Students with Disabilities: Discipline Do’s and Don’ts

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Policy says...

NC 1504-2 Discipline Procedures

NC 1504-2.1 (a)

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. Circumstances considered should include area of disability, functioning level of the child, intent of the behavior, and other relevant factors.
Unique Circumstances

- Disciplinary history
- Ability to understand consequences
- Expression of remorse
- Supports provided prior to violation

"Best determined at the local level by school personnel who know the individual child."

OSER Q & A Document
"Questions and Answers On Discipline Procedures," Revised June 2009
(71 Federal Register 46714)
Do

• Consider each student and incident individually.
• Be certain to get all of the needed information about the student and incident to consider in the determination.
• Make decisions because it is "the way we always do it".

Don't

• Make quick decisions without understanding the unique circumstances.
• Be certain to get all of the student and incident individually-based on that each student and incident.
• Consider each student and incident individually.
Removal of Student with a Disability - Part 1

NC 1504-2.1 (b)

Policy says...

(1) School personnel under this section may remove a child with a disability who violates a code of conduct from his or her current placement to an appropriate interim alternative educational setting, for separate incidents of misconduct, for not more than 10 consecutive school days, and for not more than 10 school days, or suspension, for not more than 10 school days. Such removals do not constitute a change of placement under NC 1504-2.7 (b).
What is a disciplinary removal?

Any instance in which a child with a disability is removed from his/her educational placement for disciplinary purposes, including:

- school suspension,
- out-of-school suspension,
- expulsion, or
- removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and
- removal by hearing officer for likely injury to the child or others.

FILE C143—Children with Disabilities (IDEA) Total Disciplinary Removals


FILE C143—Children with Disabilities (IDEA) Total Disciplinary Removals

Removal of child with disability

Removal of child with disability (IDEA)
Removal of Student with a Disability

Policy says...

General.

1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, for suspenision, for not more than 10 consecutive school days, and for separate incidents of misconduct (as long as those removals do not constitute a change of placement under NC 1504-2.7)...

NC 1504-2.1 (b)
Change of Placement

1. The removal is for more than 10 consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern.

NC 1504-2.7
The child has been subjected to a series of removals that constitute a pattern—

1. Because the child has been subjected to a series of removals total more than 10 school days in a school year;

2. Because the series of removals total more than 10 school days in a school year and the proximity of the removals to one another.

NC 1504.2.7

Because of such additional factors as the length of each removal, the total amount of time the child has been removed, the proximity of the removals to one another, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals total more than 10 school days in a school year;

NC 1504.2.7
Disciplinary Removal?...Possibly!

- A pattern of office referrals, extended time excluded from instruction (e.g., time out), or extended restrictions in privileges.
- Repeatedly sending children out of school on "administrative leave" or a "day off," or other method of sending the child home from school.
- Repeatedly sending children out of school with a condition for return, such as a risk assessment or psychological evaluation.
- Regularly requiring children to leave the school early and miss instructional time (e.g., via shortened school days).

Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs, August 1, 2016.
Do

- Establish a system for tracking ALL removals
- Review ALL removals each time to begin determining the potential for a disciplinary change of placement BEFORE the 11th day
- Establish a procedure for identifying a change of placement
- Establish a procedure to effectively and efficiently address a change of placement

Don’t

- Wait until day 11 to determine if there might be a pattern
- Wait until an incident has happened to determine if there is a pattern that must be addressed to figure out how the process must work
- Establish a change of placement
- Establish a procedure for identifying a change of placement
Removal of Student with a Disability - Part 2

(b) General.

Policy says...

Paragraph (d) of this section.

must provide services to the extent required under

Subsequent days of removal the public agency

Any days in the same school year, during any

from his or her current placement for 10 school

(2) After a child with a disability has been removed

NC 1504-2.1 (b)
Policy says…

NC 1504-2.1 (d)…

set out in the child’s IEP, and another setting, and to progress toward meeting the goals participant in the general education curriculum, although in NC 1501-1.7(4), so as to enable the child to continue to must—

1) A child with a disability who is removed from the child’s Services...

Policy says…

NC 1504-2 Discipline Procedures
NC 1504-2.1 (d)

Policy says...

And...

(nc 1504-2 discipline procedures)

(ii) Receive, as appropriate, a functional behavior assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. If a behavioral intervention plan already has been developed, it must be reviewed and modified, as necessary, to address the behavior.
Who determines the services?

It Depends!
Do

- Provide services to students who are removed from placement more than 10 days.
- Consider the individual needs of the student and make individual decisions to support involvement in the general curriculum and progress toward goals.
- Review the IEP, request an FBA, and develop a BIP or review and adjust it if already in place.
- Progress toward goals.
- The general curriculum and decisions to support involvement in student and make individual needs of the student.
- Consider the individual needs of the student.
- Provide services to students who are removed from placement more than 10 days.

