



# COLORADO DEPARTMENT OF EDUCATION

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## Guidance Memorandum

Date: March 19, 2012

To: Superintendents  
Special Education Directors  
BOCES Executive Directors

From: Peg Brown-Clark  
Assistant Commissioner,  
Exceptional Student Services Unit

Re: Discipline of Children with Disabilities

### **I. Purpose**

The purpose of this guidance memorandum is to provide clarification and to assist Colorado administrative units ("AUs") and state-operated programs<sup>1</sup> in complying with the requirements of the federal Individuals with Disabilities Education Act ("IDEA") related to disciplining students with disabilities who have committed infractions of student codes of conduct. This document addresses the areas of short-term removals from school and what constitutes a disciplinary change of placement, manifestation determinations, the authority of school personnel in disciplinary situations involving drugs or weapons, interim alternative educational settings and special procedural safeguards related to discipline.

### **II. Background**

The IDEA includes extensive provisions governing the discipline of children with disabilities. The regulations are premised on the principle that children should not be penalized for conduct that is the result of a disability (*i.e.*, an immutable characteristic over which they have no control). As such, when a child with disabilities engages in misconduct and is subjected to disciplinary

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<sup>1</sup> Hereafter, for ease of use, the term "AU" applies to both administrative units and state-operated programs.

removals from school as a result, AUs must take certain steps to determine whether the conduct was a function of the child's disability or whether the child requires behavioral assessment and/or interventions in order to participate in school. Further, even where the AU determines that the child's misconduct is **not** a manifestation of the child's disability, the child may not be denied all access to special education services.

Embedded in the IDEA's discipline provisions is the principle that disfavors the use of discipline to make changes in the educational placement of a child with a disability. Rather, where a child with a disability has issues with behavior or self-control, the law shows a preference for dealing with those issues via the IEP process rather than via the disciplinary process. Of course, where a student's behaviors are not related to or caused by a disability but rather are volitional, such that the student may be disciplined via the same processes that are applied to students without disability, an AU's right to enforce its code of conduct and impose discipline is not restricted. But where a student with a disability is involved, the IDEA requires AUs to take a careful look at any possible relationship between the misconduct in question and the child's disability (or disabilities), and to proceed cautiously with disciplinary action.

### **III. Disciplinary Changes of Placement**

#### ***A. What authority do school personnel have to discipline a child with a disability by removing the child from his or her educational placement without having that removal constitute a change of placement?***

An AU may remove a child with a disability who violates the code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or via suspension, for:

- up to 10 consecutive school days, to the extent those removals would be imposed upon a child without disabilities; and
- additional removals of up to 10 consecutive school days in the same school year for separate incidents of misconduct, so long as those removals do not constitute a change of placement.<sup>2</sup>

#### ***B. What constitutes a disciplinary change of placement?***

A disciplinary change of placement occurs if a child with a disability is removed from his or her current educational placement **and**:

- The removal is for more than 10 consecutive school days; **or**

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<sup>2</sup> 34 C.F.R. § 300.530(b)(1).

- The child has been subjected to a series of removals that constitutes a pattern.<sup>3</sup>

A series of removals constitutes a pattern when:

- the series of removals totals more than 10 school days in a school year;
- the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
- additional factors exist such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.<sup>4</sup>

### **C. What counts as a "removal"?**

#### ➤ **Always a "removal"**

- **Out-of-school suspension**<sup>5</sup>
- Removal to an **interim alternative educational setting**<sup>6</sup>

#### ➤ **Sometimes a "removal"**

- **In-school suspension** ("ISS") – the policy of the U.S. Department of Education is that ISS is not a "removal" that must be counted for purposes of determining whether a change of placement has occurred "so long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with non-disabled children to the extent they would have in their current placement."<sup>7</sup>
- **Bus suspension** – if bus transportation is part of the child's IEP, then a bus suspension will be treated as a removal unless the AU provides the bus service in some other way. If the bus transportation is not a part of the child's IEP, then a bus suspension is not a removal; in those cases, the child and the child's parents will have the same obligations to get the child to and from school as a child without a disability who has been suspended from

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<sup>3</sup> 34 C.F.R. § 300.536.

