

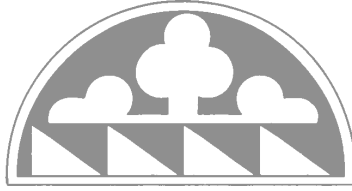
Procedures Related to Disciplinary Removal of Students with Disabilities



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Introduction

During the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997, provisions were included regarding the disciplining of students with disabilities, resulting in changes in both federal and Maryland regulations. Certain aspects of these regulations have been difficult to implement, particularly the requirements for multiple removals of a student for disciplinary reasons and the use of home and hospital teaching as a placement. This document will describe the discipline regulations, and provide assistance to school personnel as they try to interpret the requirements and determine what actions are appropriate and required under these regulations.

In order for students to be successful in school, it is critical that they remain in school. Research shows that students who are removed are much less likely to be successful in school because they are denied access to instructional opportunities, falling behind their peers in achievement. The goal of discipline is to use appropriate, positive supports and strategies to change the student's behavior. Removal of the student rarely results in fulfillment of this goal. Given the impact on student achievement and behavior, removal of students should always be considered the action of last resort.

The regulations concerning discipline of students with disabilities described in this document are but one element of a school's process for providing a safe environment for all students. Removal should occur only after a variety of proactive approaches has been tried and removal is the only way to provide a safe school environment. A system of structured, positive supports may include a school-wide behavioral system for all students, specialized group interventions for at-risk students and specialized individual interventions for students with intense or chronic behavioral problems. The use of Functional Behavioral Assessments and Behavioral Intervention Plans provides an individualized framework for helping students remain in school. Interventions are most successful when they are based on input gathered from parents, educators and students.

There are times, however, when removal or alternative placement is the only remaining option. This document will guide the reader through the steps that must be followed prior to removing a student with a disability or placing a student with a disability in an alternative setting.



Removals

Many of the procedures regarding discipline of students with disabilities are dependent on the length of a disciplinary removal. Schools have more flexibility when a student with a disability is removed for less than ten days. However, there are a number of requirements a school must follow when a student is removed for more than ten days.

An important note: The regulations that are discussed in this document apply to students with disabilities. For the sake of efficiency, there are times when only the word “student” is used, which in the context of this document means a “student with a disability.” Another important note: Throughout this document, there are references to actions by the Individualized Education Program (IEP) team and to meetings to determine which actions will be taken by the team. Prior written notice of IEP meetings must be provided to parents [COMAR 13A.05.01.07C(2)(a)]. Due to the serious nature of disciplinary removals and the expedited manner in which meetings are held for these issues, schools do not have to wait ten days after the notice of the meeting is provided to parents to actually meet [COMAR 13A.05.01.07C(2)]. In fact, IEP teams are encouraged to meet as soon as possible, so that a proactive approach can be taken to the disciplinary issues and relevant supportive services can quickly be put in place.

Removals for Not More Than Ten Days

A school principal may remove a student with a disability for not more than ten consecutive school days for any violation of school rules to the same extent he/she removes students without disabilities. Services do not have to be provided to students with disabilities during the removal if services are not provided to students without disabilities [COMAR 13A.08.03.03A]. Whenever a school principal determines that a student with a disability needs to be removed from the current placement for a violation of a school rule, the principal must notify the student’s parents of the disciplinary action on the date the decision is made to remove the student and provide the parents with a copy of the procedural safeguards notice [COMAR 13A.08.03.04].

Removals for More Than Ten Days

“A student with a disability may be removed from the student’s current placement for up to ten consecutive school days for each incident of misconduct in a school year if the cumulative effect of such removals does not constitute a change in placement” [COMAR 13A.08.03.03B].

For any removal after the student has been removed for a cumulative equivalent of ten school days in one school year, the principal is to consult with the student’s special education teacher to decide which services will be provided to enable the student to progress in the general curriculum and advance toward achieving the goals of his/her IEP [COMAR 13A.08.03.03B].

Changes in Placement

A “removal constitutes a change in placement if a student with a disability is:

1. Removed from the student’s current placement for more than ten consecutive school days; or
2. Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than ten school days in a school year” [COMAR 13A.08.03.05A].



