

## Student Discipline

IDEA encourages school districts to establish preventive measures and approaches in dealing with student behavior, including the use of positive behavioral interventions, supports and strategies. IDEA allows traditional disciplinary methods such as time out and detention. School officials may also use in-school&/or out-of-school suspension so long as it does not constitute a change of placement. The law does not set an absolute limit on the number of cumulative school days needed to constitute a change of placement but requires a case-by-case examination of specific factors and requires that services be provided after the 10<sup>th</sup> day of suspension in a school year.

School districts are required to document incidences of suspension and expulsion of children with disabilities on the Kansas Discipline Incident System (KAN-DIS) that is submitted to KSDE.

Students identified as gifted are subject to suspension or expulsion from school the same as a child without a disability. The school is not required to provide special education or any other educational services to the child, unless dually identified (e.g., LD/Gifted).

### *Short Term Removals (not a change in placement)*

School officials may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. The school does not need to provide educational services during the first 10 days of removal in a school year, unless it provides those services to a child without a disability who is similarly removed. **IMPORTANT NOTE: partial days count as full school days.**

### *Subsequent Short-Term Removals (not a change in placement)*

When a student with a disability has more than a single suspension in a school year, school officials should carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. If school officials order two or more short-term suspensions of a student with a disability during the school year, these suspensions are not a change in placement for disciplinary reasons if the suspensions do not constitute a pattern of removals.

To determine if a change of placement has occurred, school officials must consider whether the series of suspensions constitutes a pattern of removals. When a series of suspensions/removals total more than 10 school days in a school year, school officials should determine whether a pattern of removals has developed by considering:

- Whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
- Other factors such as:
  - The length of each removal;
  - The total amount of time the child has been removed; and
  - The proximity of the removals to one another

School officials have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitute a change in placement for disciplinary reasons. **However, this determination is subject to review through due process proceedings.**

School officials should be addressing the issues regarding the student's suspensions prior to reaching the 11<sup>th</sup> day.

When the total number of school days of suspension in a school year reaches 11, and the current removal is for not more than 10 consecutive school days and is not a change of placement, the school must begin providing educational services beginning on the 11<sup>th</sup> day of suspension. The student must be provided special education and related services that allow the child to:

- Participate in the general education curriculum
- To progress toward meeting the goals set out in the child's IEP

**Building administration shall contact the Director of Special Education to set up a meeting prior to reaching the 11<sup>th</sup> school day of suspension.** The meeting's purpose is to review the current IEP, any existing behavior intervention plan already in place, and problem-solve as a team. Considerations should include:

- Adding additional supports &/or services
- Conducting a functional behavioral assessment
- Developing or revising a behavior intervention plan

A meeting notice is required and documentation of this meeting should be on the "staffing summary" form. A placement form is also necessary indicating beginning on the eleventh day, when special service arrangements are needed.

### *Long -Term Removals (A change of placement)*

There are specific steps that school officials must follow when considering either a long-term suspension for more than 10 consecutive school days, an expulsion, or another short-term suspension that cumulates to more than 10 school days and shows a pattern constituting a change of placement:

- On the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school must notify the parents of that decision, and provide the parents with a copy of the Parent Rights notice.
- On the 11<sup>th</sup> school day of removal, the school must begin providing appropriate special education and related services. The IEP team decides on these services and where they will be provided.
- The school, the parent and relevant members of the child' IEP team (as determined by the parents and the school) must determine if the child's violation of the school's code of student conduct was a manifestation of his or her disability.
- The school must convene meeting regarding the manifestation determination and services as expeditiously as possible and is required to give only 24 hours prior notice of a meeting to the parents.

When a disciplinary change of placement occurs, the IEP team, including the parent, determines the special education and related services to be provided during the removal. However, parental consent for the disciplinary change in placement is not required.

### *Manifestation Review*

As soon as practical, but not later than 10 school days after the date on which the decision is made to change the placement of a child with a disability because of a violation of student code of conduct, the administrator, parent, and other members of the child's IEP team must meet to review:

- All of the relevant information in the child's file,
- The child's IEP,
- Any teacher observations, and
- Any relevant information provided by the parent.

Based on its review of the information, the group must determine if the conduct in question was:

1. Caused by, or had a direct and substantial relationship to the child's disability; or
2. The direct result of the school's failure to implement the child's IEP (as written)

If it is determined by the group that the conduct of a child was a result of either of the above, then the conduct must be determined to be a manifestation of the child's disability.

- Behavior **WAS** a manifestation of the disability:
  - The IEP team **MUST**:
    - Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the behavioral intervention plan; and
    - Either:
      - Conduct a functional behavioral assessment, unless already conducted prior to the behavior resulting in a change of placement, and implement a behavioral intervention plan for the child; or
      - If a BIP already has been developed, review the plan and modify it, as necessary, to address the behavior.
- If the behavior was a manifestation of the disability and was the direct result of the school's failure to implement the IEP, the school must take immediate action to remedy those deficiencies.

**IMPORTANT NOTE:** If it is determined that the child's behavior is a manifestation of the child's disability the child **CANNOT** be subject to a long-term removal for the behavior. However, the school and the parents could **agree to another setting**. Also, even when the behavior is a manifestation of the child's disability **the school could request a due process hearing officer to order a 45 school-day interim alternative educational setting** if the school district can show that maintaining the current placement is substantially likely to result in injury to the child or others.

- Behavior **WAS NOT** a manifestation of the disability:
  - The district may proceed with suspension and expulsion proceedings.
  - Using these proceedings, school officials may order a change in placement of a child with a disability to an appropriate interim alternative educational placement for not more than 186 school days if it is determined that:
    - The conduct of the child violated the code of student conduct;
    - The behavior was not a manifestation of the child's disability; and
    - If the relevant disciplinary procedures applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities.

### *Behavior Related to Weapons, Drugs, Serious Bodily Injury*

School officials may remove a child with a disability to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the school district or the State Board of Education;
- 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 the school district or the State Board of Education; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or the State Board of Education.

When a child has been removed to an interim alternative educational setting, the IEP team must determine what special education and related services are needed and where the services will be provided to enable the child to:

- Participate in the general education curriculum, although in another setting; and
- To progress toward meeting their goals set out in the child's IEP.

The team should also determine if a functional behavioral assessment would be appropriate. The IEP team will also review and revise any existing BIP or develop one with services and modifications that are designed to address the behavior violation so that it does not recur.

When a child commits a violation related to weapons, drugs or serious bodily injury, school officials may initially suspend the child for up to 10 school days without educational services.

On the date in which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation related to weapons, drugs, or serious bodily injury, the school must notify the parents of that decision, and provide the parents the Parent Rights Notice.

Once the child has been placed in the interim alternative educational setting, if the school believes that returning the child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others, the school may request an expedited due process hearing to request the hearing officer to order another 45 school day interim alternative educational setting. The burden of proof is on the school to justify an additional removal be ordered by the hearing officer.

(Adapted from KSDE Process Handbook)