



Discipline Under the New IDEA Regs: Charts To Help You Comply

As Congress Continues To Quibble Over IDEA's Discipline Provisions, You Can Start Complying Now With These Simple Guides

The debate over disciplining students with disabilities isn't likely to end despite the release of IDEA's final implementing regulations in March.

Questions over the "10-day rule" and what constitutes a pattern of suspensions, for example, is bound to generate administrative nightmares in some school districts, not to mention a fair share of due process hearings and court cases.

In addition, Congress doesn't appear likely to let the statute's discipline provisions go without some finishing touches — or a complete overhaul, depending on which pieces of legislation currently on the table make their way past the president's desk with fresh ink on them.

In fact, one Washington insider predicted last year that "it is inevitable that we will end up in a legislative setting again, just around discipline." He was right, but to what extent remains to be seen.

It appears school districts will remain suspended in a permanent state of limbo (sound familiar?), whether it's waiting for the proposed statute, the proposed regulations, congressional amendments or, believe it or not, IDEA reauthorization all over again, since Congress will take another look at the statute in fiscal year 2002.

So, what to do in the meantime? The answer, generally speaking, is easy: Follow the rules that the **U.S. Department of Education** gave you. But when it comes to the intricacies of the discipline provisions, you may need a little help. The charts included in this report can help.

Still, charts can't replace a good reading and understanding of the statute and its implementing regulations,

so don't forget to go there, as well. In the meantime, if you need a quick reference before delving into the law, these charts will point you in the right direction for compliance.

The flow chart on pages 2 and 3, "Disciplining Students With Disabilities," describes the disciplinarian's options and the IDEA requirements for the course of action chosen.

It was developed by **Melinda Maloney Baird**, a school law attorney based in Knoxville, Tenn., and former vice president of education publications at LRP Publications. You may have seen this chart before in an LRP newsletter, but it is updated here to include information derived from the final IDEA regulations

The chart and footnotes on page 4, "Requirements for Removals," is a quick reference chart depicting which IDEA requirements — manifestation determination, functional behavior assessment, behavioral intervention plan, FAPE — apply to which type of removal you are seeking, from a removal of less than 10 days to changing placement when the conduct is not a manifestation of the disability.

The chart was developed by **Perry Zirkel**, Iacocca professor of education at **Lehigh University** in Bethlehem, Pa., and a longtime contributor to several of LRP's education publications.

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DISCIPLINE UNDER THE NEW IDEA REGS: CHARTS TO HELP YOU COMPLY

1999 IDEA Regulations: Requirements for 'Removals'

	Manifestation Determination¹	FBA/BIP²	FAPE
Removal of less than 10 days cumulatively	No	No	No
Removal of more than 10 days cumulatively but less than a change in placement	No	Yes	Yes ³
Removal of more than 10 consecutive days or its cumulative equivalent to a change in placement ⁴	Yes	Yes	Yes ⁵
Removal resulting in 45-day placement in alternative education setting via IEP team (weapons or drugs) or via impartial hearing officer (dangerousness)	Yes	Yes	Yes ⁶
Removal amounting to change in placement where not a manifestation of disability	Yes	Yes? ⁷	Yes ⁸

Footnotes

¹The IEP team's deadline is 10 school days after the date on which the removal decision is made.

²The IEP team's deadlines are: For a child with no FBA — an "assessment plan" within 10 business days after the 11th day or after "commencing a removal that constitutes a change in placement" and a BIP as soon as practicable after completing the assessments (for example, the FBA); for a child with a BIP — within 10 business days, review and modify it and its implementation, as necessary, to address the precipitating misbehavior.

³Determined by a district official in consultation with the child's special education teacher to enable the child 1) to appropriately participate in the general curriculum, and 2) to appropriately advance toward his or her IEP goals.

⁴By cumulative equivalent, we refer to a pattern, based on such factors as the length of each removal, total amount of time child is removed and the proximity of the removals to one another (see 34 C.F.R. 300.519(b)).

⁵Meeting the full criteria set forth in the student's full IEP.

⁶Determined by the IEP team or an impartial hearing officer to enable the child to meet the same criteria as in Note 3 plus services and modifications designed so that the precipitating misbehavior does not recur.

⁷The statute and final regulations do not clarify this.

⁸Determined by the IEP team to enable the child to meet the same two criteria in Note 3.

