

Frequently Asked Questions Related to Student Dismissals and Positive Behavior Interventions

1. What should a student's individualized education program (IEP) team consider in developing an IEP if a student's behavior impedes the student's learning or other students learning?

The IEP team should consider the development of strategies, including positive behavioral interventions and, supports, and other strategies, to address the behavior. 34 C.F.R. § 300.324(a)(2)(i).

2. What are positive behavioral interventions and supports?

Positive behavioral interventions and supports are designed to help a student acquire appropriate behavior and skills rather than focusing solely on eliminating or reducing problem behaviors. This will enable the student to make progress toward individualized education program (IEP) goals and in the general education curriculum and function as independently as possible in the community. Minn. R. 3525.0850.

3. Where can I learn more about individual and school-wide positive behavioral intervention and supports (PBIS)?

www.pbis.org and <http://education.state.mn.us>.

4. What must happen when a special education student is removed for more than five consecutive school days or 10 cumulative, although not consecutive, school days in the same school year?

- a. Relevant members of the child's IEP team, including at least one of the child's teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's IEP team. The meeting must occur as soon as possible, but no more than 10 days after the sixth consecutive day of suspension or the 10th cumulative day of suspension has elapsed. Minn. Stat. § 121A.43(a).
- b. School personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. 34 C.F.R. § 300.530(d)(4) (10 cumulative days only).

5. What is a manifestation determination?

A manifestation determination requires the district representative, the special education student's parent/guardian and other relevant members of the IEP team to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- b. If the conduct in question was the direct result of the district's failure to implement the IEP. 34 C.F.R. § 300.530(e).

6. When is a manifestation determination meeting required?

The student's IEP team must meet immediately but not more than ten school days from when one of the following occurs:

- a. Prior to the commencement of an expulsion or exclusion (Minn. Stat. § 121A.43 and 34 C.F.R. § 300.530(e)); or
- b. Any decision to change the placement of a student because of the student's behavior (34 C.F.R. § 300.530(e)).

7. What if the team determines the special education student's behavior is not related to the student's disability?

If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except the student must continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP; and receive, as appropriate a functional behavioral assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(a)(2) and (d); Minn. Stat. § 121A.43(d).

8. May a special education student be removed multiple times for separate disciplinary incidents during the same school year?

Yes. School personnel may remove a student with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10

consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. 34 C.F.R. § 300.530(b).

9. What if the team determines the special education student's conduct in question was the direct result of the school's failure to implement the IEP?

The school must take immediate steps to remedy those deficiencies. 34 C.F.R. § 300.530(c).

10. What if the team determines the special education student's behavior is related to the student's disability?

If the team determines the student's behavior is related to the student's disability, the IEP team must conduct an FBA, unless the district conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student. If a behavioral intervention plan already has been developed, the IEP team must review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 C.F.R. § 530(f).

11. When must a Functional Behavior Assessment (FBA) be developed?

An IEP team must be convened to develop an FBA when:

- a. a student is removed for more than 10 consecutive school days for conduct that is a manifestation of the student's disability, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred (34 C.F.R. § 300.530(e)(1), (f));
- b. a student is removed for more than 10 consecutive school days for conduct that is not a manifestation of the student's disability, if the IEP team determines it is appropriate (34 C.F.R. § 300.530(d)(ii)); or
- c. a student is placed in an interim alternative educational setting for not more than 45 school days for behavior involving a dangerous weapon, illegal drugs or infliction of serious bodily injury, if the IEP team determines it is appropriate (34 C.F.R. § 300.530(d)(ii)).

12. What is the timeline for completing an FBA?

After securing parental permission to conduct the FBA, the district must complete the FBA as soon as possible, but not more than 30 school days, after receiving permission. Minn. R. 3525.2550.

13. What is the district's responsibility once the FBA is completed?

The IEP team must develop an appropriate behavioral intervention plan to address the behavior and ensure that those interventions are implemented. 34 C.F.R. § 300.530(f)(1)(i).

14. What is the district's responsibility when the student already has an FBA and/or behavior intervention plan (BIP) in place?

If an FBA and BIP were already in place prior to the behavioral incident that resulted in the change of placement occurred, then the IEP team must review the BIP and modify it as necessary to address the behavior. 34 C.F.R. § 300.530(f)(1)(ii).

