

## **BEHAVIOR/DISCIPLINE**

### **Behavior Intervention Process**

Special Education Students with behavioral disabilities are protected by measures such as Functional Behavioral Assessment (FBA), Behavior Intervention Plan (BIP), and Behavior Goals in their Individual Education Plan (IEP). These processes are designed to ensure students access to a free and appropriate public education (FAPE).

### **Functional Behavioral Assessment (FBA) is:**

- A comprehensive and individualized approach to gathering information about the things or events that influence a person's behaviors;
- An individualized assessment of the student that results in a hypothesis about the function of a student's behavior; and
- As appropriate, used to guide the development of a Behavior Intervention Plan (BIP).

### **Behavioral Intervention Plan (BIP) is:**

- An individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- A plan for staff to intervene with a student in order to encourage positive behavior and to decrease targeted misbehavior.
- To be written for the length of the IEP (one year). The plan becomes part of the IEP.

### **Guidelines Regarding Behavior Intervention Plans**

An effective behavior intervention plan will:

- Increase the desired behavior
- Decrease the undesired behavior
- Make adaptations to the instruction, curriculum and environment
- Provide consistent positive consequences

**Behavior IEP Goals** are articulated Long Term Goals (LTG) & (Short Term Objectives (STO) based on the Behavior Intervention Plan (BIP) for addressing student skill acquisition in assuming responsibility for **academics, relationships** and **expectations**. It is recommended that the Present Level of Educational Performance (PLEP) and the LTG be based on these areas and that the STO articulate the skills the students will be required to demonstrate in order to assume responsibility for them.

**Behavior Data** is required to be collected during the implementation and monitoring BIP and behavior IEP goals. It is recommended that the intervention data collection process:

- Be made as simple as possible;
- Utilize existing data collection whenever feasible;
- Be based on information outlined in the PLEP of the IEP and may include, but is not limited to grades, disciplinary referrals, student self-report, staff report, anecdotal information and student assessment data.
- Include a daily communication process between home and school whenever practical and possible and utilize the communication log as a component of the data collection.

### **Prior to Disciplinary Action - Be Proactive:**

- Build relationships with parents, students, administration, and other teachers.
- Ensure that students have appropriate goals, supports, strategies, materials, and expectations.

- Make adjustments in the IEP - providing effective instruction in both academic and social skills.
- Complete a Functional Behavior Assessment (FBA).
- Develop, implement, and modify as needed, a Behavior Implementation Plan (BIP).
- Make schedule changes – more/less time in the special education classroom.
- When in doubt – ask for help.

### **DISCIPLINE/SUSPENSION/EXPULSION**

The district may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities are provided access during this time.

**Current Educational Placement** means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).

**Disciplinary Removal** means suspension, expulsion, or other removal from school for disciplinary reasons including removals for mental health examinations for students who threaten violence or harm in public schools.

It does not include:

- Removals by other agencies;
- Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);
- In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with nondisabled children to the extent they would in their current placement; or
- Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

**Suspension** means any disciplinary removal other than expulsion.

### **Disciplinary Removals for Up to 10 School Days for Children with Disabilities**

The district may suspend children with disabilities from their current educational placement for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.

1. During disciplinary removals:
  - School districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.
  - School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.
2. For the purpose of counting days of suspensions:
  - Suspensions of a half day or less are counted as a half-day.
  - Suspensions of more than a half-day are counted as a whole day.

3. For the purposes of determining "current educational placement:"
  - Children who received special education services in another state and are found eligible for special education in Oregon shall be treated as if initially placed in special education in Oregon, and any days of suspension accrued in the former state shall not be counted toward the ten days.
  - For children who move from one school district to another school district in Oregon, any days of suspension from the former district carry over to the new school district unless the school district does not have actual knowledge of the previous suspensions.
4. If a parent requests a due process hearing because they disagree with the suspension, the child shall complete the suspension and then return to their current educational placement, or the parent and school district agree to another placement pending the hearing.

**Additional Disciplinary Removals of up to 10 School Days Each (No Pattern)**

The districts may suspend children with disabilities from their current educational placement for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern. These removals are not considered a change in placement.

- School personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern:
  - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.
- Services during removals:
  - The district shall provide services that are necessary to enable the child:
    - To appropriately progress in the general curriculum; and
    - To appropriately advance toward achieving the goals in the child's IEP.
  - The services, and the location for delivery of those services may be determined by school personnel, in consultation with the child's special education teacher, or by the child's IEP team.

Within 10 business days of the first day of removal, school districts shall hold an IEP meeting to:

- Develop a plan for conducting a functional behavioral assessment unless a functional behavioral assessment has been completed on the behavior that resulted in the removal; or
- If there is a behavioral intervention plan in place, to review the plan if one or more team members believe that revisions are needed.
- As soon as practicable after developing a plan for conducting a functional behavioral, and completing the assessments required by the plan, the school district shall hold an IEP meeting to develop appropriate

behavioral interventions to address the behavior and shall implement those interventions.

