

# Suspensions, Removals, & Sending Students Home



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August 2023

Pingora Consulting

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## Today's Agenda



August 2023

**01**  
Why this  
matters!

**02**  
What are  
disciplinary  
removals?


**03**  
The  
regulations

**04**  
The  
consequences

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# 01

## Why it matters!


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**“Over 3 million missed days of school by students with disabilities due to out of school suspensions.”**



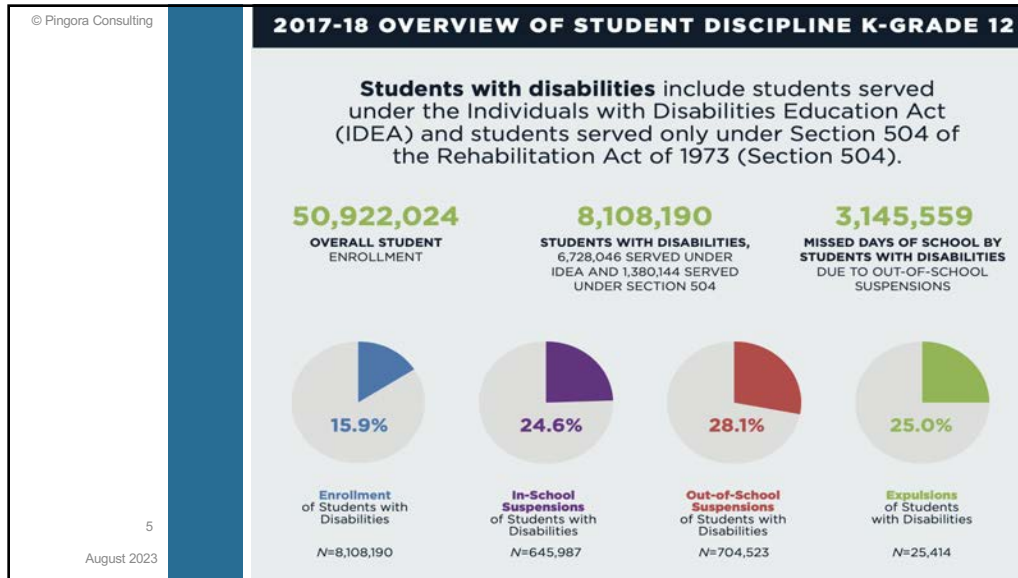
2017-2018 Civil Rights Data Collection

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## Even the littlest ones.

IDEA preschool students = 22.7% total enrollment,  
IDEA preschool students = 56.9% of EXPELLED preschool students.

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School-age students with disabilities served under IDEA represented **13.2%** of total student enrollment but received **20.5%** of one or more in-school suspensions and **24.5%** of one or more out-of-school suspensions.

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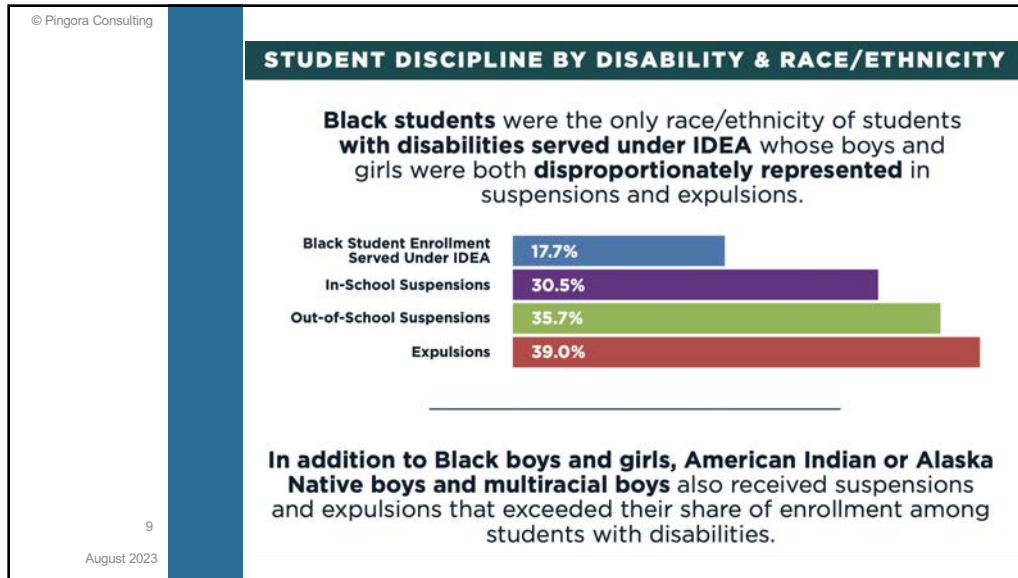
IDEA students with disabilities = **13.2%** of total school enrollment, BUT those students received **20.5%** of in school suspensions AND **24.5%** of out of school suspensions.

