

DISCIPLINE (GEORGIA RULE [160-4-7-.10](#))

Local educational agency (LEA)¹ personnel must follow specific procedures when they discipline children with disabilities. Removals of children by LEA officials refer to out-of-school suspensions (OSS), expulsions, or other disciplinary actions resulting in children not receiving a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

All schools in Georgia have a code of student conduct and school rules. This information is usually shared in a handbook that is provided at the time of enrollment. Parents, children, educators, and administrators need to know what the code of conduct and rules are, and all children are expected to follow them, including children with disabilities. Disciplinary procedures outlined in this chapter pertain to all children with disabilities in any category of eligibility who violate the code of student conduct.

Schoolwide Positive Behavior Supports

In order for schools to address problem behaviors successfully, best practice dictates placing an increased emphasis on proactive approaches rather than reactive behavior management. Proactive approaches to discipline for all children include expectations of more socially acceptable behaviors that are directly taught, skills that are regularly practiced in the school environment by staff and children, and frequent recognition of everyone in the school environment in the performance of these behaviors.

To shift from a reactive and aversive approach for managing problem behavior and discipline issues, to a positive and prevention-oriented approach, schools must:

- work for and with all children, since every child entering school needs behavior support;
- give priority to evidence-based practices;
- integrate academic and behavioral success for all children utilizing high leverage practices;
- emphasize prevention in establishing and maintaining safe and supportive school climates;
- expand the use of effective practices to LEA, regional, and state levels;

¹ Local educational agencies include public boards of education or other public authorities legally constituted within Georgia for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, including state charter schools and Georgia Department of Juvenile Justice (DJJ).

Special Education Rules Implementation Manual

- increase collaboration among multiple community support systems, (i.e., education, juvenile justice, community mental health, family, and medical); and
- build a school environment where team-building and problem-solving skills are expected, taught, and reinforced.

Schools that integrate positive and prevention-oriented schoolwide discipline programs in the current student code of conduct will experience:

- a decrease in office discipline referrals;
- a safe and healthy school climate;
- a climate where teachers can teach and children can learn; and
- a climate where learning and teaching are valued.

For more information about positive behavior interventions and supports, see <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Positive-Behavioral-Interventions-and-Support.aspx>.

Disciplinary Actions resulting in removals of 10 School Days or Less

Children with disabilities are expected to follow the code of conduct. A child with a disability, who has an Individualized Education Program (IEP) in effect, can be removed to OSS, another setting, or an appropriate interim alternative educational setting (IAES), just as any other child without a disability can, for up to a total 10 school days, for violations of the code of conduct or school rules. The 10 days can be consecutive or cumulative within one school year. If a child is accumulating repeated offenses and nearing 10 days of removals that constitute a change of placement, an IEP Team should be proactive and convene to discuss the child's behavior and develop a plan to address the behavior. To ensure that removals do not result in a change of placement, the following must occur:

- The child is afforded the opportunity to continue to appropriately participate in the general curriculum;
- The child continues to receive the services specified in his or her IEP; **and**
- The child continues to participate with nondisabled children to the extent he or she would have in his or her current placement. 71 Fed. Reg. 46715 (2006)

The criteria above also applies to in-school suspension (ISS).

The IEP Team is not required to hold a manifestation determination review meeting for removals that constitute a change of placement that total 10 days or less.

Special Education Rules Implementation Manual

Disciplinary Actions resulting in removals beyond 10 Days

When frequent removals add up to more than 10 school days in a school year, or when frequent removals result in a change in placement, the IEP Team must determine appropriate services that allow the child to continue to participate in the general education curriculum **and** progress toward meeting the goals outlined in the child's IEP, although in another setting. See [34 C.F.R. § 300.530\(d\)\(5\)](#). A change of placement occurs when the removal is for more than 10 consecutive days or the child has been subjected to a series of short-term removals that constitute a pattern because: (1) the series of removals totals more than 10 school days in a school year; (2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (3) additional 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. [34 C.F.R. § 300.536\(a\)](#).

After a child has been removed for 10 school days in the same school year, and a subsequent removal is not for more than 10 consecutive days and is not a change in placement (as defined above), the LEA personnel and at least one of the child's teachers must determine the extent of services needed so the child can continue to participate in the general education curriculum **and** progress toward meeting the goals outlined in the child's IEP, although in another setting. See [34 C.F.R. § 300.530\(d\)\(4\)](#).

