Discipline Protections for Students with Disabilities

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Michigan Alliance for Families
information, support, and education

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Overview

- Federal regulations, state laws and rules, and guidance
- Discipline requirements
- Students not yet eligible for special education services and *basis of knowledge*
- Defining disciplinary removals
- Shortened School Day
- When disciplinary removals are a change of placement
- Manifestation Determination Review (MDR) and consideration of 7 Factors
- Interim Alternative Educational Setting (IAES) and Special Circumstances
- Procedural Safeguards and dispute resolution

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Regulations, Rules, and Guidance

Individuals with Disabilities Education Act (IDEA)
(34 CFR §§ 300.530-300.536)

Michigan Administrative Rules for Special Education (MARSE)
(No specific MARSE rules specific to discipline)

Michigan Revised School Code: Act 451 of 1976
Discipline Requirements for all students – Consideration of 7 Factors
380.1310(d), 380.1311(1), 380.1311(2), 380.1311(a)

Michigan Department of Education- Office of Special Education
Discipline webpage

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FAPE

- **F**ree
- **A**ppropriate
- **P**ublic
- **E**ducation

The primary vehicle for providing FAPE is through an appropriately developed individualized education program (IEP) that is based on the individual needs of the child.

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Least Restrictive Environment (LRE)

300.114 LRE Requirements

(2) Each public agency must ensure that—

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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IDEA Discipline Requirements

All students have rights when they are disciplined at school. Students with disabilities have extra rights

Under the IDEA, there are discipline requirements that must be followed for children and students with disabilities 3-26 years old if they have an IEP or there is a *basis of knowledge*

- Disciplinary removals of 10 school days or less
- Disciplinary removals of more than 10 consecutive school days due to a violation of the school's code of conduct
- Disciplinary removals of more than 10 cumulative school days (non-consecutive) due to a violation of the school's code of conduct
- Disciplinary removals due to special circumstances
- Protections for students not yet eligible for special education and related services
- Appeals if parents disagree with a decision

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Basis of Knowledge

3 circumstances that show a school district had a basis of knowledge that a student may be a student with a disability

1. Parent requested an evaluation in writing
2. Parent expressed a need for special education services in writing to a teacher, supervisor, or administrator
3. School personnel expressed a specific concern, written or verbal, about a pattern of behavior to a special education director or supervisor

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Exceptions to the Basis of Knowledge

1. The parent of the child has not allowed an evaluation to be completed
2. Parent of the child has refused services under the IDEA
3. The child has been evaluated and determined not eligible for special education and related services

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What is a Disciplinary Removal?

Student is excluded from current educational placement, as written in the Individualized Education Program (IEP), due to a violation of the school's code of student conduct.

The student is **NOT afforded the opportunity to**

- Continue to be involved in and make progress in the general education curriculum;
- Receive instruction and services identified in the IEP
- Participate with students without disabilities to the extent the student would have been in the current placement

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Examples of Disciplinary Removals



- Pattern of office referrals, extended time away from instruction, extended restrictions on privileges
- Requesting parent pick student up early from school due to behaviors
- Repeatedly telling student to "take a day off"
- Repeatedly sending student out of school with a condition to return (risk assessment, psychological evaluation)
- Regularly requiring student to leave early and miss instructional time (shortened school day)

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Disciplinary Removals

Suspension and Expulsion

Suspension

- May be a change of placement
- Decision made by school district building administrator

Expulsion

- Always a change of placement
- Decision made by local school board

When a student with a disability experiences behavioral challenges resulting in suspensions or other disciplinary actions, appropriate behavioral supports may be necessary to ensure the student receives a free appropriate public education (FAPE)

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Shortened School Day

All students who are eligible for special education services are entitled to a free appropriate public education (FAPE) in the least restrictive environment (LRE)

Special education and related services are provided through an appropriately developed individualized education program (IEP) to address the unique needs of the individual student

"School day" has the same meaning for all students, including students with and without disabilities. School day is any day, including a partial day, that students attend school for instructional purposes

If the IEP team determines a student needs a shorter school day is needed due to the nature or severity of the student's disability, appropriate modifications must ensure the student receives FAPE in the LRE

IEP team considerations for a shortened school day

Shortened school day should only be for a limited amount of time

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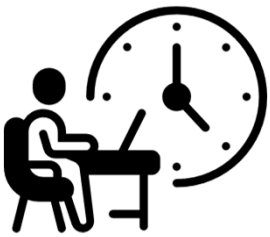

Can a shortened school day be used for a student to manage behavior or as discipline?

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Can a shortened school day be used for a student to manage behavior or as discipline?