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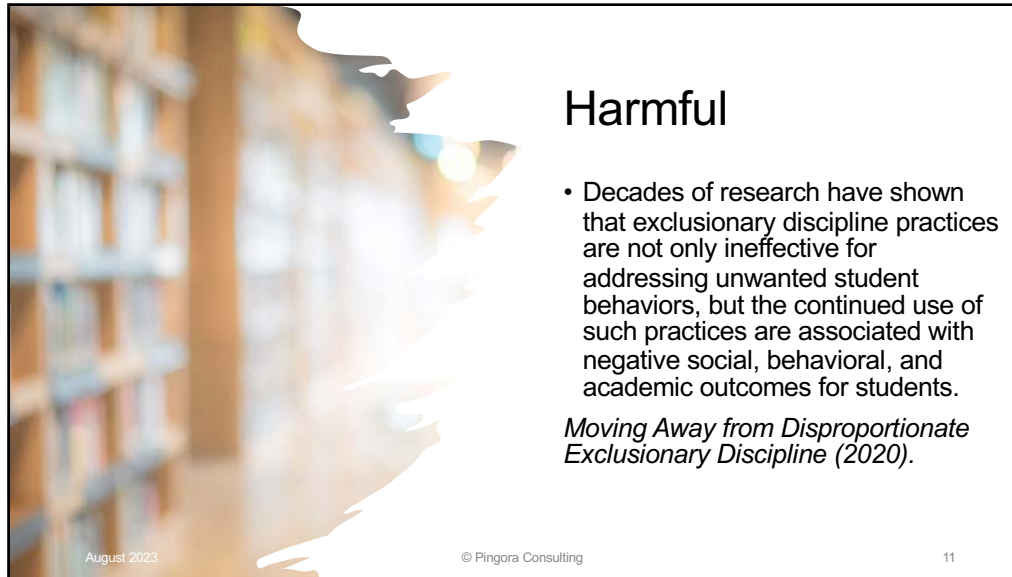
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# Urgent Need

“There is an urgent need for SEAs and LEAs to improve the implementation of IDEA so that all eligible children are served appropriately and equitably.”

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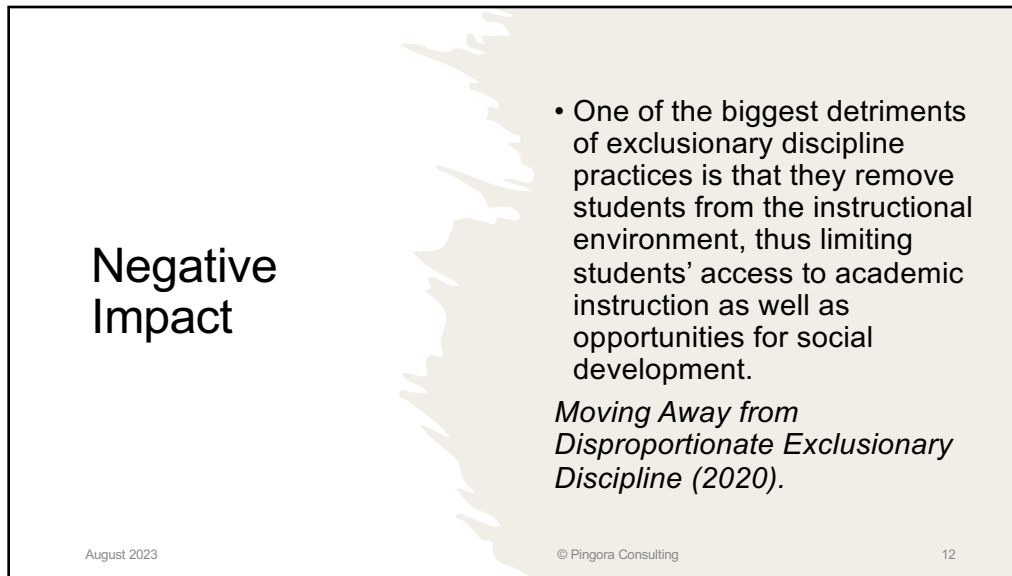
## Harmful

