Ohio | Department of Education

Discipline of Special Education Students Under IDEA

IDEA discipline protections apply to children who are eligible for special education or for whom the district is deemed to have knowledge that the child might have a disability (see 34 C.F.R.300.534 [Protections for children not determined eligible for special education and related services].

Student protected under IDEA violates a school code of conduct.

Conduct a Disciplinary Hearing as for all students.
ORC 3316.66 [Suspension, expulsion or permanent exclusion - removal from curricular or extracurricular activities]

Disciplinary removal for current misconduct is for less than 10 *consecutive* school days ***and*** removals total less than 10 *cumulative* school days in a school year.
34 CFR § 300.530(b) [Authority of school personnel].

District may exclude student from current placement without obligation to FAPE unless the district provides services for students without disabilities who are similarly removed.
34 CFR § 300.530(d)(3) [Authority of school personnel].

Types of exclusion may be suspension, removal and assignment to an interim alternative educational setting (IAES). An "in-house" suspension may be considered a change in placement.

Disciplinary removal for current misconduct is for less than 10 *consecutive* days but removals total more than 10 *cumulative* school days in a school year.
34 CFR § 300.530(b) [Authority of school personnel].

Disciplinary removal for current misconduct is for more than 10 ***consecutive*** school days.

Removal is a change of placement.
34 CFR § 300.536(a)(1) [Change of placement because of disciplinary removal].

Is the current removal one in a series that is a pattern of removal constituting a **change of placement**?
34 CFR § 300.536(a)(2) [Change of placement because of disciplinary removal].

NO

By the 10th *cumulative* school day of removal in the same school year, the district must consult with at least one of the student's teachers to determine the extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum, although in another setting, and progress toward meeting IEP goals.
34 CFR § 300.530(d)(3) [Authority of school personnel].

YES

Notify parents immediately of decision to change placement for disciplinary reasons & provide procedural safeguards notice. The child is entitled to services as determined by the IEP Team.
34 CFR § 300.530(h) and 34 CFR § 300.530(d)(5) [Authority of school personnel].

Within 10 school days of the decision to remove the student for disciplinary reasons the district, the parent and relevant members of the IEP Team must review information and make a manifestation determination.
34 CFR § 300.530(e) [Authority of school personnel].

Manifestation Determination
Questions for the team to consider:

- Is the conduct a direct result of the district's failure to implement the IEP?
- Does the conduct have a direct and substantial relationship to the disability?

NO to both

Student conduct is NOT a manifestation of his/her disability.
34 CFR § 300.530(c) [Authority of school personnel].

May apply relevant disciplinary procedures in the same manner and for the same duration as to students without disabilities.
34 CFR § 300.530(c) [Authority of school personnel].

IEP Team determines extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum and progress toward meeting IEP goals.
34 CFR § 300.530(d)(5) [Authority of school personnel].

Provide, as appropriate, functional behavioral assessment and behavioral intervention services and modifications.
34 CFR § 300.530(f)(1) [Authority of school personnel].

Return child to placement when the disciplinary period expires unless parents and school agree otherwise, or child is lawfully expelled – services would still need to be provided.
34 CFR § 300.530(d) [Authority of school personnel].

YES to either

Student conduct IS a manifestation of his/her disability.
34 CFR § 300.530(f) [Authority of school personnel].

If conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.
34 CFR § 300.530(e)(3) [Authority of school personnel].

Conduct a functional behavioral assessment and develop a behavioral intervention plan, or review and modify an existing plan as needed.
34 CFR § 300.530(f)(1)(i)-(ii) [Authority of school personnel].

And return child to placement unless parents & district agree to a different placement or removal is for *"special circumstances" under 34 CFR § 300.530(g).
34 CFR § 300.530(f)(2) [Authority of school personnel].

Parents can request a due process hearing if they object to a change of placement or if they do not agree with the manifestation determination.

Districts can request a due process hearing if a child is a danger to themselves or others or if parents refuse a change in placement.

Note: If the conduct that the child is being disciplined for involves "special circumstances" cited under 34 C.F.R. 300.530(g) of weapons, illegal drugs, controlled substances, or serious bodily injury, school personnel may remove the child to an interim alternative educational setting (IAES) for up to 45 school days, regardless of the manifestation determination. The IEP Team must determine the IAES.

The flowchart lays out the steps that a school district must take when disciplining a child with a disability. However, at any point the parents and school district can agree to change a child's placement for disciplinary reasons. This type of agreement is noted through a review of the child's IEP and affixing new signatures to the IEP.

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