



Chapter 4

Behavior and Discipline

Does the IDEA require my school to address my child's behavioral needs?

Yes. The IDEA requires that a school address all the disability-related needs of a child who is eligible for special education services, whether those needs are academic, developmental or functional, if they impact her educational performance.

Those disability-related needs might include behavioral issues.

The first place your child's school must address any of her behavioral needs is in the evaluation and eligibility process.

As noted in Chapter 1, when your child's school evaluates her for eligibility for special education services, it must assess her in all areas related to the suspected disability, including, if appropriate, her social and emotional status. If your child's educational performance is impacted by behavioral issues, she may be eligible for special education services on the basis of those behavioral needs alone.

Serena has a medical diagnosis of Bipolar Disorder and Attention Deficit/Hyperactivity Disorder.

She's getting into trouble at school. She does not get along with her peers, is disrespectful to teachers, and cannot stay on task. She has had many discipline write-ups and suspensions, including a recent five-day suspension. However, she continues to make passing grades and to be promoted.

Special education assessments indicate she's performing well both cognitively (IQ) and academically (achievement). However, behavior assessments done on Serena (including one that she completed herself) indicate clinically significant behaviors and that her behaviors are adversely affecting her social functioning in school.

The IEP Team could find Serena eligible based of these behavioral deficits since they are impacting her educational performance (defined under Alabama law as academic, social/emotional, and/or communication skills). This is true even though she's making passing grades. State and federal law require schools to provide FAPE to a child with a disability even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

In writing your child's IEP, her IEP Team must include measurable annual goals that address any behavioral needs identified during the evaluation process that are affecting her educational performance. In fact, the IDEA specifically states that if your child's behavior affects her learning or the learning of others, your child's IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Your child may require related services to help with her behavioral needs. As noted in Chapter 2, related services are developmental, corrective, and other supportive services that your child needs to benefit from the special education she's receiving. Related services that may be useful to address your child's behavioral needs include counseling services, parent counseling and training, psychological services or school-based social work services.



What are Functional Behavioral Assessments (FBAs) and how are they used to help with behavioral problems?

Your child's IEP Team conducts a functional behavioral assessment (FBA) to figure out why your child is exhibiting problem behaviors.

An FBA identifies any biological, emotional, social, or environmental factors that contribute to problem behaviors. An FBA is done to gather information to develop (or revise) a behavior improvement plan (BIP).

An FBA is important because it requires the IEP Team to move beyond the child's behavior to the underlying purpose(s) for her behavior — its function or what the child is getting out of the behavior. The behavior's function is rarely inappropriate. It is the behavior itself that is judged inappropriate. Knowing the function of an inappropriate behavior helps the IEP Team develop a plan for teaching a replacement behavior.

Two children may display the same behavior, but that behavior may serve different functions for each of them.

George is a 12 year old who becomes over-stimulated when others invade his personal space. He will hit peers and others who get too close to him which results in them moving away from him.

Martha is a 10 year old who loves to be the center of attention. When her teacher leaves her to work independently, she will hit anyone nearby which brings the teacher back to her side to reprimand her. She will stop hitting when the teacher is near her. As soon as the teacher leaves her, she starts hitting again.

For George, hitting gets people to move away from him. For Martha, hitting brings her the attention she's seeking. A well-conducted FBA will help identify the reasons why each child hits and then suggest responses targeted to each function in an effort to eliminate the hitting.

How are FBAs done?

The IDEA does not specifically mandate a certain process to be used for conducting an FBA. However, clinical practice describes an FBA as requiring these basic components.

■ Define the problem. What is the problem behavior the IEP Team is trying to eliminate?

When doing an FBA, the Team should be specific about identifying the problem behaviors. Rather than saying: "Tommy is stubborn" the Team could describe Tommy's behavior in this way: "Tommy lays on the floor and refuses to move when it's time to go to math class."

Behaviors are measurable actions and should be defined in terms of frequency, duration, and intensity — How often? How long? How much?

■ Collect data and information related to the problem behavior. What are the antecedents and consequences related to the behavior?

The Team needs to identify the antecedents and consequences related to the behavior.

The behavior's antecedents are those factors that occur before the behavior. For example, the Team should consider the following:

- When does the behavior happen? When does it not?
- Where does the behavior happen?
- Who is present and who is not when the behavior occurs?
- What is happening in the environment immediately before the behavior occurs?

The FBA should identify the consequence of the behavior — those things that follow the behavior and influence it.

Consider the example of George and Martha (above). The consequence of George's hitting is that peers move away from him and he gets the decrease in stimulation that he is seeking. On the other hand, the consequence of Martha's hitting is that she gets more attention from her teacher — even if it might be in the form of a reprimand from her.