- Decades of research have shown that exclusionary discipline practices are not only ineffective for addressing unwanted student behaviors, but the continued use of such practices are associated with negative social, behavioral, and academic outcomes for students.

*Moving Away from Disproportionate Exclusionary Discipline (2020).*

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## Negative Impact

- One of the biggest detriments of exclusionary discipline practices is that they remove students from the instructional environment, thus limiting students' access to academic instruction as well as opportunities for social development.

*Moving Away from Disproportionate Exclusionary Discipline (2020).*

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## It's a reinforcer!

- Although out-of-school suspensions can result in dropout and function as a reinforcer for problem behavior, the number of exclusionary discipline incidents has nearly doubled since the 1970s.

*Do Out of School Suspensions Prevent Future Exclusionary Discipline?*, Massar, McIntosh, and Eliason (2015).

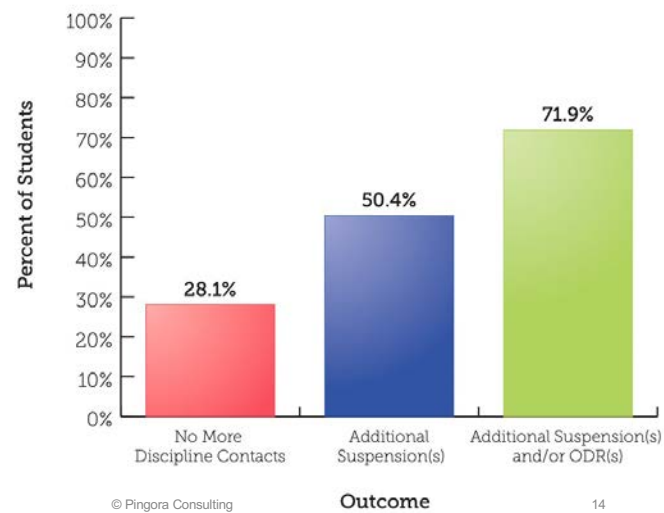
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### Discipline Contact After Suspension



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World Refugee Day

# 02

## What are disciplinary removals?

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### What counts?

- Any disciplinary removal for any violation of a code of conduct.
- 34 C.F.R. §300.530.

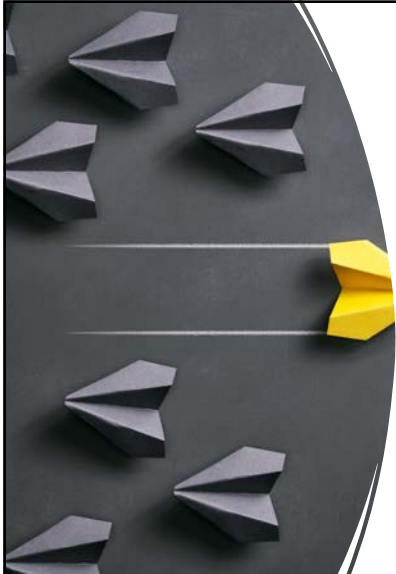
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## What is a disciplinary removal?

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- **Any** instance in which a student is removed from his/her educational placement for disciplinary purposes, i.e. behavior that is violating a code of conduct.
- **Discipline must not be used as a means of disconnecting a child with a disability from education.**

*71 Federal Register 46715.*

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## Does It matter if we call it something else?

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**No!**

- A removal from a placement due to a violation of a code of conduct is a disciplinary removal **NO MATTER WHAT YOU CALL IT!**



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## Exclusionary Discipline

- Refers to the removal, whether on a short-term or long-term basis, of a child with a disability from class, school, or other educational program or activity for violating a school rule or a school's code of conduct.

*Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholder*, 81 IDELR 139 (OSEP & OSERS 2022).

