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## ABSTRACT

This technical assistance document is intended to offer Oregon districts and agencies guidance in understanding and implementing the regulations dealing with behavioral supports, interventions, and disciplinary actions for students with disabilities who are eligible under the Individuals with Disabilities Education Act. It is comprised of regulatory requirements, research based effective practice, and frequently asked questions and answers. Specific sections of the document address: (1) the need to provide positive, proactive behavioral supports to students in the educational setting and the hierarchy of behavioral support and intervention; (2) functional behavioral assessment (FBA) and strategies for conducting the FBA; (3) Behavioral Intervention Plans (BIPs), which describe positive behavioral interventions and strategies that address a student's social, emotional, and behavioral development, and steps and outcomes of a BIP; (4) discipline procedures and requirements for disciplinary removals that are not a change in placement; (5) disciplinary removals that are a change in placement; (6) manifestation determination; (7) weapons violations; (8) disciplinary removals to an Interim Alternative Educational Setting; (9) protection for children not yet eligible for special education and related services; and (10) reporting crimes. Appendices include Oregon administrative rules on discipline for student with disabilities under the IDEA. (Contains 10 resources.) (CR)

# Behavioral Support, Intervention, and Discipline in Special Education

## August 2000



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## INTRODUCTION

Providing proactive positive behavioral supports and interventions for students with disabilities is now a requirement under federal and state law if a student's behavior is found to impede his/her learning, or that of others. In considering disciplinary action for students with disabilities found eligible under the Individuals with Disabilities Education Act (IDEA), districts and agencies must now follow a specific set of procedural requirements as part of the process.

This technical assistance document is intended to offer districts and agencies guidance in understanding and implementing the regulations dealing with behavioral supports, interventions, and disciplinary actions for students who are eligible under IDEA. It is comprised of regulatory requirements, research based effective practice, and frequently asked Q & A, as appropriate.

Throughout the document a "pencil" bullet precedes specific recommendations for effective practice. Applicable regulations are included in the Appendix, along with sample forms developed for use by the field.

Any or all portions of this document may be reproduced for use in understanding and implementing these regulations. Additional questions may be directed to the Oregon Department of Education, Office of Special Education, 255 Capitol St. NE, Salem, Oregon 97310-0203. (503) 378-3598. [www.ode.state.or.us](http://www.ode.state.or.us)

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## **BEHAVIORAL SUPPORT, INTERVENTION, AND DISCIPLINE IN SPECIAL EDUCATION**

