

Disciplinary Removals of Students with Disabilities

A Resource Document



Every child in Virginia regardless of citizenship or nationality has a right to attend a local public school in the school division where they live. Virginia requires all children between the ages of 5 and 18 to attend school. This means that children must be educated during those years in public, private, or parochial schools, or home-schooled by their parents unless school attendance has been excused by the school division. However, if the student is disciplined because they don't follow school rules, this may affect their school attendance.

Student Code of Conduct

All school divisions have a **Code of Student Conduct**. These are rules for how students will behave while on school property, and during academic and extracurricular activities. If your child, **no matter what their age**, disobeys the school rules that are in the Code of Conduct, they can be disciplined. This can include being suspended or even being expelled depending on what their behavior was. Behavior that violates the Code of Conduct could be fighting, throwing things, swearing, bringing drugs or a weapon to school, or consistently failing to follow a teacher's directions. Those are just a few examples.

Sometimes parents think that **because their child has a disability**, and/or has an **Individualized Education Program (IEP)** or a **504 Plan**, the rules are different from them and that the Code of Conduct doesn't apply. This is not true. If your child exhibits inappropriate behavior at school or during a school-based activity, they will likely face discipline just like any other student. The **difference is that children with disabilities or those suspected of having a disability have greater protection** against certain types of disciplinary actions, called exclusionary discipline, than those without disabilities in some situations.

Exclusionary Discipline

Exclusionary discipline is when **your child is removed, temporarily or long-term**, from their current educational setting as a result of a Code of Conduct violation. **Types of exclusionary discipline** may include in-school suspension, out-of-school suspension, expulsion from school, detention, removal to an alternative school, suspension from riding the bus or participating in extracurricular activities. Sometimes the school will refer the student to law enforcement depending on the nature of the conduct.

Students with disabilities have certain **rights under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act** if the conduct is related to their disability to ensure that they continue to receive a **free appropriate public education (FAPE)**.

Suspensions

A suspension (removal from school, program, or activity) can be short-term or long-term. Some school divisions also "informally" suspend students, called an informal removal.

Short-Term Suspensions

A short-term suspension is the removal of a student from school for **10 days or less**. Students with and without disabilities are treated the same for short-term suspensions. There are no extra protections for students with disabilities.

If a student has a **series of short-term suspensions**, e.g., 3 days in one instance, 2 days in another that

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ends up being more than 10 days total in a school year, this may be considered a **pattern** and be considered a change in placement. The school makes the final decision on whether a series of short-term removals constitute a pattern based on the: **length of each suspension**; the total **amount of time the student is excluded** from school; whether the removals are for **the same or substantially similar behavior**, and whether the removals **happen close to one another** (i.e., there is not much time between one suspension and the next).

If the school determines that the short-term suspensions **are not a pattern of removal**, the student will be treated like any other student in terms of disciplinary actions.

Long-Term Suspensions and a Pattern of Removals

A **long-term suspension is a removal of more than 11 to 45 days** or a **pattern of removals** that is more than 10 days. For students with disabilities, a long-term suspension requires a **Manifestation Determination Review (MDR)** before proceeding with disciplinary action. If the MDR finds that the behavior is a manifestation of (directly caused by or significantly related to) the disability or caused by a **failure to implement the IEP**, the student cannot be removed from their current placement **unless the offense involves drugs or weapons**.

Students with IEPs who have been suspended for more than 10 days or expelled **still have the right to a free appropriate public education (FAPE) and the services in their IEP**. Students with 504 Plans also retain the right to FAPE and the accommodations and services in their 504 plan.

If the MDR finds that the behavior was directly caused by or related to the disability, the team has to conduct a **functional behavioral assessment (FBA)** to try to find out the cause of the behavior. Once that is complete, the team would develop and implement a **behavior intervention plan (BIP)** for the student unless there already is one. In that case, the BIP and IEP **must be reviewed and modified** as needed to address the behavior.

What is a Manifestation Determination Review (MDR)?

Virginia special education regulations define an MDR as a “process to review all relevant information and the relationship between the child’s disability and the behavior subject to the disciplinary action.” In short, **an MDR is a review in which a school team decides whether a student’s conduct was caused or directly related to their disability or was a failure to implement the IEP.**

The MDR must occur **no more than 10 days after the decision to remove the student**. Parents have the right to participate in the MDR and can bring someone to support them before and during the process, including an advocate or attorney.

