

18. DISCIPLINE

Discipline is a relevant topic for children in dependency. Many of these children experience poor role models, instability and trauma. This can cause children to develop negative behaviors. Unmanaged, many of these behaviors will evolve into discipline problems that interfere with the child's ability to receive and benefit from their education.



Many times uncooperative and disruptive behavior is a symptom of other problems. It is important for the advocate to encourage the school staff, or IEP team when appropriate, to investigate the causes of negative behavior, instead of just simply trying to control the behavior. Many times addressing the underlying issues by providing supports and services to the child will address the child's needs and end the need for discipline.

Underlying reasons for behavior problems include:

- Uncontrolled or unresolved emotions due to negative experiences (abuse/neglect/loss)
- Fear/instability
- Learned behaviors
- Manifestation of the child's disability (disability causes the behavior)
- Cognitive delays that lead to frustration/acting out/withdrawal
- Lack of coping skills; cannot manage actions or emotions in specific situations
- Poor interpersonal skills
- Mental health issues
- Attention seeking/peer acceptance
- Physical or health-related problems

The advocate can work to ensure that school discipline policies are successfully addressing the child's negative behaviors. If a discipline action is used repeatedly (child is sent to office or must attend after-school detention), the discipline procedure may not be working.

Positive behavior interventions can be written into the IEP even without a Functional Behavior Assessment to address inappropriate behaviors.

Positive Behavior Intervention Plan

The advocate can urge school staff to use disciplinary action that is designed to bring about positive change in the child's behavior.

If the child's negative behavior is on-going, and disciplinary action is not effectively addressing the problem, the parent or advocate should request a Functional Behavior Assessment. This assessment is used to identify the causes of the child's behaviors. That information is then used to establish a Positive Behavior Intervention Plan to address unmet needs and teach the child alternative behaviors. A Functional Behavior Assessment is required after the child's 10th day of suspension.

(See section on "Behavior Assessments" and "Behavior Plan")

Discipline for a child with an IEP

School personnel may remove (suspend) a child with a disability for up to 10 school days, without providing any of the services outlined in the child's IEP. For additional removals of up to 10 school days for separate acts of misconduct, the schools must provide services necessary to enable the child to progress in the general curriculum and advance toward achieving the goals of his or her IEP.

Pattern of Removal:

If the child is regularly suspended, asked to leave school for the afternoon (a "cooling off" period), or given detention for misconduct, the parent or advocate should determine if the action constitutes a pattern of removal. A pattern of removal is considered an unapproved change in placement and is not an acceptable way to deal with a child's discipline problems. In this situation the parent or advocate should request an IEP meeting to address the problem.

A change of placement occurs if the child experiences a:

- Removal for more than 10 consecutive school days
- A series of removals that constitute a pattern because they cumulate (add up) to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed and the proximity of the removals to one another.

If school staff considers a change of placement as disciplinary action for a child with an IEP, the school must notify the parents/caregivers of their intent as soon as possible and NO LATER than the date of the change in placement.

Parents/caregivers must also be given a copy of the procedural safeguards notice outlining the child's rights regarding placement changes, etc.

If the parent is asked to remove the child for less than a full day, the parent can request a suspension slip. This can be used to document a "pattern of removal" if the problem continues. If the school will not provide a suspension slip, the parent should document the removal, including date, time and reason for the removal.

Within 10 school days of the decision to change the child's placement, the IEP team and qualified personnel must meet to determine if the child's behavior is a result (manifestation) of their disability. Different rules apply to discipline if the child's behavior is caused by the child's disability.

Manifestation determination review

If the school considers a change of placement for a child with a disability, the school must hold an IEP meeting. The IEP team must review all evaluation and test results, relevant information supplied by the parents/caregivers; observations and the child's IEP and placement to determine if the child's unwanted behavior is related to the child's disability. The behavior should be considered a manifestation of the child's disability if the IEP team and relevant professionals find that:

Alternatives to suspensions or expulsions should be used for pupils who are truant, tardy, or otherwise absent from school.

- The child's IEP and placement were not appropriate (or sufficient) or the special education services, supplementary aids and services, and behavior intervention strategies were not consistent with the child's IEP and placement.
- The child's disability interfered with his or her ability to understand the impact and consequences of the behavior subject to disciplinary action.
- The child's disability impaired the child's ability to control the behavior subject to disciplinary action.

If the IEP team determines that the behavior was a manifestation of the child's disability, team members must review the child's IEP to identify any lack in provided services, or inappropriateness of placement. The school must then take immediate steps to remedy the problems.

A child with a disability cannot be long-term suspended or expelled from school for behavior that was a manifestation of his or her disability.

The IEP team should also conduct a Functional behavior Assessment and develop a Positive Behavior Intervention Plan to identify the causes of the child's behaviors and establish a plan to deal with the child's behaviors.

(See section on "Behavior Assessments" and "Behavior Plans")

Behavior was not manifestation of disability

If the IEP team finds that the child's IEP, placement and services are appropriate, that the child is able to understand the impact and consequences of his or her behavior, and that the child is able to refrain from the behavior if he or she chooses, the behavior cannot be considered a manifestation of the child's disability. In this case the child is subject to the same disciplinary procedures as children without disabilities, as long as the removal is for no more than 10 school days.

(Exceptions may apply to a child diagnosed with ADD/ADHD; further discussion on this topic is beyond the scope of this publication.)

The child's special education and disciplinary records should be provided to the person or persons who will determine the disciplinary action.

During any long-term removal (more than 10 days) for behavior that is not a manifestation of a child's disability, the school must provide services to enable the child to appropriately progress in the general curriculum and advance toward the goals outlined in the child's IEP.