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## Exclusionary Discipline

- Examples include:
  - detentions,
  - in and out of school suspension,
  - suspension from riding the bus,
  - expulsions,
  - disciplinary transfers to alternative schools, and
  - referrals to law enforcement.

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## More Exclusionary Discipline

Moving a desk or chair  
into the hallway,

Sending a student to the  
office for periods of time  
(we know who is  
responsible for these  
students),

Suspension,

Sending a student home  
for the day,

Placing any condition on  
a student's return after a  
disciplinary removal, i.e.  
safety assessment, psych  
eval, etc., OR

Any removal by any  
other name for a  
violation of a code of  
conduct or school rules.

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## A School Day = A School Day

Students with disabilities are entitled to the same length of school day as any general education student.

Students with disabilities have the right to an IEP reasonably calculated to result in educational benefit, or progress.

IEPs that do not focus on progress will likely be deemed deficient.

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## What is a School day? 34 C.F.R. §300.11

*School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

*School day* has the same meaning for all children in school, including children with and without disabilities.

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## Shortened school day

- OSEP indicated that subjecting a student to a shortened school day to address his problematic behavior could amount to a disciplinary removal from the child's current placement for purposes of the IDEA's discipline procedures.
- *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022); *Letter to Mason*, 72 IDELR 192 (OSEP 2018).

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## ASK:

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How will shortening the school day for this student improve his/her challenging behavior?

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How will shortening the school day for this student lead to increased performance?

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How will shortening the school day for this student teach the student new skills?

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# Less instruction

By removing a student with a disability, you are shortening the amount of instructional time.

In other words, you are altering a student's right to receive FAPE.

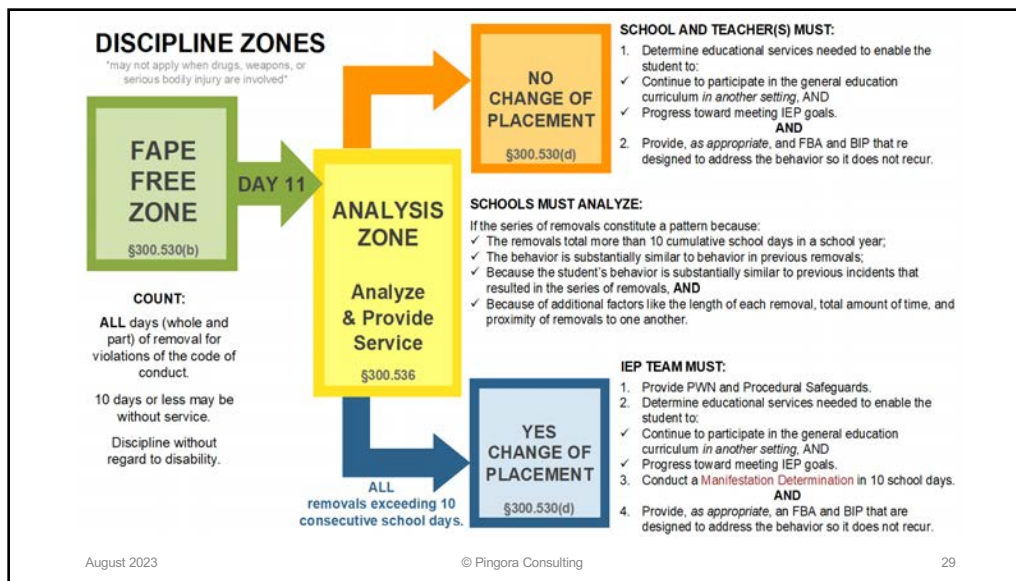


National Archives and Records Administration

code of federal regulations






# 03 The Regulations



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## When does the count start?

-  The count begins on the first day school is in session.
-  Counting continues for the remainder of the school year.
-  The count starts over with the next school year.

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## What does 10 free days really mean?

The school is not required to provide instruction during the first 10 days of removal.

It DOES NOT mean that the IEP team can forget about the educational needs of the student. What has changed?