To collect this information, the Team may use a variety of tools.

The Team may interview you, your child, school staff or outside service providers (e.g., mental health workers) who work with your child.

The Team may arrange for observations of your child in a variety of environments and settings.

It may ask you, relevant staff members or other persons who are familiar with your child to complete behavior rating scales for her. Depending on the age of your child, she might complete a self-report on a behavior rating scale.

Sometimes data need to be collected and observations conducted for the FBA by a behavior specialist — a person who has training and expertise in working with children who have behavioral challenges. The school may have to contract with a behavior specialist when there is not one employed by the system.

■ Analyze the information and develop a hypothesis about the function of the problem behavior.

Your child's IEP Team should analyze the information to determine what can be learned about the target behavior and the context

in which it occurs. The Team should look for specific patterns associated with the target behavior. Who? What? When? Your child's IEP Team should develop a hypothesis regarding the behavior. The hypothesis should look like this:

- When this behavior occurs . . . *Describe context, antecedent, consequence.*
- The individual does . . . *Describe the behavior.*
- To get or avoid . . . *Describe the function.*

Remember these terms:

- Antecedent — what happens before the behavior
- Target Behavior — the problem or inappropriate behavior
- Consequence — what happens after the behavior
- Function — what the child gets out of the inappropriate behavior

■ **Develop, implement, and monitor the BIP**

A BIP helps teachers and other school personnel deal with your child's inappropriate behaviors. It provides your child with the opportunity and motivation to learn and apply new, appropriate behaviors.

When IEP Teams are developing BIPs, they should remember the following:

- Your child's physical environment may have to be modified.
- The antecedent and/or consequence of the behavior may have to be modified.
- Your child's curriculum and instruction may have to be modified.
- The BIP should consider any issues relating to gender, ethnicity, culture, language, etc.



During the implementation process of the BIP, it's common for school personnel (and parents) to become discouraged if the child's behaviors do not improve immediately. It's important for the Team to:

- Start simply — prioritize the behaviors that need to be worked on first.
- Don't expect too much too soon — in some cases, you're working to undo years of learned behavior.
- Be patient — the behavior may get worse before it gets better!
- Be consistent — all school staff should implement the plan consistently across different school environments. The Team should work with you to incorporate relevant parts of the BIP at home.
- Build on your child's strengths, not her deficits.
- Review and revise the plan as necessary.

The BIP should identify:

- The target behavior that has been identified to be reduced or eliminated;
- The replacement behavior that will be taught your child in place of the target behavior;
- When and how your child will be taught the replacement behavior, including practice of the replacement behavior;
- A description of what will be done (consequence) when your child uses the replacement behavior; and
- The person(s) who will be responsible for the implementation of the BIP.

To be meaningful, your child's IEP Team should review the BIP at least annually. However, the Team should also review it when your child has reached her behavioral goals and new goals need to be developed or when it's not working. The BIP must be reviewed by the IEP Team when certain disciplinary actions have been taken (see below).

The Use of Punishment as a Consequence CAUTION!

- It's the least effective way to change a behavior.
- It causes emotional reactions.
- It does not teach appropriate behaviors.
- It can result in aggressive actions.
- It should only be considered as a last resort!

For how long can my child be suspended if she violates her school's code of conduct?

If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement — sending her to an appropriate alternative educational setting, another setting or suspending her for not more than ten consecutive school days — to the extent such removals are applied to children without disabilities.

Let's refer to a removal that does not exceed ten consecutive school days as a short term removal.

If your child misbehaves other times during the same school year, she may be subjected to additional short term removals.

If your child is subjected to a series of short term removals in a school year and those removals constitute a pattern of removals, then the IDEA says your child has been subjected to a disciplinary change of placement. See below for more information on what happens when there has been a change of placement.

Can my child be suspended for more than ten consecutive school days at a time?

Yes. If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement — sending her to an appropriate alternative educational setting, another setting or suspending or expelling her — for more than ten consecutive school days, to the extent such removals are applied to children without disabilities.

Let's refer to a removal that is more than ten consecutive school days as a long term removal. A long term removal is a disciplinary change of placement.

Does my child have a right to continued schooling when she's suspended?

After your child has been removed from her current placement for ten school days (cumulative or consecutive) in the same school year, the IDEA requires your school to continue to provide your child with educational services that enable her to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting her IEP goals.

Who determines the setting for such services depends on the nature of the disciplinary removal. This matter is discussed more fully below.

In addition to educating your child after ten school days of removal, her school must also provide an FBA and BIP designed to address your child's behavior so it does not recur.

What is a disciplinary change of placement?

