

# Special Education Disciplinary Requirements

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WISCONSIN DEPARTMENT OF  
**Public Instruction**  
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# Overview

- FAPE
- Addressing Behavioral Needs
- Disciplinary Requirements
- Additional Considerations
  - Bullying
  - Shortened Day



# Free Appropriate Public Education



# Free Appropriate Public Education

- **IDEA 20 U.S.C. § 1401 (2004)**
- **(9) Free appropriate public education**
- The term "free appropriate public education" means special education and related services that—
- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;



# Rowley and Endrew F


- Rowley (1982): The IEP must be reasonably calculated to enable the student to receive educational benefit.
- Endrew F (2017): The IEP must be reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances.

# FAPE in Practice

- Districts must provide FAPE to each student with a disability by developing a program based on the student's unique needs that is reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances, documenting that program in the IEP, and implementing the program articulated in the IEP.



# Key Concepts

- **Progress**
    - Current Present Levels of Information
    - Measurable Annual Goal (Baseline and Attainment)
    - Appropriate Methods for Measuring Progress
    - Review and Reporting Progress Toward Annual Goals
    - Address Lack of Progress
- 

# Addressing Behavioral Needs





# Behavior: IDEA Requirements

- If the student's behavior impedes his or her learning, or the learning of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior.



# Behavior and FAPE

- Failure to address the behavioral needs of a student with a disability can result in both a denial of FAPE and a denial of placement in the least restrictive environment.
- Addressing behavioral needs may include developing goals, providing specially designed instruction, related services, et cetera.



# Behavior and FAPE

- If the student already has behavioral supports, but there are repeated behavioral incidents and/or disciplinary removals, the IEP team should be reconvened to review, and if appropriate, revise the IEP.



# Addressing Behavior

**Consider whether a formal functional behavioral assessment would be appropriate**

**New (Sept. 2023) Bulletin on FBAs on DPI webpage.**

- **<https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins>**

# Key Points

1. Intervene Early Using the IEP Process.
2. Failing to address the behavioral needs of a student can result in a denial of FAPE.
3. Misbehavior, classroom disruptions, and violations of school board policy, may indicate a need to review/review the IEP.  
*(Especially true when you notice a pattern)*
4. Behavioral Supports = specially designed instruction, related services, supplementary aids and services etc.



# Disciplinary Requirements



# Discipline

- Students with disabilities are entitled to the same disciplinary protections afforded to students who are not disabled
- Length of Suspensions



# Disciplinary Removals



Students with IEPs can be removed from school for up to 10 cumulative school days in a school year for a violation of a code of student conduct, before the special education “discipline requirements” apply.

But remember the OSEP Dear Colleague Letter





# Removals and FAPE

- If a student is removed for several days, the IEP team should meet to review the goals, services, and behavioral supports/interventions to determine if they are effective in meeting the student's behavioral needs, and revise the IEP if necessary.

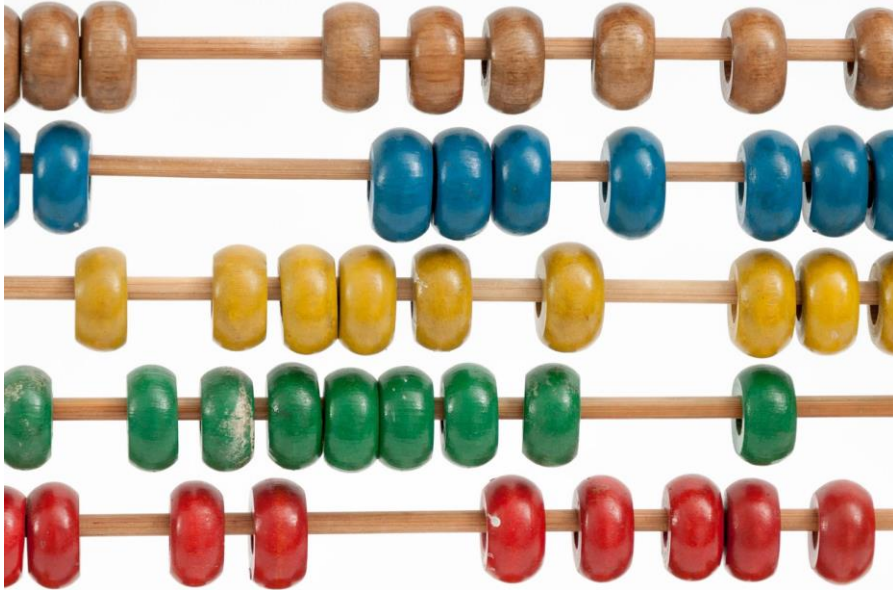


# Disciplinary Removals

- **After 10 cumulative school days, services must be provided so as to enable the student to:**
  - Continue to participate in the general education curriculum, although in another setting, and
  - To progress toward meeting IEP goals.
- **School personnel, in consultation with at least one of the student's teachers determine services.**



# Counting Removals



- In-school Suspensions
- Out of school Suspensions
- *De facto* Suspensions
- Partial-day Suspensions
- Bus Suspensions



# Scenario

In 3rd hour, a student refused to do assigned classwork and became verbally inappropriate when redirected. The teacher sent the student to the office where the student remained until dismissal. The student completed the original assignment, but missed the rest of the scheduled classes that day.

