

# **Disciplinary Removals of Students with Disabilities**

## **COUNTING THE DAYS**

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Special Education Mediation Services



# Disciplinary Removals of Students with Disabilities

## Counting the Days



# Special Education Mediation Services

## Grant-Funded

A Grant-Funded Initiative of the Michigan Department of Education Office of Special Education (OSE).

## Free

Offer FREE mediation, IEP facilitation and collaborative communication training to schools and parents across Michigan.

## Federally Mandated

Enables the OSE to meet its obligation under the IDEA to provide statewide mediation services at no-cost to schools and parents to resolve special education disputes.

# Caution



These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations



Future legal developments and guidance may impact these topics



# Today's Agenda



Broad look at discipline under IDEA



Behavior Intervention



Change in Placement



Short-term and Long-term removals



Next steps

We will  
answer  
these  
questions:

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Which students are included in IDEA's disciplinary regulations?

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What counts as a removal?

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When does a removal become a change in placement?

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How is a pattern of removals determined?

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What happens if there is a change in placement?

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# Discipline under IDEA

Intent:

Balance school safety with the individual student's connection to their education and ability to receive a FAPE





# Behavior Intervention

- Removal cannot be the only response to behavior
- 1<sup>st</sup> 10 days should not be looked at as “Free” days
- In the case of a student whose behavior impedes the student’s learning or the learning of others, the individualized education program (IEP) team must consider and when necessary, provide a free appropriate public education (FAPE), document in the IEP the use of positive behavioral interventions and supports, and other strategies, to address the behavior (FAPE).

- 34 CFR § 300.324(a)(b)(2)







# Basic IDEA Discipline Principles



- Students with disabilities can be removed for violations of a Code of Conduct with case-by-case consideration
- No additional requirements under this section for the 1<sup>st</sup> 10 school days of removal
- After 10 school days, look to see if there is a Change in Placement
- If there is a Change in Placement, then a Manifestation Determination Review (MDR) is needed
- Services must be provided after 10 school days of removal

# Which students are included in IDEA's disciplinary regulations?

- Student with an IEP
- Student without an IEP, if there is a *basis of knowledge*



What is a *basis of knowledge*?

3 circumstances

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Parent requested an evaluation in writing

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Parent expressed a need for special education services in writing to a teacher, supervisor or administrator

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School personnel expressed specific concern about pattern of behavior to special education director or supervisor

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What are the 3  
Exceptions to  
*Basis of  
Knowledge?*

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The parent of the child has  
not allowed an evaluation

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The parent of the child has  
refused services under IDEA

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The child has been evaluated  
and determined not eligible





# Change in Placement

- Long term removal = Removal for more than 10 consecutive school days in a school year

OR

- Series of short-term removals = Removal for more than 10 cumulative school days in a school year

- **If there is a pattern of removals**

34 CFR § 300.536





# Counting Removals





# What is a Disciplinary Removal?



A disciplinary removal occurs when a student is excluded from his or her current placement, as written in the individualized education program (IEP), due to a violation of the student code of conduct and the student is not afforded the opportunity to:

- Continue to be involved in and make progress in the general education curriculum
- Receive the instruction and services specified in the IEP and
- Participate with nondisabled students to the extent the student would have in his or her current placement



What else is a  
Removal?

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# Partial Day

- A school day is any day, including a partial day that children are in attendance for instructional purposes and has the same meaning for all children in school, including those with and without disabilities. 34 CFR §300.11(c)(1)(2)
- Partial days are counted the same way the school counts for attendance
- Shorter removals during the school day that will not amount to something reportable in the Michigan Student Data System may still be a removal under IDEA if the overall impact limits the student's access to FAPE.
- What about Snap Suspensions?
- After school detention?