In order to determine whether a series of removals constitutes a pattern, the IEP team must consider three factors:

1. The length of each removal;
2. The total amount of time the student is removed; and
3. The amount of time between removals [COMAR13A.08.03.05B].

In order to insure that a decision may be made concerning the issue of a pattern of removals, schools must record all removals in the student's record. Therefore, the record of the removal, regardless of the manifestation determination, is not to be expunged so that the record can be properly maintained for future decisions regarding series of removals and patterns. During any removal after the first ten days, or its cumulative equivalent in a school year, the public agency is to provide services to enable the student to progress in the general curriculum and advance toward achieving the goals of his/her IEP [COMAR 13A.08.03.05C and .03B].

Behavioral Assessment

The school's IEP team must meet within ten business days of any removal after a student has been removed for the cumulative equivalent of ten school days in a school year, or any removal that constitutes a change in placement, in order to develop a plan for conducting a functional behavioral assessment (FBA) or to review the behavioral intervention plan (BIP) [COMAR 13A.08.03.07A]. IEP teams are strongly encouraged to meet as soon as possible to review the removal and to complete or revise as appropriate an FBA and BIP so that proactive approaches may be implemented to address the issues that led to the removal.

The school **must develop a plan for completing an FBA** if the IEP team did not:

1. Conduct an FBA to address the behavior that led to the disciplinary action, before the behavior occurred, and
2. Implement a BIP to address the behavior that led to the disciplinary action, before the behavior occurred.

Once the FBA is completed, the IEP team is to meet again to develop appropriate behavioral interventions that address the behavior that led to the disciplinary action and implement a BIP that includes these interventions [COMAR 13A.08.03.07B].

If there is a BIP for the student, the IEP team is to **review the BIP** to determine if it:

1. Addresses the behavior that led to the disciplinary action, and
2. Was implemented appropriately prior to the behavior that led to the disciplinary action.

When reviewing the plan, the IEP team is to decide if the plan needs to be revised or if the implementation of the plan needs to be modified in order to better address the behavior that led to the disciplinary action [COMAR 13A.08.03.07C].

IEP teams may make a manifestation determination at the same meeting that they deal with FBAs and BIPs, particularly since the FBA and BIP have an impact on the manifestation determination.



Manifestation Determination

A manifestation determination must be made by the IEP team for a disciplinary removal when the student:

- Is subject to a removal that is considered a change in placement (a removal that exceeds ten consecutive school days or a series of removals that forms a pattern which accumulates to more than ten school days in a school year);
- Carries or possesses a weapon at school or a school function;
- Knowingly possesses or uses an illegal drug while at school or a school function; or
- Sells or solicits the sale of a controlled substance while at school or a school function [COMAR 13A.08.03.08A].

The IEP team must meet within ten school days of the disciplinary removal in order to make the manifestation determination [COMAR 13A.08.03.08B]. The team must determine if there is a connection between the student's disability and the behavior that led to the disciplinary action. During this process, the IEP team is to consider all relevant information including evaluations, observations, information supplied by parents, the student's IEP and the student's current educational setting [COMAR 13A.08.03.08C]. In order to determine that the behavior is **not** a manifestation of the disability, an IEP team must consider and determine that the student's:

1. IEP appropriately meets the student's needs;
2. Current placement appropriately meets the student's needs;
3. Special education services, supplementary services and behavior intervention strategies that were provided were consistent with the IEP and the placement;
4. Disability **did not** impair his/her ability to understand the impact and consequences of the behavior; and
5. Disability **did not** impair the student's ability to control the behavior.

If the IEP team finds that one or more of these requirements is not met, it **must determine** that the behavior that led to the removal was a manifestation of the student's disability [COMAR 13A.08.03.08D and E]. If the agreed-upon behavioral intervention strategies within the BIP were not appropriately implemented consistent with the student's IEP and placement, then the third requirement listed above is not met. If the IEP team believes that the IEP, the services and the behavioral intervention strategies are appropriate, and their implementation is appropriate, then the IEP team is to consider whether the placement is appropriate for the implementation of the IEP and the services.