Suppose the review determines there is no manifestation of the disability, i.e., the conduct was not caused by or directly related to the disability, and the IEP was followed. In that case, your child will be subject to the **same disciplinary action** as a child without a disability but is still **entitled to receive special education and related services**.

MDRs are conducted both under IDEA and Section 504. There are many more parts to an MDR, including an appeal process. You can learn more [here](#).

Informal Removals

An informal removal occurs when the school **asks a parent to come pick the child up from school** due to disruptive behavior. Informal removals also include **shortened school days** when school personnel reduce a child's day outside of the IEP team and the placement process. The school **does not record the removal as a suspension** even though it is taking the child out of their educational program. Therefore, these removals **are not counted** toward the 10-day limit on short-term suspensions (or counted as part of a pattern of suspensions). This can delay the requirement for an MDR and negatively affect the student's educational services and right to FAPE.

The U.S. Department of Education Office of Special Education Programs (OSEP) has stated that if informal removals are used to address a child's behavior and **implemented repeatedly** throughout the school year, they could **constitute a disciplinary removal** from the current placement. Therefore, IDEA disciplinary procedures would generally apply unless, according to OSEP, the following three things occur:

- 1) the child has the **opportunity to continue to appropriately participate** in the general curriculum; and
- 2) the child **continues to receive the services** specified on the child's IEP; and
- 3) the child **continues to participate with nondisabled children** to the extent they would have in their current placement.

Frequent use of informal removals could mean that the child's IEP is not addressing their behavioral needs. Therefore, the IEP team should review and revise the IEP to ensure that behavioral supports and services are in place to address the behavior. If the student is being informally removed, you may want to consider telling the school in writing, that you consider these to be disciplinary removals under IDEA which should be counted toward the requirements for holding an MDR.

In-School Suspensions

An in-school suspension occurs when your child is **removed from their regular educational setting but is not sent home from school** (i.e., they may be sent to the principal's or guidance counselor's office). **Just like an informal removal**, OSEP considers an in-school suspension as counting toward removals that may be a change in placement unless the **same three criteria listed above are met**. The IEP team should also review and modify the IEP as needed to address the behavior resulting in in-school suspensions. As a parent, you can request an IEP team meeting at any time.

Interim Alternate Educational Setting (IAES)

An interim alternate educational setting (IAES) is a **temporary educational setting**. It can be another school, a separate classroom, or a different location within the same school division. A student can be placed in an IAES under several circumstances:

- 1) If a student with a disability has been **removed from their current placement** for 10 days in the

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same school year, constituting a change in placement, the school must provide services (starting on the 11th day) and these may be provided in an IAES.

- 2) When a **change in placement of more than 10 consecutive school days is proposed** and the behavior that violated the Code of Conduct is determined **NOT** to be a manifestation of the student's disability. In this case, the student **can be disciplined the same way** and for the same amount of time that a student without a disability would be disciplined. However, the student would have to be provided educational services after 10 days.
- 3) If the student's offense **involves weapons, drugs, or serious bodily injury to another person**, the school can place your child in an IAES for up to **45 school days** regardless of a manifestation determination. There are circumstances in which the 45 days can be extended based on a hearing officer's ruling.

Expulsion

Expulsion refers to a disciplinary action in which that **student is not permitted to attend school within the school division and is ineligible for readmission for 365 calendar days** after the expulsion. Students with disabilities **cannot be expelled for conduct that is determined to be a manifestation of their disability** through the MDR process. If an MDR determines that the behavior is **not a manifestation** of the disability, the student can be expelled like any other student who violated the Code of Conduct in that manner and meets the criteria under Virginia's school disciplinary laws. Students are entitled to due process and have the right to a hearing to contest an expulsion. Students with disabilities are entitled to FAPE if eligible for special education even if they are expelled.

Additional Resources

- [Discipline Discussions: Informal Removals Matter | Office of Special Education and Rehabilitative Services Blog](#)
- [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#)
- [USDOE-Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions \(July 19, 2022\) - Individuals with Disabilities Education Act](#)
- [USDOE- 504-discipline-factsheet.pdf \(ed.gov\)](#)
- [Section 1415 \(k\) - Individuals with Disabilities Education Act](#)
- [VDOE Family Guide to Special Education](#)
- [Virginia School Discipline Laws and Regulations.pdf \(ed.gov\)](#)



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