

SUSPENSION AND SUSPENSION/EXPULSION

of Special Education Students

General Information

The suspension of an identified disabled student cannot be taken lightly. There are numerous compliance, due process, civil rights and legal issues involved.

The administration in the building is totally responsible for ensuring this process is followed. The administration must monitor all suspensions and suspension/expulsion of disabled students to ensure compliance with the ten-day rule and to ensure compliance with all other suspension/expulsion rules, procedures and policies.

Definitions

Suspension - Commonly called short-term suspensions by administrative staff. This refers to any exclusion of a disabled student from school up to and including the first ten (10) school days.

Suspension/expulsion - Commonly referred to by the administration as long-term suspension or full expulsion from the district or building that exceeds ten school days. When this occurs, at any point, the IEP Team will be expected to complete the Manifestation Determination worksheet (Sp.Ed.-21) on suspension/expulsion of special students.

The following exclusions must count as days of suspension.

- Count the portion of any day the student is sent home. School day is equivalent to six plus hours; so when a student is sent home for two hours of any school day, that is to count toward the ten day total.
- Count any bus suspension when the student does not attend school as a day toward the ten-day total. Remember to offer to pay the parent to bring the child to school. If that does not work, after a day or two, let them know about taxi service.
- Count any in-school suspension days when the student is not under the supervision of a certified special education teacher/para. The person in charge of the in-school suspension room must ensure the student continues to be given appropriate curriculum tasks relating to the IEP goals and objectives. The student's special education services must not stop.
- Any formal suspensions count as days lost.

Procedures for Short Term Suspensions

1. If the disabled student is not in school for any of the above reasons, the days are counted as toward the first ten days.
2. When a disabled student has reached the sixth day of suspension, the school staff shall meet to discuss other disciplinary actions. These suggestions or recommendations shall be documented and their success or lack of success documented.
3. When a disabled student has reached the eighth day of suspension, the staff shall begin making preparations to hold an IEP meeting with the parents and to conduct a reevaluation. The IEP notice may either contain a meeting date or indicate that a staffing will be held immediately upon the student's tenth day of suspension. At this IEP meeting, the decision shall write or review Functional Behavior (Sp.Ed.-27) or Behavior Plan (Sp.Ed.-28) and shall determine whether the student's actions are caused by his/her disability. The team shall use the Manifestation Determination sheet (Sp.Ed.-21) to document the decision.

Procedures for Long Term Suspension

1. At the IEP staffing, the team may leave the IEP as it is written. Should this occur, no additional days of suspension or expulsion may be given once the ten days have been reached.
2. When ten days are reached, the team may choose to rewrite the IEP after reviewing the Behavior Intervention Plan (Sp.Ed.-28) and completing a reevaluation and determine to:
 - a. Recommend a change in placement,
 - b. Recommend a change in level or restrictiveness. When this is completed, the student may receive ten more days of suspension/expulsion.
 - c. Leave the IEP as written.

Decisions a or b require notice and consent (Sp.Ed.-17) be given and received from the legal guardian prior to exceeding the first ten school days.

3. When the staff holds an IEP conference and either increases the level of restrictiveness or changes the student's placement, the student may have ten additional school days of suspension while the staff attempts to modify the change in programming or level of restrictiveness.

The suspensions of any disabled student may never exceed 20 school days in any school year unless done so through a hearing officer and there is no causal relationship between the event and the student's disability.

Procedures for Expulsion

1. Should the behavior of a student be so inappropriate that expulsion be considered, the following must occur:
 - a. The team must review and follow the Manifestation Determination procedures for determining whether the student's behavior, which resulted in the event that led to the expulsion hearing, was caused by his/her disability.
 - b. Proceed with district expulsion procedures.
 - c. Prior to the expulsion hearing the team must document their meeting and the final determination of whether the behavior which led to the expulsion recommendation was caused by the student's disability (Sp.Ed.-21).
 - d. At the hearing these issues must be resolved:
 - Documentation of Manifestation Determination must be available.
 - Ensure the legal guardians understand that an expulsion hearing is not a special education hearing.
 - Inform the legal guardians that if they feel their special education rights were violated, they have the right to request a Due Process special education hearing to resolve those issues.
 - When there is no causal relation, the student may be expelled as would any regular education student. However, the student's special education services must continue.
 - When a causal relationship exists, the student may require specialized treatment and in fact, may not be expelled or removed from special education services.

Manifestation Determination

BEST PRACTICES FOR DETERMINING WHEN A MISCONDUCT IS CAUSED BY A SPECIAL EDUCATION PUPIL'S DISABILITY

STEP 1

The IEP team should meet prior to any disciplinary hearing to review and discuss the circumstances. This should include a review of previous educational records, consideration of the current IEP, and analyzing the specific details of the behavior incident in question. Typically this would occur during the reevaluation prior to exceeding the tenth day of suspension (see Suspension and Expulsion of special education students).

