



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION



OFFICE OF SPECIAL EDUCATION
GUIDANCE

**DISCIPLINE
REQUIREMENTS
FOR STUDENTS
WITH
DISABILITIES**

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INTRODUCTION

This document provides an overview of the discipline requirements under the Individuals with Disabilities Education Act (IDEA 2004) and the New Jersey Administrative Code (N.J.A.C. 6A:14), offering local education agencies (LEAs) a comprehensive resource to navigate the complexities of disciplinary procedures for students with disabilities.

It serves as both a decision-making tool for determining when and how disciplinary removals may be implemented and a framework for LEAs to review and align their internal discipline procedures with federal and state requirements. By using this resource, educators, administrators, and policymakers can ensure that disciplinary actions are fair, legally sound, and supportive of students' educational rights.

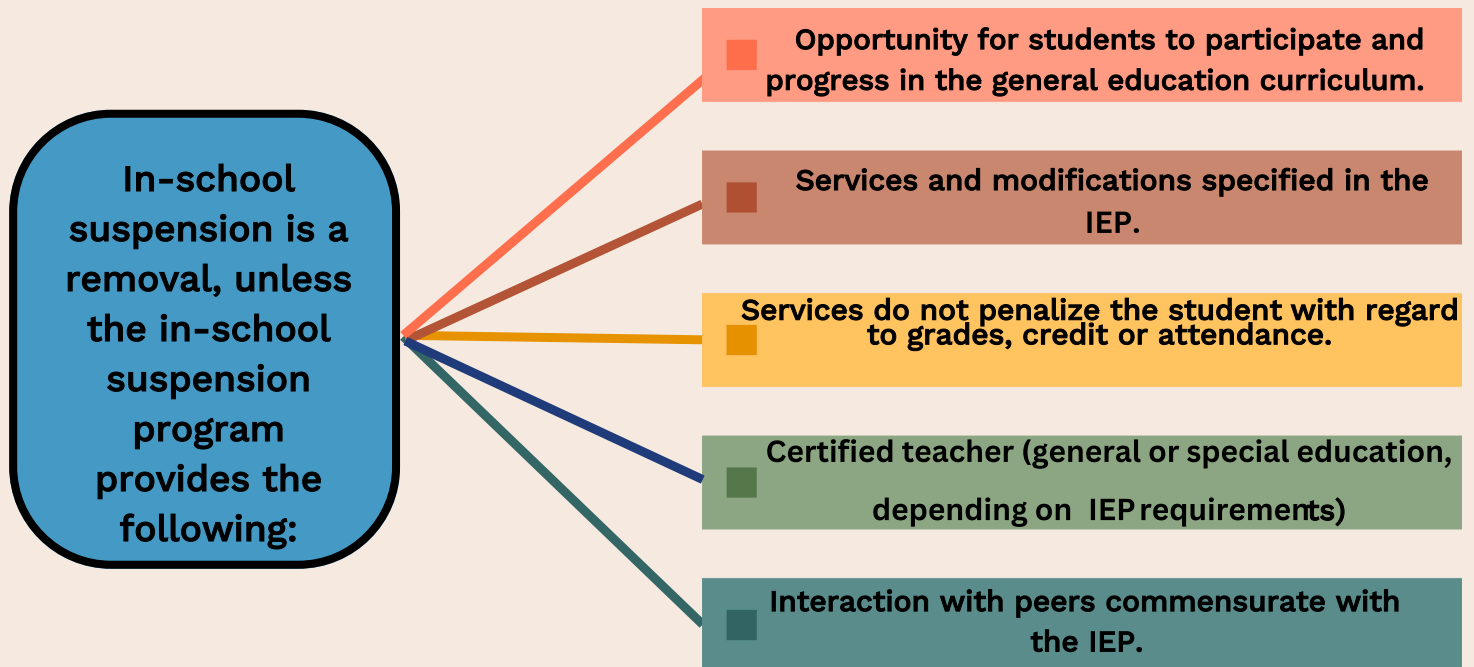
A removal includes suspension, expulsion, or suspension from transportation. If transportation is designated as a related service in a student's IEP and the student is suspended from transportation, it may constitute a removal if the student is unable to attend school as a result. Additionally, in accordance with state requirements (N.J.A.C. 6A:14-3.3(f)), the protections outlined in this guide also apply to students identified as potentially having a disability.

