

## Discipline - 8.4 Special Circumstances: Removals Involving Drugs, Weapons, or Serious Bodily Injury

---

### State Performance Plan (SPP):

---

(See Overview in the Introduction for more information on the SPP.)

#### SPP 4:

Rates of suspension/ expulsion

**A:** Percent of districts identified by the State as having a significant discrepancy in the rate of suspensions and expulsions of children with disabilities for greater than 10 days in a school year; and

**B:** Percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity. (20.U.S.C. 1416 (a) (3) (A); 1412(a) (22)) (Significant discrepancies in discipline rates are those in which the rates of suspensions and expulsions for children with disabilities exceed those for typical children by at least 1%.)

### Intent:

---

To provide guidance to school personnel regarding a child with a disability whenever special circumstances constitute a removal of the child to an interim alternative educational setting (IAES).

### Timelines:

---

***The day the decision is made to change the placement for a child with a disability***

Notify the child of the intent to suspend; notify the parents through prior written notice and provide procedural safeguards notice, *Whose IDEA Is This?*, and send the invitation to the manifestation meeting to the parents.

***Not later than 10 school days after the decision is made to take disciplinary action and change the placement of the child***

Conduct manifestation determination.

***Within 10 days of the manifestation determination, start to conduct a functional behavioral assessment (FBA)***

If the behavior is a manifestation of the child's disability, start to conduct a functional behavioral assessment (FBA), complete the assessment as soon as possible and implement a behavioral intervention plan (BIP) for the child.

***Within 10 days of the manifestation determination if a behavioral intervention plan (BIP) has already been developed***

If the child's behavior is a manifestation of the child's disability, within 10 days of the manifestation determination, the IEP team reviews the BIP and the implementation of the plan and modifies it as appropriate to address the behavior subject to disciplinary action.

***Beginning on the 11<sup>th</sup> cumulative day of removal in a school year***

Provide services.

## REQUIREMENT

---

3301-51-05

(K) Conflict resolution

(20) Authority of school personnel

**(g) Special circumstances**

School personnel may remove a child to an interim alternative educational setting for not more than forty- five school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- (i) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Ohio Department of Education or a school district;
- (ii) 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 the Ohio Department of Education or a school district; or
- (iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ohio Department of Education or a school district.

## GUIDANCE

Definitions: drugs, weapons, controlled substances, serious bodily injury

The definitions of weapons, drugs, controlled substances and serious bodily injury are found in additional federal legislation as indicated below:

- **Dangerous weapon:** A weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length. (Federal Register, August 14, 2006, pg. 46723.)
- **Controlled substance:** A drug or other substance identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812 (c) as amended and specified in the Anabolic Steroids Control Act of 2990, November 1990, 21 U.S.C. 812 (c).
- **Illegal drug:** A controlled substance, not including a controlled substance that is legally possessed or used under the supervision of a licensed health- care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
- **Serious bodily injury:** Bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. 1365 (h) (3)

## REQUIREMENT

---

**3301-51-05**

***(K) Conflict resolution***

***(20) Authority of school personnel***

***(h) Notification***

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a student code of conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (l) of this rule.

**3301-51-05**

***(H) Prior notice by the school district; content of notice***

***(3) Notice in understandable language***

(a) The notice required under paragraph (H) (1) of this rule must be:

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

## Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities

(October, 2011)

- (i) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the above requirements in paragraphs (H) (3) (b) (i) and (H) (3) (b) (ii) of this rule have been met.

### **3301-51-05**

#### ***(K) Conflict resolution***

##### **(26) Change of placement because of disciplinary removals**

(a) For purposes of removals of a child with a disability from the child's current educational placement under paragraphs (K) (20) to (K) (25) of this rule, a change of placement occurs if:

- (i) The removal is for more than ten consecutive school days; or
- (ii) The child has been subjected to a series of removals that constitute a pattern:
  - (a) Because the series of removals total more than ten school days in a school year;
  - (b) Because the child's behavior is substantially similar to the child'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 child has been removed, and the proximity of the removals to one another.

