The student's IEP

If the student's behavior impedes the student's learning or that of others,
the ARD committee must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior.
34CRF 300.530(c)(5)

Disciplinary Consequence

School personnel may remove the student from the student's current placement to an appropriate interim alternative educational setting (IAES), or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).
34CRF 300.530(f)(1)

Offense

Student protected under IDEA violates a code of student conduct and the disciplinary consequence considered involves a day of removal from the current educational setting.

Disciplinary Decisions

School personnel may consider any unique circumstances on a case-by-case basis when determining if a change of placement is appropriate for a student with a disability.

A student with a disability may not be disciplined for bullying, harassment, or making hit lists until an admission, review, and dismissal (ARD) committee meeting has been held to review the conduct.
TEC 37.004(b-1)

Services

The LEA is not required to provide services to students during removals of 10 school days or less, unless services are provided to students without disabilities who are similarly removed.

Service Obligations: No Change of Placement in Excess of 10 School Days

For each day in excess of 10 school days (that do not constitute a change of placement) the LEA shall provide services that 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. The determination of the extent to which services are needed is made by school personnel, in consultation with at least one of the student’s teachers.

In considering existing data, the ARD committee concludes that additional data is needed.

ARD Committee Meeting: Manifestation Determination Review

Timeline: Within 10 school days of any decision to change the placement of a student with a disability. The LEA, the parent, and relevant members of the student’s ARD committee (as determined by the parent and the LEA) must conduct a manifestation determination.

The conduct must be determined to be a manifestation of the student’s disability if either:

1. It is fundamentally a direct result of the LEA’s failure to implement the student’s least restrictive educational setting.
2. Functional behavioral assessments (FBA) are not conducted for the student on or after the student’s most recent FBA, or FBA is more than one year old; and
3. The student’s behavior in previous incidents that resulted in the series of removals; and
4. 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.

ARD committee determines the interim alternative educational settings and services.

IAES Services

The services provided in the IAES must allow the student to:

1. 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
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the student behavior violation so that it does not recur.

The ARD committee determines the interim alternative educational settings and services.

Interim Alternative Education Setting (IAES)

School personnel may remove the student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability.

Change of Placement

The determination of whether a pattern or practice of disciplinary actions constitutes a change of placement is made on a case-by-case basis based on the following criteria:

1. The removal is for more than 10 consecutive school days; and
2. The student has been subjected to a series of removals that constitute a pattern:
   a. Because the series of removals total more than 10 school days in a school year;
   b. Because the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals; and
   c. 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.

Under Texas statute a suspension may not exceed a maximum of 10 school days.

Any disciplinary action regarding a student with a disability who receives special education services would constitute a change in placement under federal law may be taken only after the student’s ARD committee conducts a manifestation determination review.

Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

1. Functional behavioral assessments;
2. Positive behavioral interventions, strategies, and supports;
3. Behavioral intervention plans; and
4. The manifestation determination review.

When reviewing the student’s BIP, the ARD committee must consider the student’s least restrictive setting.

Disciplinary: Not Manifestation

Whenever a disciplinary action results in a change of placement the LEA must, although not the 10th school day after the change of placement:

Seek parental consent to conduct a Functional Behavioral Assessment (FBA) of the student if the FBA has never been conducted on the student or the student’s most recent FBA is more than one year old; and
Review any previously conducted FBA of the student and any BIP developed for the student based on that assessment, and as necessary.

Develop a BIP for the student if the student does not have a plan; or
If the student has a BIP, revise the student’s plan.

Disciplinary: Manifestation

If a disciplinary action results in a change of placement, the LEA must no later than the 10th school day after the change of placement:

Conduct a BIP that describes the safety of the student and others, and changes in circumstances, including but not limited to:

1. Placement of the student in a different educational setting;
2. An increase or persistence in disciplinary actions taken regarding the student for similar types of behavior;
3. A pattern of unexcused absences; or
4. A unauthorized, unsupervised departure from an educational setting.

When reviewing the student’s BIP, the ARD committee must consider the student’s least restrictive setting.

Develop a BIP for the student if the student does not have a plan; or
If the student has a BIP, revise the student’s plan.

Disciplinary Alternative Education Programs.

A teacher in an OAPF under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

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