(Citations: N.J.A.C. 6A:14-3.3(f); 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530; 34 C.F.R. § 300.34).



In-School Suspension

In accordance with federal guidelines, an in-school suspension may be considered a removal unless the student receives the services outlined in the diagram below (71 Fed. Reg. 46715, August 14, 2006).



General Removal Requirements

N.J.A.C. 6A:14-2.8(a) N.J.A.C.6A:14-1.1(b); N.J.A.C. 6A:14-2.8(a); 4 CFR 300.530(d); and N.J.A.C. 6A:16-7.2(a)5ii

- School officials may suspend or remove a student with a disability for up to 10 consecutive or cumulative school days in a school year, such suspensions are subject to the same LEA procedures as the procedures for nondisabled students.
- At the time of removal, the principal must provide written notification to the parent and case manager detailing the rationale for removal, as well as the length of removal.
- LEAs should maintain a tracking system to monitor the number of removals and total length of removals for each student.
- Academic instruction shall be provided for all students within five school days of a suspension.
- Students with disabilities are still afforded a free and appropriate public education during academic instruction.
- All students in New Jersey, regardless of their disability status, receive instruction within five school days of a removal, therefore students with disabilities are entitled to the same.
- The instruction provided to students with disabilities however should be consistent with their IEP requirements.

Removals for More than 10 Cumulative Days

N.J.A.C. 6A:14-2.8

In the instance of a series of removals that together total more than 10 days, school officials, in consultation with a student's case manager, will determine if the removals constitute a change in placement.

Removals for More than 10 Consecutive Days

N.J.A.C. 6A:14-2.8

A removal for more than 10 consecutive days is automatically considered to be a change in placement for a student with a disability. In these instances, the LEA must offer a copy of the Parental Rights in Special Education (PRISE) booklet to the parents on the date the decision is made to remove the student. Within 10 days of the removal, the child study team must meet to conduct a manifestation determination.

In the event of a subsequent removal, of more than 10 days in a row, after the initial Manifestation Determination (MD) meeting, another MD meeting must take place prior to the removal. This means that the child study team must meet before the next suspension of more than 10 days in a row begins, to conduct another MD meeting.



Change in Placement

N.J.A.C. 6A:14-2.8(c)

When determining if a series of removals constitutes a change in placement, school officials and the student's case manager will determine if the removals constitute a pattern because they accumulate to more than 10 school days in a year and the behavior in each incident is substantially similar in nature.

They will also take into account

- the length of each removal,
- the total time the student is removed,
- and the proximity of each removal to one another.

If the determination is that a change in placement has occurred, the parent must be provided a copy of PRISE and a manifestation determination (MD) meeting must occur to review and potentially revise the IEP and Behavioral Intervention Plan (BIP) of the student. If the determination is that a change in placement has not occurred, then the student may continue with the suspension, with services being offered in consultation with the case manager and special education teacher(s). If applicable, the team may still review or revise the student's IEP or BIP.

Once an initial change in placement determination has taken place, each subsequent removal, meaning each suspension after the initial determination, then must also include a new change in placement determination. The same steps as mentioned previously are applicable to each new determination, to include the MD meeting in requirements in all instances where it has been determined that a change in placement has occurred.

If a parent wishes to challenge the determination of the LEA they may do so through the Office of Special Education (OSE) by filing a request for a due process hearing.

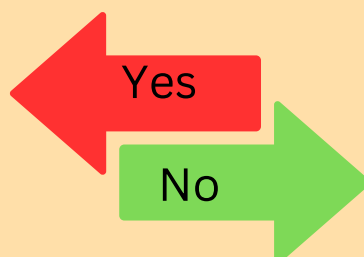
Manifestation Determination

N.J.A.C. 6A:14-2.8(c); 20 U.S.C. § 1415(f); and 20 U.S.C. § 1415(k)3

When conducting an MD meeting, all required members of the IEP team, including the parents, should attend. At this meeting, the team will review all relevant data in the student's file, as well as the incident in question to determine if the conduct in question was a manifestation of the student's disability. In doing so, the team will consider if the conduct was caused by or had a substantial relationship to the student's disability, and if the conduct was directly due to a failure to implement the student's IEP, including any applicable behavior intervention plan.