If school personnel want to suspend a child from school for more than 10 consecutive school days or for more than 10 school days that constitute a change in placement, or if school personnel have a child's educational setting changed to an interim alternative educational setting for up to 45 school days for weapon or drug possession or for infliction of serious bodily injury on another person, school personnel must notify the parent immediately of this decision and provide the parent with their procedural safeguards notice. See [34 C.F.R. § 300.530\(h\)](#).

School personnel may consider unique circumstances when determining whether a change in placement is appropriate for a child with a disability. These circumstances are best determined at the local level by school personnel who know the child and the facts and factors related to the behavioral violation. School personnel may consider various forms of information such as the child's disciplinary history, ability to understand the consequences, and expression of remorse, as well as the supports that were provided to the child prior to the behavioral violation. See 71 Fed. Reg. 46714.

Special Education Rules Implementation Manual

Manifestation Determination

Within 10 school days from the beginning of a removal that either exceeds 10 school days in a row or that constitutes a pattern of removals (a change in placement), the child's IEP Team must meet to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or whether the conduct was a result of the LEA's failure to implement the child's IEP, including any behavioral intervention plan (BIP) that may be in place. These steps are referred to as a "manifestation determination."

In making this determination, the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA), will review all relevant information in the child's file, including:

- the child's IEP,
- the child's BIP,
- any relevant teacher observations, and
- any other information provided by the parents.

If the IEP Team finds that the child's behavior was caused by or had a direct and substantial relationship to the child's disability, or that the behavior was a direct result of the LEA's failure to implement the IEP, then the behavior is a manifestation of the child's disability. In this case, if the child does not have a BIP, the IEP Team must conduct a functional behavioral assessment (FBA) and implement a BIP to address the behavioral violation. If the child already has a BIP that addresses the conduct in question, the IEP Team must review and modify it as necessary to address the behavior. The child will be returned to the placement from which he or she was removed unless the parent and LEA agree to a change of placement as part of the modification of the BIP.

If the IEP Team finds that the child's behavior was not a manifestation of the child's disability, the same disciplinary actions can be imposed on the child with a disability as those imposed on any child. The IEP Team must determine how the child will continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals in the IEP, although in a different location (this includes expulsion and alternative settings). In addition, the IEP Team, if appropriate, will conduct a FBA and develop a BIP to address the behavior violation so that it does not recur.

Special Offenses

Certain serious behavior problems can lead to a child being moved to an interim alternative educational setting (IAES) for up to 45 school days, even if the conduct is determined to be a

Special Education Rules Implementation Manual

manifestation of the child's disability. Removing the child for these offenses does not require parent consent or agreement, nor does it require a tribunal hearing. These offenses involve:

Weapons—If a child carries or possesses a weapon as defined in 18 U.S.C. § 930(g)(2) – (a 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 ½ inches in length);

Drugs—If the child knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substances (illegal drugs are a controlled substance not legally possessed or used under the supervision of a licensed health care professional, or legally possessed or used under any other authority under the Controlled Substances Act (21 U.S.C. § 1812) or under any other provision of federal law. A controlled substance is a drug or other substance identified under Schedule I, II, III, IV, or V in the Controlled Substances Act); and

Serious bodily injury—If a child has inflicted serious bodily injury upon another person (injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 U.S.C. § 1365(3)(h)).

This authority can be exercised if a child commits any of the offenses described above at school, on school premises, or at a school function under the jurisdiction of the State or LEA. [34 C.F.R. § 300.530\(g\), \(i\)](#).

Frequently Asked Questions

1. What is meant by consecutive school days?

Consecutive refers to the number of school days of suspension in a row.

2. How are cumulative days of suspension in a school year addressed?

The Discipline Rule addresses cumulative or non-consecutive days by referring to school days in the same school year. LEAs may suspend a child with disabilities for up to 10 (cumulative) school days total in a school year without providing special education and related services, unless the LEA would provide services to a child without disabilities who has been similarly removed.

3. Does in-school suspension (ISS) constitute a removal from school?

If a child is afforded the opportunity to continue to appropriately participate in the general curriculum, continues to receive the services specified in his or her IEP **and** continues to participate with nondisabled children to the extent he or she would have in his or her

Special Education Rules Implementation Manual

current placement while in ISS, then it is not counted as a removal toward a change of placement under 34 C.F.R. § 300.536(a).

4. What is free appropriate public education (FAPE) for a child who has been removed for more than 10 school days in a school year for disciplinary reasons?

FAPE applies in those circumstances and consists of services that enable the child to continue to participate in the general education curriculum **and** services that enable the child to progress toward meeting the goals set out in his or her IEP. See [34 C.F.R. § 300.530\(d\)\(1\)\(i\)](#).