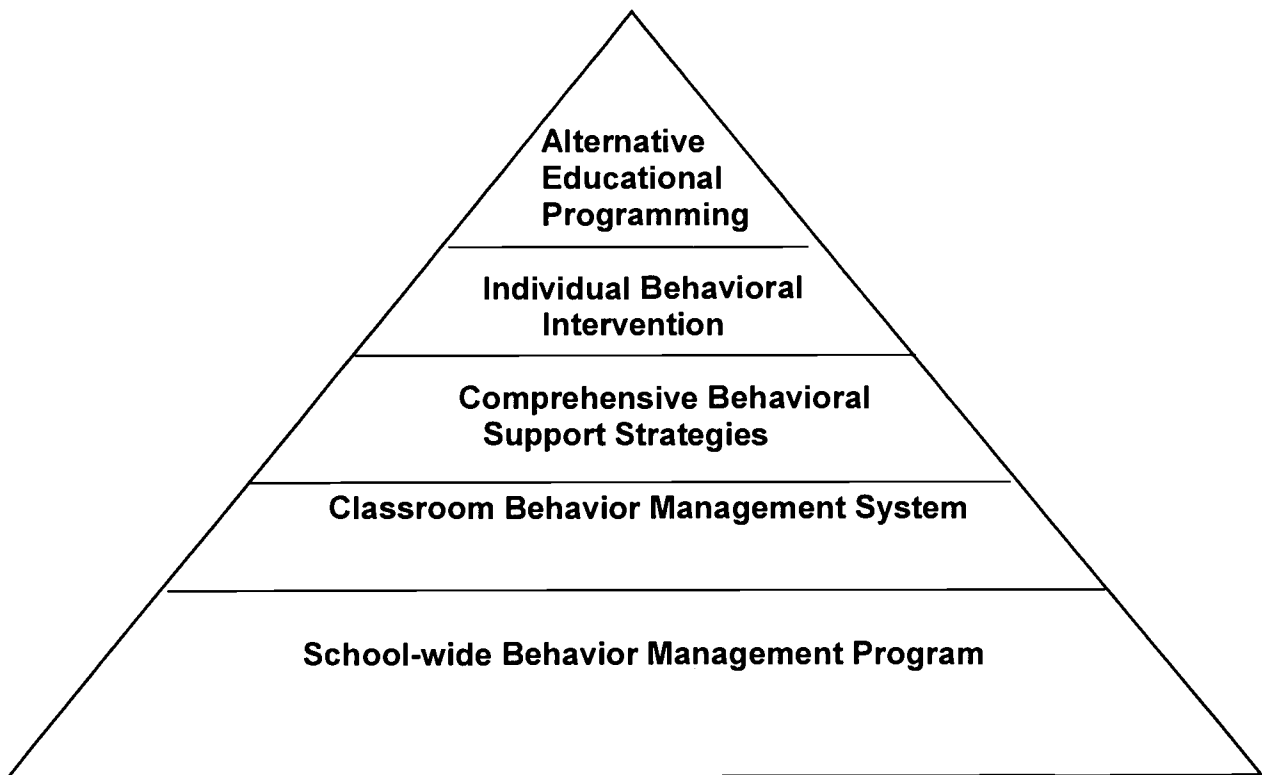
Establishing and maintaining appropriate classroom behavior can be a complex task. Maintaining an orderly educational setting so learning can take place uninterrupted is the responsibility of the Local Educational Agency (LEA). The Individuals with Disabilities Education Act (IDEA) requires districts and agencies to address the behavioral needs of students eligible for services under this law. Effective instructional planning includes proactive positive behavioral supports and interventions as part of this process.

Behavior may be defined as an individual's response to a stimulus in a way that can be observed, is purposeful, and is many times a function of its' consequence. It can be effectively increased, decreased, or eliminated, through intervention aimed at the action that immediately precedes or follows a behavioral response. This definition and premise form the basis of many behavioral programs. We can also observe that the same antecedent or consequence can elicit different behaviors based on a student's history, culture, and intellectual functioning. For example, specific words of praise may be a strong positive reinforcer for some students in the classroom, but for others it may cause a negative reaction based on past experience, such as the overuse of "empty praise".

Providing positive, proactive behavioral supports to students in the educational setting requires a well thought out plan. Many schools are developing or adopting school wide behavioral management systems that are used consistently at every grade level. If all staff embrace the system wholeheartedly, it allows for consistent response and reinforcement of behavior. Universal in-school management systems that consist of effective instruction, clear expectations, close monitoring, and standardized consequences are likely to be sufficient to prevent or extinguish some behavior problems. Once a school wide program is established and in use, the staff may then adjust or develop the program to meet a particular students more specific individual needs. The foundation of the management system stays the same for all students, but an individual's targeted behavior(s) may receive specific intervention(s).

With the requirement for students with disabilities to be included in the regular classroom and be educated with their non-disabled peers to the maximum extent appropriate, regular classroom teachers, as part of the IEP team, must now more than ever, think carefully and methodically about discipline strategies they may employ. Offering effective instruction in both academic and social skills may contribute to prevention or early intervention of some behavior problems. Using behavior management techniques consistently and skillfully may also benefit. Research indicates that positive behavior supports that are based on reward of desirable behavior, nonviolent discipline of inappropriate behavior, effective instruction in academic and social skills, and correction of environmental conditions that foster inappropriate behavior will most likely effect positive change in a student's behavior.

