

Florida Department of Education Bureau of Exceptional Education and Student Services
Rule 6A-6.03312, Florida Administrative Code
Discipline Procedures for Students with Disabilities
Rule Implementation Brief **November 1, 2004**

Questions and Answers

The following questions and answers reflect the most common inquiries and are intended to assist educators in the consistent implementation of this rule. As appropriate, specific citations to Rule 6A-6.03312, FAC, are provided in the responses.

1. Under what circumstances may students with disabilities be removed from school for disciplinary reasons?

(2) Consistent with the school board's Code of Student Conduct and to the extent that the removal would be applied to students without disabilities, a student may be removed from school for disciplinary reasons for not more than ten consecutive school days. Additional removals for not more than ten consecutive days may be ordered as long as those removals do not constitute a change of placement for the student.

2. What is considered a change of placement related to discipline procedures for students with disabilities?

(1)(a) For the purpose of removing a student with a disability from the student's current educational placement as specified on the student's individual educational plan (IEP), a change of placement occurs when the removal is for more than ten consecutive school days or when a series of removals for more than ten days cumulatively constitutes a pattern. Whether the removals constitute a pattern is based on factors such as the length of each removal, the total time the student is removed, and the proximity of the removals to each other.

3. What is a manifestation determination?

(3) Before the placement of a student with a disability can be changed as a result of disciplinary action, the IEP team and other qualified personnel must determine if the behavior in question represents a manifestation of the student's disability. Additional information about what to consider when making the determination is available in the technical assistance paper entitled *Manifestation of the Disability and Related Discipline Issues* (TAP FY-2001-7D). This document is available on the FLDOE website at <http://www.firn.edu/doe/commhome/tap-home.htm>

(3)(c) If the team determines that the behavior was a manifestation of the student's disability, the student's placement cannot be changed as a disciplinary action. However, the IEP team may determine that a change of placement is necessary to provide a free, appropriate public education (FAPE) to the student in the least restrictive environment.

4. Must a manifestation determination be conducted every time a student with a disability is considered for suspension after the initial 10 cumulative days of removal?

(3) No. However, a manifestation determination must be made any time a disciplinary action results in a change of placement. The district should have in place a procedure to ensure that a student is not subject to a series of removals that cumulate to more than 10 days in a year and that constitute a pattern of removals that result in a change of placement.

5. Must a free appropriate public education (FAPE) be provided to students with disabilities who are suspended or expelled?

(5) It depends on the amount of time the student has been removed from school. The district is not required to provide services to a student with a disability who has had removals totaling ten school days or less during the school year, unless such services are provided to nondisabled students during such removals. However, beginning on the 11th cumulative school day of removal in a school year, the district must provide FAPE to the student.

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6. Can the district apply to students with disabilities the same “zero-tolerance policy” that applies to nondisabled students?

(6)(a)-(b) In accordance with 34 CFR 300.520(a)(1)(ii), the district must provide services to a student with a disability who has been removed from his or her current placement for more than ten school days in the school year as a result of disciplinary action. However, school personnel may place a student in an IAES without the consent of the parent for the same amount of time a student without a disability would be placed, but for not more than forty-five (45) calendar days, if the student carries a weapon or firearm to school or to a school function, or knowingly possesses or used illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function. In addition, an IEP team may determine that an interim alternative educational setting (IAES), in which the student can continue to progress in the general curriculum and continue to receive the services described in the student’s IEP, is the least restrictive environment for the student.

7. What constitutes the provision of FAPE for a student removed for more than 10 days cumulatively in a school year?

(5)(b) The district must provide services to the extent necessary to enable the student to appropriately progress toward achieving the goals in the student’s IEP. If the removal is not for more than ten consecutive school days and is not considered a change of placement, school personnel in consultation with the student’s special education teacher(s) determine the extent to which services are necessary to enable the student to progress in the general curriculum and appropriately advance toward achieving the goals on the IEP. If an IEP team has determined that the behavior that precipitated the removal was not a manifestation of the student’s disability, the IEP team determines the extent to which services are necessary.

8. What are the requirements related to functional behavioral assessments (FBAs) and positive behavior intervention plans (PBIPs)?

The requirement under this rule for conducting a FBA for a student with a disability differs from the requirement under the IDEA. Section 300.520(b) of Title 34, Code of Federal Regulations states that a functional behavioral assessment must be conducted before a student may be subject to a removal that constitutes a change of placement.

In contrast, Rule 6A-6.03012(4)(d) requires that, if a district has not conducted a functional behavioral assessment for a student, one must be conducted prior to a long-term removal. A long term removal is the removal of a student with a disability from the student’s current placement for more than 10 school days in a school year, which may or may constitute a change in placement of the student (1)(m). Ten school days represents a cumulative measure of days of suspension; they need not be applied consecutively for this requirement to apply. As soon as is possible after conducting the FBA, the IEP team must meet to develop a positive behavior intervention plan (PBIP) to address the behavior in question and ensure that the plan is implemented. Information gleaned from the FBA is used to develop meaningful interventions and plan for instruction in replacement behaviors. For a student who has a PBIP in place, and who has been removed for more than 10 cumulative school days in the school year, the IEP team must review the PBIP and its implementation to determine if revisions are required to make the plan more effective.