

**If the court action granting temporary custody to the state stipulates that parent rights regarding education have been removed, must the district nominate a surrogate?**

Yes.

**May a school district use IDEA Part B federal funds for recruitment and/or training of surrogate parents?**

Yes.

## **Disciplinary Removals In Special Education**

### **Change of Current IEP Placement for Disciplinary Purposes**

**What is meant by a "change of current placement" in reference to disciplinary removals?**

A change of current IEP placement occurs if:

(a) The suspension/expulsion is for more than 10 consecutive school days; or

(b) The child is subject to a series of suspensions that constitute a pattern because;

- they accumulate to more than 10 school days in a school year and because of factors such as the length of each suspension, the total amount of time the child is suspended and the proximity of the suspensions to one another
- the child's behavior is substantially similar in the series of suspensions
- additional factors such as the length of time the child has been suspended and the frequency of the suspensions

34 CFR 300.536 Change of placement because of disciplinary removals.

**What constitutes a day of removal?**

Removing the child from school for any part of the day is considered a whole day suspension with respect to the 10 day limit.

### **Do in-school suspension days count towards the 10 day total?**

If the student is provided with services that allows them to progress toward their IEP goals and participate in the general curriculum, it does not count as a day of suspension. When a student is removed from their regular setting and isolated from instruction, it is a day of suspension.

71 Fed. Reg. 46,715 (2006)

### **May authorized school district personnel suspend a student with an IDEA protected disability?**

Yes. To the extent removal would be applied to students without disabilities, a student with a disability may be suspended for not more than 10 consecutive school days for any violation of school rules, and additional suspensions of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those suspensions do not constitute a change of placement –

34 CFR 300.530 Authority of school personnel

### **Do these protections apply to a student prior to the Evaluation Team determination that the student is a student with a disability and needs special education and related services?**

The IDEA procedural safeguards apply to any student that a school district suspected was a student with a disability prior to the behavior occurring.

### **What is the basis of “suspected”?**

- The parent of the child expressed concern, in writing, to the school district that the child may need special education and related services.
- The parent requested an evaluation for special education eligibility.
- A teacher or other personnel expressed specific concerns about a pattern of behavior demonstrated by the student to the school district administration.

### **Does IDEA require that a school district always provide educational services to a student with an IDEA-protected disability who has been suspended for disciplinary reasons?**

A student with an IDEA-protected disability may be suspended from his/her current IEP placement for 10 school days or less in a school year without the provision of educational services. Beginning on the 11th day of suspension/expulsion, the school is required to provide the necessary services to allow the student to progress toward their IEP goals and participate in the general curriculum although in another setting.

34 CFR 300.530 Authority of school personnel

**If a student is suspended from riding a bus to school and does not attend school during the suspension, do the school days missed count toward the 10-day limit per school year that a student may be suspended without the provision of FAPE?**

If bus transportation is not part of the student's IEP, the student and his/her parents would have the same obligations to get to and from school as a nondisabled student who is suspended from the bus. If transportation is a related service in the student's IEP and the district does not provide alternative transportation, then the school days missed count toward the 10 days.

**What is a Functional Behavioral Assessment (FBA)?**

A functional behavioral assessment is a comprehensive and individualized strategy to:

- Identify the purpose or function of a student's problem behavior(s).
- Develop and implement a plan to modify variables that maintain the problem behavior.
- Teach appropriate replacement behaviors using positive interventions.

**When is a FBA required during disciplinary actions?**

If it is determined that the conduct that resulted in the student's suspension/expulsion was a manifestation of the student's IDEA qualifying disability(ies), the IEP team is required to conduct a FBA unless one has previously been completed regarding the same or similar conduct.

If the IEP team determines that the behavior was a manifestation of the IDEA qualifying disability(ies), what other step must be taken by the school district?

The school district must develop and implement a positive behavior intervention plan or review an existing positive behavior support plan and modify it, as necessary to address the behavior.

34 CFR 300.530(f) Authority of School Personnel

## **Manifestation Determination**

**What is an IDEA manifestation determination and when is one required?**

A manifestation determination is a review of the relationship between the student's IDEA protected disability and the behavior subject to the disciplinary action. A manifestation determination review must be conducted within 10 school days after the date on which the decision to change the student's IEP placement based on the student's conduct.

34 CFR 300.530 Authority of school personnel

**Is a manifestation determination required each time a student is removed for more than 10 consecutive school days or each time that the school district determines that a series of removals constitutes a change of placement?**

Yes.

**Who conducts the manifestation determination and what are the requirements of a manifestation determination?**

The school district, the parent, and relevant members of the IEP team conduct the manifestation determination review.

34 CFR 300.530 Authority of school personnel

**What questions must be answered when making a manifestation determination?**

The school district and parent must determine:

- If the conduct in question was caused by or had a direct and substantial relationship to the student's IDEA qualifying disability(ies) or
- If the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation if the answer to either question is yes.

34 CFR 300.530(e) Authority of School Personnel

**Are there special circumstances that effect the district's ability to suspend/expel a student without regard to the behavior being a manifestation of the disability?**

There are three special circumstances.

1. If the student carries or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the school district or the OPI;
2. Knowingly possesses 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 school district or the OPI;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or the OPI.

Under these circumstances, the student may be removed to an interim educational setting for not more than 45 school days without regard to whether the behavior is a manifestation of the student's disability(ies).

34 CFR 300.530(g) Authority of School Personnel

### **What is the definition of a “serious bodily injury” for these purposes?**

The term “serious bodily injury” is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean a bodily injury that involves a 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.

### **What is the definition of a “weapon”?**

A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

18 U.S. Code § 930  
34 CFR 300.530

### **What is the definition of controlled substance and illegal drug?**

A controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). An illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

34 CFR 300.530

## **EVALUATION REPORT**

### **ASSESSMENT SUMMARIES AND IMPLICATIONS EXAMPLES**

#### **Assessment Area: Classroom-Based Assessment**

##### **Results:**

Amanda is reading at 44 words per minute in a beginning second-grade basal, compared to a class mean of 85 words per minute in the same materials. Amanda’s written production is approximately 10 percent of her classmates. Handwriting is nearly illegible. Amanda’s math score on a chapter test on addition was 87 percent compared to the class mean of 89 percent. Daily work is seldom completed because of