The results of a manifestation determination have a major impact on the student and the school. When an IEP team determines that the behavior that led to the removal is a manifestation of the student's disability, the IEP team must do the following:

1. Revise the student's IEP to address needed services in light of the problem behavior;
2. Develop or revise the student's BIP, as appropriate, to address the behavior; and
3. Review the student's placement and implement services as soon as possible [COMAR 13A.08.03.08F].

To implement services, a student must be in a placement.

When an IEP team determines that the behavior was not a manifestation of the student's disability, the school may discipline the student in the same manner the school disciplines a student without disabilities, except that **no matter what the decision is concerning the manifestation determination, the IEP team must determine which services will be provided to enable the student to progress in the general curriculum and advance toward achieving the goals of the IEP** [COMAR 13A.08.03.03B(2) and .08G and 34 CFR Section 300.121(d)(3)(ii)].

IEP teams are strongly encouraged to meet as soon as possible to plan for an FBA or to review the FBA and BIP, to make the manifestation determination, to put the appropriate educational services in place and to take a proactive approach to dealing with the issues which led to the removal by putting in place appropriate supports. If a student is removed, the student is not to receive his/her educational services through home and hospital teaching. The only exception is if the placement meets the requirements of COMAR 13A.05.01.10C(6), which explains that home and hospital teaching is only for students who cannot attend their school due to a physical or emotional condition [COMAR13A.05.01.10C(7)(b)].

Interim Alternative Educational Setting

In special circumstances, the school has the option of removing a student and placing that student in an Interim Alternative Educational Setting (IAES) for up to 45 days. The special circumstances as described in COMAR 13A.08.03.06A are:

1. When a student carries a weapon to school or a school-sponsored event.
2. When a student knowingly possesses or uses illegal drugs at school or a school-sponsored event.
3. When a student sells or solicits the sale of a controlled dangerous substance at school or a school-sponsored event.

The IEP team decides which IAES is appropriate [COMAR 13A.08.03.06B]. Even in these special circumstances, the school still must follow the procedures described previously for FBAs, BIPs, and manifestation determinations. The IAES must allow the student to:

1. Progress in the general curriculum;
2. Receive the services and modifications included in the IEP;
3. Meet the goals of the IEP; and
4. Receive the services and modifications designed to address the behavior that led to the IAES placement to prevent its recurrence [COMAR 13A.08.03.06C].

There is also a circumstance when a school may request that an Administrative Law Judge (ALJ) place a student in an IAES. If the school believes the student's behavior is likely to cause harm to the student or others, there is a two-step process for removing the student for up to 45 days. The first step is **the school may request an expedited due process hearing** to seek an order from an ALJ to remove a student to an IAES [COMAR 13A.08.03.06D]. In this situation, the school may not place the student directly into the IAES until the school obtains an order from the ALJ. The school is to be prepared to prove beyond a preponderance of the evidence that the student's behavior is likely to cause harm to the student or others [COMAR13A.08.03.06F and G]. The school should be prepared to provide documentation of the danger the student poses, the efforts made to minimize the risk of harm, the appropriateness of the proposed placement and the continued danger posed by the student.

The second step is an ALJ may order the removal of a student to an IAES as a result of a due process hearing if the ALJ believes that maintaining the student in the current placement is likely to result in injury to the student or to others. The ALJ is to consider the efforts made to minimize the risk of harm in the current placement, including the use of supplemental aids and services, the appropriateness of the current placement and the appropriateness of the proposed IAES for the student [COMAR 13A.08.03.06F and G].



Even if there is a determination that the behavior which led to the removal to an IAES is a manifestation of the student's disability, the student may remain in the IAES until the end of the 45-day period or, if the parents appeal, until a decision by the ALJ, unless the public agency and the parents agree otherwise [COMAR 13A.08.03.09C]. When a student commits an offense which requires a 45-day placement, that student will remain in the IAES for the 45 days to give the school time to closely examine the issues that led to the student's behavior, to work with the student to put in place strategies that will address the student's situation, to closely examine the school's policies and procedures in light of the student's action and, potentially, to revise the school's policies to enhance the protection and safety of all students and staff.

