

Special Education Discipline Procedures

What Principals Need to Know



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Outcomes

- Partner District Principals will
 - be informed of the legal foundations for discipline of students with disabilities;
 - be educated on what constitutes a disciplinary removal and the relationship to the educational placement of a student with a disability;
 - learn when special disciplinary procedures should be initiated and how to make the determination as to whether a manifestation determination is needed;
 - be taught how to monitor and calculate timelines related to manifestation determinations;
 - and obtain an overview of how a manifestation determination is conducted.

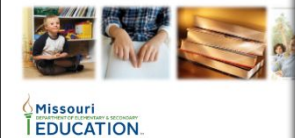
Legal Foundations and General Guidance

Legal Foundations for Special Education Disciplinary Procedures

- Regulations for implementing the Individuals with Disabilities Education Act (IDEA), including the requirements for dealing with students with disabilities who are suspended from school
 - 34 CFR § 300.530-300.536 (federal)
 - [Missouri State Plan for Special Education](#)
 - [Regulation V Procedural Safeguards/Discipline](#)
 - [Missouri Compliance Standards and Indicators](#)
- Missouri statutes address:
 - requirements for local boards of education to establish rules for student conduct (Section 160.261, RSMo)
 - what must be included in a school district's policies (definitions of weapons; Section 570.010, RSMo),
 - information to be provided when a student transfers to a new school (167.23, RSMo)



Dr. Margie Vandeven
Commissioner of Education



Missouri Office of Special Education Compliance Standards and Indicators



Missouri Department of Elementary and Secondary Education
Office of Special Education

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Authority of School Personnel

- Missouri statutes allow for the discipline of students, including students with disabilities
- IDEA affirms the authority of school personnel to remove students with disabilities and apply disciplinary procedures in the same manner and for the same duration as the procedures would be applied to children without disabilities
- Discrimination based on a student's disability is prohibited (Americans with Disabilities Act, Section 504)
- Despite requirement to accommodate students with disabilities, schools are not required to excuse behavior that violates the school's code of conduct!

34 CFR Sec 300.530 (IDEA): Authority of School Personnel

“School personnel under this section may remove a child with a disability who violates a code of student conduct **from his or her current placement** to an appropriate interim alternative educational setting, another setting, or suspension, **for not more than 10 consecutive school days** (to the extent those alternatives are applied to children without disabilities), **and for additional removals of not more than 10 consecutive school days** in that same school year for separate incidents of misconduct **(as long as those removals do not constitute a change of placement)**”

Types of Disciplinary Removals

- ***In-School Suspension (ISS)*** – Instances in which a child is temporarily removed from his/her regular classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision. *Must have access to GE students, GE curriculum, and Sped services. The Sped Services might look different.
- ***Out-of-School Suspension (OSS)*** – Instances in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IEP.
- ***Expulsion*** – An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes for the remainder of the school year or longer in accordance with local educational agency policy.
- ***Unilateral Removal*** – Instances in which school personnel, not the IEP team, ordered removal of the student with an IEP from current educational placement to an appropriate interim alternative educational setting for drugs/alcohol/serious bodily injury or dangerous or violent student status for not more than 45 days.


But remember...

- There are additional procedures to follow when issuing long term suspensions to students with disabilities or when an accumulation of short-term removals constitutes a change of placement.
- Discrimination can occur when students with disabilities are *not* disciplined.

Other Circumstances That May Count as Discipline Removals

- Partial day or unofficial removals (71 Fed. Reg. 46,715 (2006))
- Student non-attendance due to a District requirement that parent/guardian or student complete some action or meet some requirement as a contingency for the student's return
- Bus suspension IF transportation is listed as a related service on the student's IEP

EXAMPLE



“Overnights”- Instances in which a child is not allowed to return unless they come with a parent for a reinstatement meeting with the building administrator.

These types of circumstances should be considered an OSS if the student missed instructional time. (e.g., the student cannot come back because the parent cannot make it until 3 days later)

If the student missed instructional time, the special educator must enter the days removed on a Disciplinary Documentation Form as a suspension.

