

Disciplinary Protections for Students under IDEA

Marge Resan

**School Administration
Consultant**

Special Education Team

October 9, 2018



WISCONSIN DEPARTMENT OF
PUBLIC INSTRUCTION

Tony Evers, PhD, State Superintendent

Introduction

Today we will discuss:

- Counting and tracking disciplinary removals
- What a manifestation determination (MD) is
- When MDs are required
- What is a “disciplinary change of placement”
- What happens after the MD

Special Education & Discipline

- Students with disabilities are subject to the same district student code of conduct as all students.
- Additional protections apply.
- Know how attendance is taken and accounted for in your district!

Behavior in the IEP

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

These must be documented in the program summary of the IEP.

What removals must be counted?

- Out-of-school suspension
- Certain in-school suspensions
- Expulsion
- De facto suspensions
- Certain bus suspensions
- Removals to IAES

Why count removals?

- Must provide services if more than 10 cumulative days (including partial days)
- Manifestation determination required within 10 school days of disciplinary change of placement

Manifestation Determination is...

- Process used to determine whether behavior resulting in potential disciplinary change of placement is a result of a student's disability
- If the behavior is a result of the student's disability, placement cannot be changed without parent's agreement
- Only required when a disciplinary change of placement is being considered

What is a disciplinary change of placement?

A disciplinary change of placement occurs when:

- A disciplinary removal is for more than 10 consecutive days (in Wisconsin, this can only happen if expulsion is being considered) OR
- When a series of removals constitutes a pattern.

What constitutes a pattern of removals?

A pattern occurs when:

- A student has been removed for more than 10 cumulative (total) school days in a single school year; and
- The student's behavior is substantially similar to previous incidents; and
- Other additional factors, such as the length of each removal, the total amount of time removed, and the proximity of the removals are considered

Who decides whether removals are a pattern?

- Determination is made on a case-by-case basis by the school district.
- DPI recommends the principal of the school or another administrator consult with the student's special education teacher regarding this determination.

When may a school district expel a student?

A student may be expelled from school if a student:

- Repeatedly refuses or neglects to obey school rules.
- Threatens to destroy school property by explosion.
- Engages in conduct at school or at school sponsored activities endangering the property, health or safety of others.
- Engages in conduct not at school endangering the property, health, safety of others.
- Engages in conduct that endangers a person or property, including making a threat to the health, safety or property of another.
- If a student is 16 years old or older, the student repeatedly engages in conduct at school that disrupted the ability of school authorities to maintain order.

When MUST a school district consider expulsion?

If a student possess firearms on school property, the district must expel the student for at least one year.

May be modified on a case-by-case basis.

Can students with disabilities be expelled?

Yes, but the student must be provided educational services, determined by the Individualized Education Program (IEP) team, to:

- Enable the student to continue to participate in the general education curriculum, although in another setting, and
- Progress toward meeting IEP goals.

The services must be designed to provide a free, appropriate public education (FAPE).

Back to the MD...

An MD must be completed within 10 school days of any decision to make a disciplinary change of placement.

- The date of the decision is:
 - The date the district decides to remove the student for more than 10 consecutive school days (including notice of expulsion)
 - The day the district determines a pattern of disciplinary removals is a change in placement.

Who conducts the MD?

An LEA representative, the parent and other “relevant members of the student’s IEP team.”

In Wisconsin, the entire IEP team often conducts the MD.

When is behavior a manifestation?

If the conduct in question was caused by or had a direct and substantial relationship to the student's disability, or

If the conduct in question was a direct result of the student's IEP not being implemented.

IMPORTANT: The student's "disability" does NOT mean the student's impairment area!

How does the team determine this?

The team must review all relevant information in the student's file, including:

- The IEP,
- Any teacher observations, and
- Any additional relevant information provided by the student's parents.
 - This may include medical diagnoses, medications, etc.

What if the behavior is a manifestation?

- If the behavior IS a manifestation of the student's disability, the IEP team must:
 - Conduct a functional behavioral assessment (FBA), unless one has already been conducted, and
 - Create or modify the student's behavior intervention plan (BIP) to address the student's needs.
- The district must return the student to the previous placement, unless:
 - The parent agrees to a change of placement, or
 - The behavior involves weapons, drugs, or serious bodily injury, in which case the student may be placed in a 45-day IAES.

Interim Alternative Educational Placement (IAES)

Even if behavior is a manifestation, the district may unilaterally remove the student to an IAES for up to 45 school days if the student, while at school, on school premises, or at a school function:

- Carries or possesses a weapon;
- Sells or solicits the sale of a controlled substance; or
- Inflicts serious bodily injury upon another person.

Districts may request extensions to IAES placements in some circumstances.

What if the behavior is NOT a manifestation?

- The student may be disciplined in the same way applying to all students under similar circumstances. This could include expulsion.
- The student must continue to receive educational services designed to provide FAPE. The IEP team determines the services and the settings in which they will be provided.

DPI Resources

- Information Update Bulletin 14.02 on Manifestation Determinations: <http://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/14-02>
- Information Update Bulletin 06.02 on Legal Requirements Relating to Disciplining Children with Disabilities: <https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins/06-02>
- Answers to Frequently Asked School Discipline Questions:
<http://dpi.wi.gov/sites/default/files/imce/sspw/pdf/schldscplnqa.pdf>

Questions?

- Marge Resan's Contact Information:
 - Phone: (608) 267-9158
 - Email: margaret.resan@dpi.wi.gov

Questions?