Home and Hospital Teaching

Home and hospital teaching is not an alternative placement for students with behavior problems. Only "public school students who are unable to participate in their school of enrollment due to a physical or emotional condition" may receive instruction at home or in the hospital [COMAR 13A.03.05.01]. A physician or psychiatrist or psychologist must verify the physical or emotional condition and verify that the current "condition prevents the student from participating in the student's school of enrollment" [COMAR 13A.03.05.04].

A student who is disciplinarily removed from his/her current placement in accordance with COMAR 13A.08.03 and 34 CFR 300.121(d) may not receive his/her educational services through home and hospital teaching. The only exception is if the placement meets the requirements of COMAR 13A.05.01.C(6), which reiterates that home and hospital teaching is only for students who cannot attend their school due to a physical or emotional condition [COMAR 13A.05.01.10C(7)(b)].

Parental Right to Appeal

Parents may request a due process hearing if they want to appeal a school's decision regarding disciplinary removal, manifestation determination or placement in an IAES. The school system is to arrange for an expedited due process hearing in response to a parent's appeal [COMAR 13A.08.03.09A and B].

During the appeal of a placement in an IAES, through the provisions set out in COMAR 13A.08.03.06, the student is to remain in the IAES until the due process hearing decision by the ALJ or until the completion of the 45-day placement, unless the parents and the public agency agree to another course of action [COMAR 13A.08.03.09C]. If the school system proposes to change the student's placement at the end of the IAES and the parents choose to appeal the proposed new placement, the student is to return to his/her school placement prior to the removal to the IAES [COMAR 13A.08.03.09D].

Students Not Yet Eligible for Special Education

A school must apply the procedural safeguards set out in IDEA to a student who is not yet eligible for special education if the school has knowledge of a student’s disability prior to the behavior that led to the disciplinary action [COMAR 13A.08.03.10A]. The school system will be considered to **have knowledge** of a disability if any of the following situations exist prior to the behavior that led to the disciplinary action:

- The parent of the student stated in writing to school personnel that the parent believes his/her child is in need of special education services. A parent who does not know how to write, or who has a disability that prevents him/her from writing, may fulfill the written requirements in this section by orally expressing his/her concerns to school personnel [COMAR 13A.08.03.10C];
- The behavior or performance of the student demonstrates the need for special education services under Maryland law;
- The parents requested an evaluation of the student for the purpose of determining if the student has a disability and needs special education services; or
- The student’s teacher or school system personnel expressed concern to school system personnel, as set out in Maryland law, about the behavior or performance of the student [COMAR 13A.08.03.10B].

A school system will **not** be determined to have knowledge of a disability in the following situations:

- If an evaluation was conducted in accordance with Maryland law and determined that the student was not a student with a disability; or
- If it was determined under Maryland law that an evaluation was not necessary.

Written notice must be provided to the parents in accordance with Maryland law in either of the above- referenced decisions [COMAR 13A.08.03.10D]. The school system may apply the same disciplinary measures applied to students without disabilities if the school system does not have knowledge that the student has a disability before taking disciplinary action [COMAR 13A.08.03.10E].

If the school system receives a written referral to an IEP team while the student is subject to disciplinary measures, the school system will evaluate the student in accordance with Maryland law in an expedited fashion [COMAR 13A.08.03.10F]. “The student will remain in the educational placement determined appropriate by public agency personnel, including suspension or expulsion without educational services, until the evaluation is completed” [COMAR 13A.08.03.10G]. “If as a result of the evaluation ... the IEP team determines the student is a student with a disability, the public agency shall provide special education and related services” [COMAR 13A.08.03.10H].

Referral to Law Enforcement

“A public agency shall report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law. The public agency shall ensure copies of the student’s special education and disciplinary records are transmitted to the authorities to whom the public agency reported the crime, to the extent permitted, in accordance with COMAR 13A.08.02” [COMAR 13A.08.03.11].

Checklist

Removals for Less Than Ten Days

- A. Schools may remove to the same extent as they remove students without disabilities.
- B. Schools do not have to provide services if they do not provide services to students without disabilities.