<sup>4</sup> *Id.*

<sup>5</sup> 34 C.F.R. § 300.530(b)

<sup>6</sup> *Id.*

<sup>7</sup> 71 Fed. Reg. 46715.

the bus.<sup>8</sup> However, if a student is suspended from transportation for more than 10 consecutive school days, or is repeatedly suspended and such suspensions constitute a pattern, a change of placement has occurred.<sup>9</sup>

- **Removals for portions of a school day** – the AU may consider partial-day removals (e.g., a student who consistently misbehaves early and then gets sent home for the rest of the day) as removals when determining whether there has been a pattern of removals that constitutes a change of placement.<sup>10</sup>

➤ **Not a “removal”**

- Time out
- After school detention
- Lunch detention<sup>11</sup>

**D. Who decides whether a series of removals constitutes a pattern so as to be a disciplinary change of placement?**

The AU determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.<sup>12</sup> This determination may be challenged through due process and judicial proceedings.<sup>13</sup>

**E. Why does it matter whether a disciplinary change of placement has occurred?**

If no disciplinary change of placement has occurred, then the AU’s authority to impose disciplinary measures upon a child with a disability is essentially unilateral and does not trigger numerous procedural safeguards and requirements (see *below*). If the AU is even-handed in its disciplinary measures (i.e., does not discipline children with disabilities more harshly or differently than children without disabilities), the AU may impose discipline in its discretion, consistent with its policies and procedures, so long as the disciplinary removal does not constitute a change of placement.

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<sup>8</sup> *Id.*

<sup>9</sup> *OSERS Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (2009).

<sup>10</sup> 71 Fed. Reg. 46715.

<sup>11</sup> See *Honig v. Doe*, 484 U.S. 305, 325 (IDEA’s disciplinary rules and procedures do not preclude a school district from using normal disciplinary procedures such as “study carrels, time-outs, detention, or the restriction of privileges”).

<sup>12</sup> 34 C.F.R. § 300.536(b)(1).

<sup>13</sup> 34 C.F.R. § 300.530(b)(2).

If a disciplinary change of placement occurs, however, the AU must comply with a panoply of procedural requirements (including notice of procedural safeguards and a manifestation determination). If the behavior is a manifestation of the child's disability, the AU may be restricted in its ability to impose discipline.

### **Examples**

***Adam, child with a disability, is suspended from school for 6 days in November and then another 3 days in February and then 1 day in April. Do those removals constitute a pattern of removals that amounts to a change of placement?***

No, because Adam has only been removed for a total of 10 school days. A pattern is, among other things, "a series of removals that total **more than** 10 school days in a school year."

***Ben, a child with a disability, receives the following discipline:***

- ***Two separate incidents of throwing food at children in the cafeteria, each time resulting in a suspension of 1 day in September and October***
- ***Pulling the fire alarm in November – 5-day suspension.***
- ***Fighting in class in December – 2 days of removal.***
- ***Setting off the sprinkler system in the school with a lighter in February – 2 days of removal.***

***Could the AU determine that Ben's removals constitute a pattern and, thus, a change of placement?***

Yes. According to §300.536(a)(2)(i), a pattern is "a series of removals that total more than 10 school days in a school year." In this case, Ben has been removed from his current placement for a total of 11 days. An AU cannot use repeated short-term removals as a way of avoiding the IDEA's change of placement provisions. Therefore, the AU would need to consider whether this series of removals constitutes a pattern and, thus, a change of placement, including considering (a) whether Ben's behavior was substantially similar to that of previous incidents, and (b) any additional factors or relevant information regarding Ben's behaviors.

The U.S. Department of Education advises that:

what constitutes "substantially similar behavior" is a subjective determination. However, we believe that when the child's behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2)...for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in

placement has occurred. Of course, if the parent disagrees with the determination by the public agency, the parent may request a due process hearing pursuant to §300.532.<sup>14</sup>

#### **IV. School Authority in “special circumstances”**

In addition to the general authority of school personnel to remove a student with disabilities from his or her current placement in disciplinary situations, **school personnel also have the authority to remove a student with disabilities for what’s known as “special circumstances.”** These circumstances apply to a child with a disability:

- who carries a **weapon** to or possesses a weapon at school, on school premises, or at a school function;
- who knowingly possesses or uses illegal **drugs**, or sells or solicits the sale of a controlled substance, at school, on school premises, or at a school function; or
- who has inflicted **serious bodily injury** upon another person while at school, on school premises, or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA).<sup>15</sup>

In any of these circumstances, school personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability.<sup>16</sup>

##### ***A. How do the IDEA’s discipline rules relating to dangerous weapons and drugs interplay with Colorado’s safe schools laws?***

Under Colorado law, expulsion is mandatory for possessing or using a dangerous weapon or selling a drug or controlled substance in school.<sup>17</sup> Colorado law also, however, incorporates the provisions of the federal IDEA statute and regulations relating to discipline. Taking these two provisions together, and because federal law trumps state law, AUs must comply with IDEA to the extent there is any conflict between the two.

