

RENUMBERED/REVISED GUIDELINE FROM AG 2461A, VOL. 26, NO. 2

DISCIPLINING SPECIAL EDUCATION STUDENTS

When the behavior of a student eligible under the IDEA and Article 7 is such to justify serious disciplinary action, six (6) possible courses of action may be available depending upon the nature and severity of the behavioral problem.¹ The first is an in-school suspension that does not constitute a change of placement. The second is an out-of-school suspension for less than ten (10) consecutive school days that does not constitute a change of placement. The third is an out-of-school suspension for less than ten (10) consecutive school days that constitutes a change of placement. The fourth is an Interim Alternative Education Setting (IAES) for forty-five (45) school days for the carrying or possession of a weapon, the possession or sale of illegal drugs or a controlled substance, or the infliction of serious bodily injury (SBI) at school, on school premises, or at a school function. The fifth is a forty-five (45) school day IAES imposed by an Independent Hearing Officer (IHO) when a student is substantially likely to injure himself/herself or others. The sixth is expulsion from school. Each will be dealt with in the following guideline.

General Rules

- A. Short-term removal of a student from his/her current placement pursuant to the student's individualized education program (IEP) is not a suspension.
- B. Part of a day suspension is considered a full day of suspension.
- C. A suspension is a removal.

¹ Furthermore, nothing in the IDEA or Article 7 prohibits the school from seeking injunctive relief from a State court to:

- (1) remove a student with a disability from school; or
- (2) change a student's current educational placement;

if the school believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or others.

- D. No services are required unless the student already has been suspended for ten (10) cumulative days in that school year.
- E. No manifestation determination conference if ten (10) cumulative days or less of suspension.
- F. No functional behavioral assessment (FBA) or behavioral intervention plan (BIP) required if ten (10) cumulative days or less of suspension.

In-School Suspension

The principal may remove a student from his/her current placement to an in-school suspension room. The in-school suspension is not counted as a day of removal if the following apply:

- A. Services are provided to allow the student to make progress in the general education curriculum.
- B. The student receives the special education services in his/her IEP.
- C. The student participates with non-disabled students as in his/her current placement.

The third criterion means that if the student's placement ordinarily is in the general education classroom, then the in-school suspension room must be open to both students with disabilities and non-disabled students.

Out-of-School Suspension That is Not a Change of Placement

The principal may remove a student from his/her current placement for an out-of-school suspension up to a cumulative total of ten (10) school days during a school year without convening a manifestation determination case conference or providing educational services. Such short-term suspensions from a program are not considered a change of placement, and the procedural safeguards associated with a change of placement are not required.

Once a student has been removed for a total of ten (10) cumulative school days of suspension in any school year, for any subsequent suspensions of ten (10) days or less, the principal must determine whether a change of placement has occurred. The principal makes this determination on a case-by-case basis. In determining whether a change of placement has occurred, the principal must determine whether the series of removals constitutes a pattern because:

- A. the series of removals cumulate to more than ten (10) school days in a school year;
- B. the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
- C. of such additional factors as the:
 - 1. length of each removal;
 - 2. cumulative amount of time the student has been removed; and
 - 3. proximity of the removals to one another.

If the principal determines that a change of placement has not occurred, then no manifestation determination case conference is required. However, the student must receive educational services for each day of removal beyond ten (10) cumulative school days in any school year. School personnel, in consultation with at least one of the student's teachers, must determine the extent to which services are needed to allow the student to:

- A. continue to participate in the general curriculum, although in another setting; and
- B. progress toward meeting the goals set forth in the IEP.

These services may be provided in an interim alternative educational setting (IAES), which is not the same as a forty-five (45) school day IAES for drugs, weapons or SBI.

Out-of-School Suspension That Is a Change of Placement

An out-of-school suspension that is determined by the principal to result in a change in placement will trigger the need to provide a copy of the Notice of Procedural Safeguards to the student's parents. That notice must be provided on the date of the decision to make a removal that will result in a change of placement, if possible, but no later than by mail the next business day. It also will trigger the need to convene a manifestation determination case conference within ten (10) school days of the decision to remove the student to determine if the student's behavior that led to the removal is a manifestation of his/her disability. At the manifestation determination case conference, the case conference committee (CCC) must review:

- A. all relevant information in the student's file;
- B. the student's IEP;
- C. any teacher observations;
- D. any relevant information provided by parent;

and determine if the conduct was:

- A. caused by or had a direct and substantial relationship to the student's disability; or

- B. the direct result of the school's failure to implement the IEP.

If the answer to either question is yes, then the conduct is a manifestation of the student's disability. If the student's conduct was the result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

If the conduct is a manifestation of the student's disability, the CCC must:

- A. conduct an FBA, unless an FBA previously was conducted, and develop a BIP for the student or if a BIP has been developed, review and modify the BIP, as necessary, to address the behavior; and
- B. return the student to the placement from which the student was removed, unless the parent and the school agree to a change of placement as part of the modification of the BIP.

