

Overview of Discipline Procedures for Students Receiving Special Education Services*

START

School personnel decide on disciplinary removal based on violation of the code of student conduct.

School personnel need to consider two processes simultaneously:

General Education: No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law (WAC 392-400-215). Due process rules vary for different levels of discipline (short-term/long-term suspension; expulsion; emergency expulsion).

Special Education: School personnel may consider any unique circumstances of each student eligible for special education who violates a code of student conduct when determining whether a change in placement is appropriate (WAC 392-172A-05145). Special education discipline procedures apply.

“Is the current removal for more than 10 consecutive school days?”

no

“Has the student been removed for a total of more than 10 school days in the same school year?”

no

District provides services only if it also provides services to nondisabled students who are similarly removed.

yes

yes

District (with at least one of the student’s teachers) determines services needed to enable the student to continue to participate in the general ed curriculum (although in another setting) and to progress toward meeting the student’s IEP.

yes

“Do the series of removals constitute a **change of placement**?²”

no

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The MDR must answer the following questions: “Are the behaviors that led to the student’s removal: (1) caused by, or have a direct and substantial relationship to, the student’s disability; or (2) the direct result of the district’s failure to implement the IEP?”

yes

no

“Does the student’s removal involve **special circumstances**?³”

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yes

no

yes

no

(1) Student may go to an IAES for up to 45 days as determined by the IEP team;

(2) Student **must** receive services necessary for a FAPE as determined by the IEP team;

(3) IEP team **must** conduct an FBA & implement a BIP; or if FBA/BIP already developed, review the BIP and modify, as necessary, to address the behavior;

(4) Student returns to current placement unless **the parent and the school district agree** to a change of placement to modify behavior.

(1) IEP Team **must** conduct an FBA & implement a BIP; or if FBA/BIP already developed, review the BIP and modify, as necessary, to address the behavior; and

(2) Student **must** return to current placement unless **the parent and the school district agree** to a change of placement to modify behavior.

District may apply same disciplinary procedures as would be applied to nondisabled students, and:

(1) Student **must** receive services necessary for a FAPE as determined by the IEP team;

(2) Student’s IEP team determines the IAES for services; and

(3) IEP Team may conduct an FBA/BIP review to prevent behavior from reoccurring.

¹Manifestation Determination Review (WAC 392-172A-05145 (5)): A meeting between the school district, the parent(s), and relevant members of the student's IEP team (as determined by the parent and the school district) to 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:

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

The conduct must be determined to be a manifestation of the student's disability if the school district, the parent(s), and relevant members of the student's IEP team determines that one of the two conditions was met.

²Change of Placement (WAC 392-172A-05155): For disciplinary removals of a student eligible for special education, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The school district determines on a case-by-case basis that the student has been subjected to a series of removals that constitute a pattern because:
 - (a) the series of removals total more than ten 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) there are additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

³Special Circumstances (WAC 392-172A-05145 (7), (9)): A school district may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days regardless of whether the behavior is determined to be a manifestation of the student's disability, if the student:

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)); Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

* This document should be used as guidance and is not intended as legal advice. Additional information can be obtained by reading OSPI bulletins and accompanying documents; guidance from the U.S. Department of Education; chapter 392-172A WAC; Part 300 of the federal regulations; and the Individuals with Disabilities Education Act (IDEA).

