

The Discipline Process for Children with Disabilities in Ohio

September 2012

Slide 1

Discipline

Ohio Department of Education

Office for Exceptional Children

2012-2013

The subject for this presentation is:
The Discipline Process for Children with Disabilities

2. What is the first thing that must happen when a child with a disability is accused of a violation of the code of conduct or of a charge related to drugs, weapons, or serious bodily injury?

When a child with a disability is accused of either of those charges, the district conducts a suspension/expulsion hearing per Ohio Revised Code (ORC) 3313.66 and determines if discipline is warranted.

(ORC 3313.66)

3. What happens when it is determined that a disciplinary action is required?

On the date on which the decision is made to make a disciplinary removal that constitutes a change of placement for a child with a disability, the school district must notify the parents of the child of the decision and provide the parents with a copy of *Whose IDEA Is This?, the procedural safeguards notice*.

[3301-51-05(K)(20)(h)]

4. When a child is removed from school for disciplinary reasons, what is considered a change of placement?

A change of placement because of disciplinary removals occurs if:

- The removal is for more than ten consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern:
 - Because the series of removals total more than 10 school days in a school year;
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - 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.

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis.

[3301-51-05(K)(26)(a) and (b)]

5. What happens if the district is suspending the child for less than 10 days for the current infraction and all removals of the child, including the current suspension, do not total 10 cumulative days in the school year?

Since there is no change of placement, the child may be disciplined as all children without disabilities are disciplined. There is no requirement to hold a manifestation determination, provide a functional behavioral assessment (FBA) or create or review a behavioral intervention plan (BIP). There is also no requirement to provide the child services while removed unless the district provides services to all

The Discipline Process for Children with Disabilities in Ohio

September 2012

children who are removed for disciplinary reasons. The IEP team may choose to complete a FBA and BIP to address the problematic behavior, but there is no requirement to do so.

6. What happens if the district is suspending the child for less than 10 days for the current infraction and all removals of the child, including the current suspension, total 10 or more cumulative days of removal for the school year?

The district must determine if there is a change of placement. To determine if a change of placement is occurring, the district must determine if all of the removal taken together constitutes a pattern. A pattern occurs if:

- The series of removals total more than 10 school days in a school year;
- The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- There are additional factors such 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.

A child with a disability may be suspended for more than 10 cumulative days without changing placement if the removals do not constitute a pattern. However, the district must provide the child access to the general education curriculum and the child must make progress on his or her goals and objectives during any removal beyond 10 cumulative days even if the current removal is not a change of placement. School personnel must consult with one of the child's teachers to determine the extent to which services are needed to ensure that the child receives FAPE. Services must be provided to the child with a disability beginning on the 11th day of removal in the school year.

[3301-51-05(K)(20)(b) and (d)(iv)]

[3301-51-05(K)(26)(a) and (b)]

7. What is a Functional Behavioral Assessment (FBA)?

The FBA is a data-driven collaborative process that is used to describe the function or purpose served by a child's behavior. By gathering information and baseline data through direct and indirect measures, the team probes beyond "what the behavior looks like" to understand the cause or purpose of the behavior. Identifying the function of a behavior determines the child's need(s) and results in the design of effective behavioral interventions that teach more appropriate behavior and may result in the child having his or her needs appropriately met.

Informed parental consent is required if a Functional Behavioral Assessment is to be conducted.

[3301-51-05(C)(4)(a)(i)]

8. What is a Behavioral Intervention Plan (BIP)?

A behavioral intervention plan is a written set of activities that staff will utilize to decrease the number of times a child engages in behavior that will result in disciplinary action. The activities in the plan are designed to teach the child an appropriate alternative response to environmental stimuli that trigger inappropriate behavior. The goal of the BIP is to make the inappropriate behavior extinct.

9. What if the child has been removed from school for more than 10 consecutive or cumulative school

The Discipline Process for Children with Disabilities in Ohio

September 2012

days and these removals constitute a pattern?

This is considered a change of placement and the school district must conduct a manifestation determination within 10 school days of the notification to parents of the district's intent to suspend or expel the child.

[3301-51-05(K)(20)(h)]

[3301-51-05(K)(20)(e)(i)(a) and (b)]

10. Who and what is involved in making the manifestation determination?

The school district, the parents, and relevant members of the child's IEP team (as determined by the parents and the school district) must meet and 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 if the behavior in question was:

- caused by, or had a direct and substantial relationship to the child's disability; or
- the direct result of the school district's failure to implement the IEP.

If it is determined that either of the above conditions was met, the behavior must be determined to be a manifestation of the child's disability.

[3301-51-05(K)(20)(e)(i) and (ii)]

11. How may the child be disciplined if it is determined that a child's behavior is NOT a manifestation of the child's disability?

For a code of conduct violation or an incident dealing with drugs, weapons, or serious bodily injury, the district may suspend or expel a child with a disability in the same manner and for the same period as any other child. The school district must provide FAPE in the setting determined by the IEP team, including the parents, for the period of the removal and provide the parents with a Prior Written Notice PR-01 form and a copy of ***Whose IDEA Is This?***

The school district may CHOOSE to review the child's BIP and make changes as necessary or if the child does not have a BIP the district may choose to complete a functional behavioral assessment and/or complete a behavioral intervention plan; however it is not required.