This means that if a student with a disability commits an infraction involving a dangerous weapon or the sale of drugs or controlled substances, both of which result in expulsion under Colorado law, the AU may remove the child to an IAES for not more than 45 school days, but may only expel the student

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<sup>14</sup> 71 Fed. Reg. 46729.

<sup>15</sup> 34 C.F.R. § 300.530(g).

<sup>16</sup> 34 C.F.R. § 300.530(g).

<sup>17</sup> C.R.S. § 22-33-106(1)(d)(I).

after complying with the procedural requirements detailed above and determining that the child's behavior was *not* a manifestation of the child's disability. In that situation, the student will still be entitled to receive educational services during the period of expulsion, as explained below.

**B. What constitutes a "dangerous weapon"?**

The term "dangerous weapon" is defined in federal law as "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."<sup>18</sup>

In Colorado, a "dangerous weapon" means:

- (A) A firearm, whether loaded or unloaded;
- (B) Any pellet or BB gun or other device, whether operational or not, designed to propel projectiles by spring action or compressed air;
- (C) A fixed blade knife with a blade that measures longer than three inches in length or a spring loaded knife or a pocket knife with a blade longer than three and one-half inches; or
- (D) Any object, device, instrument, material or substance, whether animate or inanimate, used or intended to be used to inflict death or serious bodily injury.<sup>19</sup>

The federal and state definitions essentially overlap (though Colorado's is more specific), such that any device meeting the Colorado definition will meet the federal definition and trigger the "special authority" of the AU to remove the child to an IAES for up to 45 school days without regard to whether the conduct was a manifestation of the child's disability.

**C. What's the difference between a controlled substance and an illegal drug?**

IDEA defines what a controlled substance is and what an illegal drug is at §300.530(i)(1) and (2).

- (1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally

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<sup>18</sup> 18 U.S.C. § 930(g)(2).

<sup>19</sup> C.R.S. § 22-33-106(d)(II).

possessed or used under any other authority under that Act or under any other provision of Federal law.<sup>20</sup>

Thus, where an illegal drug is involved, special authority to remove a child with a disability to an IAES may be invoked when the child knowingly possess an illegal drug; he or she doesn't have to be caught using the drug. In contrast, for an AU to exercise special authority to remove the child to an IAES for an incident involving a controlled substance that can be legally possessed or used under the supervision of a licensed health care professional, the incident in question must involve the sale or solicitation of that controlled substance.

A current list of controlled substances and their classifications can be found on the website of the U.S. Drug Enforcement Administration at the U.S. Department of Justice: <http://www.justice.gov/dea/pubs/csa.html>

**Examples:**

**Adam, a child with a disability, is caught in school with heroin. He has not tried to buy or sell the heroin in school. May the AU remove Adam to an IAES regardless of the results of a manifestation determination?**

Yes, because heroin is an illegal drug that cannot be legally possessed or used.

**What if Adam had been caught with marijuana instead of heroin (but had not tried to buy or sell it)? Since marijuana can be legally prescribed in Colorado, would Adam have an argument that he could not be removed to an IAES regardless of the results of a manifestation determination?**

No. IDEA is a federal law, such that federal drug schedules control. Marijuana is a Schedule I drug under federal law, and thus has no recognized medical purpose under federal law, meaning that possession of marijuana may be treated by an AU as possession of an illegal drug that may not be legally prescribed.<sup>21</sup>

**Betty, a child with a disability, is caught at school trying to sell some Xanax, for which she has a prescription. May the AU remove her to an IAES regardless of the results of a manifestation determination?**

Yes, because she attempted to sell a controlled substance.

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<sup>20</sup> 34 C.F.R. § 300.530(i)(2).

<sup>21</sup> See, Controlled Substances Act, 21 U.S.C. § 812(b)(1)(B).



