

Discipline of Students with Disabilities Implementing IDEA 2004 Regulations

1.0 Basic Rules

1.1 IEP and Placement	
1.1.1. When must a student's IEP address behavior?	<p>The IEP must address behavior if the student's behavior impedes the student's learning or that of others. If so, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.</p> <p>Citation: 34 CFR 300.324(a)(2)(i) & (b)(2)</p>
1.1.2 May an IEP/placement team consider the student's disruptive effect of the student's behavior on learning in the classroom in determining the student's least restrictive environment for the student?	<p>Yes, under <i>Sacramento City School District v. Holland</i> (9th Cir, 1994), an IEP/placement team may consider the effect of the student's presence on the teacher and the other students in the regular classroom in determining the extent to which participation in the regular classroom is appropriate. This consideration would also include efforts made by the district, including appropriate supplementary aids and services, to control the disruption, danger or other detrimental impact, and the results of those efforts.</p>
1.2 Suspensions of up to ten school days in a school year	
1.2.1. May a district suspend a student with disabilities for up to ten school days in a school year?	<p>Yes, a district may suspend a student with a disability who violates the district's code of conduct for up to ten school days in a school year to the same extent that a student without disabilities would be suspended.</p> <p>Citation: 34 CFR 300.530(b)(1)</p>
1.2.2 Must the district provide educational services to a student during the first ten school days of disciplinary removal in a school year?	<p>A district must provide educational services to a student during the first ten days of removal in a school year if it provides services to a nondisabled child who is similarly removed.</p> <p>Citation: 34 CFR 300.530(d)(3)</p>
1.3 Suspensions of more than ten school days in a school year	
1.3.1. May a district suspend (or expel) a student with disabilities for more than ten consecutive school days in a school year?	<p>It depends. A district may suspend (or expel) a student with disabilities for more than ten consecutive school days in a school year only if the behavior prompting the removal is not a manifestation of the student's disability. See 1.5.</p> <p>Citation: 34 CFR 300.530</p>

<p>1.3.2. May a district suspend (or expel) a student with disabilities for more than ten cumulative school days in a school year?</p>	<p>It depends. A district may suspend (or expel) a student with disabilities for more than ten cumulative school days in a school year only if:</p> <ul style="list-style-type: none"> • The removals are not considered a “pattern” of removals (1.3.3.); or • The removals are a “pattern” but the behavior prompting the removal is not a manifestation of the student’s disability (1.5). <p>Under these circumstances, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as for children without disabilities, provided that educational services are provided during the removals. (See below for more details about services).</p> <p>Citation: 34 CFR 300.530</p>
<p>1.3.3. What is a “pattern” of removals?</p>	<p>A pattern is determined by the following factors:</p> <ul style="list-style-type: none"> • 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 additional factors such as the length of each removal, the total amount of time of removals, and the proximity of removals to one another. <p>Citation: 34 CFR 300.536(a)</p>
<p>1.3.4. Who decides if the removals are a pattern?</p>	<p>The public agency determines on a case by case basis whether the removals are a pattern, and therefore a change in placement. This determination is subject to review through due process and judicial proceedings.</p> <p>Citation: 34 CFR 300.536(b)</p>
<p>1.3.5 If the student is removed for more than 10 cumulative school days in a school year, and the removals are not a pattern, must the district provide educational services to the student beginning on day 11?</p>	<p>School personnel, in consultation with at least one of the student’s teachers, determine the extent to which services are needed (consistent with FAPE requirements) to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the IEP. These services may be provided in an interim alternative educational setting.</p> <p>Citation: 34 CFR 300.536(d)(2) & (4)</p>
<p>1.4 Counting days of suspension</p>	
<p>1.4.1 Do in-school suspensions count as “suspensions” for counting days of removal?</p>	<p><i>OSEP’s long-standing policy is that an in-school suspension does not count as long as:</i></p> <ul style="list-style-type: none"> • <i>The student has the opportunity to continue to appropriately participate in the general curriculum;</i>