Is the behavior a manifestation of the student's disability?

If it is determined that the behavior is a manifestation of the student's disability, then the LEA may not continue with the suspension. However, they may still, at the meeting, change the student's programming or placement. This change will be determined by the IEP team. Additionally, the team must review the student's BIP to make any applicable changes. If there is no BIP in place, the team must then obtain consent to conduct a functional behavioral assessment (FBA) to develop a BIP for the student.



3If it is determined that the behavior is not a manifestation of the student's disability, then the student may continue the suspension, however the LEA must still provide educational services in consultation with the case manager and special education teacher(s). If the team deems it appropriate, they may also at that time review the student's IEP, BIP and/or conduct a FBA to develop a BIP if one is not in place.

A parent may challenge the manifestation determination outcome, as well as the decision to remove a student to an interim alternative educational setting by filing a due process hearing request with the OSE.

45- Calendar Day Removals

N.J.A.C. 6A:14-2.8 & 20 U.S.C. § 1415(k)

An interim alternative education setting (IAES) refers to an educational setting and program other than the student's current placement, used to allow a student to continue to participate in the general education curriculum, and to progress meeting the goals set out in the IEP. Disciplinary action initiated by an LEA that involves removal to an IAES (e.g., suspension for more than 10 school days, or expulsion of a student with a disability) shall be of no more than 45 calendar days.

State and federal regulations allow for the removal a student with a disability for up to 45 days. IDEA allows for 45 school days, however New Jersey Administrative Code limits the IAES removal for 45 calendar days. In New Jersey, a student with a disability may be removed to a 45 calendar day IAES without regard to whether the behavior was a manifestation of the student's disability if the student : 1) Carries a weapon or possesses a weapon at school, on school premises, or at a school function; 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; or 3) Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function. 34 C.F.R. § 300.530(g). In addition, a student with a disability may be removed to an appropriate interim alternative educational setting for not more than 45 calendar days if a hearing officer orders the change in placement after determining that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. 34 C.F.R. § 300.532(b)(2)(ii). In instances where a student's actions are likely to result in injury to themselves or others, the LEA must file a request for an expedited due process hearing, and then an administrative law judge may order the removal. During a 45 calendar day removal, the IEP team must conduct an MD meeting by the 10th day of removal and provide a copy of PRISE to the parent. If the LEA and parent are unable to agree on the placement of a student during this time, then the LEA shall request an expedited due process hearing where the placement determination will be made.

At the end of the 45 calendar day placement, the student will be returned to their placement as stipulated in the IEP before the removal unless the parent and IEP team agree to a change in placement. The LEA may also request to extend the placement for an additional 45 calendar days by filing another request for a due process hearing. The student's placement may change pending resolution of the dispute.

If a parent challenges the placement during the 45 calendar day removal, the student will remain in the interim alternative educational setting pending the decision of the due process hearing or until the end of the suspension date unless he LEA and parent both agree to a different placement.

In instances where the LEA and parent do not agree to placement pending the outcome of dispute resolution, the LEA shall request an expedited due process hearing which will take place within 20 school days of the request. A determination shall then be made within 10 school days of the hearing.

Informal Removals

OSEP Q&A 22-02

Federal guidance notes that frequent use of short term removals, or what is often termed as informal removals, of students with disabilities may result in a denial of a free and appropriate public education. This occurs when a student is removed for part or all of the school day without invoking the protections under IDEA for disciplinary procedures. These types of informal removals are still subject to the same state and federal regulations regarding disciplinary removals. An informal removal includes when a student's school day is shortened or reduced due to the student's behavior.