STEP 2

The team should determine if additional evaluation is needed to make a determination regarding the behavior. This must be done to make a significant change in the pupil's special education services. A significant change is considered to include:

- A change in categorical placement, i.e., LD to BD or other combinations
- A change in level of restrictiveness, i.e., self-contained to special day school or other combinations

The team may wish to consider this prior to the expulsion hearing because their decision to consider an alternative placement could be part of the hearing order. Should the team make any of these shifts in programming prior to the hearing it could also facilitate the student's access to programming without any break in services. In cases where the behavior is caused by the disability, this could be critical.

STEP 3 (Use Sp.Ed.-21) Manifestation Determination

The team should consider whether the misconduct is caused by, not related to, the disability. Many behaviors, if not all behaviors, may be related to the student's disability. However, the team is responsible for differentiating between deciding whether these current behaviors are **caused** by the disability as opposed to determining if the current behavior that may lead to suspension and expulsion was *related* to the disability. To make this determination there should be consideration of the following questions as a team:

1. **What was the misconduct?** To determine this, ask these questions:

- What were the approximate causes?
- Is there an identifiable pattern to the behavior? If so, what is the pattern?
- Were there any precipitating circumstances?

2. What are the characteristics of the pupil's disability? To determine this, ask these questions:

- What characteristics are identified in the evaluation reports as being present when the pupil was *initially* identified in the as disabled?
- What characteristics are identified in the *most recent* reevaluation reports? If these contradict, the team should consider the causes of these differences. In fact, it is not uncommon for the two to be contradictory. The team is responsible for considering all information in determining if the behavior is caused by the disability.

3. Is the pupil's IEP current? To determine this, ask these questions:

- Is the IEP less than one year old?
- Is the IEP being appropriately implemented by staff?
- Have alternatives been tried in response to earlier suspensions?
- Have there been any adjustments in the IEP recently, particularly within the last 60 days? For instance, has the staff developed alternative supervision plans during these times?
- Have the legal guardians been involved in any changes or revisions, or at least have attempts been made to involve them?

4. Is the IEP appropriate? To determine this, ask these questions:

- If behavioral disability characteristics are present, what references are in the present level section of the IEP?
- What goals and objectives are being addressed in relation to the behavioral concerns?
- Has there been consideration of whether the pupil needs any related services? The district is required to have related services available to some disabled pupils that might address behavior issues. Is a counselor, school social worker, or school psychologist providing services to the pupil?
- Is there a need for an individual discipline plan? Has such a plan been in place, and if so, what were the results?
- Has reasonable discipline been unsuccessful?
- What does the IEP Open Statements page say about discipline?

5. Given the pupil's disability and the appropriate IEP components, is it reasonable to anticipate that the behavior was caused by the disability?

To determine this, ask these questions:

- Is the pupil a nuisance or truly dangerous to self and/or others?
- Has there been a pattern over several years of documented discipline concerns?
- Has discipline and academic opportunity been provided with little or no academic and/or behavioral growth?
- Is there a pattern of predictable misbehavior indicating a lack of judgment and/or deficient social skills? If so, is this caused by the disability?

- Were the characteristics displayed in the incident similar to the known characteristics of the pupil's disability?
- Were the characteristics displayed in the incident similar to behaviors being addressed in the IEP?

- Is there a history of behavior problems in the home, school or community?
- Is the behavior progressive from smaller infractions to more serious infractions?
- Was the discipline used progressive in nature to match any increased seriousness of infractions?
- Can the student be handled appropriately in a comprehensive school?
- Were these behaviors due to an emotional disturbance or a conduct disorder?

Elements Often Considered by Hearing Officers and Courts

1. Whether the pupil's actions could result in *irreparable injury* for which there is not adequate remedy at law.
2. Whether the district's case is *reasonable likely* to succeed on the merits, based on the school's evidence that the student poses a danger to self and/or others.
3. Whether any potential harm resulting to the student from a change in placement would be insignificant compared to the harm he/she could inflict if allowed to return to school; e.g., balance of harms.
4. Whether the *public interest* would be better served by maintaining a safe environment at school.