Removals for More Than Ten Days

- A. For any removals after the student has been removed for a cumulative equivalent of ten school days in one school year, the principal is to consult with the special education teacher regarding the services that will be provided to enable the student to:
 1. Progress in the general curriculum, and
 2. Advance toward achieving the goals of the IEP.

Change in Placement

- A. A removal is a change in placement if the student is:
 1. Removed from his/her current placement for more than ten consecutive school days; or
 2. Removed on a series of occasions that constitutes a pattern of removals that adds up to more than ten school days in a school year.
- B. Factors as to whether multiple removals form a pattern:
 1. Length of each removal;
 2. Total amount of time of removal; and
 3. Amount of time between removals.
- C. For any removal after the first ten days or its cumulative equivalent in a school year, the principal is to consult with the special education teacher regarding the services that will be provided to enable the student to:
 1. Progress in the general curriculum, and
 2. Advance toward achieving the goals of the IEP.

Behavioral Assessment

- A. The IEP team must meet within ten business days of any removal after a student has been removed for the cumulative equivalent of ten school days in a school year, or any removal that constitutes a change in placement, to develop a plan to conduct a **functional behavioral assessment (FBA)** or to review the **behavioral intervention plan (BIP)**. The IEP team must:
 1. Develop a plan to conduct an FBA if the IEP team did not:
 - a. Conduct an FBA to address the behavior that led to the disciplinary action, before the behavior occurred, and
 - b. Implement a BIP to address the behavior that led to the disciplinary action, before the behavior occurred.
 - c. Once the FBA is complete, the IEP team is to meet again to:
 - Develop appropriate behavioral interventions that address the behavior that led to the disciplinary action, and

- Implement a BIP that includes these interventions.
- or
2. Review the BIP.
 - a. If there is a BIP for the student, review the BIP to determine whether it:
 - Addresses the behavior that led to the disciplinary action, and
 - Was implemented appropriately prior to the incident that led to the disciplinary action.
 - b. In reviewing the BIP, the IEP team is to determine whether, in light of the disciplinary action:
 - The BIP needs to be revised, and/or
 - Implementation of the BIP needs to be modified in order to better address the behavior that led to the disciplinary action.

Manifestation Determination

- A. A manifestation determination must be made for a disciplinary removal when the student is:
 1. Subject to a removal that is considered a change in placement (removal exceeds ten consecutive school days or a series of removals forms a pattern which accumulates to more than ten school days in one school year);
 2. Carries or possesses a weapon at school or a school function;
 3. Knowingly possesses or uses an illegal drug while at school or a school function; or
 4. Sells or solicits the sale of a controlled substance while at school or a school function.
- B. The IEP team must meet within ten days of a disciplinary removal to make a **manifestation determination**. (Is there a connection between the student's disability and the behavior that led to the disciplinary action?)
 1. Consider all relevant information:
 - a. Evaluations,
 - b. Observations,
 - c. Information supplied by parents,
 - d. Student's IEP, and
 - e. Student's current educational setting.
 2. To indicate that the behavior is **not** a manifestation of the student's disability, the IEP team must find **all** of the following to be true statements concerning the student:
 - a. The IEP is appropriate;
 - b. The current placement is appropriate;
 - c. The special education services, supplementary services and behavior intervention services are consistent with the IEP and the placement;
 - d. The student's disability did not impair the student's ability to understand the impact and consequences of his/her behavior; and
 - e. The student's disability did not impair the student's ability to control his/her behavior.
 3. If there is a determination that the behavior **is** a manifestation of the student's disability, the IEP team must:
 - a. Revise the student's IEP to address needed services in light of the problem behavior;
 - b. Revise the student's behavioral intervention plan as appropriate to address the behavior;
 - c. Review the student's placement; and
 - d. Implement services as soon as possible.
 4. If there is a determination that the behavior is **not** a manifestation of the student's disability, the school may discipline the student in the same manner the school disciplines a student without disabilities, except the school must put in place services that enable the student to:

- a. Progress in the general curriculum, and
- b. Advance toward achieving the goals of the IEP.

Interim Alternative Educational Setting

A student may be placed in an **Interim Alternative Educational Setting (IAES)** in certain special circumstances.