5. What is the definition of behavioral intervention plan?

A [behavioral intervention plan](#) (BIP) is a plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings. Georgia Rule [160-4-7-.21\(7\)](#).

6. At what point in the disciplinary process is a child required to have a behavioral intervention plan?

Within 10 days of any decision to change the placement of a child with a disability because of a violation of the student code of conduct, the relevant members of the IEP Team must make the determination as to whether the conduct was a manifestation of the child's disability. If it is determined to be a manifestation of the child's disability, a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP) must be developed, reviewed, and/or modified. If it is determined not to be a manifestation of the child's disability, a FBA and behavior intervention services and modifications should be provided, as appropriate, to address the behavior violation and so that it does not recur.

7. What is a functional behavioral assessment?

A functional behavioral assessment (FBA) is a systematic process for defining a child's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a Behavioral Intervention Plan should be developed. Georgia Rule [160-4-7-.21\(20\)](#).

8. Does a Behavioral Intervention Plan (BIP) have to be based on a Functional Behavior Assessment (FBA)? Is an FBA required before a BIP can be done?

If the IEP Team has adequate information to develop a Behavior Intervention Plan, a Functional Behavior Assessment may not be required. Although not required, best practice is to conduct an FBA prior to the development of a BIP. In the case of a required FBA and BIP due to discipline procedures and the determination that the behavior in question was a

Special Education Rules Implementation Manual

manifestation of the child's disability, both a FBA and a BIP must be developed. If already completed, the FBA and BIP must be reviewed and revised as necessary.

9. Do removals from the school bus count as days of out-of-school suspension?

Yes, if special transportation is listed in the child's IEP and a child is suspended from the bus. Since IEP services have been interrupted, the bus suspension/removal will be counted as out-of-school suspension unless the LEA makes provisions for alternative transportation.

10. Who makes the manifestation determination?

The determination is made by the parent, relevant members of the IEP Team (as determined by the LEA and the parent); **and** the LEA.

11. LEAs conduct a tribunal to determine guilt or innocence when a child is accused of a serious or repeated violation of the code of conduct. Is the manifestation determination conducted before or after the tribunal?

The manifestation determination may be conducted before or after the tribunal based on the LEA's policies/procedures.

12. What must occur if the determination is made that the behavior in question was a manifestation of the child's disability?

The child must be returned to the placement from which the child was removed, except in cases involving weapons, serious bodily injury, or illegal drugs or controlled substances, unless the parent and the LEA agree to a change in placement. If a BIP is not in place, the IEP Team must conduct a functional behavioral assessment (FBA), unless the LEA had conducted one prior to the behavior, and a behavioral intervention plan (BIP) should be implemented. If a BIP is already in place, the IEP Team must review the existing BIP; and the IEP Team must make changes needed in the BIP to address the behavior.

13. What occurs if the determination is made that the behavior in question was not a manifestation of the child's disability?

For disciplinary removals that would exceed 10 consecutive school days, LEA personnel may apply the relevant disciplinary procedures in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that the child must:

- continue to receive educational services so as to enable the child to participate in the general education setting and to progress toward meeting IEP goals, although in another setting; **and**
- receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Special Education Rules Implementation Manual

14. If the Manifestation Determination decides that the child's behavior was not a manifestation of the disability, and the tribunal decides that the child is to be served in an alternative educational setting, must the LEA provide transportation?

First, the tribunal does not determine the special education services, the IEP Team determines the special education services of the child so that he or she may continue to progress toward meeting the IEP goals and to have access to the general education curriculum. Whether or not transportation must be required will depend on whether specialized transportation was required in the IEP. If it was in the IEP, then it must be provided for the alternative education setting. In other circumstances, the Team must consider whether not having transportation results in removing the child from services. If so, the IEP Team should consider an alternative.

15. When are the provisions about weapons, illegal drugs, controlled substances, and serious bodily injury in effect?

These provisions are in effect when children are at school, on school premises, and at school functions.

16. When should a parent be notified of a change of placement due to a removal because of a violation of the code of student conduct?

The LEA is responsible for notifying the parent and providing procedural safeguards on the date on which the decision is reached to make such a removal that constitutes a change of placement.

17. What decisions about discipline can a parent appeal?

A parent may appeal the manifestation determination and the selection of an interim alternative educational setting regarding the issues of weapons, illegal drugs or controlled substances, or serious bodily injury.

18. Can the LEA appeal any decisions related to discipline?

Yes, the LEA may appeal if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

19. How does the parent or the LEA file an appeal?

The parent or the LEA must request a due process hearing, and an expedited due process hearing will occur within 20 school days of the date the hearing is requested. A determination must be made by the administrative law judge (ALJ) within 10 school days after the hearing. For more information on due process hearings, see the Dispute Resolution Chapter.