Figure 14-2 Suspension/Expulsion

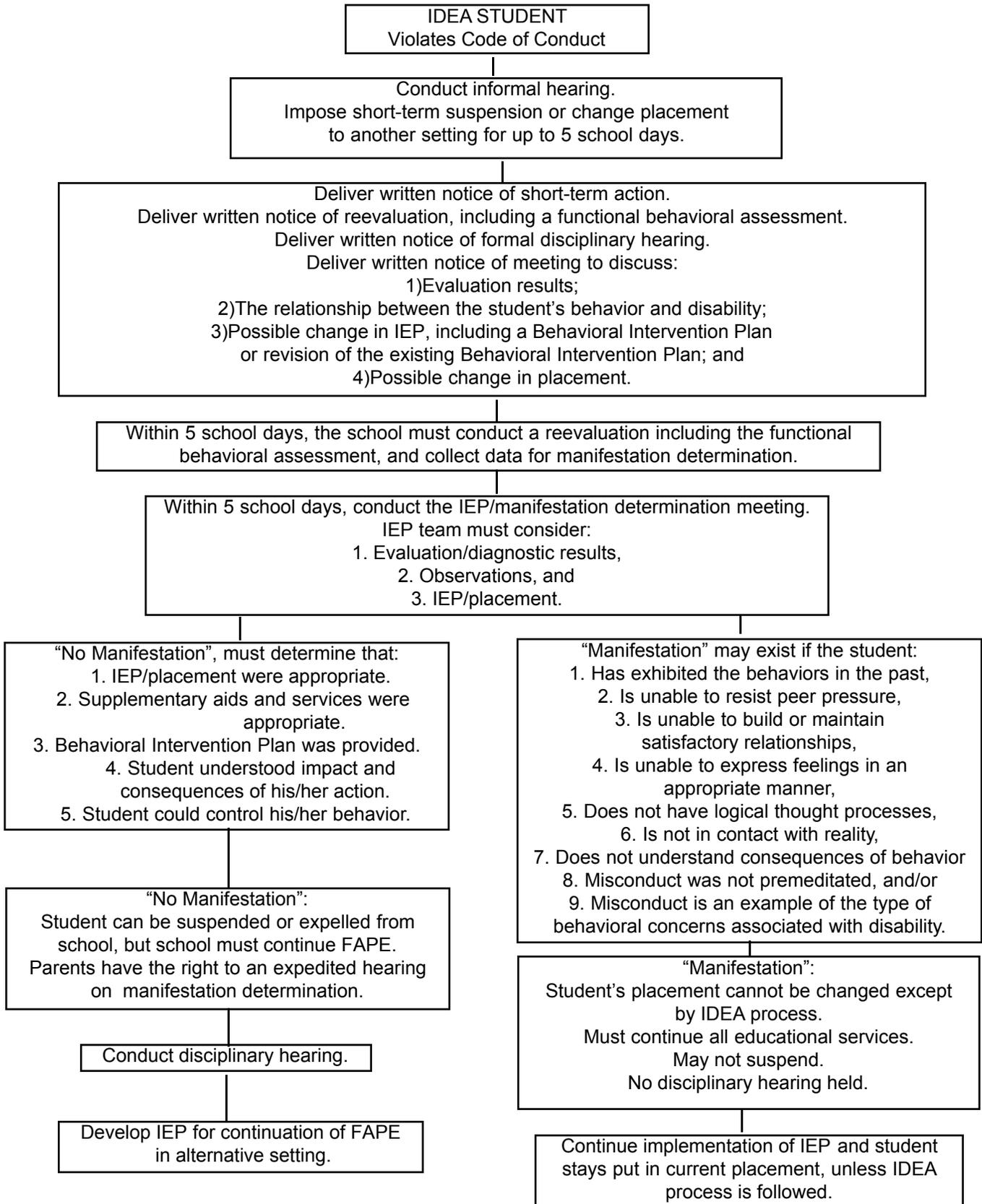
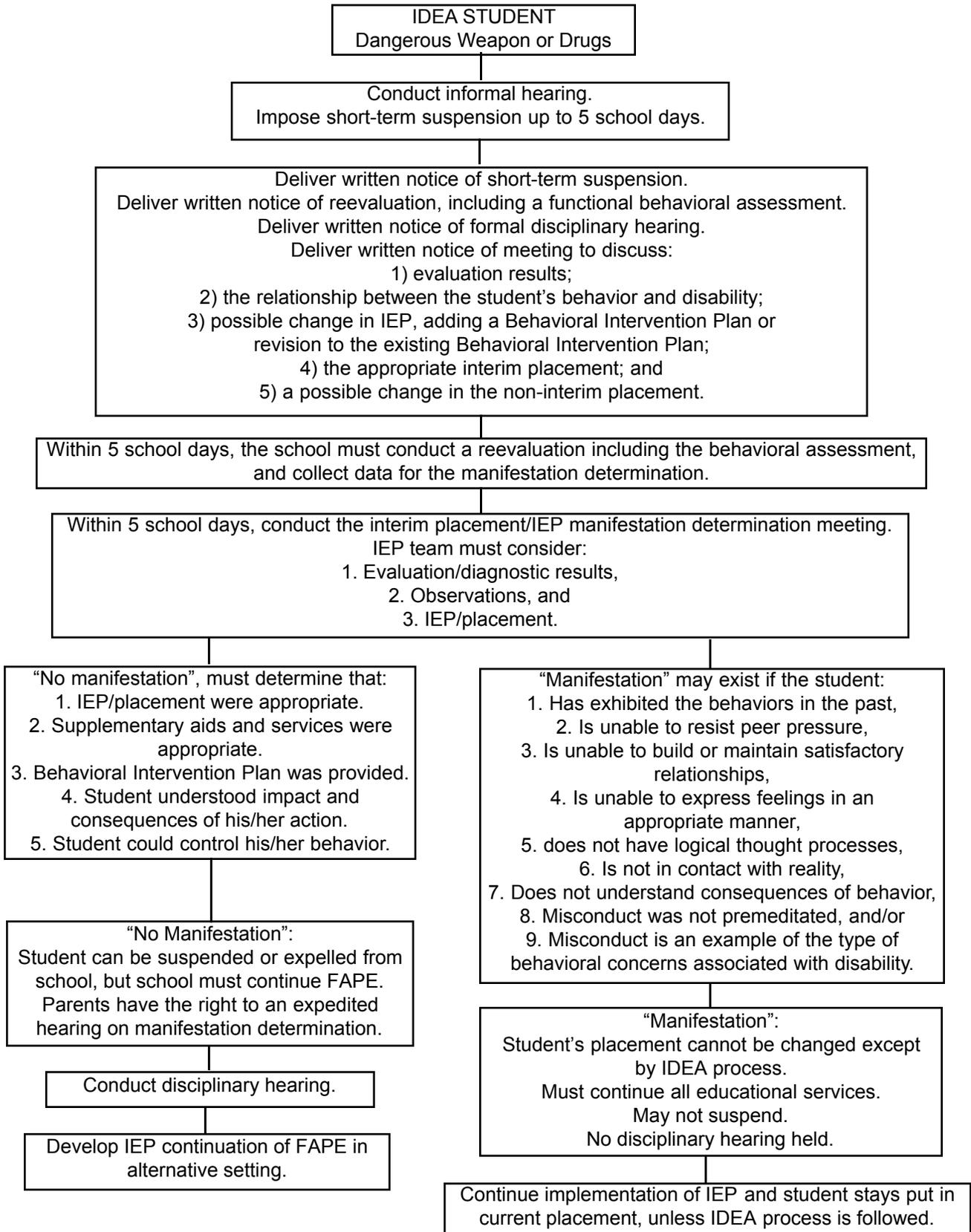