A. School makes IAES Placement/One-Step Removal

1. A school may place a student directly into an IAES for up to 45 days in any of the following circumstances:
 - a. A student carries a weapon to school or a school-sponsored event;
 - b. A student knowingly possesses or uses illegal drugs at school or a school-sponsored event; or
 - c. A student sells or solicits the sale of a controlled dangerous substance.
2. The IEP team decides which IAES is appropriate.
3. The IAES must be a place where the student can:
 - a. Progress in the general curriculum;
 - b. Receive the services and modifications included in his/her IEP;
 - c. Meet the goals of his/her IEP; and
 - d. Receive the services and modifications designed to address the behavior that led to the disciplinary action to prevent recurrence.
4. Previously described procedures for manifestation determinations and FBAs/BIPs must be followed, although the school may keep the student in the IAES regardless of the IEP team's findings in the manifestation determination.

B. Administrative Law Judge makes IAES Placement/Two-Step Removal

1. A school may request an expedited due process hearing to seek an order from an ALJ to place the student in an IAES for up to 45 days in any of the following circumstances:
 - a. A student is likely to cause harm to himself/herself; or
 - b. A student is likely to cause harm to others.

The school must provide documentation of the efforts to minimize the risk of harm and documentation that proves beyond a preponderance of the evidence the likelihood of harm.
2. An ALJ may order the placement of a student in an IAES if remaining in the current placement is likely to:
 - a. Result in injury to the student, or
 - b. Result in injury to others.
3. In making this decision, the ALJ is to consider:
 - a. The efforts made to minimize the risk of harm in the current placement, including the use of supplemental aids and services;
 - b. The appropriateness of the current placement; and
 - c. The appropriateness of the proposed IAES.

Parental Appeal

Parents may appeal a school's decision by requesting a due process hearing. Parents may appeal the following decisions:

1. Disciplinary removal,
2. Manifestation determination,
3. Placement in an IAES.

During an appeal of a placement in an IAES, the:

4. Student remains in the IAES until the due process hearing decision by the ALJ or until the completion of the 45-day placement, unless the parents and public agency agree to another course of action.

During the appeal of a new placement after the 45-day IAES placement is complete, the:

5. Student returns to his/her school placement prior to the IAES.

Students Not Yet Eligible for Special Education

- A. Schools must apply the procedural safeguards that are set up for students with disabilities if a school system has knowledge that a student has a disability prior to the behavior that led to the disciplinary action, even if a determination has not been made that the student is eligible for services.

- B. Schools have knowledge of a disability in the following circumstances:
 1. The parent stated in writing to school personnel that he/she believes the student needs special education services. A parent may fulfill any of these written requirements by orally expressing his/her concerns to school personnel if the parent does not know how to write or the parent has a disability that prevents him or her from writing; or
 2. The behavior or performance of the student demonstrates the need for special education services; or
 3. The parents requested an evaluation of the student to determine if the student has a disability and needs special education services; or
 4. The teacher or any other school system personnel expressed concern to school system personnel about the behavior or performance of the student.

- C. Schools do not have knowledge of a disability in the following circumstances:
 1. An evaluation was conducted in accordance with Maryland law and determined that the student was not a student with a disability; or
 2. It was determined under Maryland law that an evaluation was not necessary; and
 3. Written notice was provided to the parents in the two above-referenced decisions.

- D. The school may apply the same disciplinary measures applied to students without disabilities if the school system does not have knowledge that the student has a disability before the school takes disciplinary action.

- E. If the school system receives a written referral to an IEP team while the student is subject to disciplinary measures, the school system will evaluate the student in accordance with Maryland law in an expedited fashion, and the student will remain in the educational placement determined appropriate by the school personnel until the evaluation is complete. If the IEP team decides the student is a student with a disability, the school is to provide special education and related services.

Referral to Law Enforcement

- A. A school is to report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law.

- B. The school is to ensure that copies of the student's special education and disciplinary records are transmitted to the authorities to whom the school reported the crime, to the extent permitted, in accordance with COMAR 13A.08.02.



Resources

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