No. Shortened school days may not be used to manage student behavior or as a means of discipline

For students with disabilities whose behavior impedes their learning or the learning of others, the IEP team must develop an IEP that addresses the student's behavioral needs through annual goals, related services, and or supplementary aids and services

The IEP should also include behavioral intervention, supports and strategies to enable to student to participate in the full school day

Removal from school is not an intervention or support for students with difficult behaviors and is not reasonable calculated to result in educational benefit

The failure of the IEP team to consider and provide needed behavioral supports could also lead to behavior that is inconsistent with the school code of conduct

Shortening a student's school day as a disciplinary measure could be considered a denial of a free appropriate public education

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Can virtual instruction be used as an alternative to suspension?



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Can virtual instruction be used as an alternative to suspension?

No! Virtual instruction cannot be used as an alternative to suspension for students with disabilities

The school district cannot unilaterally move a student to virtual instruction without implementing IDEA discipline protections

Any change of placement decision is made by the IEP team and needs to consider:

- Whether the student can work on their goals in the setting
- Whether the setting enables the student to continue receiving educational services and participate in the general education curriculum
- Whether the setting would be detrimental to the student's progress
- Whether the student can benefit from home instruction

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Disciplinary Removals of 10 School Days or Less in a School Year

Schools can remove a student with a disability from their educational placement for a violation of the school's code of student conduct

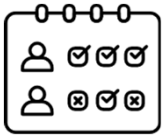
Removal can be to an interim alternative educational setting (IAES), another setting, or suspension

Not more than 10 consecutive days in the same school year

Can be a full day or part of a day

Separate incidents of misconduct

Removals don't constitute a change of placement



Examples of Removals

- Parent called to pick up student from school for behavior incident
- Student sent to principal's office
- Suspensions of less than 10 days

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Disciplinary Removals of More than 10 Consecutive School Days

ALWAYS considered a change of placement when student is removed from school for more than 10 consecutive school days due to a violation of the school's Code of Student Conduct

After 10th day of removal, the school district must:

Provide the student with services determined by the IEP team to participate in the general education curriculum and to progress toward meeting goals in the IEP. These services could be provided in another setting

Provide notice and procedural safeguards to parents about the change in placement on the date the decision is made to make a removal that is a change of placement.

Conduct a manifestation determination review (MDR) within 10 school days of the decision to change the placement.

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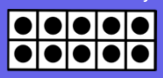
When is it a Change of Placement?

Removal is more than 10 consecutive school days



OR

A series of removals that are a pattern
More than 10 cumulative school days
AND
Behavior substantially similar to behaviors in previous incidents that resulted in removals

Other factors: similar behavior, length of each removal, total amount of time student was removed, how close the removals are to one another

Determination of a "pattern" is determined by the school district
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MDR required

Note: If school puts conditions on return to school
(must have a meeting, get an evaluation)
each day out of school = counted as removal

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What is a Manifestation Determination Review (MDR)

Procedural safeguard for students

Meeting to determine if the conduct in question was
1) **caused by or had direct and substantial relationship to the child's disability**
2) **a direct result of the school district's failure to implement the IEP**

Must be held within 10 school days of the decision to change the student's placement

Participants include parent, school district, and relevant members of the IEP team (determined by parent and school district)

Parent must be notified of the MDR meeting in a reasonable time and provided an opportunity to attend.

School district can hold MDR meeting without parent

An MDR can be conducted for a student not yet eligible for special education services if the school had a *basis of knowledge* that the student is a student with a disability

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Manifestation Determination Review (MDR) Discussion

Question 1:

- Was the conduct in question caused by or did it have a direct and substantial relationship to the child's disability?

Question 2:

- Was the conduct in question a direct result of the school district's failure to implement the IEP?

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Manifestation Determination Review (MDR) Discussion

Review all relevant information in the student's file

Individualized Education Program (IEP)	Observation and behavioral information from those working with the student	Information provided by the parent	School and private evaluation reports
Therapy/behavioral reports	Grades and progress notes	Discipline records	Information about current misconduct

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Manifestation Determination Review (MDR) Discussion

Decisions should be reached during the MDR by consensus (agreement), rather than voting

School district keeps detailed documentation of all information considered

If the IEP team cannot reach consensus in answering the questions, the school district makes the determination and provides prior written notice to the parent



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Michigan Law: 7 Factors

Discipline Protection for All Students

Michigan law requires that "7 Factors" be considered before suspending or expelling a student for certain offenses of the school code of conduct.:

Each of these factors must be considered

- Student's age
- Student's disciplinary history
- Whether the student is a student with a disability
- Seriousness of the offense or behavior
- Whether the offense or behavior committed threatened the safety of any student or staff member
- Whether restorative practices will be used to address the offense or behavior
- Whether a lesser intervention would properly address the offense or behavior

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Consideration of the 7 Factors

Mandatory consideration of the 7 factors does not apply when a student is being suspended or expelled for possessing a firearm in a weapon-free school zone

The method used for consideration of the factors is at the sole discretion of the school board or it's designee

- Checklist, meeting
- Does not have to be in writing
- Parents can request documentation of consideration of the factors

"7 Factors" relevant to manifestation determination review (MDR) for a student with a disability

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MDR Decision

Question 1:

- Was the conduct in question caused by or did it have a direct and substantial relationship to the child's disability?