**What if Betty had merely been in possession of the Xanax but didn't try to sell it?**

In that case, because Xanax is a controlled substance for which Betty has a valid prescription, it is not an "illegal drug," meaning that the AU would not be able to remove her unilaterally to an IAES regardless of manifestation. Any discipline imposed would have to be consistent with the IDEA's disciplinary procedures, including a manifestation for any removal that constitutes a change of placement, etc.

**What if Betty didn't try to sell the Xanax but gave it away to some of her friends?**

As stated above, Betty has a prescription for the Xanax, meaning it is a controlled substance but not an illegal drug. Because Betty did not sell or solicit the sale of the Xanax, but merely gave it away, the AU would not be able to remove her unilaterally to an IAES regardless of manifestation.<sup>22</sup> Any discipline imposed would have to be consistent with the IDEA's disciplinary procedures.

**What if Betty stole the Xanax from her mom?**

If the prescription for Xanax is in someone else's name, then Betty does not "legally possess" the drug, meaning she is in possession of an illegal drug and may be removed to an IAES for 45 school days regardless of manifestation.<sup>23</sup>

**D. What constitutes "serious bodily injury"?**

The definition of "serious bodily injury" is found in the law:

The term **serious bodily injury** means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.<sup>24</sup>

**E. Who decides what the appropriate IAES is?**

When a child is removed to an interim alternative educational setting either because the conduct is not a manifestation of disability or because the

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<sup>22</sup> 34 C.F.R. § 300.530(i)(2).

<sup>23</sup> 34 C.F.R. § 300.530(i)(2).

<sup>24</sup> 34 C.F.R. § 300.530(h)(3), incorporating 18 U.S.C. 1365 (h)(3).

infraction involved drugs, weapons or serious bodily injury, the child's IEP team determines the interim alternative educational setting.<sup>25</sup>

***F. If the disciplinary infraction involves drugs, dangerous weapons or serious bodily injury, does that mean the AU does not have to conduct a manifestation determination or comply with any of the other procedural requirements relating to disciplinary changes of placement?***

NO. Even when an AU gets a "free" 45 school days to remove a child to an IAES regardless of the results of a manifestation determination, *it must still conduct a manifestation determination* and comply with the other procedural requirements set out in Section V, below (including parental notification under § 300.530(h) and determining the services the child will receive under § 300.530(d)(1)).

**V. Procedural Requirements /Manifestation Determinations**

***A. What are the parental notification requirements if a disciplinary change of placement has been imposed?***

Parental notification is a very important aspect of implementing IDEA's discipline procedures. On the date when the decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct, the AU must notify the parents of that decision and provide the parents with a copy of their procedural safeguards notice.<sup>26</sup> The discipline regulations do not specify that the notification to the parents must be in writing, but a change of placement is an event that triggers the IDEA's prior written notice ("PWN") requirement, so AUs must provide written notice that complies with the requirements of 34 C.F.R. § 300.503.

***B. When is a manifestation determination necessary?***

A manifestation determination must occur within **10 school days** of any decision to change the placement of a child with a disability because of a violation of the code of student conduct.

***C. Who makes the manifestation determination?***

The manifestation determination must be conducted by appropriate AU staff, the parent(s), and relevant members of the IEP team, *as determined by the parent and the AU.*<sup>27</sup>

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<sup>25</sup> 34 C.F.R. §§00.531.

<sup>26</sup> 34 C.F.R. § 300.530(h).

<sup>27</sup> 34 C.F.R. § 300.530(e) (emphasis added).

Because the parent has a role in determining the relevant members of the IEP team to take part in the manifestation determination, the AU must provide the parent with notice of the manifestation determination meeting, including notifying the parent of the relevant members of the IEP team invited or included by the AU, so that the parent can exercise their right to determine whether additional individuals should be included in the manifestation determination.<sup>28</sup>

***D. How is the manifestation determination made?***

In making the manifestation determination, the team will review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. This list is not exhaustive, however. It may include other relevant information in the child's file, including placement appropriateness, supplementary aids and services, and if the behavior intervention strategies were appropriate and consistent with the IEP.<sup>29</sup> The manifestation determination should be "done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented."<sup>30</sup>

Based upon the appropriate information, the team must determine:

- (i) If 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 [AU's] failure to implement the IEP.<sup>31</sup>

The link between the child's behavior and his or her disability is obviously essential. As noted by the federal Department of Education, "the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability."<sup>32</sup>

The relationship between the child's behavior and disability, however, is not the only factor to be considered in a manifestation determination. A manifestation determination must also consider if the child's conduct was the direct result of the AU's failure to implement the IEP.<sup>33</sup> If such a finding is made, the AU must take immediate steps to remedy those deficiencies.<sup>34</sup> This will be discussed further below.

