

# Disciplinary Consequences for SWDs

Reducing Confusion  
and Frustration

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# Agenda

Regulatory Requirements

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# Regulatory Requirements

## Federal

- IDEA Part B §§300.530 through 300.536
  - 10 day Rule
  - Manifestation Determination
  - Services
  - Special Circumstances

## New York State

- Part 200 and 201 Regulations
  - 10 Day Rule
  - Manifestation Determination
  - Results of the MDR
  - Interim Alternative Educational Setting
  - Special Conditions
  - Procedural Safeguards

# 10 Day Rule

e) Disciplinary(e) Disciplinary change in placement means suspension or removal from a student's current educational placement that is either:

(1) for more than 10 consecutive school days; or

(2) for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to 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 suspension or removal, the total amount of time the student has been removed and the proximity of the suspensions or removals to one another. The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

# IAES

Interim alternative educational setting or IAES means a temporary educational placement, other than the student's current placement at the time the behavior precipitating the IAES placement occurred. A student who is placed in an IAES shall:

- (1) 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;  
and
- (2) 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.

# Manifestation Determinations

) *General requirement for manifestation review.* A review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the conduct is a manifestation of the disability must be made immediately, if possible, but in no case later than 10 school days after:

(1) a decision is made by a superintendent of schools to change the placement of a student to an interim alternative educational setting pursuant to section 201.7(e) of this Part;

(2) a decision is made by an impartial hearing officer to place a student in an interim alternative educational setting pursuant to section 201.8 of this Part; or

(3) a decision is made by a board of education, district superintendent of schools, building principal or superintendent pursuant to section 201.7(a) or (b) of this Part to impose a suspension that constitutes a disciplinary change in placement.

# Conduct of Review

(c) *Conduct of review.* The manifestation team shall 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:

- (1) the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
- (2) the conduct in question was the direct result of the school district's failure to implement the IEP.

# Special Circumstances

## **Section 201.8 Authority of impartial hearing officer to order a change in placement to an IAES in a dangerous situation.**

- (a) An impartial hearing officer appointed pursuant to Education Law section 4404(1), in an expedited due process hearing conducted pursuant to section 201.11 of this Part, may order a change in placement of a student with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 school days, if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or others.
- (b) The procedures established in this section may be repeated if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or others.
- (c) A school district shall not be required to commence disciplinary action against a student with a disability as a prerequisite for initiating an expedited due process hearing to obtain an order of an impartial hearing officer pursuant to this section.

# Special Circumstances

*(e) Change in placement to an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances.*

(1) A superintendent of schools, either directly or upon recommendation of a hearing officer designated to conduct a superintendent's hearing pursuant to Education Law, section 3214(3)(c), may order the change in placement of a student with a disability to an appropriate IAES, to be determined by the CSE, for up to 45 school days, but not to exceed the period of suspension ordered by the superintendent in accordance with Education Law, section 3214(3), where the student:

(i) has inflicted serious bodily injury, as defined in section 201.2(m) of this Part, upon another person while at school, on school premises or at a school function under the jurisdiction of the educational agency;

(ii) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the educational agency; or

(iii) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school,

# Prevention

## Positive Behavior Interventions

All students participate in the school wide positive behavior systems.

## Functional Behavioral Assessment

For students whose behavior is persistent and that interferes with their learning or the learning of others, an FBA must be completed.

## De-escalation

Training is required for all staff on de-escalation of student behavior, and for those who work with students who may need restraint, there must be further training.

## Behavior Intervention Plans

Based on the results, a behavior intervention plan is specific to the child with a disability and must be implemented with fidelity, regular progress monitoring and follow up.