A disciplinary change of placement occurs under two circumstances:

- Your child is removed from her current educational placement for more than ten consecutive school days (a long term removal), or
- Your child is subjected to a series of short term removals that make a pattern of removals. A series of short term removals becomes a pattern when:
 - the series of removals total more than ten school days in a school year and,
 - your child's behavior is substantially similar to her behavior in previous incidents that resulted in removal and,
 - factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

A school administrator and your child's special education teacher decide, on a case-by-case basis, whether your child's short term removals have

created a pattern. The decision about whether a pattern has been created can be contested through due process and judicial proceedings.

Why is it important to know when a change of placement has occurred?

A manifestation determination must be completed when a disciplinary change of placement has occurred.

In addition, on the date on which the school decides to make a disciplinary removal that constitutes a change of placement for your child, it must notify you of that decision, and provide you with a copy of the IDEA's procedural safeguards notice.

What is a manifestation determination?

The manifestation determination (MD) dictates the disciplinary response your child's school can take to violations of the school code of conduct.

Learn how manifestation determinations work and be an active, informed participant in the process!

In a MD, you as parent, school personnel, and relevant members of your child's IEP Team must meet within ten school days of any decision to remove your child from her current educational placement when that removal creates a disciplinary change of placement.

You and the school identify the relevant members of your child's IEP Team who should make up the MD team.

MDs are done by reviewing all relevant information in your child's file, including the IEP, teacher observations and information provided by you.

In doing a MD, two questions have to be answered. If the answer to either of the questions is "yes" then the MD team must find that your child's misconduct was a manifestation of her disability.

- **Question One:** Was your child's conduct the direct result of the school's failure to implement her IEP?

Answer: If yes, then the MD team must find that her behavior is a manifestation of her disability.

- Question Two: Was your child's conduct caused by or did it have a direct and substantial relationship to her disability?

Answer: If yes, then the MD team must find that your child's conduct was a manifestation of her disability.



What happens if the MD team determines that my child's misconduct was a manifestation of her disability?

If the MD team finds that your child's misconduct was a manifestation of her disability, her IEP Team must:

- Conduct an FBA if one has not been completed (note: as part of its obligation to provide FAPE, the Team should consider whether a previously completed FBA is adequate);
- Implement a BIP (or review and revise a previously completed one) to address the behavior; and
- Return your child to the placement from which she was removed, unless you and the school agree to a change of placement as part of the modification of the BIP.

In addition, the school must immediately fix any deficiencies in how it implemented your child's IEP if the MD team determined that the school had failed to correctly implement it.

What happens if the MD team determines that my child's misconduct was not a manifestation of her disability?

If the MD team determines that your child's misconduct was not a manifestation of her disability, school personnel may discipline her just as they would a child without a disability for the same misconduct.

During the disciplinary action, your child must continue to receive educational services that enable her to participate in the general education

curriculum and to progress toward meeting her IEP goals. Your child's IEP Team determines in what setting she will be placed.

The IEP Team also must provide your child with an FBA and BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

Your child's IEP Team determines the educational setting for her services when:

- there has been a change of placement because your child's removal is for more than ten consecutive school days (a long term removal);
- there has been a change of placement because of a pattern of short term removals; or
- the misconduct involves weapons, drugs or serious bodily injury.

What are the special exceptions involving weapons, drugs and serious bodily injury?

School personnel may remove your child to another setting for not more than 45 school days if, on school premises or at a function under the jurisdiction of the school, she

- carries or possesses a weapon to or at school; or
- knowingly possesses, uses, or sells or solicits illegal drugs; or
- has inflicted serious bodily injury upon another person.

School personnel have this authority whether or not the violations are found to be a manifestation of your child's disability.

Your child's IEP Team determines the appropriate educational setting for violations involving weapons, drugs and serious bodily injury. This setting must enable your child to participate in the general education curriculum and to progress toward meeting her IEP goals.

Besides continuing to provide educational services in the event of misconduct involving weapons, drugs and serious bodily injury, the IEP



Team must provide your child with an FBA or BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

Federal law defines the following terms:

A 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 ½ inches in length.

An illegal drug is a controlled substance (as defined under the Controlled Substances Act (CSA)), but an illegal drug does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority under the CSA or any other provision of Federal Law.

Serious bodily injury is bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Who determines the setting to which my child gets sent for short term removals that are not a disciplinary change in placement?

School personnel, in consultation with at least one of your child's teachers, determine the setting in which your child will be placed.

This setting must enable your child to participate in the general education curriculum and to progress toward meeting her IEP goals.