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### FAPE FREE ZONE

**DAYS OF REMOVAL + DAYS OF ISS = 10 DAYS OR LESS, counting whole and part days**

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**What happens on Day 11?**

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Beginning on the 11<sup>th</sup> day in a school year that a student is removed from his/her current placement, and for any subsequent removals, educational services must be provided **FAPE!**

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*71 Federal Register 46717.*

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**What happens if removals exceed 10 school days?**

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**THE STUDENT IS ENTITLED TO ADDITIONAL PROTECTIONS.**

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**THE TEAM HAS MORE WORK TO DO.**

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**THE SCHOOL MUST PROVIDE FAPE!**

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**ANALYSIS  
ZONE**

**Analyze &  
Provide  
Service**

## SCHOOLS MUST ANALYZE:

If the series of removals constitute a pattern because:

- ✓ The removals total more than 10 cumulative school days in a school year;
- ✓ The behavior is substantially similar to behavior in previous removals;
- ✓ Because the student's behavior is substantially similar to previous incidents that resulted in the series of removals, **AND**
- ✓ Because of additional factors like the length of each removal, total amount of time, and proximity of removals to one another.

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NO CHANGE OF PLACEMENT

**NO  
CHANGE OF  
PLACEMENT**

## SCHOOL AND TEACHER(S) MUST:


1. Determine **educational services** needed to enable the student to:
  - ✓ Continue to participate in the general education curriculum *in another setting*, AND
  - ✓ Progress toward meeting IEP goals.

**AND**
2. Provide, **as appropriate**, and FBA and BIP that are designed to address the behavior so it does not recur.

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## YES, CHANGE OF PLACEMENT



YES CHANGE  
OF  
PLACEMENT

Removals of more than 10 consecutive days are ALWAYS a change in placement!

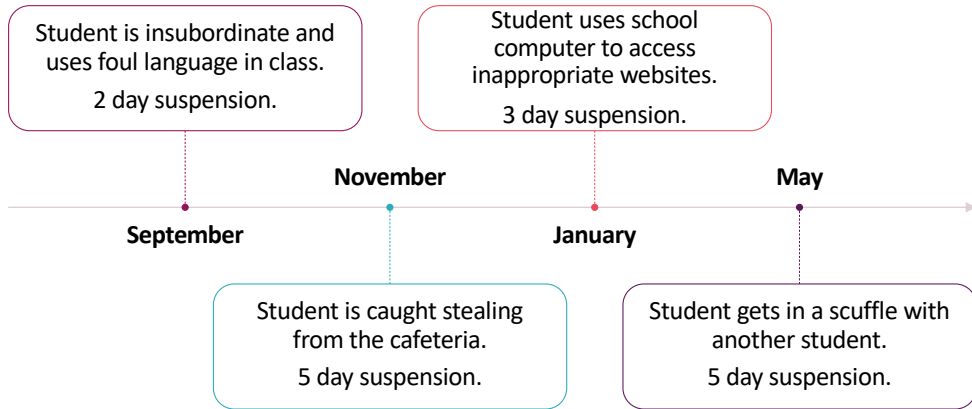
**IEP TEAM MUST:**

1. Provide PWN and Procedural Safeguards.
2. Determine **educational services** needed to enable the student to:
  - ✓ Continue to participate in the general education curriculum *in another setting*, AND
  - ✓ Progress toward meeting IEP goals.
3. Conduct a **Manifestation Determination** in 10 school days; **AND**
4. Provide, *as appropriate*, an FBA and BIP that are designed to address the behavior so it does not recur.