Suspensions Involving Bus Transportation

Student is suspended off bus and the student's IEP shows transportation as....	And the student....	Does the day count as OSS?
Related Service	Does not attend school	Yes
Related Service	Attends school because the parent provides transportation	Yes
Related Service	Attends school because parent provides transportation and the school reimburses (or offers to reimburse) the parent for providing the "transportation services"	No
Not a Related Service	If student misses greater than 10 days due to bus suspension, the IEP team should convene to discuss behavioral concerns on bus and consider transportation as a related service	

[DESE Bus Suspension Chart 2020](#)

**What do
you
think?**

**Student with a disability is
written up while riding bus and
transportation as a related
service is on their IEP.**

**How should the school
administrator respond to this?**

Examples of IDEA Violations Involving “Other Circumstances”

- A charter school violated the IDEA by failing to ensure that a student with an emotional disturbance and autism continued to receive educational services and was provided with a manifestation determination after the school shortened his school day. (*Millennium Community Sch.*, SEA OH 03/25/16)
- A student with a disability was sent home for most of the day after a behavioral incident before being officially suspended for 10 days. Because he was actually removed from school for more than 10 days, the district was required to issue a prior written notice to his guardian and provide FAPE during the suspension. (*Cleveland Metropolitan Sch. Dist.*, SEA OH 01/22/15).

Source: Special Ed Connection

These are NOT removals...



- Refusal to allow the student to attend due to failure to meet Missouri immunization requirements
- Refusal to allow the student to attend due to residency requirements
- In-school suspension (ISS)
 - ***Provided the student is allowed to access all their special education services and the general education curriculum; otherwise, it could become OSS in certain situations***

Counting Days: Why the Type of Removal Matters

- Schools must keep track of the number of days students have been removed for disciplinary reasons
- Once a student's special education placement has been changed due to disciplinary reasons, the student may be entitled to a Manifestation Determination.
- A student's special education placement may have changed, once the number of days a student has been removed for disciplinary reasons exceeds 10, consecutively or cumulatively
- School personnel must keep track of the days of removal for disciplinary reasons to ensure two things:
 1. What services a student needs on the 11th day of suspension and beyond
 2. Whether a Manifestation Determination is required

What is Educational Placement for Students with IEPs?

- Placement is not necessarily a location, a classroom or a place
- Placement is not synonymous with Least Restrictive Environment (LRE) though they are concepts integral to each other
- Placement is better described as the amount of specialized services and supports a student needs and the degree to which the student must be removed from the regular education setting to receive those services and supports, because they cannot be provided in the regular education setting effectively.
- Placement decisions are made by IEP teams.

DESE Continuum of Alternative Placements

Placement Continuum (K-12)			Placement Options (ECSE)		
Considered	Selected		Considered	Selected	
<input type="checkbox"/>	<input type="checkbox"/>	Inside regular class at least 80% of time	<input type="checkbox"/>	<input type="checkbox"/>	Early childhood setting
<input type="checkbox"/>	<input type="checkbox"/>	Inside regular class 40% to 79% of time	<input type="checkbox"/>	<input type="checkbox"/>	Early childhood special education
<input type="checkbox"/>	<input type="checkbox"/>	Inside regular class less than 40% of time	<input type="checkbox"/>	<input type="checkbox"/>	Home
<input type="checkbox"/>	<input type="checkbox"/>	Public separate school (day) facility	<input type="checkbox"/>	<input type="checkbox"/>	Part-time early childhood/Part-time early childhood special education
<input type="checkbox"/>	<input type="checkbox"/>	Private separate school (day) facility	<input type="checkbox"/>	<input type="checkbox"/>	Residential facility
<input type="checkbox"/>	<input type="checkbox"/>	Public residential facility	<input type="checkbox"/>	<input type="checkbox"/>	Separate school
<input type="checkbox"/>	<input type="checkbox"/>	Private residential facility	<input type="checkbox"/>	<input type="checkbox"/>	Itinerant service outside the home
<input type="checkbox"/>	<input type="checkbox"/>	Home/hospital			

“Educational Placement” and Relationship to Disciplinary Removal

- When a student is suspended for greater than 10 days, consecutively, their educational placement, effectively will change
 - Example: Student receives a 10-day principal suspension and a 30 day superintendent’s suspension
- A student’s placement might also change when they’ve received multiple short-term suspensions over the school year that cumulatively total more than 10 days AND there is a pattern to those removals*
 - Example: Student received a 2-day suspension for fighting, a 4 day suspension for fighting, a 5 day suspension for fighting, all within a 6 week period during unstructured times of the school day
- In both of these circumstances, the student was removed so much from school that their placement was effectively changed
- When this occurs, a manifestation determination must occur

*Note that if there is no pattern to a series of multiple removals no manifestation determination will be needed.

