

# Discipline Requirements

*Presented  
By  
The New Jersey Department of Education,  
Office of Special Education Programs  
2015*

# Overview and Goals

- Provide clarification on the IDEA 2004 discipline requirements and N.J.A.C. 6A:14
- Provide a resource to facilitate decision-making regarding suspensions (removals from program) and a tool for districts to review internal disciplinary procedures and align those procedures with IDEA 2004, N.J.A.C. 6A:14 and N.J.A.C. 6A:16 requirements
- Provide examples and an opportunity to apply skills learned

# Unique Circumstances

- **N.J.A.C. 6A:14-2.8(b)**
  - School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

# What constitutes a removal?

## **Applies to classified pupils and those with a potential disability (basis of knowledge)**

- Suspensions from school—removal to an interim alternative educational placement
- Expulsions
- Suspension from transportation if identified as a related service in the IEP (when as a result, the child does not attend school)
- In-school suspension, **unless** the program provides the following:
  - ✓ Opportunity for students to participate and progress in the general education curriculum
  - ✓ Services and modifications specified in the IEP
  - ✓ Interaction with peers commensurate with the IEP
  - ✓ Services do not penalize the student with regard to grades, credit or attendance.
  - ✓ Certified teacher (general or special education)

# For Removals of TEN (10) or fewer days

- Student is subject to the same disciplinary policy as non-disabled students
  - ❖ N.J.A.C. 6A:16-7.2 (requirement for ALL students)
- Case manager and student's parent are notified of each removal (in writing, including reason for removal and number of days)
  - ❖ N.J.A.C. 6A:14-2.8(a)
- Tracking system implemented

# For Removals of TEN (10) or fewer days

- What services must be provided?
  - State and Federal regulations require that students with disabilities who are suspended or expelled are entitled to receive a FAPE [6A:14-1.1(b)]
    - Students with disabilities are provided services in the same manner as general education students [6A:14-2.8(a) and 34 CFR 300.530(d)]
    - Students with disabilities receive services consistent with the IEP [N.J.A.C. 6A:16-7.2(a)5ii]

# Procedures for Long-term Suspensions

- Districts are required to conduct a formal hearing before the district board of education [N.J.A.C. 6A:16-7.3(a)10]
  - Purpose—For the student to contest whether or not he/she committed the offense and/or the appropriateness of the penalty
  - Conducted by the board of education or may be delegated to a committee, school administrator or impartial hearing officer

# Procedures for Long-term Suspensions (con't.)

- Shall take place no later than 30 calendar days following the day the student is suspended
- Results of the hearing may be appealed to the Commissioner of Education



# More than TEN (10) Consecutive Days

- AUTOMATIC change in placement
- Provide the parent with a copy of PRISE
  - ❖ On the date a decision is made to initiate a removal of a student that constitutes a change in placement because of a violation of a code of student conduct
  - ❖ 34 CFR §300.530(h)
- Convene a meeting of the relevant IEP team members including the parent
  - ❖ Conduct a Manifestation Determination (MD) within 10 school days of the decision to remove the student
  - ❖ For additional suspensions of more than 10 consecutive days in the same school year, the MD must be conducted prior to the removal.

# Manifestation Determination

Behavior IS a manifestation of the disability:

- May NOT suspend (remove) the student
- May change the student's program and/or placement (IEP team makes the determination)
- IEP team must review behavior intervention plan (BIP)
  - ❖ If there is no BIP, conduct a functional behavioral assessment (FBA) and develop a BIP

# Manifestation Determination

Behavior IS NOT a manifestation of the disability:

- May suspend (remove) the student
- Must continue to provide educational services

As appropriate and as required by state law (case by case basis):

- ❖ IEP team reviews behavior intervention plan (BIP)
- ❖ If there is no BIP, as appropriate, conduct a functional behavioral assessment (FBA) and develop a BIP

# Appeals of Discipline Decisions

- A parent may challenge the following:
  - When there is a disagreement between the district and the parent regarding whether a series of removals is a change in placement
  - Manifestation determination
  - Removal to an interim alternative educational setting

# Placement During an Appeal

- When an appeal has been filed by the parent, the student must remain in the interim alternative educational setting pending the decision of the hearing officer OR until the expiration of the time period for the suspension, whichever comes first, unless the parent and the district agree otherwise.