When considering the use of short term removals, LEAs should look at the circumstances that led to the student's removal and whether or not the student was being provided with the services as required by their IEP. LEAs should consider if the behavior could be addressed through changes to the classroom or program and if the IEP team should be convened to address the potential need to revise the IEP itself.

When the informal removals and student's behavior impedes their learning or that of others, the LEA must convene an IEP meeting to revise the student's IEP and ensure that appropriate behavioral supports and services are in place to address the behaviors resulting in disciplinary removals. The LEA must then take the steps necessary to ensure the student's IEP, to include the built in positive behavior supports and strategies are consistently being implemented across the school setting.

Examples of Informal Removals



Calling family members to pick a student up early.



Requiring a parent to attend school or a school function with the student.



Moving a child to a separate learning space for all or part of the day away from their peers.



Having a student remain home for a period of days, but not recording it as a disciplinary removal.

Psychiatric Clearances

N.J.A.C. 6A:14-2.8; N.J.A.C. 6A: 16-7.2; N.J.A.C. 6A: 16-10; OSEP Q&A 22-02

When an LEA determines that a student with a disability is to be removed from school pending a psychiatric clearance, this is considered an informal removal and therefore is subject to all the same previously mentioned protections and regulations as mandated by both state and federal regulations.

When a psychiatric clearance is ordered, the parent shall not be made responsible for any cost associated with the clearance. Students shall still be provided with academic instruction by the fifth day, and an MD meeting must take place by the 10th day. The same procedures should be followed as that of a student who is suspended.



Questions and Answers

The following information is from the U.S. Department of Education Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions guidance issued on July 19, 2022. The full guidance document can be accessed [here](#).

Who makes the determination as to whether a pattern of removals constitutes a disciplinary change in placement?

The LEA makes the determination, on a case-by-case basis, of whether a pattern of removals constitutes a change in placement under the discipline provisions in IDEA. 34 C.F.R. § 300.536(b)(1).

Can the imposition of short-term disciplinary removals (i.e., 10 consecutive school days or less) be a basis for reconvening the child's IEP Team?

Yes. Under 34 C.F.R. § 300.324(b), IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; the child's anticipated needs; or other matters such as the behavior that led to the short-term disciplinary removal including the impact on the child's learning or that of others.

Who determines the appropriate IAES for a child with a disability when the disciplinary removal is a change of placement?

If the removal is a change in placement under 34 C.F.R. § 300.536, the child's IEP Team, which includes the parent, determines the IAES for the provision of special education and related services. 34 C.F.R. § 300.531.



When the parent of a child with a disability and school personnel agree about changing the child's placement after the child has violated a school's code of student conduct, is the change considered a removal under the discipline provisions?

No. If the parent of a child with a disability and the LEA agree to a specific change in the current educational placement of the child to implement the child's current IEP, then it is not considered a removal under the discipline provisions. However, where the parent and the LEA agree that a child with a disability requires additional services and supports from those in the current IEP, the IEP must be revised before the new placement is determined.



Is the IEP Team required to hold a manifestation determination review each time that a child is removed for more than 10 consecutive school days, and each time that the LEA determines that a series of removals constitutes a change of placement?

Yes. The regulations require that “within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct,” the LEA, the parent, and relevant members of the child's IEP Team must conduct a manifestation determination review. 34 C.F.R. § 300.530(e) (emphasis added). Under 34 C.F.R. § 300.536, a change of placement occurs if: (1) the removal is for more than 10 consecutive school days; or (2) if the LEA determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because (i) the series of removals total more than 10 school days in a school year, (ii) the child's behavior is substantially similar to the behavior that resulted in the previous removals, and (iii) because of such additional factors 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. See Question C-1 for information regarding change in placement.

When are children who have not yet been determined eligible for special education and related services under IDEA entitled to the discipline protections?

A child who has not yet been identified as eligible for special education and related services under the IDEA and has violated a code of student conduct – and their parent – may assert any of IDEA’s discipline protections in circumstances where the LEA is deemed to have knowledge that the child is a “child with a disability” before the behavior that precipitated the disciplinary action occurred (see Question I-2 for further information). 34 C.F.R. § 300.534(a).