Removals and Change of Placement

Short Term Suspension

10 days or less
Series of short-term
suspensions with no pattern



No change in placement



No manifestation
determination

Short Term Suspension

Series of short-term
suspensions totalling more
than 10 days WITH a pattern



change in placement



Manifestation determination
required

Long Term Suspension

11 days or more



change in placement



Manifestation determination
required

Regardless if the suspension is a Short-Term or Long-Term removal

A student with a disability must receive services on the 11th day of removal

Analysis: Determining if a Pattern of Suspension Exists

Pattern: A regularity; elements that repeat in a predictable manner; a series or sequence that repeats

When does the pattern matter?

Removals that total 11 or more days cumulatively in the school year

Who decides if there is a pattern?

School personnel determine on a case-by-case basis if a pattern has been created.

- **Special Education Coordinator should be involved with this decision**
- The “public agency” determines whether a pattern of removals constitutes a change of placement on a case-by-case basis (Reg. V, MO State Plan); “School personnel” determine whether the current removal constitutes a pattern of suspension (300.20, Compliance Standards and Indicators)
- There is no requirement for a meeting or IEP meeting;
- Parents are not required to be a part of this determination
- There is no prior written notice requirement for this determination
- Decision may be challenged through due process and judicial proceedings


Analysis: Determining if a Pattern of Suspension Exists

Has a pattern been created?

- The child's behavior that triggered the removal is **substantially** similar to the child's behavior in previous incidents that resulted in the series of removals
 - ****Only consider the behaviors that resulted in OSS**
 - Is **substantially** similar **not "somewhat" similar**
 - Must be **very clearly similar (use the description of the event not just the code).**
 - The exact behavior could have been predicted

AND

- A pattern is evident in at least one of the following:
 - Length of each removal
 - The total amount of time the child has been removed and
 - The proximity of the removals to one another



At this point, we are not including any analysis of the student's disability. Save that for the manifestation determination!

No Pattern of Suspension = No Disciplinary Change of Placement
NO MANIFESTATION DETERMINATION

Pattern of Suspension = Disciplinary Change of Placement
MANIFESTATION DETERMINATION

Services on the 11th Day of Removal

Regardless if the suspension is a Short-Term or Long-Term removal

A student with a disability must receive services on the 11th day of removal.

300.20

School personnel, in consultation with at least one of the child's teacher's, determine the extent to which services are required on the 11th school day and thereafter and the location in which services will be provided to enable child to appropriately progress in general curriculum and appropriately advance towards achieving goals set out in IEP. Documentation includes the following:

- **300.20.a.** Date on which the decision was made regarding the extent to which services were required on the 11th school day and thereafter and the location in which the services would be provided
- **300.20.b.** Listing of participants in the decision
- **300.20.c.** Results of the decision

<https://dese.mo.gov/media/pdf/discipline>

GROUP WORK: Sample Case- Pattern Analysis

Student A

Aug 25: throwing an object at a teacher: 3-day OSS

Sept 3: elopement from classroom: 2-day OSS

Sept 6: throwing an object at a teacher: 3-day OSS

Sept 11: throwing a book at a peer: 4-day OSS

Sept 23: left school grounds: 4-day OSS

Oct 5: walked out of the school: 2-day OSS

Oct 9: threw a spoon in the cafeteria, left the school: 3-day OSS

Dec 12: left school grounds: 4-day OSS



When do school personnel need to initiate special procedures ?

At what point(s) is there a pattern and a Manifestation need to be completed?

The Manifestation Determination

Manifestation Determination Timeline

300.30.b. Documentation is present that within ten (10) school days after any decision to change the placement of a child with a disability because of a violation of a code of student conduct, a manifestation determination was conducted.

<https://dese.mo.gov/media/pdf/discipline>

- **For short term suspensions**, the day a suspension is issued that is determined to indicate a pattern of removal triggers the 10-day timeline within which a manifestation determination must be held.
- **For long term suspensions**, the day the Superintendent/Hearing Officer officially issues the suspension triggers the 10-day timeline within which a manifestation determination must be held.