# Example 1

Stewart was suspended for 15 days for pulling the fire alarm. (This is the first disciplinary action in the current school year. “Services” began on day 5, per N.J.A.C. 6A:16-7.2.)

**WHAT ACTION(S) MUST BE TAKEN?**

# More than TEN (10) Cumulative Days

- Determine if removal constitutes a change in placement.
- School officials shall make this determination in consultation with the student's case manager.

# Change in Placement

## Factors to Consider

A change of placement occurs if the student is subjected to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a year, because the behavior is substantially similar to behavior in previous incidents and consideration of the following factors:

- Length of each removal
- Total amount of time student is removed
- Proximity of the removals to one another



# More than TEN (10) Cumulative Days (con't.)

Has a change of placement occurred?

If YES:

- Provide PRISE
- Convene a meeting of relevant IEP team members to conduct a MD
- If behavior IS a manifestation, the IEP team must review BIP and/or conduct FBA
- If behavior IS NOT a manifestation, as appropriate, review BIP and/or conduct FBA

If NO:

- May suspend but services continue (school personnel in consultation with child's teacher determine extent of services)
- As appropriate, review BIP and/or conduct FBA

# Subsequent Removals

## Has a change of placement occurred?

If YES:

- PRISE to parent
- Convene a meeting of relevant IEP team members to conduct a MD
- If behavior IS a manifestation, the IEP team must review BIP and/or conduct FBA
- If behavior IS NOT a manifestation, as appropriate, review BIP and/or conduct FBA

If NO:

- Services continue (extent determined by school personnel and child's teacher)
- As appropriate (case by case basis):
  - ❖ Review BIP
  - ❖ If no BIP, conduct FBA

## Example 2

John was suspended for four days in September for fighting. On January 5<sup>th</sup>, he was suspended for four days for fighting. On January 28<sup>th</sup> he was suspended for four additional days for fighting. In May he is suspended again for two days for using profanity.

**WHAT ACTION(S) MUST BE TAKEN?**

# 45 Day Placement

School Personnel may remove for:

- Drugs
- Weapons
- Serious bodily injury to others\*

\*New requirement

Administrative Law Judge (ALJ) removes for:

- Actions likely to result in injury to self and/or others
- Dangerousness

# 45 Day Placement

## **IN ALL CASES**

- Provide PRISE to the parent
- Convene a meeting of relevant members of the IEP team
  - ❖ Conduct a Manifestation Determination (The school is permitted to remove a child with a disability to an IAES for not more than 45 calendar days without regard to whether the behavior is determined to be a manifestation of the child's disability.)
  - ❖ If behavior IS a manifestation, the IEP team must review BIP and/or conduct FBA
  - ❖ If behavior IS NOT a manifestation, as appropriate (case by case basis), review BIP and/or conduct FBA

# Example 3

Bryan is a student in 5<sup>th</sup> grade with a specific learning disability. He is suspended in September for four days for hitting another student. At the end of September, he is suspended for four days for kicking his teacher. In October, he explodes with anger in the classroom and throws a chair and is suspended for three days.

**WHAT ACTION(S) MUST BE TAKEN?**

# Example 4

Jamie, a student with a disability, is caught fighting in the cafeteria with Bill, a general education student. Both students are suspended for 8 days. Upon return to school, they are caught fighting again, this time in the gym. Both students are suspended for 10 days. Two months pass and Bill trips Jamie in the hall and a fight ensues. Since it is the third incident, they are both suspended for 12 days.

**WHAT ACTION(S) MUST BE TAKEN?**

# Example 5

Jill, a student with a disability, convinced Stephanie, another student with a disability, to take an exam for her by stealing the exam and taking it to the parking lot. Upon return to the building with the completed exam, the principal catches both students, escorts them to the office, contacts the parents, and suspends both girls for 20 days for cheating.

**WHAT ACTION(S) MUST BE TAKEN?**



# Example 6

Shawn is suspended for 4 days in October for fighting in the cafeteria. He is suspended again for 8 days in December for fighting in the classroom. Shawn is suspended in February for 1 day for spitting. Upon his return to school, he starts a fight and is suspended for 10 days.

**WHAT ACTION(S) MUST BE TAKEN?**

# Example 7

Paige is suspended for 10 days in September for leaving school grounds. She is suspended for 10 days in January for the same offense. She returns to school and two days later, again leaves school grounds. She is suspended for 10 days.

**WHAT ACTION(S) MUST BE TAKEN?**