**Is this a disciplinary removal?  
What would you do?**



# Disciplinary Change of Placement

- Removal for more than 10 consecutive school days (10 school days in a row); or
- The student has been subjected to a series of removals (more than 10 cumulative school days) that constitutes a pattern



# What constitutes a pattern?



- Removals total more than 10 cumulative days in a school year; AND
- Behavior is substantially similar to behavior in previous incidents that resulted in removals; AND
- Behaviors are close in proximity to one another.



# Key Points

Once a student has been removed for 10 school days, you cannot keep removing the student without going through a few processes first.



# Prior to Suspending Beyond Day 10

**Determine if the proposed suspension would constitute a disciplinary change of placement.**





# Disciplinary Change of Placement?

## •If YES:

- Conduct a Manifestation Determination

## •If NO:

- Proceed with proposed discipline and provide services.



# Services/Not a Disciplinary Change of Placement

- **FAPE must still be provided.**
- **Services must enable the student to continue to participate in the general education curriculum and to progress toward meeting IEP goals.**
- **School personnel, in consultation with at least one of the student's teachers, determine the services.**



# Disciplinary Change of Placement

If there is a decision to change placement because of a violation of a code of student conduct:

- Parents must be notified and provided with notice of procedural safeguards
- A manifestation determination is required
- Services and setting are determined by the child's IEP team



# Is Manifestation Determination Required?

**A student violated a school rule at 10 a.m. and was sent home for the rest of the day. This was the 8<sup>th</sup> total day of disciplinary removal during the school year. Next week, the district held an IEP team meeting to determine whether the removal was a manifestation of the student's disability.**



# Manifestation Determinations

- **When:** required when there is a disciplinary change in placement
- **Purpose:** Determine if the conduct is due to the student's disability
- **Timeframe:** Within 10 school days



# Manifestations Determinations (Continued)

- **Who:** The school district, the parent, and relevant members of the IEP team
- **What:** In making the determination, all relevant information in the student's file must be reviewed, including the IEP, teacher observations, and information provided by the parents



# Manifestation Determinations (Continued)

**How: The conduct must be determined to be a manifestation of the student's disability if it is determined that:**

- **The conduct was caused by, or had a direct and substantial relationship to, the student's disability; OR**
- **The conduct was the direct result of the district's failure to implement the IEP**



# If Behavior IS a Manifestation...

- Return student to previous placement unless an exception applies
- Conduct a functional behavioral assessment (FBA), unless one has previously been conducted, and implement a behavioral intervention plan
- If a BIP has already been developed, review the BIP and modify as necessary to address the behavior.



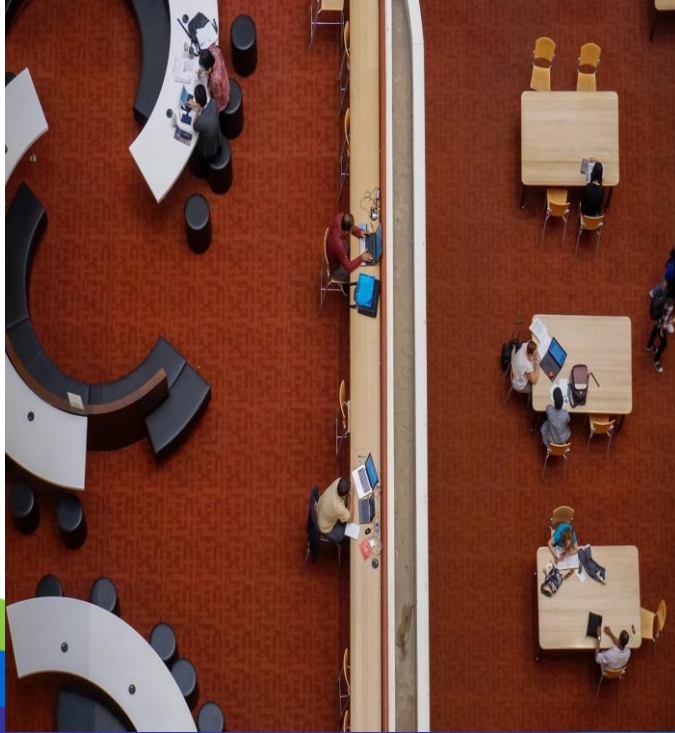


# If behavior is NOT a manifestation

- The school district may proceed with the change in placement
- FAPE must still be provided, which is determined by the IEP team.
- The services must enable the student to continue to participate and make progress in the general education curriculum and to make progress toward IEP goals.