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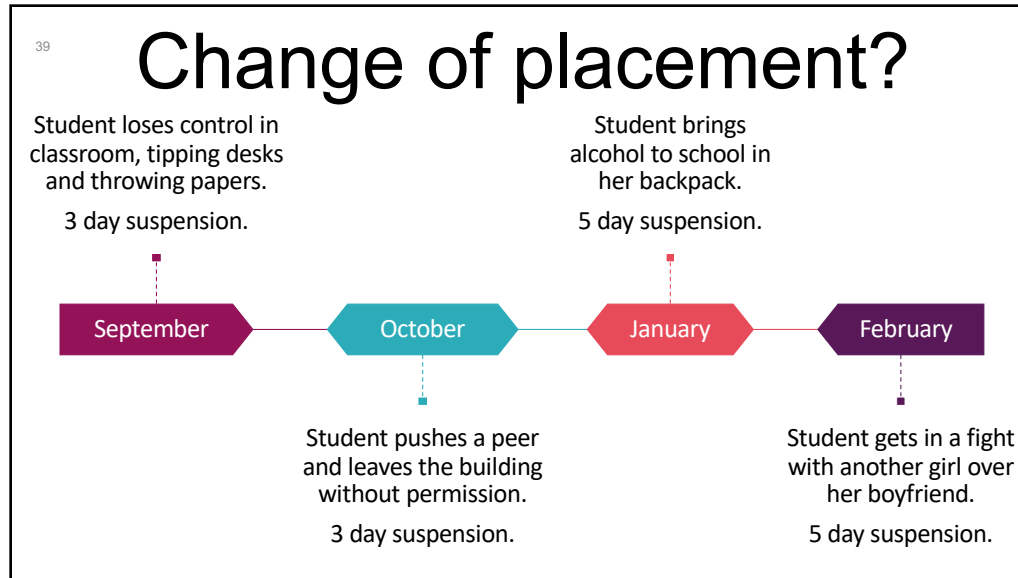
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## 38 Change of placement?



The diagram shows a horizontal timeline with an arrow pointing right. Key months are labeled: September, November, January, and May. Above the timeline, two incidents are noted: 'Student is insubordinate and uses foul language in class. 2 day suspension.' (linked to September) and 'Student uses school computer to access inappropriate websites. 3 day suspension.' (linked to January). Below the timeline, two incidents are noted: 'Student is caught stealing from the cafeteria. 5 day suspension.' (linked to November) and 'Student gets in a scuffle with another student. 5 day suspension.' (linked to May).

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WHEN IS A  
MANIFESTATION  
DETERMINATION  
REQUIRED?

WHAT IS  
MANIFESTATION  
DETERMINATION

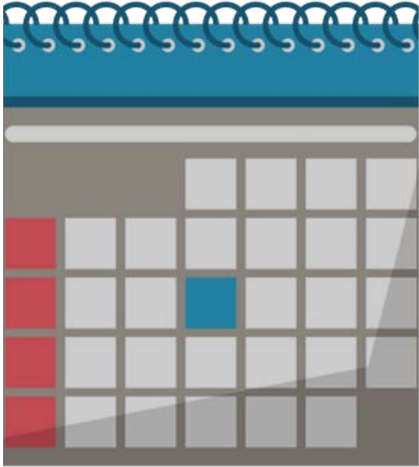
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**WITHIN 10 SCHOOL DAYS OF THE DECISION TO CHANGE THE STUDENT'S PLACEMENT FOR DISCIPLINARY REASONS.**

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**MANIFESTATION DETERMINATION**

§300.530(e)

Within 10 school days of a decision to change a placement because of a violation of a code of conduct, the IEP team **MUST**:

1. Review all relevant information in the student's file and information from parents, AND
2. Determine if:
  - ✓ The conduct in question was *caused by or had a direct and substantial relationship to* the student's disability;
  - OR
  - ✓ The conduct in question was the direct result of the LEA's failure to implement the IEP.

**YES, THE BEHAVIOR IS A MANIFESTATION OF THE STUDENT'S DISABILITY:**

1. Conduct (or review) and FBA;
2. Implement (or review and revise) a BIP; **AND**
3. **RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT.**

Manifestation

No Manifestation

**NO, THE BEHAVIOR IS NOT A MANIFESTATION OF THE STUDENT'S DISABILITY:**

1. Discipline without regard to disability; AND
2. Provide FAPE in the disciplinary setting.

The disciplinary placement is the stay-put placement if challenged!  
§300.533

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# How to conduct the Manifestation Determination

**THIS IS A TIME TO BE THOROUGH AND  
CAREFUL.**

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## Gather your team.

The LEA

Relevant  
IEP Team  
Members

The Parent

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## Gather your data.

- The team must review ALL relevant information in the student's file, including:
  - ✓ The IEP,
  - ✓ Teacher observations, **and**
  - ✓ Input from parents.



