

Compliance Corner

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Do You Have the Tools When Implementing the Discipline Rules? (Part 3 of 4)

Topics Include:

In-School Suspension (ISS)

Bus Suspension

Special Circumstances

Interim Alternative Educational Setting (IAES)

As we discussed in the last edition of Compliance Corner, the determination as to how the school district is to respond when it proposes disciplinary consequences pivots on whether such consequences will result in a change in placement. In the March edition of Compliance Corner, we discussed when a change in placement occurs. For disciplinary purposes, the Individuals with Disabilities Education Act (IDEA) 34 CFR §300.536 states:

For purposes of removals of a child with a disability from the child's current educational placement under [§§ 300.530](#) through [300.535](#), a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Again, it is important to make note of the words “consecutive” as well as “or” referenced in the citation above. These scenarios are independent of one another. In other words, if one or the other applies, it will result in a change in placement for the student. As such, a Manifestation Determination Review (MDR) must take place to determine if the student’s misconduct is a manifestation of his/her disability. This process will be discussed in the May edition of Compliance Corner.

Keeping the above information in mind, the question of whether in-school suspension counts toward a change in placement is often confusing and, if not careful, a district could violate a student’s right to a Free Appropriate Public Education or FAPE. In-school suspension occurs when a student, who is accused of violating the student code of conduct, is put in a separate room on the school campus for whatever specified period of time determined by the school administrator in charge of discipline.

The United States Department of Education considers in-school suspension to **not** be a change in placement provided **all** of the following provisions are in place: 71 Fed. Reg. 46,715 (2006)

- *The student is afforded the opportunity to continue to appropriately progress in the general education curriculum.*
- *The district continues to provide the services specified in the student’s IEP.*
- *The student continues to participate with non-disabled students to the same extent as he does in his current placement.*

All three of the above components must be in place for the time in ISS to not count toward a change in placement. This could prove challenging to implement, especially the last provision pertaining to a student participating to the same extent he would in his current placement. In addition, school personnel must ensure the student is receiving the services as described in his/her IEP and is not placed in ISS for custodial care. For these reasons, these provisions should be used with caution. If all three provisions are in place, the time served in ISS would not count as a change in placement; thus, there would be no requirement to conduct a manifestation determination review.

While ISS can serve as a disciplinary measure, it is important to remember that if it is being utilized excessively for a student, it is the responsibility of school personnel to determine if the student’s behavior is impeding their learning or the learning of others. A student’s behavior prompting excessive assignments in ISS is likely going to interrupt the instructional process for that student and will likely impede his/her learning. Administrators should be cognizant of whether the excessive assignments in ISS could result in a denial of FAPE. School districts may argue they have met the three prongs of what constitutes ISS as not counting as days of

suspensions but could be negligent as to other protections afforded to students who are eligible under the IDEA. As a result, school personnel have an obligation to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. This is typically accomplished through a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP). For further information regarding the regulations and rules pertaining to FBAs and BIPs, please refer to the December 2023 and January 2024 editions of Compliance Corner located on the CES website at ces.org.

To access their services, a student may require special transportation. That student's Individualized Education Program (IEP) Team would have determined if special transportation services were necessary for the student to receive a FAPE. Should the student exhibit unwanted behaviors on the school bus for which the student is restricted from riding the bus, that period of time would be considered a suspension unless the district is providing some alternative means of transportation. To ensure that services delineated in a student's IEP are at no cost to the parent(s), many school districts have paid parents to transport their child during these days of bus suspension.

IDEA defines a school day in 34 CFR §300.11(c)(1) "as any day, including a partial day that children are in attendance at school for instructional purposes". It is important to note that according to the New Mexico Public Education Department, any portion of a school day in which a student is suspended (out-of-school suspension), would count toward the "10-Day Rule", which was discussed in the previous edition of Compliance Corner. In other words, even if the student is suspended some time in the afternoon prior to the conclusion of the school day, that portion of the day would count as a full day of suspension.

Similarly, if a student is being "sent home" due to behavior, it counts as a day of suspension. Consequently, administrators must use caution when imposing this disciplinary action. Rather than sending students home, it would be imperative for the school staff to address the behavior by whatever means necessary. This could include specifically teaching the desired behaviors, developing a goal for the student to address the behavior, conducting an FBA/BIP as appropriate, and/or meeting with the parent(s) and the student to name a few examples.

At times, a student's behavior is so dangerous that it might include the possession of a weapon, possession of drugs or inflicting serious bodily injury upon another person. In such cases, the school has options to keep the campus safe for students and staff. These instances are called Special Circumstances and can result in a student being placed in an Interim Alternative Educational Setting (IAES). IDEA defines Special Circumstances in 34 CFR §300.530(g) as:

Special circumstances. School personnel may remove a 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 child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(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 an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

As a result, the student may be placed in an IAES, even if the student's behavior is a manifestation of his/her disability. Should the behavior be a manifestation of the student's disability, the IAES placement can be **up to** 45 school days. This does not mean it is an automatic 45 school days. Some students may require the entire 45 school days; others may require less. School personnel, along with parents, should determine on an individual basis the amount of time needed to provide supports for bringing the student back to his/her former placement and the supports needed to keep the campus safe. This would require the district to conduct or modify an FBA/BIP, as applicable.

If the student's behavior is **not** a manifestation of the student's disability, the student may be disciplined commensurate with students without disabilities. Students could serve the imposed disciplinary consequence in IAES for longer than the 45 school days so long as the imposed suspension would not be longer than a suspension period for a student without disabilities. In this case, school personnel would determine whether an FBA/BIP would be warranted to address the behavior so it does not recur.

Regardless of the disciplinary action being considered, school districts must continue to involve the parents/guardians during the discipline process. Keeping close communication with parents over the course of the school year may result in less or no disciplinary actions needed. Involving them and soliciting their input can prove invaluable regarding their child's behavior and ultimate success at school.

For further information and guidance regarding the discipline process involving eligible students, I recommend you consult the technical assistance manual, [Student Discipline: A Technical Assistance Manual For Students with Disabilities](#), located on the New Mexico Public Education Department website at <https://webnew.ped.state.nm.us>.

Join me for the next edition of Compliance Corner when we will discuss the provisions involving Manifestation Determination Reviews. We will talk about the timeline regarding when parents must be contacted, when the meeting must be held, what information should be considered when answering the required questions, and what the ramifications are depending on the decision.

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.