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<sup>28</sup> Colorado Department of Education State Complaint Decision 2010:516, <http://www.cde.state.co.us/spedlaw/download/SC2010-516.pdf>.

<sup>29</sup> 71 Fed. Reg. 46719.

<sup>30</sup> 71 Fed. Reg. 46720.

<sup>31</sup> 34 C.F.R. § 300.530(e)(1).

<sup>32</sup> 71 Fed. Reg. 46720

<sup>33</sup> 34 C.F.R. §300.530(e)(1(ii)).

<sup>34</sup> 34 C.F.R. §300.530(e)(3).

**E. What makes the answer to the manifestation determination a “yes”?**

There are two scenarios under which the “answer” to the manifestation determination would be “yes,” *i.e.*, the conduct resulting in the disciplinary change of placement must be deemed a manifestation of the child’s disability. These are when the conduct:

- was a manifestation of the child’s disability, *i.e.*, was caused by or had a direct and substantial relationship to the child’s disability, *or*
- was the direct result of the AU’s failure to implement the child’s IEP.

If **either** condition is met, the student’s conduct must be determined to be a manifestation of his or her disability.<sup>35</sup> In other words, the manifestation determination is “yes.”

Importantly, it matters which of the two conditions was the basis for the determination of “yes.”

**F. What are the AU’s obligations if the conduct is a manifestation because of a failure to implement the IEP?**

If the team determines that the child’s misconduct was the direct result of the AU’s failure to implement the child’s IEP, the AU “must take immediate steps to remedy those deficiencies.” The AU has an affirmative obligation to take immediate steps to ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as identified in the IEP.<sup>36</sup>

Unless the behavior involved one of the special circumstances—weapons, drugs, or serious bodily injury—the child would be returned to the placement from which he or she was removed as part of the disciplinary action. However, the parent and AU can agree to a change of placement as part of the modification of the behavioral intervention plan.<sup>37</sup>

**G. What are the AU’s obligations if the conduct is a manifestation because it was caused by the child’s disability?**

If the team finds that the child’s misconduct was caused by or had a direct and substantial relationship to his or her disability, then the team must also reach a manifestation determination of “yes.” Such a determination carries with it two immediate considerations:

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<sup>35</sup> 34 C.F.R. §300.530(e)(2)-(3) and (f).

<sup>36</sup> 71 Fed. Reg. 46721.

<sup>37</sup> 34 C.F.R. §300.530(f)(2).

- Functional behavioral assessment (FBA)—Has the child had one? Does one need to be conducted?
- Behavioral intervention plan (BIP)—Does the child have one? If so, does it need to be reviewed and revised? Or if the child does not have one, does one need to be written?<sup>38</sup>

Thus, if a child's misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP team will need to immediately conduct a FBA of the child, unless one has already been conducted. An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.

In addition to conducting an FBA (if necessary), the IEP team must also write a BIP for the student, unless one already exists. If the latter is the case, then the IEP team will need to review the plan and modify it, as necessary, to address the behavior.

The IEP team must also address a child's misbehavior via the IEP process as well.

When the behavior is related to the child's disability, proper development of the child's IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior... When the behavior is determined to be a manifestation of a child's disability but has not previously been addressed in the child's IEP, the IEP Team must review and revise the child's IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate... even if the behavior is a manifestation of the child's disability.<sup>39</sup>

The child must be returned to the placement from which he or she was removed as part of the disciplinary action, with two exceptions:

- if the behavioral infraction involved special circumstances of weapons, drugs, or serious bodily injury; or
- if the parents and AU agree to change the child's placement as part of the modification of the BIP.

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<sup>38</sup> 34 C.F.R. §300.530(f).

<sup>39</sup> 71 Fed. Reg. 46720-21.

If either of these exceptions applies, then the child need not necessarily return to the same placement.