	<ul style="list-style-type: none"> • <i>The student continues to receive the services on the student's IEP;</i> • <i>The student continues to participate with nondisabled students consistent with the student's IEP/placement.</i> <p>This provision is in Oregon Administrative Rules.</p> <p>Citation: OAR 581-015-0550(3)(c); <i>FR 46715, 3rc col. Top.</i></p>
1.4.2 Do partial days of suspension count as days of disciplinary removal?	<p><i>OSEP says "portions of a school day" "may be considered as a removal". Oregon Administrative Rules currently provide that suspensions of a half day or less count as half day and suspensions of more than half a day count as a full day. ODE will reconsider this provision in light of OSEP directives in relation to data collection.</i></p> <p>Citation: OAR 581-015-0551(3), <i>FR 46715, 3rd col.top</i></p>
1.4.3 Do bus suspensions count as days of suspension?	<p><i>OSEP says bus suspensions would count if transportation is part of the student's IEP unless the school district provides transportation in some other way. If transportation is not a related service on the student's IEP, a bus suspension is not counted as a suspension from school. In those situations, the parent has the same obligation to get the student to and from school as a nondisabled student who has been suspended from the bus. However, the district "should consider whether the student's behavior on the bus is similar to behavior in the classroom that is addressed in the IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the student."</i></p> <p>Oregon Administrative Rules currently state that bus suspensions are not counted "unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension."</p> <p>Citation: OAR 581-015-0050(3)(d), <i>FR 46715. 3rd col. Bottom</i></p>
1.5 Manifestation determination	
1.5.1. When must a "manifestation determination" meeting be held?	<p>The district must hold a meeting to determine whether the student's behavior is a manifestation of the student's disability "within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of conduct."</p>

	Citation: 34 CFR 300.530(e)(1)
1.5.2. What is considered “a change in placement because of a violation of a code of conduct”?	<p>A change of placement occurs if:</p> <ul style="list-style-type: none"> • The removal is for more than 10 consecutive school days; or • The student has been removed for more than 10 cumulative school days and the removals are a pattern. See 1.3.3. <p>Citation: 34 CFR 300.536(a)</p>
1.5.3 Who participates in the manifestation determination meeting?	<p>The team includes school district, the parent, and relevant members of the IEP team (as determined by the parent and the district).</p> <p>Citation: 34 CFR 300.530(e)(1)</p>
1.5.4.. What information must be reviewed as part of the process?	<p>The team 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.</p> <p>Citation: 34 CFR 300.530(e)(1)</p>
1.5.5 When is a student’s behavior considered to be a manifestation of the student’s disability?	<p>The student’s behavior is considered to be a manifestation of the student’s disability if:</p> <ul style="list-style-type: none"> • The conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability; or • The conduct in question was the direct result of the school district’s failure to implement the student’s IEP. <p>Citation: 34 CFR 300.530(e)(1), (2)</p>
1.5.6 What must a school district do if the team determines that the conduct in question was a direct result of the school district’s failure to implement the student’s IEP?	<p>The district must take immediate steps to remedy the situation.</p> <p>Citation: 34 CFR 300.530(e)(3)</p>
1.5.7 Does ODE have a sample form to assist school districts in correctly completing this process?	<p>Yes, the sample form and directions are posted on the ODE website at:</p> <p>http://www.ode.state.or.us/pubs/forms/schoolage/ (first sample form listed – no changes to form since 8/05)</p>
1.6 Case-by-case determination	
1.6.1 May a district consider unique circumstances related to the student in deciding whether a	Yes, a district may consider any unique circumstances on a case by case basis, consistent with the IDEA, when determining whether a change in placement is

change in placement resulting from a violation of a code of conduct is appropriate?	appropriate. <i>Examples of case by case circumstances: disciplinary history; ability to understand consequences; expression of remorse; supports (or lack of supports) before the incident; etc.</i> Citation: 34 CFR 300.530(a), FR 46714 (col 1, bottom)
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2.0 When the student's behavior IS NOT a manifestation of the student's disability(ies)

Note: This section applies to disciplinary removals of more than ten consecutive school days or more than ten cumulative school days that constitute a "pattern" of removals.

