



Providing FAPE during Expulsion

Students with Disabilities

INTRODUCTION

The *Individuals with Disabilities Education Act* (IDEA) outlines specific provisions for the discipline of students with disabilities. In some cases, disciplinary action resulting from a violation of the student code of conduct may involve various types of exclusionary discipline, including long-term suspension or expulsion. LEAs are responsible for ensuring that students with disabilities are provided with a free appropriate education (FAPE), which includes the right to Manifestation Determination prior to consideration for expulsion or suspension for greater than ten (10) days in a school year (see *Manifestation Determination: A Practice Guide*).

This guide specifically addresses cases that have resulted in the recommendation for suspension beyond ten (10) cumulative days in the school year or expulsion.

Definitions

- **Expulsion.** Removal of a student for an extended period of time. For general education students, services usually cease during this time.
Idaho Special Education Manual, Glossary
- **Free Appropriate Public Education (FAPE).** The definition of FAPE under the IDEA means special education and related services that:
 - are provided at public expense (free);
 - are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
 - are provided under public supervision (public); and
 - include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the Idaho Department of Education (education).*Idaho Special Education Manual*, Chapter 2, Section 1

STEPS LEADING TO CONSIDERATION FOR EXPULSION

The following outlines the general steps leading to the consideration of expulsion for a student with a disability.

1. The student violates the student code of conduct.
2. The district proposes disciplinary action that would result in a change of placement (removal and cessation of educational services for more than ten (10) consecutive or ten (10) cumulative days in a school year).
3. *Procedural Safeguards* are provided to parents, and a Manifestation Determination is conducted.
4. It is determined that the behavior is **NOT** a manifestation of the student's disability or disabilities.
 - a. The conduct in question is not caused by or has a direct and substantial relationship to the student's disability; and
 - b. The conduct in question is not the result of the LEA's failure to implement the IEP.
5. If it is determined that the behavior **IS** a manifestation of the student's disability or disabilities.
 - a. The student cannot be considered for expulsion.

PROVISION OF FAPE DURING EXPULSION

Students with disabilities continue to have the right to FAPE during the period of expulsion. This means that educational services must be provided. In the case of expulsion, services may be provided in a different location than outlined in the student's current IEP and may limit or eliminate access to nondisabled peers during the expulsion period. During the period of expulsion, services shall be provided to the extent necessary to:

1. allow the student to continue to participate in the general education curriculum;
2. the opportunity to advance toward achieving the goals set out in his or her IEP; and
3. receive, as appropriate, a functional behavior assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

[Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#), pg. 26

CAUTION

It is not sufficient to provide only special education and related services during an expulsion period. The student must continue to have access to the general education curriculum and to progress toward grade-level standards that apply to all students.

Behavior needs and goals must also continue to be addressed, regardless of the location of services and for the duration of the expulsion.

The primary difference in the provision of FAPE for a student during expulsion is the location of services and access to peers, the school environment, and other curricular and non-curricular activities.

The IEP team determines what services will be provided and the location of the service provision. The IEP team cannot decide to provide less than what is required for the student to receive a FAPE.

The LEA that expels the student is responsible for the provision of FAPE for the duration of the expulsion period. The LEA is also responsible for ensuring that the expelled student participates in all required State and Federal testing, such as the ISAT, IRI, and Access testing. Although Idaho Code indicates that expelled students are considered exited students for the purpose of participation in required State assessments, this provision does **NOT** apply to IDEA-eligible students who have been expelled.

CONSIDERATIONS

IEP teams should consider the following questions when determining how and where educational services will be provided:

Location of services

- Where will services be provided?
- Is accessing services at home in the student's best interest?
 - Is it safe and appropriate to send staff to the student's home for services?
 - Is the student likely to consistently and meaningfully engage in learning in the home environment?
- Is there a public location that can be accessed?
 - A district facility removed from the student's school (district office)
 - Other public locations such as a library

General education curriculum

- How will the student access the general education curriculum?
 - Online or virtual content
 - In-person instruction
 - Hybrid virtual/in-person instruction and supervision
 - Multiple classes simultaneously or fewer classes at a time for shorter periods of time

- How will the district ensure that instruction is provided by qualified, certified staff?

EXAMPLES

1. Student A is a 10th grader and attends school at the district office with supervision. Rather than taking six general education classes, she will take three classes per quarter. General education classes are provided through an online service provider with regularly scheduled virtual meeting sessions scheduled with instructors. Special education services are provided in-person by a special education teacher from her school. The special education teacher provides academic services and works on coping strategies and replacement behaviors with the student.
2. Student B is a 5th grader who attends school at the public library with a tutor/aide. He is unable to attend to and manage online learning. Instruction is provided by a halftime teacher for two hours each day with support from his tutor/aide for the remainder of the day. The aide, under the supervision of the special education teacher, also provides social/emotional learning support. Special education services are provided in person. Related services are provided virtually and are facilitated by the aide. Both the aide and the student check in regularly with certified staff.

For Questions Contact

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