***H. What if the result of the manifestation determination is “no”?***

A manifestation determination of “no” means that:

- the child’s behavior was not caused by or did not have a direct and substantial relationship to the child’s disability; AND
- the child’s behavior was not the direct result of the AU’s failure to implement the IEP.

In this scenario, school personnel have the authority to apply the relevant disciplinary procedures to the child with disabilities in the same manner and for the same duration as the procedures would be applied to a child without disabilities, except for whatever special education and related services the school system is required to provide the child with disabilities under §300.530(d).

**VI. Services during removals**

***A. When must AUs provide educational services to students with disabilities who have been properly removed for disciplinary purposes?***

Even where a student with a disability is properly removed, suspended or expelled from his or her educational program for violating the student code of conduct (*i.e.*, to an IAES for 45 school days for behavior involving weapons, drugs or serious bodily injury, for conduct that is found to not be a manifestation of disability, or when the removal does not constitute a disciplinary change of placement), an AU is required to provide the student with educational services sufficient to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the IEP goals.

The only time a child with a disability may go without any services is during the first 10 school days (whether consecutive or not) of removal. During that time, services must only be provided if the AU provides services to children without disabilities who are similarly removed.<sup>40</sup>

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<sup>40</sup> 34 C.F.R. § 300.530(d)(3).

## **Example**

**Joe is a child with a disability. He has been suspended from school for a total of 15 school days, but none of the suspensions were for more than 10 days and the AU determined that the suspensions are not a pattern of removals that constitutes a change of placement. Is Joe entitled to educational services during his suspensions?**

Yes, on the 11<sup>th</sup> school day, Joe will be entitled to receive educational services to enable him to continue to participate in the general curriculum and to progress toward meeting IEP goals.

### ***B. Who decides what services the child receives during a removal?***

#### **➤ No change of placement**

If a child with a disability has been removed from his or her educational placement for more than 10 school days in a year, but the removal does not constitute a change of placement, "school personnel, in consultation with at least one of the child's teachers," must make the determination of "the extent to which services are needed ... 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."<sup>41</sup> There is no requirement that parents be consulted.

#### **➤ Change of placement**

If the removal is a change of placement, then the determination of appropriate services to provide to the child must be made by the child's IEP team.<sup>42</sup>

## **VII. Data reporting**

AUs are required to report data relating to disciplinary action involving students with disabilities, which is then used by CDE to report to OSEP on Colorado's compliance with Indicator 4 of Colorado's IDEA Part B State Performance Plan.<sup>43</sup> The data should be broken out and reported under the following categories and distinctions:

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<sup>41</sup> 34 C.F.R. § 300.530(d)(4).

<sup>42</sup> 34 C.F.R. § 300.530(d)(5).

<sup>43</sup> Indicator 4 looks to whether there is a significant discrepancy in the rates of suspensions and expulsions for children with disabilities. See 20 U.S.C. 1412(a)(22); 34 C.F.R. § 300.170; 34 C.F.R. §§ 300.600-609; see also [http://www2.ed.gov/policy/speced/guid/idea/bapr/2008/5relstedrequirement\\_s081308.pdf](http://www2.ed.gov/policy/speced/guid/idea/bapr/2008/5relstedrequirement_s081308.pdf).

- Disability category;
- Federal Racial Category;
- Gender;
- Limited English Proficiency or ELL Status;
- For unilateral removals, by type of offense (drugs, weapons or serious bodily injury);
- IAES removals based upon a hearing officer's determination that the child was likely to injure themselves or others;
- Out-of-school suspensions or expulsions, including:
  - whether the removal(s) were 10 days or less; and
  - for suspensions of more than 10 days, the number of days in excess of 10.
- In-school-suspensions.

The federal Office of Special Education Programs (OSEP) provides extensive and detailed guidance regarding the data reporting requirements for students with disabilities. In 2007, OSEP established the Data Accountability Center (DAC), which maintains a website that provides data about students with disabilities served under IDEA and provides technical assistance to support data collection, analysis and reporting of IDEA data, and the forms and spreadsheets used for collection.<sup>44</sup>

The DAC's requirements for reporting students subject to disciplinary removal, including tables, spreadsheets and data reporting instructions, may be found online at: <https://www.ideadata.org/docs/DisciplinePtB7-2010.pdf>.

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<sup>44</sup> See [www.IDEAdata.org](http://www.IDEAdata.org)