

DISCIPLINE OF STUDENTS WITH SPECIAL NEEDS: PART 11

Behavior Assessments, Behavior Support Plans & Manifestation Determinations

Removal of a Student from the Current Placement Under the Student Conduct Code

Under the amended IDEA, school personnel have the authority to remove (suspend) a student with special needs for **not more** than 10 school days, to the same extent that any student could be suspended from school under the school district's conduct code. (The Federal Department of Education has issued its own interpretation of this requirement to mean either 10 **consecutive** days or 10 **cumulative** days of suspension.) If the student brought a weapon to school or to a school function, or if the student knowingly possessed or sold a controlled substance at school or at a school function, the student could be removed to an "appropriate interim placement" for up to 45 days under the amended statute. Under the circumstances described, neither of these removals is considered a "change of placement," and does not require the implementation of procedural safeguards.

There are, however, some other requirements that are triggered by school suspensions or removals. Either before taking disciplinary action or within 10 days of taking such action, the school must convene an IEP meeting, including the student's parents. If no functional behavior assessment was done and a behavior support plan developed for the student prior to the behavior that resulted in the student's suspension, the team must develop a plan to assess the student's behavior and address it in a written behavior plan. If the student has already undergone a functional behavior assessment and has a behavior support plan in place, the IEP team must review the plan and modify it, as necessary, to address the behavior that led to suspension.

Development of a Behavior Support Plan Using Functional Assessment

Jefferson County School District R-1 has developed a specific form for documenting targeted student behaviors, predictors or antecedents of the behaviors, and what action was taken by staff or providers to address the behaviors when they occurred, in other words, what interventions were tried to correct or eliminate undesirable behaviors. This form and the data collected on it is titled: Functional Assessment: Challenging Behaviors. It allows staff to note specific behaviors, the date and time of the occurrence, and the activity during which the behavior occurred. The form is to be completed by each teacher during the period the teacher has the student in class. The collected data is then used to develop an individualized behavior support plan for helping the student address the targeted behaviors as part of his or her IEP or Section 504 plan.

When to Create a Behavior Support Plan

If a student has exhibited behaviors that interfere with learning in the recent past, a behavior plan should already be part of the student's IEP. If the interfering behavior is a new one and the student has no behavior plan, the team should convene to develop a behavior support plan after the first incident of the behavior, whether or not the student was suspended for the behavior. Parents may also initiate a request that a behavior support plan be developed for their student. When a student already has a behavior plan, the team should reconvene to review the plan and make any modifications that are necessary.

Behavior support plans are designed to address any undesirable behavior that interferes with a student's learning or the safety or learning of others. A plan might address such varied areas as: chronic attendance problems for a student who skips classes or entire school days, or has problems with chronic tardiness; a student's failure to follow general school rules or demonstrates a lack of respect for school staff or property; or assaultive behavior on the part of a student with limited communication skills. The essential features of a plan are: (1) that it be individualized for a specific student; (2) that it address targeted behaviors based upon the collection of data (functional assessment or analysis); and (3) that the student and parents be made fully aware of the behaviors targeted, the interventions to be provided, and the consequences for committing the targeted behaviors.

Manifestation Determination Meeting

If the school district anticipates taking disciplinary action against a special needs student served through an IEP, and that action would constitute a change of placement (as described above), the school district must conduct a manifestation determination meeting. Actions that would require convening a manifestation determination meeting include: suspensions of more than ten days, either consecutive or cumulative; expulsion from the school program/building; action taken due to the student bringing a weapon to school or to a school function; or the student's possession, sale, purchase or use of a controlled substance on school property or at a school function.

The manifestation determination meeting is merely another type of IEP meeting in which the IEP team, including the parents and any other people with relevant information about the student or the incident, is convened to discuss whether the behavior that led to disciplinary action being taken against the student is in any way related to the student's disability. This meeting must be held as soon as possible after the decision to discipline the student is made, but no later than ten days after the date the decision is made to discipline the student. The school district must notify the parents of the decision to discipline and must provide parents a copy of their rights, or "procedural safeguards," at that time.

Under the amended IDEA, a student's conduct leading to disciplinary action is deemed to be a manifestation of the student's disability unless the IEP team makes certain findings after reviewing all relevant information, including their evaluation and diagnostic results or other relevant information provided by the parents, observations of the student (at school), and the current IEP and the student's placement. If, after conducting a review of these the IEP team determines that, with respect to the behavior subject to disciplinary action, (1) the student's IEP and placement were appropriate **and** (2) that special education services were provided consistent with the IEP **and** (3) the student's disability did not impair the student's ability to understand the impact and consequences of the behavior **and** (4) the student's disability did not impair the student's ability to control the behavior that led to the disciplinary action, the team may make the determination that the behavior that led to disciplinary action **is not** a manifestation of the student's disability. In other words, the IEP team may determine that the behavior was not a demonstration, revelation or outcome of the student's disability and that there is no direct connection between the student's conduct and the student's disability.