15. When can an expedited hearing be requested?

An expedited hearing can be requested if:

- a. a parent of a special education student disagrees with the disciplinary placement of the student;
- b. a parent disagrees with the manifestation determination results; or
- c. the district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others. 34 C.F.R. § 300.532(a).

16. How can a parent or district request an expedited hearing?

The party requesting an expedited hearing files a due process complaint. 34 C.F.R. § 300.532. Additional information can be found in the procedural safeguard notice.

17. In a disciplinary action, when is the district required to provide a copy of the procedural safeguards to the parents of a special education student?

On the same date the district decides to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct. 34 C.F.R. § 300.530(h); 34 C.F.R. § 300.504(a)(3).

18. What constitutes a change of placement because of disciplinary removals?

A change of placement because of disciplinary removals occurs if:

- a. The removal is for more than 10 consecutive school days (34 C.F.R. § 300.536(a)(1));
- b. There has been a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year; because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals;

and, because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another (34 C.F.R. § 300.536(a)(2)(i-iii)); or

- c. School personnel removes a student to an interim alternative educational setting for not more than 45 school days for behavior involving a weapon, illegal drugs or infliction of serious bodily injury (see generally, 34 C.F.R. § 300.530(g)).

19. Does suspension from the bus count against the 10 cumulative days of removal suspension from school?

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the student's IEP. If the bus transportation were a part of the student's IEP, a bus suspension would be treated as a suspension unless the district provides the bus service in some other way, because that transportation is necessary for the student to obtain access to the location where services will be delivered. If bus transportation is not a part of the student's IEP, a bus suspension is not a suspension. In those cases, the student and the student's parent have the same obligations to get the student to school as a nondisabled student who has been suspended from the bus. However, the school should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the student's behavior on the bus should be addressed in the IEP or a behavioral intervention plan of the student. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

20. Does in-school suspension count against the 10 cumulative days of removal?

An in-school suspension would not be considered a part of the days of removal/ out-of-school suspension as long as the special education student is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the student's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

21. Are removals or suspensions for part of a school day considered when determining if there is a pattern of removals?

Yes. Portions of a school day that a special education student had been suspended/removed may be considered as a removal in regard to determining whether there is a pattern of removals. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

22. If a special education student's placement is changed, does the school have a right to a new 10 days of removal period in the same school year?

No. The days of removal from the special education student's current placement consistently refers to days of removal in the same school year. 34 C.F.R. § 300.530(b).

23. If a special education student changes school/district, does the school/district have a right to a new 10 days of removal period in the same year?

No. The days of removal from the special education student's current placement consistently refers to days of removal in the same school year. 34 C.F.R. § 300.530(b).

24. May school personnel ever remove a special education student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability?

Yes. School personnel may remove a special education student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

- a. Carries a dangerous weapon to or possesses a dangerous weapon at school, on school premises, or to or at a school function under the jurisdiction of a district or state department of education;
- b. 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 a district or state department of education;
- c. Has inflicted serious bodily injury upon another person while at a school, on school premises, or at a school function under the jurisdiction of a district or state department of education. 34 C.F.R. § 300.530(g); 34 C.F.R. § 300.530(i)(4).

25. How is the term "dangerous weapon" defined?

The term "dangerous weapon" means 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 2.5 inches in length. 18 U.S.C. § 930(g)(2).

26. Can school personnel remove a special education student to an interim alternative educational placement for a violation of the district's discipline policy for possession of cigarettes or alcohol?

No. School personnel may remove a special education student to an interim alternative educational setting for not more than 45 school days if the student

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 a state or local district. 34 C.F.R. § 300.530(g)(2). 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 (34 C.F.R. § 300.530(i)(1)). Alcohol and tobacco are not substances listed in those schedules.

27. What constitutes serious bodily injury that could result in school personnel removing a special education student to an interim alternative educational placement for not more than 45 school days?

Serious bodily injury has the meaning given the term under 18 U.S.C. § 1365(h)(3). 34 C.F.R. § 300.530(i)(3). The term serious bodily injury means bodily injury which 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. 18 U.S.C. § 1365(h)(3).

