary to address violations of school rules is already in place.

'Zero Tolerance Policies' have been established by many school districts to develop consequences for behaviors that will not be tolerated under any circumstance. Certainly most people would agree that behaviors such as sexual misconduct or physical assault should not be tolerated. However if a child with a disability violates such a policy, schools cannot simply apply a universal consequence if the consequence violates IDEA, or if it is not appropriate to the needs of the child. If the standard consequence is not appropriate to the needs of a child, or if it is a violation of IDEA, the IEP team should meet to determine an appropriate response, which might include increased special education instruction, interventions targeted to increasing skills or additional evaluation. Parents of children with disabilities must be diligent in any behavioral needs their child may have, so that the IEP team can plan proactively to address those needs.

Positive Interventions: Parents Need to Know. (May 1999) Reprinted with permission from PACER Center

The following are the discipline provisions from IDEA. Understanding these provisions can help parents to be proactive in the IEP process. Parents may want to contact the Utah Parent Center for help in understanding the requirements if a child is facing disciplinary actions in school.

Discipline: Protection under IDEA 2004

A student who qualifies for special education has protection under the discipline provisions of IDEA.

- A student who faces suspension or expulsion from school, even long-term, must receive a free, appropriate, public education (FAPE) for removals longer than 10 school days in a school year. This means a student with disabilities may be suspended or expelled. However, appropriate educational services must still be provided.
- These services must allow for a child to appropriately progress in the general curriculum and progress toward achieving IEP goals. The student must receive, as appropriate, a functional behavioral assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

If your child has special needs, so do you! We can help!

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Change Of Placement

Removals beyond 10 cumulative days in school constitute a “change in placement” and trigger specific procedures required by IDEA 2004. The IEP team (which includes the parent) determines the extent of the services.

A change in placement occurs if:

- the removal is for more than 10 consecutive school days, or
- the student is 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; because the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals; and because of such additional factors 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.

The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

Unique Circumstances

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement consistent with the other requirements of the law is appropriate for a student with a disability who violates a **code of student conduct**. This means that schools do not have to automatically apply all the school or district discipline procedures in cases where it does not make sense based on the student’s understanding or other factors.

Suspension and No Change of Placement

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.

Services Must Be Provided

After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal, the LEA must provide services to the extent required.

- A student with a disability who is removed from the student’s current placement must continue to receive educational services, so as 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.
- 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.
- The services may be provided in an interim alternative setting.
- If the removal is a change of placement, the IEP team determines appropriate services to be provided during the removal.

Suspension and Change of Placement

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student’s disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for

the same duration as the procedures would be applied to students without disabilities, except after the 10th day of removal that constitutes a change in placement, the LEA must provide services to the student.

Manifestation Determination Requirement

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 student conduct, the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents 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 LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the LEA, the parent, and the relevant members of the student's IEP team determine that the misconduct was caused by or had a direct and substantial relationship to the student's disability, or was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent, and relevant members of the IEP team determine that the misconduct was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

If the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the student's disability, the IEP team must either:

- Conduct a **Functional Behavioral Assessment (FBA)** unless the LEA had conducted a FBA before the behavior that resulted in the change in placement occurred, and
- Implement a **Behavioral Intervention Plan (BIP)** or

If a BIP already has been developed, review the BIP and modify it as necessary to address the behavior, and unless the misconduct falls under the definition of "Special Circumstances", return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the BIP.

Special Circumstances

Interim Alternative Educational Setting (IAES)

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student at school or on school premises at a school function:

- Carries a weapon to or possesses a weapon
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance
- Has inflicted serious bodily injury upon another person

Please see the *Utah Special Education Rules* from the Utah State Office of Education for definitions of the above terms.

The student's IEP team determines the interim alternative education setting (IAES).

Right to a Hearing

An **expedited due process hearing** may be requested when:

- A parent disagrees with either placement or the manifestation determination, or
- The LEA believes that maintaining the current placement is substantially likely to result in injury to the student or others.