When would an LEA be deemed to have knowledge that a child is a child with a disability?

Under 34 C.F.R. § 300.534(b), an LEA would be deemed to have knowledge that the child is a child with a disability if, before the behavior that brought about the disciplinary action occurred: (1) the parent expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to the child’s teacher, that the child is in need of special education and related services; (2) the parent requested an evaluation of the child’s eligibility for special education and related services under IDEA; or (3) the child’s teacher or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA’s director of special education or to other supervisory personnel of the LEA.

Under what circumstances would an LEA not be deemed to have knowledge that a child is a child with a disability despite the existence of one or more factors.

There are specific exceptions to when an LEA must be deemed to have knowledge as described above. An LEA would not be deemed to have knowledge if the parent did not allow the LEA to conduct an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311 or refused special education and related services under IDEA. Also, an LEA would not be deemed to have knowledge if the child has been evaluated in accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined not to be a child with a disability under IDEA. 34 C.F.R. § 300.534(c)(2).

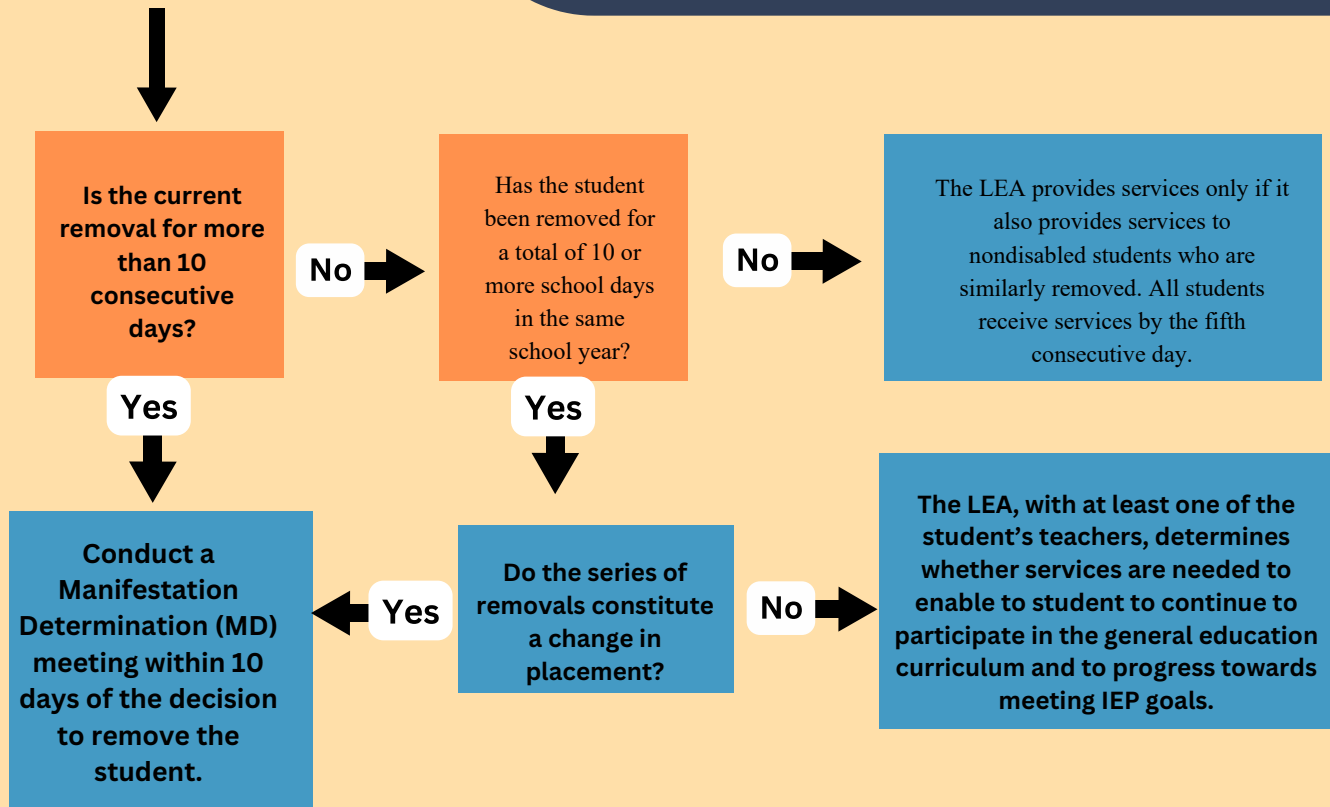
What disciplinary protections are available to a child who has been referred for an evaluation under IDEA and is removed for a violation of the school’s code of student conduct prior to a determination of eligibility?