[3301-51-05(K)(20)(c),(d) and (h)]

[3301-51-05(K)(20)(d)(i)(b)]

12. If it is determined that the child's behavior IS a manifestation of the child's disability but did not involve drugs, weapons, or serious bodily injury and the child violated the school's code of conduct, how may a child be disciplined?

The school district may not suspend or expel the child for more than 10 consecutive days or for any period of time that would constitute a change of placement. See question number 4 above.

The IEP team, including the parents, must review the BIP, if one has already been created, for any necessary changes or begin the FBA process. The review of the BIP or beginning to conduct the FBA must be done within 10 school days of the manifestation determination.

The IEP team, including the parents may convene to determine if a change of placement is appropriate.

The Discipline Process for Children with Disabilities in Ohio

September 2012

Parental consent must be obtained to change the child's placement and for an FBA to be conducted. The district must provide the parents with a Prior Written Notice PR-01 form and a copy of ***Whose IDEA Is This?***

The child must return to his or her current placement THE DAY after the manifestation determination meeting.

[3301-51-05(K)(20) (f) and (h)]

13. What happens if it is determined that the behavior was a result of the district's failure to implement the IEP?

School personnel must:

- Immediately remedy deficiencies in the implementation of the IEP, **AND**
- Either conduct a functional behavioral assessment (FBA) and implement a behavioral Intervention plan (BIP) as appropriate; **or**
- Review the existing FBA and BIP and modify them as needed to address the behavior.
- Return the child to the placement from which he or she was removed unless:
 - the parents and the school district agreed to a change of placement, or
 - the child's action involved drugs, weapons, or serious bodily injury.

[3301-51-05(K)(20)(e)(iii)]

[3301-51-05(K)(20) (f)(i) and (ii)]

14. What does the school district do if the parent refuses to consent to completing a functional behavioral assessment as a result of the manifestation determination meeting?

If the parents do not give written parental consent for the FBA, the school district may, but is not required to, use procedural safeguards (including the mediation and due process procedures) to pursue the evaluation. (See Procedural Safeguards - 5.3 Parent Consent for Evaluation in *Procedures and Guidance for Ohio Educational Agencies serving Children with Disabilities* on www.edresourcesohio.org/.)

[3301-51-05(C)(1)(e)]

[3301-51-05(C)(4)(a)(i) and (5)]

15. If it is determined that the child's behavior is a manifestation of the child's disability and the child's action involved drugs, weapons, or serious bodily injury, how may a child be disciplined?

The school district must review the child's BIP and make changes as necessary. If the child does not have a BIP, the IEP team including the parents, and with the parents' informed written consent, must start to conduct a Functional Behavioral Assessment (FBA) within 10 school days of the manifestation determination and complete the assessment as soon as practicable. The FBA must be started within 10 school days even if the child has been removed to an Interim Alternative Education Setting (IAES). Once the FBA is completed, the IEP team including the parents must meet to develop a BIP as soon as possible.

If it is determined that a change of placement is necessary, the child may remain in an IAES that has been determined by the IEP team for up to 45 school days. While the child is in an IAES, the school district must provide services to the child that enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

[3301-51-05(K)(20)(f) and (g)]

[3301-51-05(K)(20)(d)(i) and (ii)]

The Discipline Process for Children with Disabilities in Ohio

September 2012

16. What happens if the parents of the child with a disability disagree with the placement decision made by the IEP team or with the manifestation determination or the school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others?

If the parents of a child with a disability disagree with the placement decision made by the IEP team or the manifestation determination, the parents may request an expedited due process hearing to challenge these decisions.

If the school district believes that maintaining the child in his or her current placement is likely to result in injury to the child or to others, the district may request an expedited due process hearing.

[3301-51-05(K)(22)(a)]

17. If children are not yet eligible for special education and related services, do the IDEA protections for disciplinary purposes apply?

Yes. A child can assert IDEA's protections, if the school district had knowledge that a child is a "child with a disability" before the behavior that precipitated the disciplinary action occurred.

[3301-51-05(K)(24)(a)]

18. What are the criteria to determine if the school district had knowledge that the child is a child with a disability?

The school district is determined to have knowledge if:

- The parents of the child expressed their concerns in writing to supervisory or administrative personnel or a teacher of the child that the child is in need of special education and related services;
- The parents of the child requested an evaluation of the child; or
- The teacher of the child, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other district supervisory personnel.

[3301-51-05(K)(24)(b)]

19. Why does Ohio have both an optional form and a required form for the manifestation determination?

The optional form, OP-3: Manifestation Determination, may be used as a discussion guide and worksheet by the team making the determination. It provides items that should be considered and questions that should be asked to determine whether or not a child's behavior was a manifestation of the child's disability.

The required form, PR-03: Manifestation Determination Review, must be completed whether or not the optional form was used.

Both of these forms are posted at www.EdResourcesOhio.org and included in this module.

Included in this resource are:

- A graphic representation of the discipline process, and
- The script for the resource.
- Required form - [Form PR-03: Manifestation Determination Review](#)

The Discipline Process for Children with Disabilities in Ohio

September 2012

- Optional forms
 - [Form OP-1: Functional Behavior Assessment](#)
 - [Form OP-2: Behavior Intervention Plan](#)
 - [Form OP-3: Manifestation Determination](#)

- State Support Team (SST) Information

Slide 20

For further information on The Discipline Process for Children with Disabilities in Ohio,
please contact:

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