If the conduct is not a manifestation of the student's disability, then school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as non-disabled students. However, during any removal, the student must receive services. The CCC must determine the appropriate services to enable the student to:

- A. continue to participate in the general education curriculum, although in another setting;
- B. progress toward meeting the goals in the student's IEP;
- C. receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so it does not re-occur.

These services may be provided in an interim alternative educational setting as decided by the CCC.

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Interim Alternative Educational Setting for Drugs, Weapons or SBI

The principal or the principal's designee may remove the student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is manifestation of the student's disability if the student:

- A. carries a weapon to school or possesses a weapon, or
- B. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, or
- C. has inflicted serious bodily injury upon another person

at school, on school premises, or at a school function under the jurisdiction of the Department of Education or a school. On the day that the principal or his/her designee makes the decision to place the student in a forty-five (45) school day IAES, if possible, but no later than the next business day by mail, a copy of the Notice of Procedural Safeguards must be provided to the student's parents. A CCC must be convened as soon as possible but no later than ten (10) school days after the decision to place the student in an IAES to determine whether the student's behavior is a manifestation of his/her disability. However, regardless of the outcome of the manifestation determination, the student will remain in the forty-five (45) school day IAES. The CCC must determine the IAES and appropriate services to allow the student to:

- A. continue to participate in the general curriculum, although in another setting;
- B. progress toward the goals in his/her IEP; and
- C. receive an FBA and/or BIP to address the behavior violation so that it does not re-occur.

"Weapon" has the meaning given:

A. "dangerous weapon" under 18 U.S.C. 930(g)(2), which means:

1. a weapon;
2. a device;
3. an instrument;
4. a material; or
5. a substance;

animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that the term does not include a pocketknife with a blade of less than two and one-half (2 1/2) inches in length; and

B. "firearm" under I.C. 35-47-1-5.

"Illegal drug" means a controlled substance, but does not include a substance that is legally possessed or used under:

- A. the supervision of a licensed health care professional; or
- B. any other authority under the Controlled Substances Act (21 U.S.C. 812(c)) or under any other provision of Federal law.

"Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in subsection 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) or I.C. 35-48-2.

"Serious bodily injury" (SBI) has the meaning given the term "serious bodily injury" under 18 U.S.C. 1365(h)(3). The term means bodily injury that involves:

- A. a substantial risk of death;
- B. extreme physical pain;
- C. protracted and obvious disfigurement; or
- D. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

IAES for Students Who Are Substantially Likely to Injure Themselves or Others

A student who is considered to be substantially likely to injure himself/herself or others may be placed in a forty-five (45) school-day IAES by an Independent Hearing Officer (IHO) pursuant to 511 IAC 7-44-7, but only after an expedited special education due process hearing has been held to determine whether maintaining the current placement of the student is substantially likely to result in injury to the student or to others. If the IHO decides that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the IHO may order a change of placement to an appropriate forty-five (45) school-day IAES. Such an expedited hearing should be requested by the _____Principal_____.

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Expulsion

If the principal decides that the student should be expelled from school, the decision to recommend expulsion automatically results in a change of placement because an expulsion is a removal for more than ten (10) consecutive school days. Therefore, it will trigger the need to provide a copy of the Notice of Procedural Safeguards to the student's parents. That notice must be provided on the date of the decision to recommend expulsion of the student, if possible, but no later than by mail the next business day. It also will trigger the need to convene a manifestation determination case conference within ten (10) school days of the decision to recommend expulsion of the student to determine if the student's behavior that led to the recommendation for expulsion is a manifestation of his/her disability. At the manifestation determination case conference, the CCC must review:

- A. all relevant information in the student's file;
- B. the student's IEP;
- C. any teacher observations;
- D. any relevant information provided by the parent;

and determine if the conduct was:

- A. caused by or had a direct and substantial relationship to the student's disability; or
- B. the direct result of the school's failure to implement the IEP.

If the answer to either question is yes, then the conduct is a manifestation of the student's disability. If the student's conduct was the result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

If the conduct is a manifestation of the student's disability, the CCC must:

- A. conduct an FBA, unless an FBA previously was conducted, and develop a BIP for the student or if a BIP has been developed, review and modify the BIP, as necessary, to address the behavior; and

- B. return the student to the placement from which the student was removed, unless the parent and the school agree to a change of placement as part of the modification of the BIP.

If the conduct is not a manifestation of the student's disability, then school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as non-disabled students. The principal would then submit the recommendation for expulsion to the Superintendent, who would decide whether to appoint an expulsion examiner. If an expulsion examiner is appointed, s/he must be provided copies of the student's special education and discipline records. The expulsion examiner will notify the student and his/her parents of the right to an expulsion meeting. The normal procedure for an expulsion will then continue. If the parent challenges the manifestation determination, the student does not return to his/her previous placement. However, during any removal the student must receive services. The CCC must determine the appropriate services to enable the student to:

- A. continue to participate in the general education curriculum, although in another setting;
- B. progress toward meeting the goals in the student's IEP;
- C. receive, as appropriate, a FBA and behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur.

These services may be provided in an interim alternative educational setting as decided by the CCC.

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