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# DETERMINE

**Manifestation**

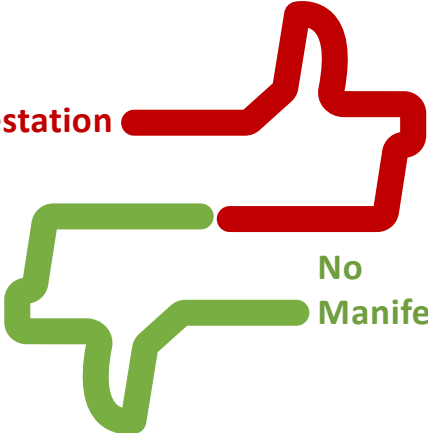
**NO, THE BEHAVIOR IS NOT A MANIFESTATION:**

- Discipline without regard to disability; **AND**
- Provide FAPE in the disciplinary setting.

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**YES, THE BEHAVIOR IS A MANIFESTATION:**

- Conduct (or review) and FBA;
- Implement (or review and revise) a BIP; **AND**
- RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT!**



**No Manifestation**

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## And then what?

- If the conduct is a manifestation of a student's disability, you **MUST RETURN THE STUDENT TO THE PREDISCIPLINARY PLACEMENT!**

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Rule #1  
Convene the whole team

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Rule #2  
review & consider **ALL**  
relevant information

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Rule #3  
take a broad view of “disability” to  
include all areas of need.

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Rule #4  
Remember the school must  
continue to provide FAPE.

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WHAT IF THE STUDENT  
IS TRULY DANGEROUS?

**Request a due process hearing pursuant to 34 C.F.R.  
§300.532 to prove up dangerousness.**

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# Special circumstances

**How “SPECIAL” do special  
circumstances need to be?**

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**Schools are  
not free to  
alter the  
definitions.**

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## Weapons

- *Dangerous weapon* is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
- 8 USC 930(g)(2).

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## Drugs

- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.




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## Serious Bodily Injury

- *Serious bodily injury* means bodily injury which involves—
  - A) a substantial risk of death;
  - (B) extreme physical pain;
  - (C) protracted and obvious disfigurement; or
  - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (8 USC 1365(h)(3).

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Nothing in the Act [IDEA] permits schools to expand the definition of 'serious bodily injury.'

*71 Federal Register 46722.*

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IAES


Who determines the interim alternative educational setting?

**THE IEP TEAM!**

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World Refugee Day



**04**  
**The**  
**Consequences**

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## IEPs and Behavior

- A district's "good-faith efforts" to address a third-grader's ongoing behavioral difficulties helped convince the 3d Circuit that the district provided the student FAPE.
- When evaluating the appropriateness of an IEP, a court or hearing officer focuses on the information available at the time of the IEP's development.
- The student's behaviors not only persisted, but expanded to include threats of self-harm -- conduct that the parents and the district attributed to the student's difficulties with self-regulation and her tendency to exaggerate.

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## IEPs and Behavior

- The district revised the student's IEP in October and November 2018 to address those behaviors.
- The court determined that the district's efforts to address the student's behaviors were adequate. "Those problems were no doubt very troubling, but the [district] was not ignoring them."

*I.K. v. Manheim Township Sch. Dist.*, 83 IDELR 54 (3d Cir. 2023).

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## IEPs and Behavior

- The student's behavior deteriorated in February, around the same time he was adjusting to a medication change and dealing with family-related issues.
- The district took steps to address the student's increasingly aggressive and violent behaviors.
- In addition to seeking consent to conduct an FBA and scheduling an IEP meeting, the district moved the student to a classroom that imposed fewer academic demands.
- "This type of responsiveness to changes in a student's behavior is what the IDEA requires to ensure that an IEP is sufficiently individualized."

*B.S. v. Waxahachie Indep. Sch. Dist.*, 83 IDELR 2 (5<sup>th</sup> Cir. 2023).

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## Lessons Learned

1. Develop IEPs based on ALL educational needs.
2. Be responsive to changing needs.
3. NEVER ignore a student's escalating behavior.

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## Shortened School Day

- According to OSEP, shortened school days, if imposed repeatedly as a disciplinary measure, could help create a "pattern" of removals triggering the IDEA's disciplinary protections, including the right to a manifestation determination review.
- The decision to impose the shorter day was made outside of the IEP team process.
- The use of short-term disciplinary measures, "if implemented repeatedly ... could constitute a disciplinary removal from the current placement, and thus the discipline procedures set out in 34 C.F.R. §300.530 - 300.536 would apply."  
*Letter to Mason*, 72 IDELR 192 (OSEP 2018).