Manifestation Determination Timeline for Short-Term Suspensions

- Student has 8 cumulative days of suspension:
 - 2 days for fighting December 15
 - 1 day for verbal aggression January 10
 - 3 days for fighting February 12
 - 2 days for fighting February 20
- He gets in a fight and is given 3 days of OSS on March 1
- School personnel realize student has accumulated 11 days of OSS this school year
- On March 2 school personnel review student's behavior in previous incidents and determine if a pattern of suspension has been created.
- School personnel determine that a pattern has been created, which constitutes a disciplinary change of placement and requires a manifestation determination
- Since the suspension was issued on March 1, school personnel have until March 15 to hold the manifestation determination (10 school days)



The date of the Manifestation does not change the fact on the 11th day services must be provided.

Manifestation Determination Timeline for Long-Term Suspensions

Jack is an 8th grade boy who receives special ed services for an Other Health Impairment. He got into a fight on March 1. He is suspended for 10 days by the building administrator with a recommendation to the Superintendent for an additional 30 days. By what date do we have to do the Manifestation Determination?



March						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31



March 9 triggers 10 school day timeline for Manifestation Determination. This is the date of the decision to long term suspend.

[Source: DESE Discipline Presentation 7.2021](#)

Manifestation Determination

300.40 Manifestation Determination: 34 C.F.R. §300.350 (e)(2); SP(V)	Documentation is present that the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the LEA): 300.40.a. Reviewed all relevant information in the student's file, including 300.40.a.(1) The child's IEP 300.40.a.(2) Any teacher observations 300.40.a.(3) Relevant information provided by the parents	Student file
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Keep in mind that this is NOT an IEP meeting and as such, does not have the same requirements as those that exist for IEP meetings

- Reasonable attempts to ensure parent participation should be made and the SSD Notification of Meeting must be sent in accordance with SSD procedures
- Manifestation Determinations may proceed without the parent in attendance
- Don't stop at reviewing just the latest IEP; historical information may be quite helpful in making decisions

Manifestation Determination

300.40 Manifestation Determination:

34 C.F.R. §300.350 (e)(2);
SP(V)

Documentation is present that the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) made a determination regarding both of the following:

300.40.b. Whether the conduct in question was caused by, or had a direct and substantial relationship to the child's disability

OR

300.40.c. Whether the conduct in question was the direct result of the LEA's failure to implement the IEP.

NOTE: The conduct must be determined to be a manifestation if either of these conditions is met.

IMPORTANT CONSIDERATIONS

- The behavior must be **very clearly caused by, or directly related to the disability (4.5 on a 1-5 scale)**
- The behavior/misconduct may not merely be “related” to the disability
- Consult with your school psychologist and/or invite them to the manifestation determination if there are questions about the evaluation.
- The group's decision is not a vote. Consensus should be obtained.

Conduct is NOT a Manifestation of the Disability

- Student can serve the suspension
- District can apply the same discipline consequences as those that non-disabled peers receive
- 34 C.F.R. §300.530 (c)(d)(1) The **IEP team** must :
 - **Determine services and placement** that will be in place on the 11th day of removal that will allow the student to:
 - Receive educational services to continue to participate in the general education curriculum, but in an alternate setting during the suspension
 - Progress toward IEP goals
 - Receive a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) or a review of an existing FBA and BIP, if appropriate (this will require reevaluation procedures)
 - Provide the parent/guardian with procedural safeguards prior written notice for change of placement

Conduct IS a Manifestation of the Disability

- Student **CANNOT** be long-term suspended
- IEP team must:
 - Conduct an FBA and develop a BIP or review/revise an existing FBA and BIP
 - Return the student to the placement from which they were removed
or
 - With parent agreement, change the student's placement
 - Issue prior written notice if placement is changed
 - Be thoughtful when assigning student to a different location