When Behavior Is Not a Manifestation of Disability

If the result of the IEP team's review is that the student's conduct was not a manifestation of the student's disability, the disciplinary actions applicable to students without disabilities may be applied to the student in the same manner they would be applied to students without disabilities. If the school district takes disciplinary action against the student, the IEP team must transfer the student's special education and disciplinary records to the person or persons making the final determination as to what disciplinary action will be taken.

When Behavior Is Deemed a Manifestation of the Student's Disability

If the IEP team determines that a student's conduct was a manifestation of the student's disability, the team then goes immediately into the IEP review meeting format. The team then considers the evaluation and diagnostic results, relevant information provided by the parents, observations of the student and the student's current IEP and placement to determine what changes in educational programming may be required in order to prevent another occurrence of the student's conduct. Additional services may be needed, a change of placement may be necessary, adjustments to the student's medication may be needed, the behavior support plan may need to be revised, or a new functional assessment may need to be conducted. The team decides what course of action to take and how to go about making the necessary programming changes.

What if Parents Disagree?

Parents may disagree with the actions taken by the IEP team--either the team's decision that the behavior was not a manifestation of the student's disability or the educational programming changes that are proposed by the team after it determines that the behavior was a manifestation of the student's disability.

If the parents disagree with the IEP team's decision that the conduct was not a manifestation of the student's disability or if they disagree with the "appropriate interim placement," they may file a formal appeal and request an expedited hearing by a state-appointed hearing officer. The student's placement remains the interim alternative education setting until the hearing officer issues a decision or until the 45-day time period expires, whichever occurs first, unless the parents and the state department of education or the local school district agree otherwise.

If a student is placed in an interim alternative educational setting and the IEP team proposes to change the placement after the 45-day time period, the parents may appeal the proposed placement and request a hearing. If an appeal is filed, the student is returned to the original placement pending the outcome of the hearing. An exception to this may occur only if school personnel are able to persuade the hearing officer that it would be dangerous for the student to remain in the original placement. In making this decision, the hearing officer must consider: (1) whether the school district has demonstrated that the student or others would be substantially likely to incur injury as a result of maintaining the student's placement; (2) the appropriateness of the student's current placement; (3) whether the school district has made reasonable efforts to minimize the risk of harm in the student's current placement; (4) whether the interim alternative placement enables the student to continue to participate in the general curriculum and to receive the services described in the student's IEP such that the student may continue to meet the goals set forth in the IEP, and (5) whether the interim placement includes services and modifications designed to address the behavior that led to the disciplinary action so that it does not recur.

IDEA Prohibits the Termination of Educational Services to Expelled Students

Although a student with a disability may be suspended for more than ten days or expelled from a specific educational program or school building, the school district may not terminate educational services to the student under the amended IDEA. The school district must continue

to provide the student with a free appropriate public education under federal law. The State of Colorado further requires that school districts provide educational services to **all** expelled students and that these services be designed to enable the student to return to school to complete a diploma or to obtain a General Equivalency Diploma (GED). For this reason, the IEP team should also prepare a written plan that addresses the services to be provided to an expelled or suspended student, including the manner in which the services will assist the student in returning to the educational setting from which he or she was suspended or expelled. Homebound services are permitted on an interim basis, but homebound services are not permitted as a long-term solution for serving the student with the goal of returning the student to the school setting.

Summary

Because the provision of a free appropriate public education is the right of every student with a disability under the IDEA, it is essential that parents know and understand the procedures involved and their rights when a school district undertakes disciplinary action against a student with a disability. The Individuals with Disabilities Education Act, as reauthorized by Congress in 1997, contains many changes in the area of discipline. These include the new requirement that students who exhibit undesirable behaviors or behaviors that subject them to disciplinary action under the student conduct code, have a behavior support plan based upon the collection of specific data and implemented for the purpose of reducing or eliminating the targeted behaviors.

Students with disabilities are still subject to the conduct expectations outlined in the school district's conduct code, including disciplinary action regarding weapons or controlled substances. However, a student's behavior support plan, IEP or the results of a manifestation determination meeting may alter the nature and severity of the disciplinary action taken and may even protect the student from any disciplinary action whatsoever. In the event a student's conduct warrants a suspension of more than 10 days or expulsion, the school district must continue to provide a free appropriate public education to the student. By being aware of these protections, informed parents can participate fully to exercise these protections when disciplinary issues arise.