

SCHOOL DISCIPLINE OF STUDENTS WITH DISABILITIES

Linda Cook

Ohio State Legal Services Association

555 Buttles Avenue

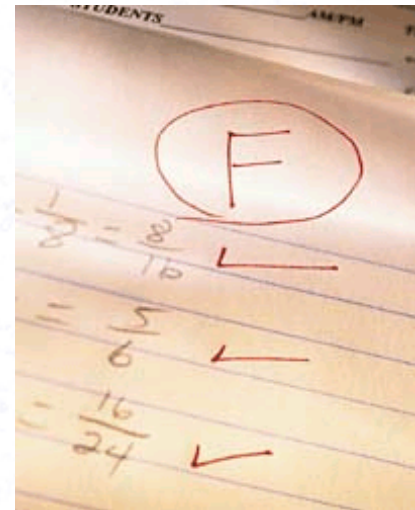
Columbus, Ohio 43215

614-221-7201 ext. 124

Lcook@oslsa.org

Why Do You Need To Know?

- Students with disabilities generally perform academically well below their peers
- Suspensions and expulsions of disabled students result in even greater performance gaps and can lead to problem behaviors



Why Do You Need To Know cont.

Children with emotional disturbance(ED)

- Fail more courses, earn lower GPA's, miss more school and are held back more often
- Only 35% graduate from high school
- Over three times more likely to be arrested before leaving school
- 73% of those who drop out are arrested within five years

Review of IDEA terms

(Individuals with Disabilities Education Improvement Act)

20 USC §1415

34 CFR Part 300

- FAPE = free and appropriate education
- MFE = multifactored evaluation
- IEP = individual education plan
- FBA = functional behavior assessment
- BIP = behavior intervention plan

Who has a disability for purposes of IDEA?

24 CFR § 300.8 - the magic 13 categories:

Cognitively disabled (mental retardation)

Hearing impairment

Speech or language impairment

Visual impairment

Emotionally disturbed

Orthopedic impairment

Autism

Traumatic brain injury

Other health impairment

Specific learning disability

Deaf-blindness

Multiple disabilities

Pre-school child with disability



Can a child with a disability be subject to disciplinary action?

YES, if...

The breaking point is **10 school days**.

Students with disabilities may be suspended out of school with no educational services for up to a total of 10 school days per year using the same procedures that are used with typical peers.

Change of Placement

- Removals for more than 10 days constitute a change of placement
- Change of placement triggers procedural safeguards

Immediately, but in no case later than 10 school days after the date on which the decision was made to take disciplinary action, the IEP team must meet to determine whether the student's behavior is a manifestation of the student's disability.

Manifestation Determination

- Team = parent and all relevant members of the IEP team
- Team reviews all relevant information from the student's file, parent. teacher observations



Team decision

Two questions:

1. Was the conduct in question caused by, or had a direct and substantial relationship to the child's disability, or
2. Was the conduct in question the direct result of the school's failure to implement the IEP?

If the answer to either question is “**YES**”,
Behavior = manifestation = no discipline

If the answer to both questions is “**NO**”,
Behavior = no manifestation = discipline

Action required if behavior was a manifestation

The IEP team must

- Conduct an FBA and implement a BIP
- If BIP already exists, review and modify as necessary to address the behavior
- Return the child to previous placement unless agreed change is part of modification of the BIP

Action if behavior not a manifestation

School may use same discipline procedures and duration as with nondisabled students

EXCEPT

School must continue to provide the student with FAPE

Services may be provided in an interim alternative placement (IAES)

Special Circumstances

School may remove a student to an IAES for not more than 45 days without regard to whether behavior is manifestation if:

1. Child carries a weapon to or possesses a weapon at school
2. Child knowingly possesses, uses, sells, or solicits illegal drugs while at school
3. Child has inflicted serious bodily injury upon another person at school

IEP team determines the IAES

Procedural Safeguards

What to do if the child/parents disagree

Expedited due process:

Parents can request if they disagree with disciplinary placement or manifestation determination

School can request if it believes current placement is substantially likely to result in injury to the child or another

Expedited Due Process

- Hearing must occur within 20 school days
- Hearing officer must make a decision within 10 school days
- Unless waived, resolution meeting must occur within 7 days
- Hearing proceeds unless matter resolved within 15 days of receipt of due process complaint
- After exhausting state process, appeal is to federal court

Placement pending appeal

Student remains in IAES pending the first of

1. Decision of the hearing officer
2. Expiration of 45 days

Parties can agree to extend IAES

School can request order extending IAES

What About Students Who Have Not Yet Been Identified?

They may assert protections of IDEA if the school had knowledge the the student was a child with a disability before the behavior occurred



Basis of Knowledge

- Parent expressed concern in writing to administration or teacher
- Parent has requested an evaluation
- Teacher or other school personnel expressed concerns



If school has no knowledge

- Student may be subject to discipline
- If evaluation requested during disciplinary period, must be expedited
- Until evaluation complete, student remains in disciplinary placement
- So even if student suspended or expelled, if you suspect a disability, ask for an evaluation!

Finally

Federal Law: 20 USC §1415
34 CFR Part 300

- Check your state rules
- Other resources
 - Wrightslaw.com
 - Southern Poverty Law Center
 - Children's Law Center
- Questions?

The logo for Wrightslaw features the word "Wrightslaw" in a bold, sans-serif font. The "Wright" is in blue and "slaw" is in orange. A curved line above the text transitions from yellow to orange to red.The logo for The Children's Law Center features the text "The CHILDREN'S LAW CENTER" in blue, sans-serif font. The word "CHILDREN'S" is on the top line and "LAW CENTER" is on the bottom line. There are stylized human figures in red and blue integrated into the letters "I" and "R" in "CHILDREN'S" and "E" in "CENTER".

Southern Poverty Law Center