

Discipline 101 for Students with Disabilities

March 2014

Change of Placement

§ 300.536

- The defining issue in discipline for a student with a disability is the concept of **“change of placement because of disciplinary removals.”**
- A change of placement occurs in one of two situations:
 - > 1. The removal is for more than 10 consecutive days; or
 - > 2. The student has been subjected to a series of removals that constitute a pattern.

Pattern of Removals

§ 300.536(a)(2)

- The student has been subjected to a series of removals that constitute a pattern if there are:
 - > 1. A series of removals that total more than 10 school days in a year;
 - > 2. A recurrence of substantially similar behavior in a series of removals subject to discipline; and
 - > 3. Such additional factors as:
 - a. Length of each removal.
 - b. Total time removed.
 - c. Proximity of removals to each other.

Removals

§ 300.530

- The term “removal” refers to the removal of a student with a disability from instruction for disciplinary reasons, without the opportunity to continue to progress in the general education curriculum, continue to receive services specified on the student’s IEP, and continue to participate with nondisabled students to the extent they would have in their current placement.

In-School Suspension

- ◉ An in-school suspension does not count as a removal if all the following are met:
 - > a. The student is offered the opportunity to continue to appropriately participate in the general education curriculum.
 - > b. The student continues to receive the services specified in the child's IEP.
 - > c. The student continues to participate with non-disabled children to the extent they would in their current IEP.
 - > d. The personnel staffing the In-school suspension must be physically in the same location as students under their supervision; and
 - 1) Be a certified teacher; or
 - 2) Meet the criteria in the State Board policy on **“Utilization of Noncertified Personnel in Elementary and Secondary Schools.”**

Manifestation

Determination Review (MDR) § 300.530(e)

- An MDR must be held whenever a district proposes a change of placement for disciplinary reasons.

MDR (continued)

- ◉ A. The district must conduct an MDR within **10 school days of any decision to change the student's placement because of a violation of a code of student conduct**,
 - > 1. For any removal over 10 days (consecutive); or
 - > 2. A series of removals that constitute a pattern of removals (cumulative).

- ◉ B. The MDR team includes the district representative, the parent and the relevant members of the IEP team.

- ◉ C. The team must review all relevant information in the student's file, including the child'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 child's disability; or
 - > 2. If the conduct in question was the direct result of the LEA's failure to implement the IEP.

MDR (continued)

- D. Regardless of previous MDRs held for the same or similar behaviors, the MDR team must hold a new MDR. They may take into account the previous MDR and look at any new or additional information to make the determination.
- E. If a student is removed again after an MDR has been held, the MDR team must consider if the additional removal, along with the previous removals constitutes a pattern of removals. If it does, an MDR must be held. If the team determines that the new removal does not constitute a pattern, an MDR is not required.
- F. If the MDR team determines that the behavior was related to the student's disability, all disciplinary removals are terminated and the student returns to the previous placement.

MDR (continued)

- It is not required that an MDR be held as part of an IEP team meeting.
 - > A. The regulations require a district representative, the parent, and **relevant members of** the IEP team.
 - > B. However, if the outcome of the MDR may result in a change of placement for the student, which would require an IEP team meeting, it may be expeditious to combine the MDR with an IEP team meeting.
 - > C. When holding an IEP under this circumstance, the parent must be informed that the purpose of the IEP team meeting is to consider an alternative educational setting.

MDR (continued)

- ◉ Consider the following information when conducting an MDR:
 - > A. Description of the incident, and reports from participants and witnesses.
 - > B. Relevant information in the student records, including:
 - 1. Evaluations.
 - 2. IEPs to assist the team in considering certain behaviors of the student.
 - 3. The current IEP regarding:
 - a. Relevant behaviors and student needs, including those which may be outside the student's eligibility, but included in the PLAAFP statement or referenced in reports.
 - b. Implementation, including whether any behavior intervention plan incorporated in the IEP has been followed.

MDR (continued)

- ◉ Consider the following information when conducting an MDR:
 - > C. Relevant information from parents.
 - > D. Input of district members who:
 - 1. Are familiar with the student.
 - 2. Can interpret assessment results in relation to the student's disability and the behavior in question.

Functional Behavior Assessments and Behavior Intervention Plans (FBA & BIP)

- In general, functional behavior assessments (FBA) and behavior intervention plans (BIP) are not specifically defined in the regulations as they pertain to what, who, and when they are appropriate (other than in regards to an MDR).

FBA & BIP (continued)

- An FBA involves collecting data about behavior, which can be analyzed to determine the function the behavior serves, and analyzed to determine any antecedent situations which may have impacted the behavior.
- A BIP is designed to reduce the occurrence of problem behaviors which led to the removal and increase desired behaviors.

FBA & BIP (continued)

- The team conducting the FBA may conclude that a BIP is not necessary once they have analyzed the collected data.
- In these cases, please be sure to document the rationale for not developing a BIP that is driven from cited data sources.

FBA & BIP (continued)

- If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—
 - > Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

FBA & BIP (continued)

- > If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- ⦿ Except for Special Circumstances, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

FBA & BIP (continued)

- According to the MDE, Behavior Intervention Plans are not to be a part of the IEP. BIPs should be documented by writing them into Special Factors, Supplementary Aids and Assessments section of the IEP and include time, frequency, conditions and location for the implementation of the BIP.
- The district does not need to convene an IEP or develop an amendment to change the BIP.

For More Information Contact:

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