(b) The school district determines on a case- by- case basis whether a pattern constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

#### ***(K) Conflict resolution***

##### ***(20) Authority of school personnel***

###### **(a) Case- by- case determination**

School personnel may consider any unique circumstances on a case- by- case basis when determining whether a change of placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

###### **(e) Manifestation determination**

(i) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parents, and relevant members of the child's IEP team (as determined by the parent and the school district) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

###### **(g) Special circumstances**

School personnel may remove a child to an interim alternative educational setting for not more than forty- five school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child

- (i) Carries a weapon to or posses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Ohio Department of Education or a school district;
- (ii) 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 the Ohio Department of Education or a school district; or
- (iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ohio Department of Education or a school district.

**3301-51-05**

**(K) Conflict resolution**

**(21) Determination of setting**

The child's IEP team determines the interim alternative educational setting for services under paragraph (K) (20) of this rule.

**3301-51-05**

**(K) Conflict resolution**

**(20) Authority of school personnel**

**(d) Services**

(i) A child with a disability who is removed from the child's current placement pursuant to paragraphs (K) (20) (c) or (K) (20) (g) of this rule must;

(a) Continue to receive educational services, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

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

## GUIDANCE

### Removals for weapons, drugs and serious bodily injury

School district personnel may remove a child to an interim alternative educational setting (IAES) for up to 45 school days, without regard to whether the behavior was a manifestation of the child's disability, if the child:

- Carries a weapon to or possesses a weapon at school, on school premises or to or at a school function under the jurisdiction of the Ohio Department of Education or a school district;
- 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 the Ohio Department of Education or a school district; or
- Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of the Ohio Department of Education or a school district.

### Procedural safeguards and notice

Notify parents: not later than the day the decision is made to expel the child for a weapon or drug offense or for inflicting serious bodily injury and provide the parents with a procedural safeguards notice, *Whose IDEA Is This?*, and Prior Written Notice to Parents PR-01 form.

- The school district follows the standard disciplinary procedures that are applicable to all children:
  - Send the child written notice of the intent to expel and the reasons for expulsion and notify the parents.
  - Provide the child an opportunity to appear in an informal hearing.
- The school district provides parents:
  - Prior written notice of that decision;
  - A copy of their procedural safeguards notice, *Whose IDEA Is This?*

### Give the child's special education and disciplinary records to the person making the decision about the disciplinary action

- The superintendent designates this person. The designee might be the superintendent, building principal or other administrative personnel.
- Applicable records include the child's current IEP, evaluation team report (ETR), behavior intervention plan (BIP) if applicable, functional behavior assessment (FBA) if applicable, office disciplinary reports and a reporting of the total number of days removed.

Consider any unique circumstances based upon the child's records, which could include factors such as:

- The child's disciplinary history;
- The child's ability to understand consequences;
- The child's expression of remorse; and
- Supports provided or not provided to the child with a disability prior to the violation involving drugs, weapons or serious bodily injury.

Convene the IEP team to determine the interim alternative educational setting (IAES)

- The school district arranges for the IEP team meeting at a mutually agreed upon time and place and notifies IEP members, including the parents, of the time and location of the meeting.
- The purpose of the IEP team meeting is to determine the interim alternative educational setting (IAES).
  - An IAES must be selected that enables the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - When determining the appropriate IAES, a school district must not limit an IEP team to a single placement option (e.g., home instruction). If home instruction is provided for a child, the services provided must satisfy the above requirements.
  - Whether a child's home would be an appropriate IAES would depend on the particular circumstances of the individual case, such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals. (*Federal Register*, August 14, 2006, pg. 46722.)
  - If home instruction is the interim alternative educational setting (IAES), the IEP team determines how much home instruction is necessary to provide a free and appropriate public education (FAPE) for each child. The amount of home instruction is based on educational need and not the reimbursement formula, i.e., one hour per day removed.

Conduct the manifestation determination

(See [Discipline - 8.5 Manifestation Determination](#)).

**LEGAL CITATIONS:**

**Federal Statutes:**

**Federal Regulations:**

34 C.F.R. §300.530

**Ohio Revised Code: (Policies)**

3310.66, 3323.12

**Operating Standards: (Procedures)**

3301-51-02

3301-51-05

**FORMS** (\* = required)

- Prior Written Notice to Parents PR-01\*
- Manifestation Determination PR-03\*
- Whose IDEA Is This?\*