In general, once the child is properly referred for an evaluation under IDEA, the LEA would be deemed to have knowledge that the child is a child with a disability for purposes of IDEA’s disciplinary provisions. However, under 34 C.F.R. § 300.534(c) the LEA is considered not to have knowledge that a child is a child with a disability if the parent has not allowed the LEA to conduct an evaluation of the child under IDEA, if the parent has refused special education and related services, or if the child has been evaluated and determined not to be a child with a disability under IDEA.

Overview of Discipline Procedures

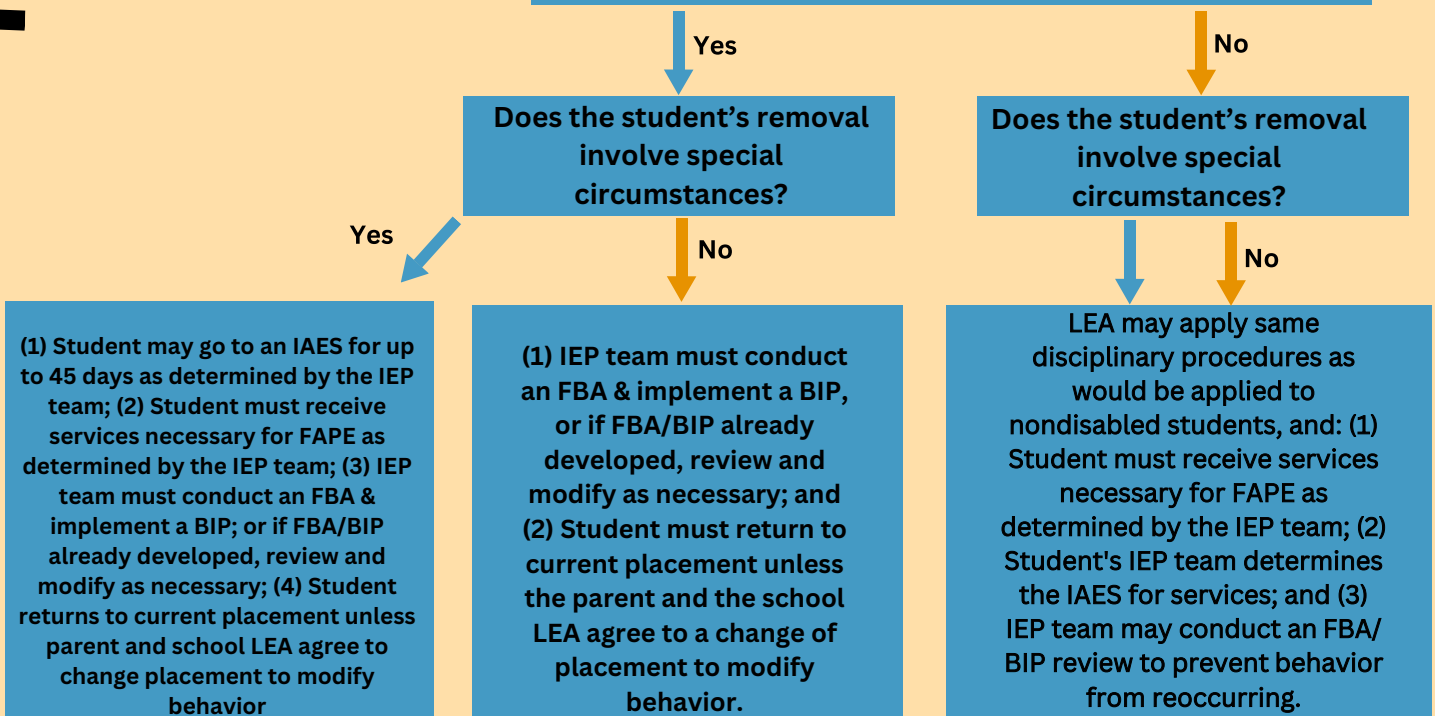
N.J.A.C. 6A:14-2.8(c); 20 U.S.C. § 1415(f); and 20 U.S.C. § 1415(k)3