Figure 14-1 Suspension/Expulsion



MANIFESTATION DETERMINATION REVIEW

Student's Name: _____ Date: _____
School: _____ Grade: _____

1. Summary of the information considered:

A. Student's behavior

B. Student's IEP

C. Teacher observation of the student

D. Relevant information provided by the parent

E. Any other relevant information.

2. Was the conduct in question caused by or have a direct and substantial relationship to the child's disability?

YES or NO

3. Was the conduct in question a direct result of the school's failure to implement the IEP?

YES or NO

4. Determination:

The team (which included the student’s parent(s) or legal decision maker, a representative of the school district and relevant members of the IEP team) looked at all relevant information, and determined that the behavior

IS a manifestation of the disability **AND:**

- the student will be returned to the placement specified in his/her IEP, unless: (a) the school and parent(s) agree to a change of placement through the IEP process; or (b) the student is assigned to an alternative educational setting for possession of a weapon or illegal drugs or for infliction of serious bodily injury on another person; and
- the team will conduct a functional behavioral assessment (unless a functional behavioral assessment has already been conducted), and will implement a behavior intervention plan for the student; or
- the team will review the existing behavior intervention plan and modify it, as necessary, to address the behavior that resulted in the disciplinary removal.

OR

IS NOT a manifestation of the disability **AND:**

- disciplinary removal may occur, but the school district must continue to make a free appropriate public education (FAPE) available to the student in a manner which enables the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP; and
- If appropriate, the school will conduct a functional behavioral assessment and develop a behavior intervention plan designed to address the behavior violation so that it does not recur.

TEAM MEMBERS PRESENT

NAME	TITLE	NAME	TITLE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DISSENTING OPINION TEAM MEMBERS:

NAME	TITLE	NAME	TITLE
_____	_____	_____	_____
_____	_____	_____	_____

Attachments: YES or NO