



Division of Special Education/Early Intervention Services

Discipline of Students with Disabilities

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on December 3, 2004, by President George W. Bush. The provisions of the Act take effect July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the Act. This is one in a series of documents, prepared by the Division of Special Education/Early Intervention Services, Maryland State Department of Education (MSDE) that cover a variety of high-interest topics to support local school systems, local Infants and Toddlers Programs, and other public agencies in preparing to implement the new requirements. This document only addresses the changes in the provisions regarding discipline of students with disabilities that take effect July 1, 2005. It does not address any changes that may be made in the final federal regulations or potential changes to State statutes or regulations.

1. Do school personnel have new authority to remove a student with a disability to an alternative educational placement?

Yes. When school personnel are considering whether to change a student with disability’s educational placement to an alternative educational setting, due to a violation of a code of conduct, school personnel may consider any unique circumstances on a case by case basis.

[Sec. 615(k)(1)(A)]

2. When are a Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP) required in the context of discipline?

FBA’s and BIP’s are required, as appropriate, in connection to removals to interim alternative settings for 45 days because of drug offenses, weapons offenses, and offenses involving serious bodily injury as well as removals from the student’s current educational placement that last more than ten days because of a violation of the code of student conduct. In both instances, students are to receive as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavioral violation so that it does not recur.”

[Sec 615 (k)(1)(D)]

3. Are there changes in the area of manifestation determinations?

Yes. First, the individuals designated to make the manifestation determination include the

- Local education agency;
- Parent, and
- Relevant members of the IEP team (as determined by the parent and the local education agency).

Second, the standard for making the manifestation determination was also revised. The relevant persons look to see if:

- “(i) the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
- (ii) if the conduct in question was the direct result of the local education agency’s failure to implement the IEP.”

If the persons making the determination decide that either clause (i) or (ii) apply to the student’s behavior then they must conclude the behavior was a manifestation of the disability.

If the determination was that the behavior was a manifestation, the IEP team has a number of responsibilities. If no behavior intervention plan (BIP) was in place prior to the behavior that led to the change in placement, then the IEP team is to conduct a functional behavioral assessment (FBA) and a BIP. If a BIP was in place, then the IEP team is to review it and modify it as needed, to address the behavior that led to the change in placement.

Unless the student’s behavior involved a drug offense, weapons offense, or inflicting serious bodily injury upon another, the IEP team is to return the student to the student’s previous placement unless the local school system and parent agree otherwise, as part of the modification of the BIP.

[615(k)(1)(E)-(G)]

4. Are there any changes with regard to the removal of students to an interim alternative education setting?

Yes. One change is that an eligible student may now be placed in an interim alternative education setting (IAES) for 45 school days as opposed to the previous timeframe of 45 calendar days.

Another circumstance that has been added for when school personnel may place a student in an IAES. The new circumstance is when a student “has inflicted serious bodily injury upon another student while at school, on school premises, or a school function under the jurisdiction of a State or local education agency.” The new statute includes the definition of serious bodily injury taken from the Federal Criminal Code, Title 18 of the United States Code. Serious bodily injury “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.”

[615(k)(1)(G); 18 U.S.C. Section 1365(h)(3)]

5. Who makes the decision relative to where a student will continue to receive services as a result of a disciplinary removal?

When a student is removed for more than 10 school days under 615(k)(1)(C) and removed for more than 45 school days under 615(k)(1)(G) the IEP team is to determine the interim placement for the student.

[615(k)(2)]

6. Are there any provisions for notification of rights?

Yes, the local school system is to notify the parents of the disciplinary decision and of all procedural safeguards no later than the date on which the decision is made.

[615(k)(1)(H)]

7. Who may appeal the actions covered in Section 615(k)?

Parents of students and local education agencies may request a hearing to appeal any decision regarding placement or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

An administrative law judge (ALJ) with the Office of Administrative Hearings (OAH) will hear these appeals. An ALJ has the authority to return the student to the

placement from which the child was removed; or order a change in placement to an appropriate interim alternative setting for not more than 45 school days if the ALJ determines that maintaining the current placement of such child is likely to result in injury to the child or to others.

[615(k)(3)(A) and (B)]

8. Where is the student placed during the appeals described in 615(k)(3)?

When a student is removed for more than ten days and there is a determination the behavior is not a manifestation of their disability, the student remains in the interim alternative education setting until OAH makes a decision or until the end of the removal period, whichever comes first, unless the parent and the school system or state agree otherwise. Currently the federal regulations call for the student to remain in the predisciplinary action placement pending the appeal unless drugs or weapons were involved or there was a substantial likelihood of injury to the child or others.

[615(k)(4)(A)]

9. Are there any timelines in this appeals process?

Yes, a local school system is to contact OAH to arrange for an expedited hearing within 20 school days from the date of the request for a hearing. A determination of the hearing must be made within 10 school days of the hearing.

[615(k)(4)(B)]

10. Are there any changes in the protections for children not yet eligible for special education, particularly concerning when a school system will be deemed to have knowledge that a student has a disability?

Yes. Parents must express concerns about a need for special education services in writing. IDEA 2004 is more specific about who must receive this notice from the parents. Parents must give that written notice to supervisory or administrative personnel of the local school system or a teacher of the student.

A teacher or other school system personnel must express "specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or to other supervisory personnel of the agency. The behavior or performance of the student by itself is no longer considered a basis of knowledge for the school/local school system under the new statute.

The new statute also specifies that a local school system is not deemed to have knowledge that a student has a disability if the parent of the student "has not allowed an evaluation of the child pursuant to section 614 or has refused services under this

part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

[615(k)(5)(B) and (C)]

11. Are there any changes in data collection that are connected to the topic of discipline?

Yes. MSDE must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local education agencies with respect to the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. The data relative to suspensions and expulsions is also to be disaggregated by race/ethnicity. Additionally, MSDE must report the number of hearings under 615(k) and the number of changes in placement ordered as a result of those hearings.

[618(a)(1)(D-G); 618(d)(1)(C)]

12. What other data are local school systems to collect and report to MSDE relative to disciplinary actions?

IDEA 2004, Sec. 618(a)(1)(A)(v) requires MSDE to annually collect and report to the u.s. Department of Education and the public the number and percentage of students with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following categories:

- Removed to an interim alternative educational setting under section 615(k)(1);
- The acts or items precipitating those removals;
- The number of children with disabilities who are subject to long term suspensions or expulsions.

IDEA 2004 (618)(d)(1)(C) requires MSDE to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local education agencies with respect to the incidence, duration, and type of disciplinary action, including suspensions and expulsions [Sec. 618 (d)(1)(C)];

MSDE is also to collect data annually on the following:

- The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more. [Sec. 618 (a)(1)(D)]
- The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled. Sec. 618 (a)(1)(E)]

13. What actions will be required of a local school system if there is a determination of significant disproportionality with respect to the discipline of minority students with disabilities?

If significant disproportionality is identified, MSDE must:

- Provide for the review and revision of a local school system's policies, procedures, and practices to ensure they comply with the requirements of IDEA 2004;
- Require any local school system identified under Section 618(d)(1) to reserve the maximum amount of funds (15%) under section 613(f) to provide comprehensive coordinated early intervening services, particularly to serve children who are significantly over identified.
- Require the local school system to report publicly on the revision of policies, procedures, and practices.

[Sec. 613(f); Sec. 618(d)(1)]

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