Special Circumstances

SPECIAL CIRCUMSTANCES/FORTY-FIVE (45) SCHOOL DAY INTERIM ALTERNATIVE EDUCATIONAL PLACEMENT:		
<p>300.70 Forty-five (45) day removal – weapons/drugs/serious bodily injury:</p> <p>34 C.F.R. §300.350 (g)(1-3), (h); 34 C.F.R. §300.350 (f)(1)(i – ii), (2); SP(V)</p>	<p>Whether or not the behavior was a manifestation of the child’s disability, school personnel may remove a student to an interim alternative educational setting (determined by the child’s IEP team) for up to forty-five (45) school days if the child:</p> <p>300.70.a. Carries or possesses a weapon to school, or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.</p> <p style="text-align: center;">OR</p> <p>300.70.b Knowingly has 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 under the jurisdiction of the State Educational Agency or a school district; or,</p> <p style="text-align: center;">OR</p> <p>300.70.c. 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 Educational Agency or a school district.</p> <p>Documentation is present that on the date the superintendent or designee issued the 45 school day suspension the parent(s) and/or majority-aged student was:</p> <p>300.70.d. Notified of the decision</p> <p>300.70.e. Provided a copy of the Procedural Safeguards Notice</p> <p>Documentation is present that within ten (10) school days after any decision to change the placement of a child with a disability because of a violation of a code of student conduct:</p> <p>300.70.f A manifestation determination was conducted.</p>	<p>Student file</p>

Special Circumstances

300.70

Forty-five (45) day removal –
weapons/drugs/serious bodily
injury:

34 C.F.R. §300.350 (g)(1-3), (h);
34 C.F.R. §300.350 (f)(1)(i – ii),
(2); SP(V)

NOTE (1) The interim alternative educational setting must be determined by the IEP team for removals that are changes of placement and forty-five (45) school day placements described under special circumstances.

NOTE (2) If relevant members of the IEP team determine the conduct was not a manifestation of the disability then the agency may impose disciplinary procedures consistent with those applied to children without disabilities.

Serious Bodily Injury

A serious bodily injury involves an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365 (h)(3)) (Reg. V, Mo State Plan).

Students Suspected of Having a Disability

- IDEA includes protections for students suspected of having a special education disability. (Procedural Safeguards p 30-31)
- Consider whether there was knowledge prior to the disciplinary action
- A district is deemed to have knowledge that a student was a student with a suspected disability if before the behavior that triggered the discipline:
 - The parent/guardian expressed concern in writing to supervisory or admin personnel of the appropriate education agency or to the child's teacher that the child was in need of special education
 - The parent/guardian requested an evaluation related to eligibility for special education
 - Child's teacher or other school district personnel expressed specific concerns about a pattern of behavior to the school district's director of special education or other supervisory personnel of the district.

Exceptions to Having Prior Knowledge

- A school district is not deemed to have prior knowledge of a suspected disability if
 - The parent/guardian did not allow an evaluation or refused special education services OR
 - The student was evaluated and determined not to be a student with a disability

If prior to taking disciplinary measures the district had no knowledge of a suspected disability, the student may be subjected to the disciplinary measures that are applied to children without disabilities

If a parent/guardian makes a request for an evaluation during the time period the student is subjected to disciplinary measures, the evaluation must be completed in an expedited manner

Until the evaluation is completed, the student remains in the educational placement determined by the district, which can include suspension or expulsion without educational services

Responsibilities of Gen Ed and Special Ed in the Discipline Process

- **General Education Staff/Administration**

- Make timely discipline decisions and keep excellent documentation of suspensions issued
- Ensure communication with special education staff regarding discipline decision
- Issue and maintain communications to parents regarding discipline decisions
- Provide detailed descriptions of acts of misconduct
 - General labels or codes are not descriptive enough to assist with pattern analysis or manifestation determinations
- Participate in Manifestation Determination meetings

- **Special Education Staff/Administration**

- Complete Discipline Documentation forms in a timely manner
- Keep excellent documentation when notified of disciplinary removals to ensure that when needed, manifestation determinations are held within compliance timelines.
- Schedule manifestation determination, participate and document proceedings
- Issue appropriate prior written notice and Procedural Safeguards when required
- **Does not issue discipline or determine extent of discipline**

Communication between the administrator doing the suspending and special education staff about students with disabilities and those suspected of having a disability is critical during the disciplinary process!

Key Resources for Support

- [Missouri State Plan for Special Education](#)
 - [Regulation V Procedural Safeguards/Discipline](#)
- [Missouri Compliance Standards and Indicators](#)
- [DESE Compliance Presentation: Discipline](#)
- [DESE Discipline Flowchart](#)
- [DESE Myth of the Month: Discipline](#)
- [DESE Bus Suspension Chart](#)

Questions?