# Exception/Interim Alternative Educational Setting

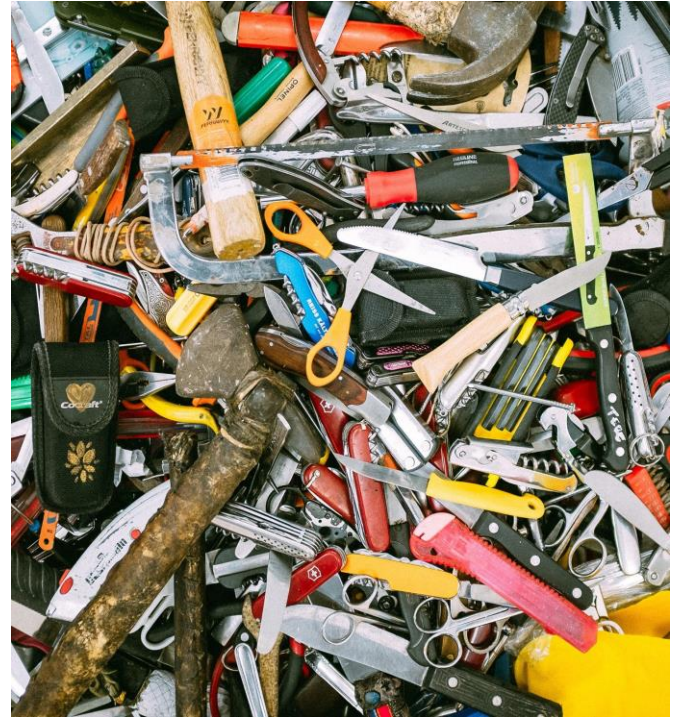


- **Only for:**
  - Weapons
  - Illegal drugs or controlled substances
  - Serious bodily injury
- **Up to 45 school days**
- **The IEP team determines IAES**



# Definition: Weapon

- **Weapon, device, instrument, material or substance, animate or inanimate, used for, or is readily capable of, causing death or serious bodily injury.**
- **Does not include a pocket knife with a blade of less than 2 ½ inches**



# Definitions: Drugs

**A controlled substance unless the controlled substance is legally possessed and used pursuant to a prescription**

- **Does not include tobacco or alcohol**
- **Does not include over-the-counter medicine**
- **Does not include prescription meds if used pursuant to the Rx**
- **Does include marijuana, cocaine, heroin, LSD, other “illegal street drugs” and/or prescription drugs not used pursuant to an Rx**



# Definitions: Serious Bodily Injury



- 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
- Most injuries by a student of another student, teacher, or administrator are **NOT** “serious bodily injury”



# Disagreement with Manifestation Determination or Disciplinary Removal

## Any of the Special Education Dispute Resolutions are Available

- Due Process
- Mediation
- IDEA Complaint



# Protections for Children Not Yet Eligible for Special Education

- District knows student may have a disability
- District is “deemed to have knowledge” if BEFORE misconduct occurs: (See 34 CFR 300.534(b))
  1. Parent expresses concern, in writing, to appropriate school staff that student needs special education and related services; OR
  2. Parent requested an evaluation of the student; OR
  3. Teacher or other school personnel expressed specific concern to director of special education or school supervisor about a pattern of student’s demonstrated behavior



# When the Deemed to Know Provisions Don't Apply

**The district does not have knowledge if:**

- The student's parent did not consent to an evaluation
- Refused initial provision of special education services,
- Revoked consent for special education services, or
- The student was evaluated and determined not to be a student with a disability.





# Protections for Children Not Yet Eligible for Special Education

- A district must evaluate a student referred for special education during a period of disciplinary removal
- The evaluation must be conducted in an expedited manner



# Some Additional Considerations



# Bullying

- **Bullying is characterized by aggression used within a relationship where the aggressor has more real or perceived power than the target and the aggression is repeated or has the potential to be repeated over time.**
- **Any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.**
  - **Whether or not the bullying is related to the student's disability**



# Response to Bullying

- **Reconvene IEP team**
- **Student's needs may have changed**
- **IEP may no longer be designed to provide meaningful educational benefit**
- **Use caution when considering a more restrictive placement**
- **Follow LEA's internal bullying policy**



# Bullying – Recent Decisions

- **IDEA Complaint Decision 23-010**
- **IDEA Complaint Decision 23-041**
- **IDEA Complaint Decision 23-045**



# Shortened Day

- **Definition**
- **When Appropriate**
- **IEP Team Decision**
- **Behavior**



# Shortened Day – Recent Decisions

- **IDEA Complaint Decision 22-099**
- **IDEA Complaint Decision 23-011**
- **IDEA Complaint Decision 23-044**



# Thank You!

Special Education Team

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