Source: Perry Zirkel, Iacocca Professor of Education at Lehigh University

DISCIPLINING CHILDREN WITH DISABILITIES

UNDER FINAL IDEA REGS

Child Violates Code of Conduct¹

Option #1:

A principal can remove a child with a disability from his/her current educational placement for no more than 10 school days in a school year without providing educational services. In addition, principals may remove a child for up to 10 consecutive school days per offense, so long as the additional removals do not constitute a "change in placement."² A change in placement occurs if a series of removals constitutes a "pattern." A pattern is determined by reviewing factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. However, the student must receive a free appropriate public education during any periods of removal over 10 school days in a school year.³

Option #2:

In case of a dangerous weapon⁴ or drugs⁵, principal can place child in interim alternative educational setting for a maximum of 45 calendar days (IEP team determines the setting and child returns to regular placement on the 46th day).
The interim alternative educational setting must provide the student an opportunity to make appropriate progress in the same curriculum as that offered to nondisabled students, make appropriate advancement towards the goals in his/her IEP, and provide services designed to prevent the misconduct from recurring.

For Both Options:

If removals of more than 10 school days cumulative in a school year do constitute a change in placement, the school district must notify the parents of their procedural rights under the IDEA and convene an IEP meeting within 10 school days to conduct a manifestation determination.⁶

Regardless of whether or not a series of removals constitutes a "change in placement," the school district must convene an IEP meeting within 10 business days after removing a student for more than 10 school days in a school year to either (1) develop a plan to conduct a functional behavior assessment and develop a behavior intervention plan, or (2) review and modify an existing behavior intervention plan (modification of the plan is required if at least one IEP team member desires a revision to the plan), and, as soon as practicable, convene an IEP meeting to develop appropriate behavior interventions to address the student's behavior.

OR

Required Elements for "Dangerousness":

- 1) Substantial likelihood of injury; and
- 2) Reasonable steps to minimize likelihood of harm.
- 3) Current IEP is appropriate.
- 4) Interim alternative educational setting enables the child to progress in the same curriculum as that offered to nondisabled students, make appropriate advancement towards the goals in his/her IEP; and provides services designed to prevent the misconduct from recurring.

LEA can go before a hearing officer to prove that the student is dangerous ("beyond" a preponderance of the evidence) and request an injunction to place student in an alternative setting for no more than 45 calendar days.⁶

*MANIFESTATION DETERMINATION

Must Consider:

- 1) Evaluation/diagnostic results.
- 2) Observations.
- 3) IEP/placement.

Must Determine:

- 1) IEP/placement were appropriate.⁷
- 2) Supplementary aids and services were provided consistent with the IEP.
- 3) Behavioral interventions were provided consistent with the IEP.
- 4) The child understood his/her behavior and could control the behavior.

No Manifestation:

Child can be disciplined as nondisabled, but must continue FAPE for suspensions/expulsions over 10 school days in a given school year.

Is a Manifestation:

Child's placement cannot be changed except via IEP team process.

Points of Note

1. The parents may request a due process hearing at any time to challenge a disciplinary action, invoke "stay-put" and freeze their child's current educational placement during the pendency of an expedited hearing. There is one exception: "Stay-put" does not apply during a 45-day removal for possession or use of dangerous weapons or drugs.
2. For removals of more than 10 school days cumulative in a school year that do not constitute a change in placement, the principal may consult with the student's special education teacher to determine what services are required to provide a FAPE. For removals of more than 10 school days cumulative in a school year that do constitute a change in placement, the student's IEP team must determine what services are required to provide a FAPE.
3. A free appropriate public education means that the student must have the opportunity to make appropriate progress in the same curriculum as that offered to nondisabled students and make appropriate advancement towards the goals in his/her IEP.
4. The IDEA amendments and regulations incorporate the definition of dangerous weapon from the U.S. Code: "The term dangerous 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 the term does not include a pocket knife with a blade of less than 2 and 1/2 inches in length."
5. The IDEA amendments and regulations incorporate the definition of controlled substance as defined in the Controlled Substances Act. Regarding the level of intent, the IDEA amendments and draft regulations specify that the level of intent be "knowing." In other words, the child must "knowingly" possess or use the illegal drugs.
6. The regulations clarify that an LEA may seek subsequent expedited hearings and alternative placements if, after the term of the first such placement has expired, the LEA maintains that the child is still dangerous and the issue has not been resolved through due process.
7. The IDEA amendments and draft regulations specify that the IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team determines that in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services and behavior intervention strategies were provided consistent with the child's IEP and placement.

Source: Melinda Maloney Baird, Esq.