2.1 Required procedures	
2.1.1 May the district implement disciplinary procedures, including disciplinary removals (suspensions, expulsions, etc.) of more than ten school days?	Yes. The disciplinary procedures that apply to students without disabilities may apply to the student in the same manner and for the same duration as the procedures would apply to students without disabilities, but educational services must be provided. Citation: 34 CFR 300.530(c); 34 CFR 300.530(a)
2.1.2 Must the district provide educational services to the student during these disciplinary removals?	Yes, after the first 10 school days of disciplinary removal in a school year, the district must continue to provide educational services (consistent with FAPE requirements) to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP. These services may be provided in an interim alternative educational setting. <i>OSEP notes that the school is not required to replicate every aspect of the services in the original program, particularly if those classes are taught "using a hands on component or specialized equipment or facilities". (Examples – chemistry lab, auto mechanics) Schools are not required to provide exactly the same services in exactly the same settings.</i> Citation: 34 CFR 300.530(d)(1)(i) & (d)(2); FR 46716, 1 st col. Middle & 2 nd col. Middle.
2.1.3 Who decides on the services and the interim alternative educational setting?	The IEP team determines the appropriate services and the interim alternative educational setting. Citation: 34 CFR 300.530(d)(5) & 531
2.1.4 Must the district complete a functional behavior assessment and behavior intervention plan for the student?	As appropriate , the district must provide a functional behavior assessment and behavior intervention-services and modifications designed to address the behavior violation so that it does not recur.

2.1 Required procedures	
	Citation: 34 CFR 300.530(d)(1)(ii)
2.1.5 Must the district provide notice to the parent?	<p>Yes, on the date on which the decision is made to make a removal that is a change in placement, the district must notify the parents of the decision and give them a copy of the <i>Notice of Procedural Safeguards</i> (parent rights booklet).</p> <p>Citation: 34 CFR 300.530(h)</p>

3.0 When the student's behavior IS a manifestation of the student's disability(ies)

Note: This chart applies to disciplinary removals of more than ten consecutive school days or more than ten cumulative school days that constitute a "pattern" of removals.

3.1 Required Procedures	
3.1.1 May the district implement a disciplinary removal that is a change in placement?	<p>No, the student must be returned to the placement from which child was removed unless:</p> <ul style="list-style-type: none"> • "Special circumstances" allow removal to an interim alternative educational setting (see 4.0); or • The parent and district agree otherwise (as part of the modification to the behavior intervention plan in 3.1.2). <p>Citation: 34 CFR 300.530(f)(2)</p>
3.1.2 Must the district complete a functional behavior assessment and behavior intervention plan for the student?	<p>Yes, the district must either:</p> <ul style="list-style-type: none"> • Conduct a functional behavior assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred; or • If a behavior intervention plan already had been developed, review the behavior intervention plan and modify it, as necessary to address the behavior. <p>Citation: 34 CFR 300.530(f)(1)</p>
3.1.3 May a district review and revise a student's IEP and placement even if the team determines that the behavior IS a manifestation of a student's disability?	<p><i>Yes, if the behavior was not previously addressed in the student's IEP, the IEP team must review and revise the student's IEP so that the student will receive services appropriate to the student's needs.</i></p> <p><i>A change in placement that is appropriate and consistent with the child's needs may be implemented subject to the parent's procedural safeguards regarding prior written notice, mediation, due process and "stay put" provisions.</i></p> <p><i>FR 46721 , col. 1, top</i></p>