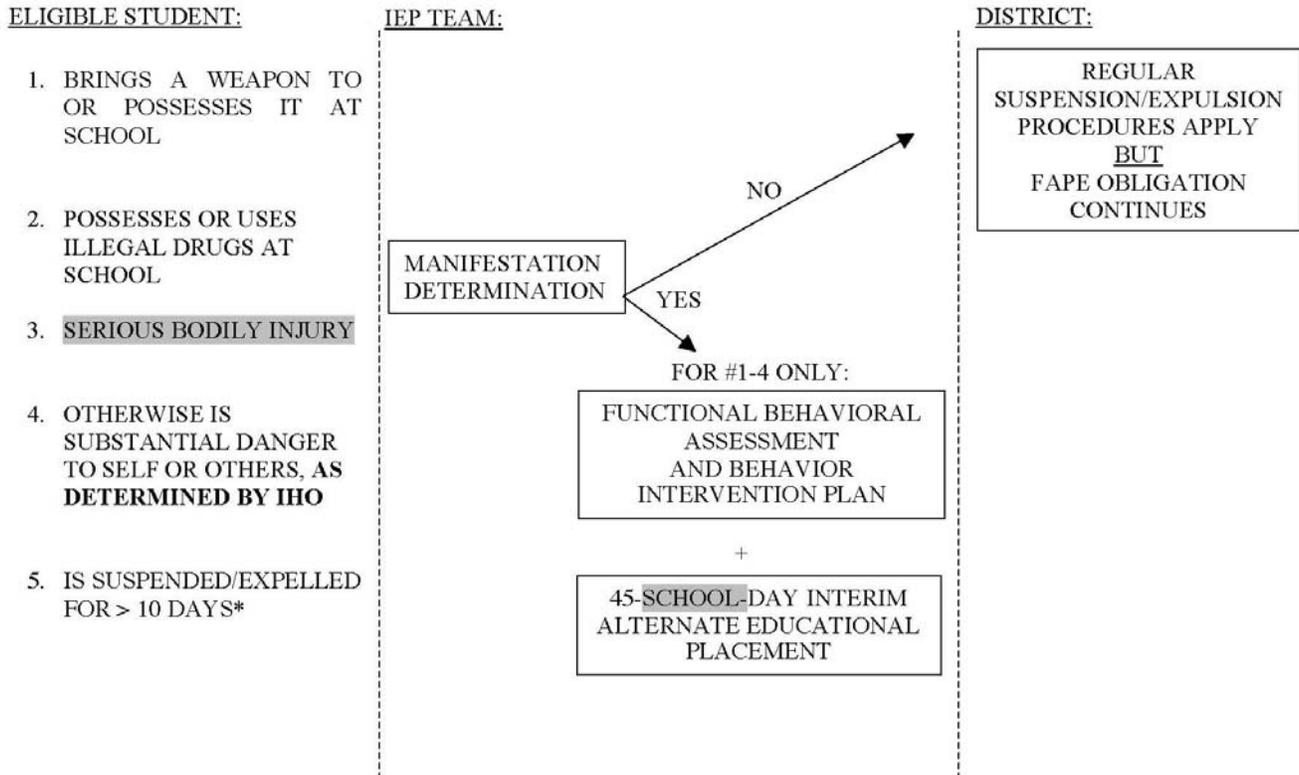
The expedited due process hearing must be held within 20 school days of the request and the hearing officer must make a determination within 10 school days.

Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the request and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request (complaint). (Please see page 71 for more information on due process hearings and resolution meetings.)

Expedited due process hearing decisions can be appealed. During the appeal the student must remain in the interim alternative educational setting (IAES) unless the parent and the LEA agree otherwise.

Overview of Suspensions and Expulsions under IDEA

FIGURE I: OVERVIEW OF SUSPENSIONS/EXPULSIONS UNDER THE IDEA: 2004 REVISIONS HIGHLIGHTED



The above chart summarizes the requirements for suspensions and expulsions.

Functional Behavioral Assessment

A Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) are required when a child is suspended or expelled for more than 10 cumulative days in a school year or there is a “change in placement” to an Interim Alternative Educational Setting (IAES).