Didi has been suspended four times so far this year:

- *Incident one - 3 day suspension*
- *Incident two - 2 day suspension*
- *Incident three - 1 day suspension*
- *Incident four - 4 day suspension*

She has been suspended for a total of ten cumulative school days.

If Didi receives another disciplinary removal, she will be entitled to continued educational services because she will have gone over ten days of removal.

If these short term removals and any subsequent short term removals are not a change of placement, then school personnel, in consultation with at least one of Didi's teachers, will determine the extent to which she needs services to enable her to participate in the general education curriculum and to progress toward meeting her IEP goals. They will also determine the setting in which Didi will receive such services.

If a change of placement is created, then a manifestation determination will have to be conducted.

My child is not yet eligible for special education. Is she entitled to protection under any of the IDEA's disciplinary provisions?

Yes, under limited circumstances.

A child who is not eligible for special education and who has violated her school's code of conduct may assert the protections provided for in the IDEA if the school had knowledge that she was a child with a disability before the violation that led to the disciplinary action occurred.

A school is said to have knowledge that your child is a child with a disability if, before the violation occurred,

- you expressed concern in writing to school administrative personnel or to your child's teacher that the child is in need of special education and related services; or
- you requested an evaluation, verbally or in writing; or
- your child's teacher or other school personnel expressed specific concerns about a pattern of troubling behavior by your child to the school's special education director or other supervisory school personnel.

The school would not be said to have knowledge of your child's status as a child with a disability if:

- you did not allow your child to be evaluated; or
- you refused special education services for your child; or

- she had been evaluated and determined not to be eligible for services.

What happens if I disagree with any decision regarding my child's disciplinary removal or the MD decision?

You have the right to appeal any such decision by requesting a due process hearing.

A due process hearing officer will hear and make a determination regarding such a disagreement. The hearing officer may return your child to the placement from which she was removed if he determines that the removal was improper or that your child's behavior was a manifestation of her disability.

You also have the right to file a state administrative complaint alleging a denial of a free appropriate public education or to request voluntary mediation to address the matter.

What if school personnel disagree with any decision made by the MD team or the IEP Team regarding my child's disciplinary removal or the MD decision?

The school has a right to appeal any removal, placement or MD decision by requesting a due process hearing if it believes that maintaining your child's current placement is substantially likely to result in injury to the child or others.



A due process hearing officer will hear and make a determination regarding any such disagreement. The hearing officer may order your child's placement to be changed to another appropriate setting for not more than 45 school days if he determines that maintaining your child's current placement is substantially likely to result in injury to the child or to others.

Further hearings can be filed by the school if it continues to believe that returning your child to her original placement is substantially likely to result in injury to the child or to others.

How quickly are disciplinary due process hearings heard and decided?

Disciplinary due process hearings are handled on an expedited basis.

An expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make his decision within 10 school days after the hearing.



A resolution meeting between the school and the parents must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the resolution meeting or they agree to use the mediation process.

Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed.

Expedited due process decisions may be appealed in state or federal court.

Where is my child going to be educated pending the disciplinary due process hearing decision?

Your child must remain in any alternative setting in which she has been placed pending the decision of the hearing officer or until the expiration of the time period specified in the disciplinary action, whichever occurs first, unless you and the school agree otherwise.

Can school officials report my child's misconduct to law enforcement and judicial authorities?

Yes, if your child's misconduct constitutes a crime. The IDEA does not prohibit school personnel from reporting crimes committed by students with disabilities to law enforcement and judicial authorities.

If school personnel report a crime committed by your child, it must ensure that her special education and disciplinary records are sent for consideration by the appropriate authorities to whom the crime was reported. Such records may only be sent to the extent allowed under Family Educational Rights and Privacy Act.

The IDEA states that “school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of [the IDEA’s discipline protections and procedures], is appropriate for a child with a disability who violates a code of student conduct.” When would this provision be used? What are unique circumstances?

The provision allows school personnel to bypass disciplinary removals that are typically required by a school’s code of conduct. It allows school personnel the flexibility to make case-by-case disciplinary decisions by allowing them to consider a child’s unique and individual circumstances when determining whether a change of placement is appropriate. This provision does not allow school personnel to ignore the other disciplinary protections provided to students that are described above. This provision must be used consistent with those requirements, including the requirement that children with disabilities cannot be disciplined more harshly than children without disabilities for the same misconduct.

Guidance provided by the U.S. Department of Education says that what constitutes unique circumstances is best determined at the local level by school personnel who know your child and all the facts and circumstances regarding her behavior. Factors such as your child’s disciplinary history, ability to understand consequences, expressions of remorse, and the supports provided to her prior to the violation of the school code of conduct could all be unique circumstances considered by school personnel.