4.0 When the student is removed for a “special circumstance” – drugs, weapons, serious bodily injury

4.1 Special circumstances defined	
4.1.1. What “special circumstances” would allow a district to remove a student for up to 45 school days regardless of whether the student’s behavior is a manifestation of the student’s disability?	<p>There are three types of special circumstances:</p> <ul style="list-style-type: none"> • Weapons violations; • Drug violations; and • Infliction of serious bodily injury. <p>Citation: 34 CFR 300.530(g)</p>
4.1.2 What is a drug violation?	<p>A drug violation means the use, possession, sale or solicitation of drugs at school or a school function. A drug means an illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or otherwise legally possessed. It does not include alcohol or tobacco.</p> <p>Citation: 34 CFR 300.530(g)(2) & (i)(1) & (2)</p>
4.1.3 What is a weapons violation?	<p>A weapons violation occurs if the student “carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function” under the jurisdiction of the school district. A weapon is “a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length.”</p> <p>Citation: 34 CFR 300.530(g)(1) & (i)(4).</p>
4.1.4 What is “serious bodily injury”?	<p>Serious bodily injury means “bodily injury which involves —</p> <ul style="list-style-type: none"> (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of a bodily member, organ, or mental faculty.” <p>Citation: 34 CFR 300.530(g)(3) & (i)(3)</p>
4.1.5 Is “dangerousness” a special circumstance?	<p>No. “Dangerousness” that is not accompanied by one of the three special circumstances above is not considered a “special circumstance” that would allow a school district to implement a 45 school day removal to an interim alternative educational placement. See 5.1.2.</p>

4.2 Required procedures	
4.2.1 Must the district provide educational services to the student during a removal for a special circumstance?	<p>Yes, after the first 10 school days of disciplinary removal in a school year, the district must continue to provide educational services (consistent with FAPE requirements) to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP. These services may be provided in an interim alternative educational setting.</p> <p>Citation: 34 CFR 300.530(d)(1)(i); (d)(2)</p>
4.2.2 Who decides on the services and the IAES?	<p>The IEP team determines the services and the IAES.</p> <p>Citation: 34 CFR 300.530(d)(5) & 531; <i>FR 46716, 2nd col. bottom</i></p>
4.2.3 Must the district complete a functional behavior assessment and behavior intervention plan for the student?	<p>As appropriate, the district must provide a functional behavior assessment and behavior intervention-services and modifications designed to address the behavior violation so that it does not recur.</p> <p>Citation: 34 CFR 300.530(d)(1)(ii)</p>
4.2.4 Must the district provide notice to the parent?	<p>Yes, on the date on which the decision is made to make a removal that is a change in placement, the district must notify the parents of the decision and give them a copy of the <i>Notice of Procedural Safeguards</i> (parent rights booklet).</p> <p>Citation: 34 CFR 300.530(h)</p>
4.2.5 Must the district determine whether the behavior prompting the disciplinary removal to an interim alternative educational setting for a "special circumstance" is a manifestation of the student's disability?	<p>Yes, the district must hold a meeting to determine whether the student's behavior is a manifestation of the student's disability "within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of conduct." The district may move the student to an interim alternative educational setting for one of the three special circumstances regardless of the outcome of the manifestation determination. However, the manifestation determination will what the district's options are following the end of the 45 school day removal for a special circumstance.</p> <p>Citation: 34 CFR 300.530(e)</p>

