

I. Discipline

A student's behavior may become a barrier to his or her learning or the learning of other students. If the student's behavior begins to impede learning, the IEP team must consider the use of strategies to address the behavior. These services may include positive behavior supports and interventions. If the IEP team determines that such services and supports are necessary to address the behavior, those services and supports must be included in the student's IEP and properly implemented.

A. Key terms

Placement – the setting in which the student is receiving special education and related services

- The student's placement is listed on his or her IEP
 - General Educational Environment (GEE) (a regular classroom); and/or
 - Special Education Environment (SEE) (a special education classroom)

Disciplinary removals – out of school suspensions; expulsions; placement in interim alternative educational settings (IAES)

- In calculating the number of cumulative school days a student has been removed, can also consider in-school suspensions, partial day suspensions, and bus suspensions

In school suspension – when a child is temporarily removed from his or her classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel

- In school suspension is not considered a day of suspension as long as the student:
 - Has the opportunity to participate in the general curriculum
 - Continues to receive services listed on the IEP; and
 - Participates with students without disabilities the same amount of time as in their current placement.
- However, repetitive in-school suspension could be considered a “pattern.”

Disciplinary change of placement – removal from the student's current educational placement for

- More than ten (10) consecutive (in a row) school days; or
- A series of removals that constitutes a pattern

Pattern – established when a series of removals totals more than ten (10) cumulative (total) school days in a school year and the student's behavior is similar to the behavior in previous incidents that resulted in removal

- Repetitive in-school suspension could be considered a pattern
- Partial day suspensions may be considered in determining if there is a pattern
- Example: a student spits at a teacher one eleven different occasions and is removed for one day each occasion
- Note: a student who exhibits behaviors that become a pattern should have those behaviors addressed through an FBA and the development of a PBSP.

Manifestation Determination Review (MDR) meeting – a meeting of IEP team members (including district personnel and parent(s)) to review the relationship of the student's disability and the behavior that resulted in disciplinary action. The team will review the student's file, the IEP, information provided by the parent(s) and teacher(s), and the details surrounding the behavior that resulted in disciplinary action. The team will then make a determination as to whether the behavior was caused by the disability, was directly and substantially related to the student's disability, and/or was a direct result of the school's failure to properly implement the student's IEP.

Functional Behavior Assessment (FBA) – an assessment tool used by a trained professional to understand the meaning of behaviors through evaluating the environments in which behaviors occur, the events before and after the behaviors occur, and causes or triggering events. The trained professional collects data and information on the individual's behaviors through observations in various settings. A FBA also provides recommendations to teach individuals how to appropriately express wants and needs.

Positive Behavior Interventions and Support (PBIS) Plan – A broad term that describes a comprehensive, research-based, proactive approach to behavioral support to produce

change for students with challenging and maladaptive behaviors. The goal of is not to eliminate the behavior, but instead to understand the purpose of the behavior (based on the students FBA) so that the team can assist the student with replacing the challenging behavior with a new, pro-social behavior that achieves the same purpose. PBS encompasses many approaches including changing systems, altering environments, teaching skills, and appreciating/rewarding positive behavior. PBS strategies may include but are not limited to:

- Altering the classroom environment
- Increasing predictability and scheduling
- Increasing choice making
- Making curricular adaptations
- Appreciating positive behaviors
- Teaching replacement skills

Behavior Intervention Plan – Written, individualized plan based on a student's FBA. The BIP describes the positive behavioral interventions, strategies and supports required to implement the student's IEP goals and objectives in the areas of social, emotional and/or behavioral development. The BIP may include, but is not limited to:

- Environmental modifications that reduce the likelihood of the problem behavior
- Guidance, structured opportunities and/or instruction in the use of new skills as a replacement for problem behaviors
- Consequences to promote positive change and diminish problem behavior
- A crisis management plan
- Procedures for monitoring, evaluating, and reassessing the plan as necessary

B. Change of Placement

The first step in understanding disciplinary actions for a student with a disability is determining whether "disciplinary removals" constitute a "change of placement."

Not a "change of placement"

- A student with a disability has been removed for ten (10) or fewer consecutive days in a school year, or
- Student with a disability has been removed for ten (10) or fewer cumulative days in a school year

“Change of Placement”

- A student with a disability has been removed for eleven (11) or more consecutive days in a school year, or
- Student with a disability has been removed for (11) or more cumulative days in a school year

C. Understanding a student's rights

If the disciplinary removals do not constitute a change of place, the school is not required to provide services to the student with a disability unless services are provided to students without disabilities. Essentially, the student is subject to the same disciplinary action as students without disabilities. The school is not required to hold an Individualized Education Program (IEP) or Manifestation Determination Review (MDR) meeting, but it is recommended that parents advocate for appropriate services, including a review of the positive behavior support plan.

If the disciplinary removals do constitute a change of placement, a manifestation determination review meeting (MDR) is required. A manifestation determination review is a meeting of the IEP team to review the relationship of the student's disability and the behavior resulting in disciplinary action; the IEP team makes a decision as to whether the student's behavior resulted from a characteristic of his or her disability. If the MDR decides that the conduct in question was caused by, or had a direct and substantial relationship to the student's disability, or if the conduct in question was the direct result of the school's failure to implement the student's IEP, the school must:

1. Conduct a Functional Behavior Assessment (FBA);
2. Develop and implement a positive behavior support plan (or review and update an existing plan to address the student's current needs); and
3. Return the student to the placement from which the student was removed unless the parents and school district agree on the change of placement.

D. Due Process

An expedited due process hearing can be requested if the parent disagrees with the decision of the manifestation determination review meeting, any decision of the IEP team regarding a change of placement during a disciplinary proceeding, or a decision regarding the student's placement in an interim alternate educational setting.

A school district may also request an expedited due process hearing if the school district believes that maintaining the student in his or her current placement is substantially likely to result in injury to the student or to others.

The expedited due process hearing will be heard by a hearing officer within twenty days of the request, and a decision will be issued within ten school days of the hearing.

E. Behavior violations involving weapons, illegal drugs, and serious bodily injury

A student with a disability can be removed to an Interim Alternate Educational Setting (IAES) **regardless of whether the behavior is a manifestation of the student's disability** for forty-five (45) school days or less if the student:

- Carries or possesses a weapon,
- Knowingly possesses, carries, or uses illegal drugs or sells or solicits the sale of a controlled substance, or
- Inflicts serious bodily injury to another person

while at school, on school premises, or at a school function. For more information on behavior violations involving weapons, illegal drugs, or serious bodily injury, see West Virginia Policy 2419.

F. Tips for Parents

- School districts often employ professionals such as Positive Behavior Support specialists or school psychologists who have the training necessary to develop functional behavior assessments and positive behavioral interventions and supports, including behavior intervention plans. However, if the school district does not employ an individual with the necessary training, the school district should contract with someone outside the district to complete the assessments and develop the necessary plans.
 - Parents are encouraged to know the qualifications of school staff involved in evaluating the student and developing the plans.
- Parents should obtain copies of all assessments and plans developed.
- Parents should obtain a copy of documents developed at the MDR meeting.
 - Request incident reports following each behavioral event resulting in disciplinary action.
 - Request specific information following each behavioral event resulting in disciplinary action, including:
 - Staff involved

- Whether staff was appropriately trained in implementing the behavior plan
 - Whether staff properly implemented the behavior plan during that specific incident
- Do not allow the IEP team to include the use of restraint (even for “emergencies”) in the student’s IEP or behavior plan.