28. What is the definition of a “suspension”?

A “suspension” is defined under state law as an action by the school administration, under rules promulgated by the school board, prohibiting a student from attending school for a period of no more than 10 school days. Minn. Stat. § 121A.41, Subd. 10.

29. May school administration impose consecutive suspensions against the same student for the same disciplinary infraction that resulted in the initial suspension?

School administration may only impose a consecutive suspension if the student will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion. If the district is in the process of initiating an expulsion, school administration may, with notice to the student and parent, extend the suspension to a total of 15 school days. Minn. Stat. § 121A.41, Subd. 10.

30. Do districts have to provide alternative educational services for special education students that are suspended in excess of five days or regular and special education students that are expelled or excluded?

Yes. The school administration must implement alternative educational services for special education students when the suspension exceeds five school days or when a regular or special education student is expelled or excluded. During a pending expulsion proceeding, regular and special education students must receive alternative educational services to the extent that the suspension exceeds five school days. The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress

toward meeting the graduation standards and to help prepare the student for readmission. If the student wishes to take advantage of the alternative educational services, the district is required to implement those services rather than simply notify the student of other educational options, such as nonpublic school or enrollment in another school district. Minn. Stat. § 121A.46, Subd. 4; Minn. Stat. § 121A.55(a).

31. Do districts have to provide alternative educational services for regular education students that are suspended from school?

During a pending expulsion proceeding, regular education students must receive alternative educational services to the extent that the suspension exceeds five school days. For all other suspensions, each school board (public school district or charter school) shall include in its discipline policy the continuing responsibility of the school for the education of the student during the dismissal period. The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress toward meeting the state and local graduation standards and to help prepare the student for readmission. Minn. Stat. § 121A.46, Subd. 4; Minn. Stat. § 121A.55(a).

32. What are alternative education services?

Alternative educational services may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation standards although in a different setting. Minn. Stat. § 121A.41, Subd. 11.

33. Can a special education student be expelled or excluded if the team determines the student's behavior is not related to the student's disability?

Yes. When a student who has an individual education program is excluded or expelled for misbehavior that is not a manifestation of the student's disability, the district may expel or exclude the student in the same manner and for the same duration as the expulsion/exclusion procedures would be applied to students without disabilities and must continue to provide special education and related services during the dismissal period. Minn. Stat. § 121A.43(d); Minn. Stat. § 121A.55(a).

34. Who is responsible for providing alternative educational services to a student who is expelled from a charter school?

The charter school is a public school which is obligated to abide by all the provisions of the Pupil Fair Dismissal Act (PFDA). Minn. Stat. § 124D.10, Subd. 8(h). Therefore, the charter school would have the responsibility to provide alternative educational services to a student during the period of an expulsion. Minn. Stat. § 121A.55(a).

35. What happens if a district proposes to expel/exclude a student?

The district must notify the parent/guardian and student in writing that it proposes to expel or exclude the student. The written notice must include a complete statement of the facts, a list of the witnesses, and a description of their testimony. The district cannot expel or exclude a student without a hearing, unless the right to a hearing is waived in writing by the student and parent/guardian. Minn. Stat. § 121A.47.

36. May a student who waives his/her right to an expulsion hearing appeal his/her expulsion to the state?

Yes. If a student waives his or her right to a hearing, he or she still has the right to appeal the district's subsequent actions to the commissioner of the Minnesota Department of Education based on the record of the district's action. Minn. Stat. § 121A.49. All expulsion appeals must be submitted to the commissioner of the Minnesota Department of Education within 21 calendar days of the school board's action to expel.

37. When is the district required to provide a student with a copy of the Pupil Fair Dismissal Act (PFDA)?

When a student is facing disciplinary action, for example a suspension or expulsion/exclusion, the district is required to provide the student and the student's parent/guardian with a copy of the PFDA. Minn. Stat. § 121A.40 to 121A.56; Minn. Stat. § 121A.46, Subd. 3; Minn. Stat. § 121A.47, Subd. 2(d).

38. Does the PFDA apply to private school students?

No. Under the PFDA, "pupil" means any student who remains eligible to attend a public elementary or secondary school. Minn. Stat. § 121A.41, Subd. 7.