5.0 Protections for students not determined eligible for special education services

5.1 When a district “has knowledge”	
5.1.1 When must a school district extend these discipline protections to students who have not been determined eligible for special education services?	<p>A school district must extend these protections if the district “has knowledge” that a student is a student with a disability if, before the behavior that precipitated the disciplinary action:</p> <ul style="list-style-type: none"> • The parent expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to a teacher of the student, that the student was in need of special education and related services; • The parent requested a special education evaluation of the student; • The student’s teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the district’s special education director or to other supervisory personnel of the district. <p>Citation: 34 CFR 300.534(a) & (b)</p>
5.1.2 Are there any exceptions?	<p>Yes. The discipline protections do not apply if:</p> <ul style="list-style-type: none"> • The parent has not allowed an evaluation of the student; • The parent has refused special education services for the student; or • The student was evaluated and did not meet special education eligibility criteria. <p>Citation: 34 CFR 300.534(c)</p>
5.2 When the district does not have knowledge	
5.2.1 May the district take disciplinary action, if the district does not have knowledge that the student has a disability prior to taking the disciplinary action (based on the criteria above)?	<p>Yes, under these circumstances, a school district may take disciplinary action as it would for students without disabilities that engage in comparable behaviors.</p> <p>Citation: 34 CFR 300.534(d)(1)</p>
5.2.2 What must the district do if a request for evaluation is made while the disciplinary action is in effect?	<p>The district must conduct the evaluation in an expedited manner. If the student is found to be a student with a disability, the district must begin providing special education and related services in accordance with these provisions.</p> <p>Citation: 34 CFR 300.534(d)(2)</p>

6.0 Appeal Provisions

6.1 Appeal	
6.1.1 What appeal rights does a parent (or adult student) have regarding removals to an interim alternative educational setting for a child who has violated a code of conduct?	<p>The parent (or adult student) who disagrees with any decision regarding placement in an interim alternative educational setting or with the manifestation determination may appeal the decision by requesting a due process hearing. This is a state level special education hearing before an administrative law judge.</p> <p>Citation: 34 CFR 300.532(a)</p>
6.1.2 What options does a school district have if student's behavior is a manifestation of the student's disability but the district believes that maintaining the student's placement is dangerous?	<p>If the district believes that maintaining the student's placement is substantially likely to result in injury to the student or others, the district may appeal the decision by requesting a due process hearing. This is a state level special education hearing before an administrative law judge.</p> <p>Citation: 34 CFR 300.532(a)</p>
6.1.3 What actions may result from a special education due process hearing?	<p>The administrative law judge may:</p> <ul style="list-style-type: none"> • Return the student to the placement from which the student was removed if the district did not follow the proper procedures or if the student's behavior was a manifestation of the student's disability; or • Order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if maintaining the current placement is substantially likely to result in injury to the student or others. <p>(This procedure may be repeated if the district believes that returning the child to the original placement is substantially likely to result in injury to the student or others.)</p> <p>Citation: 34 CFR 300.532(b)</p>
6.1.4. What type of hearing is this?	<p>This is a state level special education administrative hearing. ODE has an interagency agreement with the Office of Administrative Hearings to conduct these hearings. Hearings brought under the discipline provisions are considered expedited hearings.</p> <p>Citation: 34 CFR 300.532(c)</p>
6.1.5 What timelines apply to an expedited hearing?	<p>The hearing must occur within 20 school days of the date the hearing request is filed. The administrative law judge must make a decision within 10 school days after the</p>

	<p>hearing.</p> <p>Citation: 34 CFR 300.532(c)(2)</p>
<p>6.1.6 Must the district and parent participate in a resolution session when a due process hearing request is filed?</p>	<p>Yes, unless the district and parent agree in writing to waive the resolution session or agree to use mediation in lieu of a resolution session.</p> <p>The resolution session must be held within seven days of receiving notice of the due process hearing request.</p> <p>The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process hearing requests.</p> <p>Citation: 34 CFR 300.532(c)(3)</p>
<p>6.1.7 If the parent or district requests a due process hearing, what is the student's educational placement pending the outcome of the hearing?</p>	<p>When the district has implemented a disciplinary removal that is a change in placement, unless the parent and district agree otherwise, the student remains in the interim alternative setting pending the whichever of the following occurs first:</p> <ul style="list-style-type: none"> • The decision of the administrative law judge; or • The removal for special circumstances (if applicable); or • The disciplinary removal for behavior that is not a manifestation of the student's disability. <p>Citation: 34 CFR 500.533</p>