Don’t

- Wait long periods after removals to begin services.
- Use cookie-cutter intervention plans.
- Make one-size-fits-all limited decisions, because “that is all we can do/all we have here.”
- Delay requesting an FBA and developing a BIP if one is needed.
- Use cookie-cutter behavior intervention plans.
Remember Change of Placement Rules

If the removals are:

- more than 10 consecutive school days
- total more than 10 cumulative school days
- more than 10 consecutive school days

Is there a pattern constituting a change of placement?

- Proximity of the removals to one another
- Of time the child has been removed, and the length of each removal, the total amount
- Resulted in the series of removals
- Child's behavior in previous incidents that substantially similar to the child's behavior in previous incidents that
- The length or each removal, the total amount

NC 1504-2.7

Is there a pattern constituting a change of placement?
• Consult with at least one of the child’s teachers to determine the extent to which services are needed as prescribed by NC 1501-1.1 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.

• Provide, as appropriate, an FBA and BIP to address the behavior OR if already in place, it MUST be reviewed and revised as necessary.

• If no pattern then...

Do not change placement.

For Cumulative days/series of short removals...
If there IS a pattern OR would exceed 10 consecutive school days then...

**DO**

- **Notify the parent** of the decision to make a removal that constitutes a change of placement and provide procedural safeguards.
- **Provide educational services**, as provided in NC 1501-1.1(a) so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.
- Have the child’s **IEP team determine** the appropriate services.
- **Conduct a Manifestation Determination** within 10 school days of the decision to change the placement.
Policy says...

(1) Within 10 school days of any decision to

(e) Manifest determination

NC 1504-2 Discipline Procedures

manifest determination,

Policy says...

NC 1504-2.1 (e)
MANIFESTATION DETERMINATION

Area of Disability:

Student Name:

School Name:

Birth Date: 00/00/2000

Current Educational Setting (IPE):

Grade: Grade

Data being considered (check each one):

- [ ] Executive Information Plan (EIP)
- [ ] Functional Behavioral Assessment (FBA)
- [ ] Discipline report for the current school year
- [ ] Peer review conducted
- [ ] IEP assessment conducted
- [ ] Data reviewed
- [ ] Data being considered (check each one):

Implementación of IEP:

Describe how the academic and behavioral goals on the child’s IEP are being implemented:

Describe how the supplemental modifications and supplemental services included in the child’s IEP are being implemented:

Describe how the related services included in the child’s IEP are being implemented:

Summarize the available information from persons who observed the violation of the student code of conduct when it occurred:

Summarize the administrative authority’s written findings:

Was a weapon involved?

Were drugs involved?

Did school policy apply correctly?

Current Disproportionality Measure:

Number of administrative actions at or above the 97th percentile vs. total or racial group:

Number of administrative actions by race:

History of disciplinary actions during current school year:

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000

Date: 00/00/2000
Manifestation Determination

**DOs**

- May apply the disciplinary procedures in the same manner and for duration as would be applied to children without disabilities EXCEPT:
  - MUST continue to receive educational services determined by IEP team
  - MUST receive, as appropriate, an FBA and behavioral intervention services and modifications to address the behavior OR if already in place, it MUST be reviewed and revised as necessary

**WAS** a Manifestation

- If "failure to Implement IEP" then MUST remedy those deficiencies.
- If caused by, or direct and substantial relationship to disability, then MUST be reviewed and revised as necessary
- If not, the behavior OR if already in place, it MUST continue to receive educational services determined by IEP team
- MUST conduct FBA and implement BIP OR Review BIP and modify as needed to address the behavior
- MUST return the child to the placement from which the child was removed* (unless special circumstance)

**NOT Manifestation**

May apply the disciplinary procedures in the same manner and for duration as would be applied to children without disabilities EXCEPT:

1. Return the child to the placement from which the child was removed *unless special circumstance.
2. Address the behavior.
3. Review BIP and modify as needed to address the behavior.
4. Conduct FBA and implement BIP.
5. If "failure to Implement IEP" then MUST remedy those deficiencies.
6. If caused by, or direct and substantial relationship to disability, then MUST be reviewed and revised as necessary.
7. If not, the behavior OR if already in place, it MUST continue to receive educational services determined by IEP team.
8. MUST conduct FBA and implement BIP OR Review BIP and modify as needed to address the behavior.
9. MUST return the child to the placement from which the child was removed *unless special circumstance.

NC 1504-2.1(e)(f)(g)
Cases to Consider

• J.H. v. Rose Tree Media Sch. Dist., 118 LRP 38235 (E.D. Pa. 09/17/18)
• Rights, Eastern Division, NY 02-12-1064 June 7, 2012
• South Bronx (NY) Classical Charter School Office for Civil
Regional Charter Support

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Questions?