The Interim Alternative Educational Setting

If the child with a disability engages in behavior that requires his or her to be removed from their regular educational placement (class) for more than 10 days, the IEP team must establish an interim alternative educational setting where the child can continue to progress in his or her educational program. The child can remain in the interim setting for up to 45 days.

Interim educational placements can include:

- Continuation campuses
- Other community schools
- Home schooling
- Other alternatives

An interim educational setting might be required if the child:

- Carries a weapon to school or to a school function
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function
- Engages in behaviors that has or is likely to result in injury to the child or to others

The child can remain in the interim educational setting for up to 45 days. After 45 days, the child must return to their regular educational setting unless the IEP team determines a more appropriate permanent placement.

If the child in this situation has not had a Functional Behavioral Assessment, the IEP team should develop a Functional Behavioral Assessment Plan. As soon as assessments are completed the IEP Team should meet and develop appropriate behavioral interventions to address the child's problem behaviors.

(See Section on "Behavioral Assessment" and "Behavioral Plan")

If the child exhibiting negative behavior already has a Behavioral Intervention Plan, the IEP team needs to review the plan and its implementation, and make any changes necessary to address the behavior. These changes can include a change of services and/or placement.

An opportunity transfer (transfer from one school to another in the district or another district)

The child may be offered an opportunity transfer if the IEP team determines that the child's current school is unable to meet the child's needs.

Opportunity transfers are considered for:

- Student protection
- Peer separation—when the student needs to be separated from peers because of drug/peer pressure, etc.

The interim placement must enable the child to continue to progress in the general curriculum and receive all services and modifications needed to enable the child to meet the goals set out in the child's IEP. The child must also receive services and modifications to address the behavior (s) and prevent the behavior(s) from recurring.

- Student adjustment—to offer new or different opportunities for social or academic success (different environment/teachers, etc)
- Progressive discipline—repeated attempts to resolve the student’s misconduct have been unsuccessful
- A single, serious act of misconduct—sometimes this option is used before expelling a student

If the school recommends an opportunity transfer and the parent/care giver disagrees with the recommendation, he or she can appeal the decision by requesting a conference with the school principal or district administrator.

Disagreements: Parent appeal

The child’s parent can request a hearing in writing if he or she disagrees with the disciplinary action, a determination that the child’s behavior was not a manifestation of the child’s disability, or with any decision regarding placement, including interim placement.

If the school proposes a change of placement and the parent disagrees with the proposed change, the child should remain in his or her current placement until the matter is resolved. Exceptions occur only when the child engages in behavior that requires an interim educational placement (see above). If the child is in an interim placement, the child should remain in that placement pending the decision of the hearing officer. The child can remain in the interim placement up to 45 days, unless the parent and the state agency or local educational agency agrees to extend the time.

The hearing officer shall determine whether the public agency has demonstrated that the child’s behavior was not a manifestation of the child’s disability. The hearing officer can also review the child’s placement to ensure that it meets the requirements set by law.

Referral to and action by law enforcement and judicial authorities.

If a child with a disability engages in a reportable crime, the school can refer that child to appropriate authorities. The school should ensure that copies of the child’s special education and disciplinary records are available to that agency (i.e., police or probation department).

Children not yet identified under IDEA

There are protections for children suspected of having a disability who are not yet identified and eligible for special education and related services.

The school must treat the child as one with a disability regarding discipline action if:

- The child’s parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel or service providers that the child needs special education and related services
- The child’s behavior or performance demonstrates the need for these services
- The parent or advocate has requested an evaluation of the child

- The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the agency director of special education or other appropriate personnel

The school does not need to treat the child as one with a disability if the school has previously conducted an evaluation and determined that he or she was not a child with a disability or determined that an evaluation was not necessary.

If the parent or advocate requests an evaluation of a child during the period in which the child is subjected to disciplinary measures, the evaluation must be conducted as soon as possible and a decision reached by the school within 45 days.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to have a disability, the agency will follow all procedures required for a child with a disability including the provision of special education and related services.

Discipline for child without IEP

(Excerpt from Los Angeles County Educational Advocacy Training Manual)

- Prior to suspending a student from school, a principal, the principal's designee, or the superintendent must, under most circumstances, hold an informal conference between the student and, whenever practicable, the teacher or supervisor who made the referral for the misbehavior.
- At the conference, the student must be informed of the reason for the disciplinary action and the evidence against the student.
- The student must be given the opportunity to present his or her version of the alleged misbehavior and the evidence in the student's defense.
- A student may be suspended without being afforded an opportunity for a conference only if the principal, principal's designee, or the superintendent that the student presents a clear and present danger to the lives, safety or health of students or school personnel.
- If a student is suspended without a conference prior to suspension, both the parent and the student must be notified of the student's right to a conference and the student's right to return to school for the purposes of a conference.
- At the time of suspension, a school employee must make reasonable effort to contact the student's parent or guardian in person or by telephone.
- Whenever a student is suspended from school, the parent or guardian must be notified in writing of the suspension.
- A teacher may suspend a student from the teacher's class for the day of the suspension and the day following. However, the teacher must immediately report the suspension to the principal and send the student to the principal or the principal's designee.

- Only the principal, or the principal's designee, may suspend a student from school.

The principal or the superintendent may recommend a student be expelled. However, final action for expulsion is by the governing board.

For more information:

North Coast Parents Helping Parents

Eureka, CA
707-441-8400

PACER Center

952-838-9000
Information and Support for families with children with disabilities

Protection and Advocacy, Inc.

100 How Ave. Ste 235N
Sacramento, CA 95825
916-488-9950
800-776-5746

Disability Rights Education and Defense Fund

2212 Sixth Street
Berkeley, CA 94710
510-644-2555