



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

DEPARTMENT OF
EDUCATION

State Office of Special Education

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Discipline in Special Education

Brief Overview of Discipline Procedures under IDEA 2004

Introduction

The Individuals with Disabilities Education Act (IDEA) governs children's rights in disciplinary situations. One requirement from the IDEA is that Districts are required to provide a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE), which includes disciplinary action. All students eligible for special education and related services are responsible for following the V. I. Board of Education's Student Code of Conduct and Discipline Policy. All personnel involved with students with disabilities must comply with the provisions of Part B of the IDEA, the federal implementing regulations found at 34 CFR §§300.530-300.536, and with the V. I. Special Education Rules. The reauthorized IDEA and its implementing regulations include provisions that address important disciplinary issues such as: the consideration of unique circumstances when determining the appropriateness of a disciplinary change in placement; expanded authority for removal of a child from his or her current placement for not more than 45 school days for inflicting a serious bodily injury at school or at a school function; the determination on a case-by-case basis as to whether a pattern of removals constitutes a change of placement; and revised standards and procedures related to the manifestation determination.

IDEA 2004 added "serious bodily injury" to the list of occurrences (including drugs and weapons), which entitle a school district to impose an automatic forty-five (45)-day removal from school. Serious bodily injury is defined as "bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function or a bodily member, organ or mental faculty." **IDEA 2004** also clarified that forty-five (45) days means school days, not calendar days. All students removed from school for any length of time are to receive services to prevent a recurrence of whatever caused the removal. Positive behavioral supports are now to be considered when a student's behavior impedes his/her learning or that of others.

Discipline for Students with Disabilities under the IDEA 04

If a student engages in behavior that is a violation of the school code the following should occur:

If the Student has an IEP

- All students with an IEP regardless of whether their behavior is a manifestation of their disability or not, are entitled to receive a free appropriate public education (FAPE), including related services to enable the student to participate in the general curriculum, and to progress towards his/her IEP goals.

- The district must notify the parents of any disciplinary action to be taken on the day the decision is made to discipline the student.
- The district must provide the parents with a copy of the procedural safeguards.
- The district may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. This addition to the law clarifies that districts are not required to follow disciplinary measures that it believes are not appropriate for this student but can instead evaluate each situation on a case-by-case basis and consider the unique circumstances.
- If appropriate, to the extent that these measures are applied to non-disabled students, the district may, for up to ten school days:
 - a. remove the student to an interim alternative educational setting;
 - b. another setting; or
 - c. suspend the student.
- Behavioral intervention services and modifications to prevent the behavior from recurring are to be added to the student's IEP if the student is suspended on more than two (2) separate occasions.

SUSPENSION /EXPULSION FOR STUDENTS WITH DISABILITIES

Suspension for more than 10 school days/Expulsion

If the district suspends the student for more than ten(10) school days (consecutively or concurrently), changes his/her placement for more than ten school days, or notifies the parent of possible expulsion, the district must hold a Manifestation Determination Review(MDR) to determine if the student's behavior is a manifestation of the student's disability.

Manifestation Determination Review (MDR)

- The MDR conference must be held within ten (10) days of a decision to change the child's placement because of a violation of a code of student conduct.
- This meeting is held only when a student is removed from school for more than ten days.
- **Purpose:** At this meeting the team must decide whether the student's behavior was a manifestation of his disability. To decide this, the team must do the following:
 - Review all relevant information in the student's file including;
 - the student's IEP;
 - teacher observational records;
 - parent information; and
 - evaluation reports to determine if the conduct was caused by a direct and substantial relationship to the child's disability **OR** was the direct result of the LEA's failure to implement the student's IEP.

If the student's behavior IS a manifestation of the disability

Then the school must

- Conduct/review a functional behavioral assessment; and
- If a behavioral intervention plan was already developed, it must be reviewed or modified; if one was not developed then one should be developed consistent with (20 U.S.C. §1415(k) (1)(F), 34 C.F.R. §300.530(f)).

- Return student to the placement he was in prior to the suspension.
- Student may only be moved from previous placement with parents' agreement.

If the determination is that behavior *is NOT* a manifestation of the disability

- Discipline measures may be applied using the same procedures and in the same manner and duration as for students without disabilities.
- FAPE must be provided, though it can be provided in an interim alternative educational setting.
- A student's placement can be changed in his IEP as a result of a behavior that was not a result of his/her disability.

TERMS TO KNOW:

Functional Behavioral Assessment (FBA): use of a variety of techniques and strategies to diagnose the causes of and identify interventions likely to be effective in addressing problem behaviors.

Manifestation Determination (MD): is a process to determine if a student's behavior problem **WAS** **or WAS NOT** a manifestation of the student's disability. A Manifestation Determination is completed as part of an IEP team meeting. (A parent can request such a meeting following a disciplinary incident.)

Behavioral Intervention Plan (BIP): a written plan that includes positive Behavioral interventions, strategies and supports to be used in addressing behavior that impedes a student's learning or that of others. If appropriate, BIPs are designed by the IEP team after an FBA has been conducted.

Positive behavior support (PBS) is an approach used to provide intensive individualized interventions to individual children with challenging behavior.



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