



THE EDUCATION ADVOCATE

Ensuring that all children with disabilities receive quality educational services.

A Newsletter of The Department of Education Advocacy

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This edition of The Education Advocate provides clarification about issues related to discipline for students with disabilities. Many families find this topic very confusing, so this edition attempts to dispel some of the myths and simplify the issues. Please note that some of the material in this edition has been extracted from Discipline Requirements 2006, a publication of the New Jersey Department of Education.

A Glossary of Frequently Used Terms

Behavior Intervention Plan (BIP)

A plan designed to teach the student more acceptable behaviors, in place of inappropriate or problem behaviors. The plan should include positive behavioral interventions, strategies and supports. The plan should also be revisited and amended as necessary.

Change in Placement

A removal from the student's program for disciplinary reasons that triggers procedural safeguards.

Functional Behavioral Assessment (FBA)

A problem-solving process that relies on a variety of techniques and strategies to identify the purposes of specific problem behavior. This assessment should take place across time and across settings. It should consist of observations and recommendations from several people who either work with the student or who have a certain area of expertise.

An IEP team will take the findings of this assessment and create an intervention to address the problem behavior(s), AKA a Behavior Intervention Plan.

Interim Alternative Educational Setting

Must be selected so as to enable the child to continue to progress in the general education curriculum even though he/she will be in a different setting. The child needs to continue receiving the services and modifications as described in the IEP, including those services that are designed to prevent the behavior from recurring.

Manifestation Determination (MD)

The process of determining whether the behavior was "because of" the disability. This shall occur within 10 school days of any decision to change the placement of a child with a disability because of a violation of code of student conduct. The district, relevant IEP team members and the parent shall review all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parents to determine if conduct was 1) caused by, or was in direct and substantial relationship to, the child's disability, or 2) a direct result of the district's failure to implement the IEP.



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Some Common Scenarios.....

Scenario 1

Your child has been removed from school for less than 10 consecutive days.

The child is subject to the same disciplinary policy as students without disabilities. The case manager and student's parents must be notified of the removal (in writing, including reason for removal and number of days). After the 5th day, the student is entitled to receive homebound instruction. Please note--If this is not taking place, be sure to contact your case manager in writing immediately. If your child is suspended often, see Scenario #3.

As a parent it is important to be proactive. If your child is beginning to act out in school, request an IEP meeting to discuss the behaviors. Think about revising the existing behavior plan or request that one be developed and implemented.

Scenario 2

Your child has been removed for more than 10 consecutive days.

A meeting must be convened with the relevant IEP team members including the parent, and a manifestation determination hearing must be conducted. This must occur within 10 school days of the decision to remove the student. After the 5th day of removal, the child is entitled to receive homebound instruction. Please note--If this is not taking place, be sure to contact your case manager in writing immediately.

If the behavior is a manifestation of the disability or the district's failure to implement the Behavior Intervention Plan, then the district shall return the child to school by Day 11. In this case, the team must review and modify the Behavior Intervention Plan. If there is no plan in place, the team must conduct a Functional Behavioral Assessment and develop a Behavior Intervention Plan. In addition, the team may make revisions to the student's program and/or placement.

If the behavior is not a manifestation of the disability, the child must finish out the suspension and must continue to receive homebound educational services. At this point, the team will review the BIP and/or conduct FBA, as appropriate. Please note-it is important to advocate for the team to review the BIP and/or conduct the FBA.

A Few Reminders . . .

- 1) Administrator must notify Case Manager in writing of suspension, reason, and number of days.*
- 2) For all suspensions that are 5 or more consecutive days, "academic instruction shall be provided within five days of the suspension." N.J.A.C 6A:14-7.2 (a) 5.*
- 3) If a change of placement has occurred, the parent must be given a copy of the Parental Rights in Special Education (PRISE) immediately.*
- 4) Preschool students shall not be suspended or expelled. N.J.A.C. 6a:14-2.8(a)1.*

Scenario 3

Your child has been removed for more than 10 cumulative days

The IEP team and school officials will determine if this constitutes a change in placement. A change in placement occurs if the student is subjected to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a year, because the behavior is substantially similar to behavior in previous incidents and consideration of the following factors:

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

If this is determined to be a change in placement, then the team must hold a meeting on the 11th day to conduct a manifestation determination. If the behavior is a result of the child's disability or the district's failure to implement the BIP, then the district cannot suspend the child. In this case, the team must review and modify the Behavior Intervention Plan. If there is no plan in place, the team must conduct a Functional Behavioral Assessment and develop a Behavior Intervention Plan. In addition, the team may make revisions to the student's program and/or placement. If the behavior is not a manifestation of the disability the team will review the BIP and/or conduct FBA, as appropriate. Please note-it is important to advocate for the team to review the BIP and/or conduct the FBA.

If this is not considered to be a change in placement, then the district may suspend the child but services must continue. At this point, the team will review the BIP and/or conduct FBA, as appropriate. Please note-it is important advocate for the team to review the BIP and/or conduct the FBA.

Scenario 4

Your child has been put on a "45 Calendar Day Suspension" and placed in an Interim Alternative Education Setting (IAES)

School personnel may remove a student to an IAES for 45 calendar days for:

- Drugs
- Weapons
- Serious bodily injury to others

At this time, the team must convene a meeting to conduct a manifestation determination. (The school may remove a child for 45 days regardless of whether or not the behavior was a manifestation of the child's disability). If the behavior is a manifestation, the team must review the Behavior Intervention Plan and/or conduct a Functional Behavioral Assessment. If the behavior is not a manifestation of the disability the team will review the BIP and/or conduct FBA, as appropriate. Please note-it is important advocate for the team to review the BIP and/or conduct the FBA.

PARENTAL CHALLENGES IN DISCIPLINE PROCEEDINGS

A parent can challenge the following:

- 1) *When there is a disagreement between the district and the parent regarding whether a series of removals is a change in placement*
- 2) *Results of a manifestation determination*
- 3) *Decision to remove a child to an interim alternative education setting*

When an appeal is filed by a parent, the student must remain in the interim alternative educational setting pending the decision of the hearing officer OR until the expiration of the time period for the suspension, whichever comes first, unless the parent and the district agree otherwise.

IMPORTANT POLICY UPDATE: *Burden of Proof Bill Signed Into Law!*



Governor Corzine signed the Burden of Proof bill (A4076/S2604) into law on Monday, January 14th. Effective immediately, the Burden of Proof in Special Education Due Process hearings has been returned to the school districts. This is a major victory for the disability advocacy community. It was a difficult battle, but we could not have succeeded without the involvement of our families. On behalf of The Arc of New Jersey, we would like to thank you for your stories, letters, and personal phone calls to your legislators. It truly made a difference!!!