# Processes

## Before Suspension:

- Implement instruction and/or counseling to ensure that there are not skill deficits leading to the behavior
- Be proactive with FBA/BIP
- Communicate regularly with family to have them partner in planning
- Look at environmental factors that may be impacting
- Ensure that the IEP accurately depicts the typical behaviors seen from the student

## Once Suspension Occurs:

- Ensure that you have the proper paperwork for notifications
- Do not impose the suspension before allowing the family the option of an informal meeting
- Plan for re-entry
- Determine with the CSE if there is a need for change in the IEP or BIP
- Ensure that the IEP accurately depicts the typical behaviors seen from the student

### Pattern Determination

- Look at the behaviors that are occurring before you get to 10 days
- If there is a pattern, start planning ahead of the tens days on proactive strategies that can be used
- If 10 days are reached convene a team to review whether or not a pattern is found

### Manifestation

- Again this is a team determination
- The determination is not just based on a diagnosis or classification, it has to be based on the how the diagnosis or classification is manifested by the student in question

# Paperwork

## Part 100-

All notifications under Part 100 are required for all students. This includes the notification of a proposed suspension, offer of an informal conference, prior to the actual suspension.

## Part 200:

For students with a disability, before a suspension that may be longer than 10 days, parents must receive a copy of the Procedural Safeguards.

Notification of the manifestation meeting must also be provided via Prior Written Notice.

Results of the Manifestation must also be shared in writing with the determination of whether or not to go to CSE or receive consent for an FBA,

# Pattern Determination

## Step 1 - Is a pattern determination required?

Review and attach the students' referral record from schooltool.

Will the current suspension/removal or proposed suspension/removal result in the student being suspended/removed from his/her regular placement for a total of *more than 10 school days during the current school year*?

If **Yes**, continue with pattern analysis as set forth below.

If **No**, stop here. The student's current proposed suspension/removal remains unchanged, and a manifestation determination is *not* required.

## Step 2 - Pattern Determination

Is the behavior that resulted in the current or proposed suspension/removal *substantially similar* to the student's behavior in previous incidents that resulted in suspension/removal?

**Yes No**

OR

Does the behavior that resulted in the current or proposed suspension/removal *serve the same function* as the student's behavior in previous incidents that resulted in suspension/removal?

**Yes No**

1. Additional factors:
  - a. Similar suspension/removal lengths?  Yes  No
  - b. Suspensions/removals close in proximity?  Yes  No
  - c. Behaviors leading to suspensions/removals occurring at similar times? (day, time of day, before/after breaks, etc.)  Yes  No
  - d. Behaviors leading to suspensions/removals occurring in similar locations? With similar individuals or staff?  Yes  No
  - e. Other factors suggesting a pattern?  Yes  No  
If Yes, explain

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★ Use responses to Questions 1 and 2 to determine if suspensions/removals form a pattern, resulting in a disciplinary change in placement (case-by-case determination).

### Step 3 - Pattern Determination:

- **Pattern Exists (Yes):** The suspension/removal is a disciplinary change in placement. Immediately schedule a Manifestation Determination Review (MDR) Team Meeting (must be held within 10 school days of the decision).
- **No Pattern Exists (No):** The suspension/removal is not a disciplinary change in placement; an MDR is not required. The student may be disciplined like non-disabled peers.

*A pattern determination is required for every subsequent suspension/removal for the rest of the school year.*

# Special Circumstances

(c) *Controlled substance* means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. section 812(c)) (United States Code, 2006 edition, volume 13; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2008 - available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234).

(m) *Serious bodily injury* means bodily injury which involves a 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.

(s) *Weapon* means 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 such term does not include a pocket knife with a blade of less than two and one-half inches in length.

# Partnerships

## Building Level Team

- Include classroom teachers, special educators, related service providers, mental health support, and administrators
- Include parents as partners

## Special Education Administrators

- Involve them in conversations early so plans can be developed

# Resources

[Part 201 Regulations](#)

[Behavior Supports and Interventions and Behavioral Procedures](#)

[Creating and Sustaining Discipline Policies that Support Students' Social, Emotional, Behavioral, and Academic Well-Being and Success](#)

[Manifestation Review Flow Chart](#)

[Manifestation Review Policy Brief](#)

[FBA Policy Brief](#)

[BIP Policy Brief](#)

# Resources, Continued

[Restraint and Seclusion](#)

[Behavioral Supports and Interventions in School Frequently Asked Questions](#)

[Procedural Safeguards](#)

[Pattern Determination Form](#)

[Manifestation Determination Review Form](#)

[FBA Template](#)

[BIP Template](#)