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## Shortened School Day


- The limited progress that a student with autism and an intellectual disability made after a district reduced his time at school to just four hours a week resulted in a denial of FAPE.
- The student attended school for one hour a day, four days a week, and that he received all instruction and services in an administrative office.
- "[The student's] educational environment often consisted of him sitting in a chair for one hour a day, secluded from other children, still wearing his backpack, with little academic instruction, and the focus was on redirecting negative behaviors."
- The student made no progress.  
*J.R. v. George County Sch. Dist.*, 81 IDELR 282 (S.D. Miss. 2022).

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## Lessons Learned

1. Students with disabilities are entitled to receive a FULL school day.
2. Shorten a student's day ONLY IF it results in growth and improved performance.
3. DO NOT expect students with disabilities to make more progress with LESS instruction.

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## Counting Removals

- The district formally and informally removed a 10-year old with autism on multiple occasions.
- The principal acknowledged that the school didn't always count informal student removals as suspensions.
- The district often called the parent to pick up the student early due to behavior.
- Had the district counted both the informal and formal removals, it would have known to conduct an MDR.
- The district violated IDEA.

*Redmond Sch. Dist. 2J, 123 LRP 16827 (Oregon SEA 2023).*

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## Lessons Learned

1. Count ALL removals for violations of a code of conduct or school rule.
2. Count whole and partial days.
3. Informal removals are NOT behavioral interventions.

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## Compliant MDRs

- To conduct a compliant MDR, the team must review ALL relevant information in the student's file.
- Evidence that the team reviewed the student's evaluations, discipline history, past behavior, IEPs, IEEs, and input from the parent supported the district.
- The IDEA's requirements were satisfied.

*Gloria V. v. Wimberley Indep. Sch. Dist.*, 80 IDELR 181 (5<sup>th</sup> Cir. 2022).

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## Compliant MDRs

- A California district's detailed records of a 16-year-old boy's conversations with school staff shortly before he pushed a teacher into a wall helped to demonstrate the appropriateness of its MDR.
- The student's responses to the staff members showed he understood their requests.
- Based on the student's exchanges with school staff, the judge determined that the student's behavior did not stem from communication-related frustrations.
- Nor could the parent show that the student's misconduct was an impulsive act relating to his ADHD and intellectual disability.

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## Compliant MDRs

- When staff members persuaded the student to return to the building so he could take his medication, they accompanied the student from a distance. The student's lack of physical aggression during the walk to the building suggested he chose to back up suddenly to force his teacher into a wall.
- Because the student's conduct was not a manifestation of his disabilities, the judge held that the student's 22-day suspension did not violate the IDEA.


*C.D. v. Atascadero Unified Sch. Dist.*, 83 IDELR 80 (C.D. Cal. 2023).

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## Lessons Learned

1. Consider all relevant information and disabilities.
2. Don't engage in emotional decision-making.
3. Make fact-based decisions.

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## Special Circumstances

- Because a kindergartner with an undisclosed disability didn't possess "dangerous weapons" that could cause harm to staff, a Michigan district should not have removed him to an IAES.
- The 5-year-old assaulted staff members by throwing supplies, books, pieces of a broken thermometer, and the base of a phone at them.
- The district recommended a long-term suspension and conducted an MDR. The MDR team determining that the child's behavior was a manifestation of his disability.
- It removed him to an IAES due to his alleged use of a weapon.

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## Special Circumstances

- The IDEA uses the definition of "dangerous weapon" in the criminal code.
- Plastic phone receivers and thermostats, no matter how broken and jagged, are not readily capable of causing a substantial risk of death.
- It held that because the child didn't possess dangerous weapons, he should not have been placed in an IAES. The court agreed that "it is difficult to imagine any instance where a kindergarten student could cause death to anyone by throwing any of the objects...."

*G.D. v. Utica Comm. Schs*, 83 IDELR 12 (E.D. Mich. 2023).

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## Lessons Learned

1. District are not free to expand the definition of drugs, weapons, or serious bodily injury.
2. Do not let frustrations guide your decisions.

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**Thank you for being  
a life long learner!**

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**Session  
Evaluation**



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**Session Evaluation**

**Suspensions, Removals, & Sending Students Home**

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