A Functional Behavior Assessment looks at why a child behaves as he or she does, given:

- The nature of the child, and
- What is happening in the environment

A Functional Behavioral Assessment is a process that collects information to determine the purpose problem behaviors serve for the child given the nature of the child and what is happening in the environment. Knowing what function the behavior serves (or why the child is doing the behavior) helps the team to choose the right interventions to include in the Behavioral Intervention Plan.

Some key points about the Functional Behavior Assessment are that it:

- Guides decision-making about needs
- Leads to strategies to help meet the need
- Is required when a child is to be removed from his or her educational program beyond 10 days
- Should be considered in any evaluation when behavioral concerns have not responded to standard interventions

Behavioral Intervention Plan

A Behavioral Intervention Plan (BIP) is an individualized plan developed in the IEP process that outlines strategies to address problem behaviors. An effective BIP will focus on providing positive behavioral supports to teach or reinforce appropriate behavior skills. A Behavior Intervention Plan is NOT the same thing as a school discipline plan that speaks to what happens if a student violates a rule or code of conduct.

Remember that for students whose behavior impedes the student’s learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior.

Some key points to remember about Behavioral Intervention Plans, is they:

- Are in writing
- Are team developed
- Are based on functional assessment
- Change environmental triggers/antecedents
- Include strategies to strengthen appropriate behaviors
- Include a crisis intervention plan, if needed
- Include general educator input
- Include modifications in the curriculum and/or classroom expectations

It is important to have the general education teacher participate when developing the Behavioral Intervention Plan. One of the functions of the general educator on the IEP team is to help determine appropriate positive behavioral interventions, supports and other strategies for the student.

Parents should consider a Functional Behavior Assessment and Behavioral Intervention Plan for the IEP of any special education student who has behavior challenges. Using a BIP to include positive behavioral supports greatly lessens the likelihood of serious discipline problems and also provides better documentation of the child’s needs in the event that an infraction does occur.

Placement during Appeals (300.533)

When an appeal has been made by either the parent or the school, 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 whichever occurs first, unless the parent and the school agree otherwise.

Children Not Yet Eligible Under Idea (300.534)

A child with a disability who has not yet been determined eligible for special education may be eligible for protection under the discipline provisions of IDEA only under a few circumstances.

A child may assert the protections of the discipline section of IDEA if the school district “*had knowledge*” or “*should have had knowledge*” that the individual was a student with a disability. The school is said to have “*had knowledge*” if:

- A parent expressed in writing that the child needed special education and related services,
- The parent had requested an evaluation, or
- The teacher or other personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel.

If a school district did not “*have knowledge*” that a child has a disability, the child may be subjected to regular discipline. If an evaluation is requested during the disciplinary period, it must be expedited. Until the evaluation is completed, the student remains in the placement determined by school authorities which can include suspension and expulsion without educational services. If the student is found to have a disability, the agency must provide special education and related services.

Referral To and Action by Law Enforcement and Judicial Courts (300.535)

The school district can report a crime committed by a student with a disability to state law enforcement and judicial authorities.

Transmittal of Records:

- The LEA reporting the crime must ensure copies of the special education and disciplinary records are sent to the appropriate authorities for consideration.
- The LEA reporting a crime may transmit copies of the student’s records only to the extent that the transmission is permitted by the Family Education Rights and Privacy Act.

Behavior Management Resources Specific to Utah

When making decisions about behavioral interventions, the IEP team may refer to the USOE Special Education Least Restrictive Behavior Interventions (LRBI) Guidelines for information on research-based intervention procedures. The guidelines offer guidance in choosing interventions that are more positive and less intrusive, before moving to more intrusive procedures. The LRBI Guidelines are available on the Utah State Office of Education website under the Special Education Section.

Another resource is Utah’s Behavior Initiatives (UBI), a program which provides behavioral strategies for educators and parents. Some schools have been chosen to participate in ongoing training and support to implement the research based UBI strategies on a school wide basis. In addition, UBI offers many links to resources on the UBI section of the Utah State Office of Education website which is found under the “behavior” link on the Special Education page.

This content is taken from the Utah Parent Center handbook: Parents as Partners in the IEP Process Parent Handbook