# In School Suspension (ISS)

OSE Guidance states:

In-school suspensions are not counted as disciplinary removals when students:

1. Are provided the opportunity to continue to be involved in and make progress in the general education curriculum **AND**
2. Receive instruction and services specified in the IEP **AND**
3. Participate with nondisabled students **AND**
4. Have instruction provided by a certified teacher





## In School Suspension (ISS) (cont'd.)

- For MSDS reporting purposes, schools must report all In-School Suspensions that are  $\frac{1}{2}$  day or more as a removal
- ISS that does meet the criteria should still be included on the pattern of removals worksheet, but would not be counted as removals toward the 10 days





# Bus Suspension



- **Is transportation part of the student's IEP?**
  - If YES, then the bus suspension counts as a removal, unless the school district provides the transportation in another way.





# Behavior Plans

- Removals under a behavior intervention plan are counted when determining if there is a pattern of removal.



“Come pick up your child”

- Counted as a removal





# What is a Pattern of Removal?

The short removals total more than 10 school days in a school year

AND

The behavior is substantially similar to behavior that resulted in previous removals  
AND

- Length of each removal, total amount of time removed and the proximity of removals to one another is factored in

# Pattern of Removal: Let's look at an example

- |                              |                      |                                |
|------------------------------|----------------------|--------------------------------|
| ■ September 21 <sup>st</sup> | Tardy                | 3 day after school detention   |
| ■ September 28 <sup>th</sup> | Profanity in class   | 1 class period Snap Suspension |
| ■ October 15 <sup>th</sup>   | Insubordination      | 3 day ISS                      |
| ■ October 20 <sup>th</sup>   | Out of seat on bus   | 3 day bus suspension           |
| ■ December 3 <sup>rd</sup>   | Fighting with peer   | 10 day OSS                     |
| ■ January 6 <sup>th</sup>    | Profanity to teacher | 3 day OSS                      |
| ■ January 19 <sup>th</sup>   | Profanity in hallway | 3 day OSS                      |





# What about this?



- A High School student with a disability has been removed from History class for 25 of the last 55 school days for failing to follow direction, cell phone violation, making noise, and insubordination.
- Removals under IDEA?
- Pattern/change in placement?





# What happens if there is a Change in Placement?



- Must convene a Manifestation Determination Review (MDR) within 10 school days of the decision to change the placement
- Must provide the parent a copy of the Notice of Procedural Safeguards on the date the decision is made to make the change of placement



# Services if Removed more than 10 Days



Short term removal that is not a pattern (no change in placement):

- ✓ District determines services by consulting with at least one of the student's teachers

Long term removal or short-term removal that is a pattern:

- ✓ IEP team determines services

Services must enable student to:

- ✓ Continue to participate in the general education curriculum and
- ✓ Progress toward their IEP goals



# Resources

[MDE OSE Guidance: Responding to and Counting Disciplinary Removals](#)

[MDE OSE Individuals With Disabilities Education Act \(IDEA\) Discipline Requirements \(October 2022\)](#)

[MDE OSE Guidance: Determining a Change in Placement](#)

[MDE OSE Conducting a Manifestation Determination Review](#)

[MDE OSE MDR Model Form](#)

[MDE OSE Guidance: Shortened School Day](#)

[OSERS Questions and Answers on Discipline Procedures \(June 2009\)](#)

[OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities \(August 1, 2016\)](#)

[OSERS Q & A on Discipline Procedures \(July 2022\)](#)

[OSERS Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders \(July 2022\)](#)

[OSEP Dear Colleague Letter on Implementation of IDEA Discipline Provisions \(July 2022\)](#)

[Positive Behavioral Intervention Supports](#)



# QUESTIONS?

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***Special Education  
Mediation Services***

# THANK YOU!

- Laura Zangara, Intake Coordinator
- [www.MiKids1st.org](http://www.MiKids1st.org)
- 833-Kids-1<sup>st</sup> (833-543-7178)



# We are here to support you!

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For more information visit:

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# Michigan Alliance for Families

Michigan Alliance for Families is an IDEA Grant Funded Initiative of the Michigan Department of Education, Office of Special Education, and Michigan's federal Parent-Training and Information Center (PTIC) funded by U.S. Department of Education, Office of Special Education Programs (OSEP).

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