Disciplinary Removal Occurs



The MD meeting 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 results of the LEAs failure to implement the IEP.



Sample Manifestation Determination

Student:_____ Date:_____

School:_____ Grade/Program:_____

To determine whether s behavior is (or is not) a manifestation of the student's disability, complete the following:

1. Describe the violation of the school rules or code of conduct..

2. In carrying out a review of the misconduct, the LEA, parent, and relevant members of the IEP team must consider all sources of information.

I. Please check all information considered :

- a)___ Assessment/evaluation (List any current assessments/evaluations considered)
- b)___ The student's IEP
- c)___ interviews conducted
- d)___ Teacher observations
- e)___ information provided by the parent

II. Please note any relevant comments or observations:

3. The relevant members of the IEP team must answer the following, in relationship to above detailed behavior:

(a) Was the conduct in question caused by the child's disability?

___Yes ___ No

(b) Did the conduct in question have a direct and substantial relationship to the child's disability?

___Yes ___ No

(c) Was the conduct in question the direct result of the school's failure to implement the student's IEP?

___Yes ___ No

If the LEA, parent and relevant members of the IEP team determine that the IEP was not implemented, list the steps the LEA will take to remedy the identified deficiencies:

If yes is checked for any one of the above, the behavior is a manifestation of the student's disability
Comments:

If no is checked for all the questions above, the behavior is not a manifestation of the student's disability. Comments:

4. If it is determined that the behavior is a manifestation of the student's disability and the student does not have a behavioral intervention plan, the IEP team must develop an assessment plan for a functional behavioral assessment (FBA). Describe the procedures for conducting the FBA:
(Please note that this activity requires the participation of the full IEP team.)

5. If it is determined that the behavior was a manifestation of the student's disability and the student has a behavior intervention plan, review the plan and note revisions on the IEP as necessary. (Please note that this activity requires the participation of the full IEP team.)

6. Based on the preceding information, the IEP team has determined that:

____The student's behavior was a manifestation of his/her disability. (Therefore, the student may not be removed from his/her current placement beyond 10 days for disciplinary reasons. However, the student's placement may be changed through the regular IEP review process.)

____The student's behavior was not a manifestation of his/her disability. State the disciplinary to be imposed and services to be provided:

Persons Participating in the Meeting:

Signature of Parent

Date

Signature of Student (if appropriate)

Date

Signature of Case Manager

Date

Signature of Special Education Teacher

Date

Signature of General Education Teacher

Date

Signature of LEA Representative

Date

Signature of Other Participant

Date

SAMPLE Change in Placement Determination Form

Student: _____

School: _____

Grade: _____

Date _____

A change of placement occurs if the student is subject to a series of removals that constitute a pattern because they accumulate to more than 10 days in a school year, because the behavior is substantially similar to behavior in previous incidents and in consideration of the following factors:

- Length of each removal
- Total amount of time the student is removed
- Proximity of the removals to one another

Is there a change of placement? _____ Yes _____ No

If yes:

- Has the parent received a copy of PRISE? (with the notice of suspension)
- Has a manifestation determination meeting been scheduled? Date of meeting: _____

If no:

Student may continue the suspension

- It Is the current suspension more than 4 consecutive days? ____ Yes ____ No
- If Yes, educational services must be provided starting with the fifth day, as would be provided to general education students.
- If No, the case manager and disciplinarian (in consultation with the student's teacher) determines if services are warranted to enable the student to progress on IEP goals and objectives.
- If services are warranted, list the extent of services. _____

Administrator: _____ Date: _____

Case Manager: _____ Date: _____