Question 2:

- Was the conduct in question a direct result of the school district's failure to implement the IEP?



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Behavior WAS NOT a manifestation of the student's disability (not related)

Student can receive discipline in the same manner and duration as a student without a disability

Student must be provided with services that will allow them to participate in the general education curriculum and allow them to progress toward their IEP goals, though could be in a different setting

Review and revise the Individualized Education Program (IEP), as necessary. Free appropriate public education (FAPE) will look different

School must consider development of a functional behavioral assessment (FBA) and positive behavioral supports/behavior intervention plan for the student for any student removed more than 10 days, if appropriate

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Behavior **WAS** a manifestation of the student's disability (was related)

Return student to placement from which student was removed (pre-disciplinary placement), unless parent and school district agree to a change of placement or there are special circumstances

Do a functional behavioral assessment (FBA) unless the school district did one before the behavior that resulted in the change of placement **AND** implement a behavioral intervention plan (BIP) **OR** review and revise current behavioral intervention plan as necessary

Review and revise the IEP if the behavior was not previously addressed

If the IEP isn't being implemented, the school must take immediate steps to remedy a failure to implement the IEP

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Interim Alternative Educational Setting (IAES) & Special Circumstances

Regardless of the MDR decision, there are some circumstances in which a student can be moved to an IAES:

Student can be moved to an IAES if the parent and IEP team agree on an alternative placement

School district can move a student to an IAES for up to 45 school days if a student:

- brings a **weapon** to school
- uses, sells, or possesses illegal **drugs** at school
- inflicts **serious bodily injury** upon another person at school

A hearing officer may order that the student be moved to an IAES for up to 45 school days if keeping the student in the current placement is "substantially likely to result in injury to the student or others"

School district must continue to provide educational services to the student and address the student's behavioral needs, but FAPE can look different

Parent can appeal the IAES placement to keep the child in the current placement (stay put)

The IAES is an IEP team decision

Notice and procedural safeguards must be provided to parent

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Procedural safeguards if you disagree with the MDR decision

(not a manifestation of the student's disability)

Parent and school may disagree about whether the behavior that led to the disciplinary action was related to the child's disability or not

There are procedural safeguards available to parents and schools under the IDEA

Anyone can write a **dissenting report** who disagrees with an MDR decision

Parents and schools can utilize **mediation** to try to resolve the disagreement. If the parent and school agree on how to resolve the issue, a legally enforceable agreement is developed

Parents can request an **Independent Educational Evaluation (IEE)** for each evaluation that the school district conducted in which the parent disagrees

Anyone can file a **state complaint.** A state complaint alleges that the school violated or failed to implement a state or federal special education rule or regulation related to special education programs and services, an IEP, or Michigan Revised School Code

Special Education Mediation Services

1-833-KIDS-1ST

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Expedited Due Process Hearing



A **due process complaint** can be initiated by a parent or by the school district

Alleges violations on matters under Michigan Administrative Rules for Special Education (MARSE) or the Individuals with Disabilities Education Act (IDEA)

A school district can request an expedited hearing if they believe maintaining the current placement of the child is substantially likely to result in injury to the child or others

An **expedited due process hearing** is only used to appeal a school district's manifestation determination review decision

Process timelines are shorter than for a standard due process complaint and hearing

- Required resolution session must start within 7 calendar days of the expedited complaint being received
- Resolution session can be waived if parent and school agree, or agree to go to mediation
- Hearing must be within 20 school days
- Decision and order must be mailed within 10 school days after hearing ends

Student remains in IAES pending the outcome of the hearing (disciplinary placement)

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Right to post expulsions services



If a student receives special education and related services is expelled, the student is still entitled to a free appropriate public education (FAPE)

The IEP team determines how the student will get FAPE

Post expulsion services must:

- Include an appropriate school education, including general education curriculum instruction
- Be provided in conformity with the student's Individualized Education Program (IEP)
- Must provide a free appropriate public education (FAPE)

FAPE could be less special education and related services, provided in a different location

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What can I do to support my child in school?

Be familiar with federal laws, state rules, and Michigan Department of Education, Office of Special Education guidance regarding discipline protections for your student

Know your school's code of student handbook and know the school board policies. School Code of Conduct policies should be consistent with school board policies and align with the law



Open communication with the IEP team

Address behavior concerns quickly and prevent challenging behaviors before they occur with appropriate behavioral supports

Keep your own documentation and data about disciplinary removals and behavior incidents

Review and revise the IEP as needed and ensure all needs are addressed in the IEP, including behavioral needs

Utilize dispute resolution options if you disagree with an IEP team decision

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Michigan Alliance for Families

In collaboration with The Arc Michigan

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