Special Education Rules Implementation Manual

20. May the hearing officer's decision on an expedited due process hearing be appealed?

Yes. The parent or the LEA may appeal the administrative law judge's opinion consistent with Georgia Rule 160-4-7-.12 Dispute Resolution.

21. What happens to the child's placement when an appeal under the Discipline Rule is made?

When the parent disagrees and appeals, the child will remain in the interim alternative educational setting (IAES) pending the hearing decision or until the expiration of the 45-school-day time period if the infraction involved illegal drugs, controlled substances, weapons, or serious bodily injury, unless the parent and the district agree otherwise. The child does not stay put in his or her special education placement that was in place prior to the IAES.

22. What protections are in place for a child who has not been determined to be eligible for special education and related services and who has violated the code of student conduct?

A child may assert protections under the Discipline Rule if the LEA is deemed to have knowledge that the child was a child with a disability before the behavior occurred.

23. How is it determined that the LEA had knowledge that the child was a child with a disability?

An LEA is deemed to have knowledge that a child was a child with a disability if any of the following occurred prior to the behavior that precipitated the disciplinary action:

- The parent expressed concern that the child was in need of special education and related services. (This concern must have been expressed in writing to supervisory or administrative personnel in the LEA, or to a teacher of the child.);
- The parent requested an evaluation of the child (consistent with Georgia Rule 160-4-7-.04 Evaluation and Reevaluation); or
- The teacher of the child, or other LEA personnel, expressed specific concerns about a pattern of behavior of the child. (These concerns must have been expressed directly to the local special education director or other LEA supervisory personnel.)

24. If a child becomes involved in a disciplinary action and has been previously evaluated and determined ineligible for services, what is the LEA's responsibility? In addition, if a parent requests an additional evaluation, what is the LEA's responsibility?

The district is not deemed to have knowledge that a child is a child with a disability if the parent has refused services or the child has been evaluated and found ineligible for services. However, if a child was found ineligible for services, and subsequently the parent expressed concern that the child was in need of special education services; or the parent requested an evaluation for special education services; or LEA personnel expressed specific concerns about a pattern of behavior to the special education director or other LEA supervisory personnel,

Special Education Rules Implementation Manual

before the disciplinary action, the LEA is deemed to have knowledge that the child is a child with a disability and the child is entitled to protections under Discipline Procedures.

If a parent requests an evaluation of a child during the time in which a child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by LEA authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the LEA must provide special education and related services.

25. Can law enforcement officials be informed of suspected criminal activity of a child with a disability?

Yes. The LEA may report criminal acts committed by a child with a disability. Nothing in the Discipline Rule prohibits the LEA from reporting criminal activity allegedly committed by a child with a disability.

26. When does a change of placement occur?

A change of placement occurs:

- if the disciplinary removal is for more than 10 consecutive days; or
- if the removal is part of a series of removals that constitutes a pattern.

27. What constitutes a pattern of removals?

A pattern of removals occurs when:

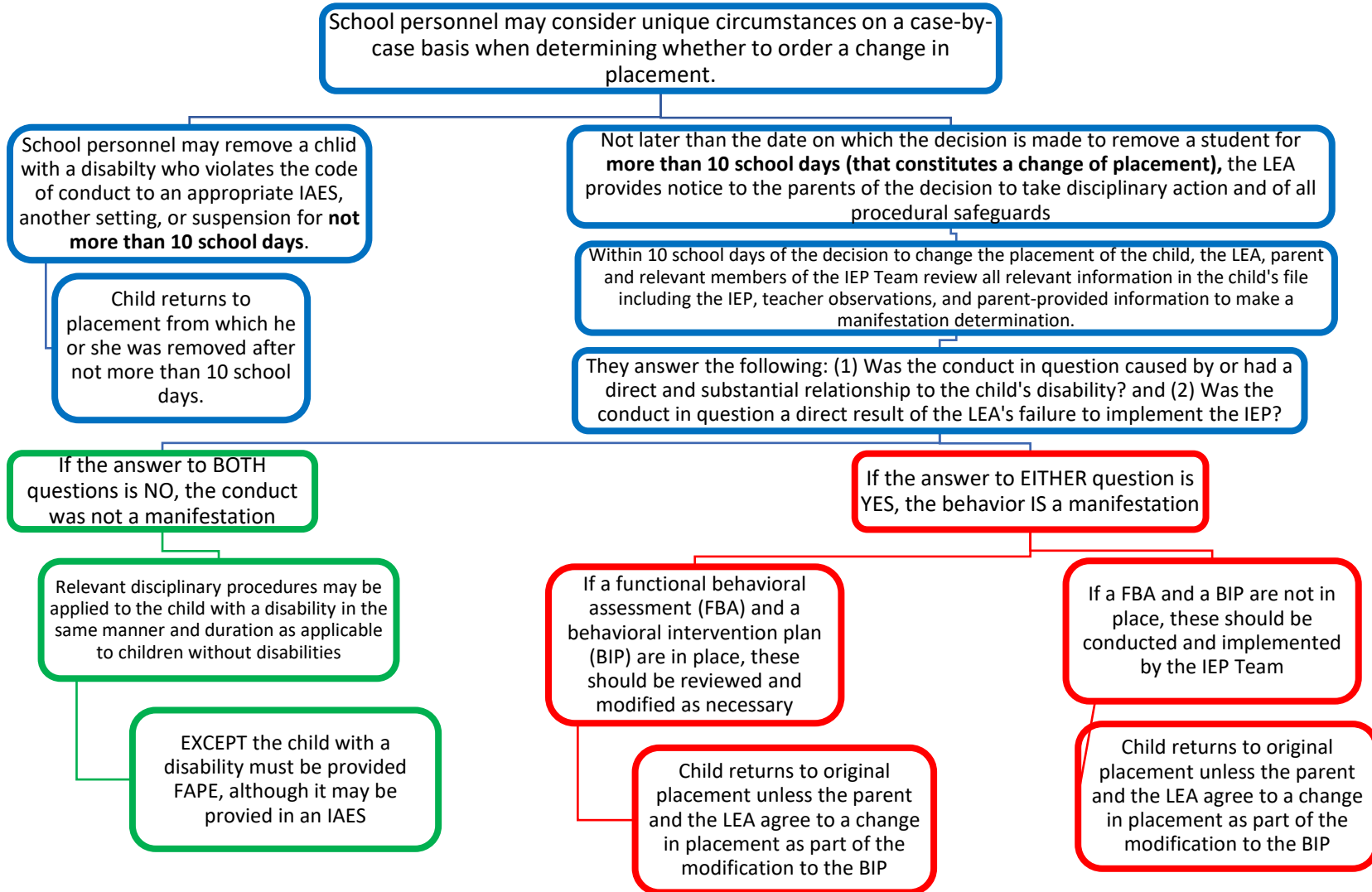
- a series of removals totals more than 10 school days in a school year;
- the behavior is substantially similar to previous incidents that required removal; and
- the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another have been considered.

28. How is it determined that a series of removals constitutes a change of placement?

The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process hearings and judicial proceedings.

Special Education Rules Implementation Manual

Flowchart 1: Student with a Disability: Violates Code of Conduct (not including infractions involving weapons, drugs, or inflicting serious bodily injury)



An expedited due process hearing may be requested by:

1. The parent, if in disagreement with the placement or manifestation determination.
2. The LEA, if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

Special Education Rules Implementation Manual

Flowchart 2: Student with a Disability: Violates Code of Conduct – Special Circumstances

School personnel may remove a child with a disability who violated the code of conduct to an appropriate interim alternative educational setting (IAES) for not more than 45 *school* days, without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where the child carries or possesses a weapon, knowingly possesses or uses illegal drugs, sells or solicits the sale of a controlled substance, 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 state or district. The child's IEP Team determines the interim alternative educational setting for services.

An agency may report a crime committed by a child with a disability to the authorities.

Not later than the date on which the decision to take disciplinary action is made, the LEA provides notice to parents of the decision to take disciplinary action and of all procedural safeguards.

Within 10 school days, the IEP Team must convene so that the following can take place: (1) Manifestation can be determined; and (2) Services can be determined. The child must receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

In the IAES, the child must continue to receive FAPE so as to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.

An expedited due process hearing may be requested by: (1) the parent, if in disagreement with the placement or manifestation determination; or (2) the LEA, if it believes maintaining the current placement is substantially likely to result in injury to the child or to others

If no due process hearing is requested.

Depending on whether the behavior was a manifestation of the child's behavior or the result of LEA's failure to implement the IEP, on the 46th school day, the child will return to the placement from which he or she was removed or remain in an IAES

Stay put is in the IAES, unless the parent and LEA agree otherwise.

The administrative law judge may return the child to the placement from which he or she was removed or order a change in placement to an IAES for not more than 45 days if maintaining the current placement is substantially likely to result in injury to the child or others.

Special Education Rules Implementation Manual

Flowchart 3: Protections for Children Not Yet Eligible for Special Education