- School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.
  - Upon subsequent removals of up to ten school days that are not a pattern, the IEP team shall review the behavior intervention plan and its implementation to determine if modifications are necessary.
2. If a parent requests a due process hearing because they disagree with the suspension, the child shall complete the suspension and then return to their current educational placement pending the hearing unless the parent and school district agree to another placement.

### **Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

1. A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:
  - The removal will be for more than 10 consecutive school days (e.g. expulsion); or
  - The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern.
2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal for a child with a disability who violates a code of conduct.
3. Manifestation Determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct; the school district must determine whether the child's behavior is a manifestation of the student's disability.
4. Manifestation. If the determination is that the child's behavior is a manifestation of the child's disability, the school district must:
  - Return the child to the placement from which the child was removed, unless:
    - The parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan;
    - The school district removes the child to an interim alternative educational setting for a weapons or drug violation or for infliction of serious bodily injury; or
    - The school district obtains an order from an administrative law judge allowing a change in placement to an interim alternative educational setting for injurious behavior; and
  - Either:
    - Conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or
    - If the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.
5. No manifestation. If the determination is that the child's behavior is not a manifestation of the child's disability:

- The school district may proceed with disciplinary action applicable to children without disabilities, in the same manner and for the same duration in which the procedures would be applied to children without disabilities.
  - If the school district takes such action applicable to all children, the school district must:
    - On the date on which the decision is made to remove the student notify the parents of that decision and provide the parents with notice of procedural safeguards.
    - Provide services to the student in an interim alternative educational setting, determined by the IEP team; and
    - Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
6. Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement related to the disciplinary removal, the child remains in the interim alternative educational setting pending the decision of the administrative law judge, or until the end of the disciplinary removal, whichever occurs first, unless the parent and school district agree otherwise.

### **Manifestation Determination**

1. In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must 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 to determine:
  - If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - If the conduct in question was the direct result of the school district's failure to implement the IEP.
2. If the school district, the parent, and relevant members of the IEP team determine that either of the above is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.
3. If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

### **Removal to an Interim Alternative Educational Setting by School District**

**Drug** means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.

**Drug violation** means the use, possession, sale or solicitation of drugs at school or a school function.

**Serious bodily injury** means bodily injury, which involves 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.

**Weapon** means 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 it does not include a pocket knife with a blade of less than 2 1/2 inches in length.

**Weapon violation** means carrying a weapon to school or to a school function or acquiring a weapon at school.

1. The district may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days in a school year without regard to whether the behavior is determined to be a manifestation of the child's disability for:
  - A drug or weapon violation; or
  - If the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district.
2. A removal for a drug or weapon violation, or for inflicting serious bodily injury, is considered a change in placement.
3. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a removal for a child with a disability who violates a code of conduct.
4. For removals due to drugs, weapons or serious bodily injury, school districts must:
  - On the date on which the decision is made to remove the student, notify the parents of that decision and provide the parents with notice of procedural safeguards;
  - Provide the services to the student in an interim alternative educational setting, determined by the IEP team;
  - Within 10 school days of any decision to remove a child under determine whether the child's behavior is a manifestation of the child's disability; and
  - Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
5. Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal, the child remains in the interim alternative educational setting pending the decision of the administrative law judge, or until the end of the removal, whichever occurs first, unless the parent and school district agree otherwise.

### **Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)**

**Injurious behavior** means behavior that is substantially likely to result in injury to the child or to others.

- The district may request an expedited due process hearing to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

- The interim alternative educational setting must meet the requirements.
- The procedures may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.
- Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

### **Requirements of an Interim Alternative Educational Setting**

An interim alternative educational setting under must:

- Be determined by the child's IEP team; and
- Enable the child to:
  - Continue to participate in the general curriculum, although in another setting; and
  - Progress toward achieving the goals in the child's IEP.

### **Protections for Children Not Yet Eligible for Special Education**

1. The provisions apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.
2. For the purposes of this rule, a school district "had knowledge" if, before the behavior that precipitated the disciplinary action occurred:
  - The parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
  - The parent of the child requested a special education evaluation of the child; or
  - The teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or other supervisory personnel of the district.
3. A school district will not be considered to have had knowledge that the child was a child with a disability if:
  - The parent of the child has not allowed an evaluation of the child or has refused; or
  - The child has been evaluated, and the child was determined not eligible.
4. If the school district did not have knowledge before taking disciplinary action against the child, the district may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:
  - If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation must be conducted in an expedited manner.
  - Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education.
  - If, on completion of the evaluation, the child is determined to be a child with a disability, the school district must conduct an IEP meeting to develop an IEP and determine placement and must provide special education and related services.
  - The provisions apply beginning on the date of the eligibility determination.

### **Expedited Due Process Hearings**

1. An expedited due process hearing must be held if a hearing is requested because:
  - In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or
  - The school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
2. Expedited due process hearings must meet the requirements; except that:
  - Unless the parents and school district agree in writing to waive the resolution meeting or agree to use the mediation process:
    - A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and
    - The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process hearing request.
    - The expedited hearing must occur within 20 school days of the date the hearing is requested and must result in a written decision within 10 school days after the hearing.