**Chart 1: Hierarchy of Behavioral Support and Intervention**



Current research suggests recognized levels of proactive, positive behavioral support. The base of this support is the adoption of the school wide behavioral support system. This system is the foundation of the educational setting, and sets the requirements for orderly learning. This level of support is provided for all students while in the school setting and forms a cohesive approach to behavior management.

The next level of proactive support would be a classroom behavior management system. Using the school wide system as a base, this program would focus on maintaining a consistent environment where optimum learning takes place. A classroom teacher would develop this system with his or her own individual criteria, but would not override or circumvent the school wide system already in place.

If the student's behavioral needs indicate additional support is necessary, the district might employ the use of comprehensive strategies that involve families, multiple service agencies, and local community services. A sound support program includes the participation of these partners, as education alone cannot provide this level of comprehensive support. Collaboration is the key in providing a consistent positive approach to effect behavioral change.

Behavioral interventions that are least intrusive are considered at the next level. This proactive intervention requires a positive assertive approach in order to avert inappropriate behavior. Interventions at this level are specific to individual students, and may be outlined within the framework of a behavioral intervention program. A Behavior intervention Program (BIP) at this level would be implemented in the regular classroom.

If individual student need requires more intense, sustained intervention for a serious emotional and/or behavioral disorder, the consideration of alternative educational programming may be warranted. While placement in the "least restrictive environment" is often seen as the same environment in which those without disabilities are placed, at this level of intervention the least restrictive environment for the individual is actually one that allows for a structured, consistent program that alters environmental factors while teaching alternative, acceptable behaviors that meet both social and individual need, and allows success in a safe setting that does not disproportionately disrupt the learning of others.

School wide and classroom behavioral management systems are usually sufficient to address the behavioral needs of the majority of students. For students who require a more individual behavioral plan, we must look at specific steps in identifying problem behavior(s), and planning appropriate intervention(s). This process of addressing the behavioral needs of a student whose behavior is impeding his learning or that of others is a requirement for students who are eligible under the Individuals with Disabilities Education Act (IDEA). Functional Behavioral Assessment (FBA) is an effective assessment tool that may be used in this process. FBA is not required at this level of support, but is mandated as part of the Discipline requirements under IDEA. A team's use of a FBA as a response to behavioral need at this level of intervention is a proactive approach to addressing the student's behavior.

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

Functional Behavioral Assessment refers to the detailed analysis of a person's behavior. It is a process that is based on interviews, observations and archival reviews, and looks at the antecedents-behavior-consequence (A-B-C) relationships that explain behavioral occurrences. This assessment may be brief or in-depth depending on behavioral need and may look at one behavior or many. FBA is a process that establishes the base for intermittent progress checks toward positive behavioral success. The purpose of a FBA is to understand the structure and function of the behavior in order to teach and promote appropriate alternative behavior(s).

Functional Behavioral Assessment typically includes the identification of the problem behavior; observation; and functional analysis. Identification of the problem behavior may be accomplished through interviews (which may include parent, teaching staff, support staff, and student if appropriate), record or archival review, and/or behavior rating scales. Direct observation of the student should be non-invasive and take into

account the antecedent-behavior-consequences as well as environmental factors. If the identified behavior is isolated, persons who observed the behavior as it occurred could complete the observation through documentation of the incident. If the behavior is repetitive, direct observation may take several sessions and should occur in all situations in which the behavior occurs. Functional analysis will include summary statements or testable explanations that describe the antecedent and consequence stimuli, functions associated with the problem behaviors, and setting events (a condition or event that makes a problem worse or more likely by changing the typical contingencies that maintain problem and acceptable replacement behaviors, for example, illness, social conflict, or medication change). Direct observation data should be included that supports or provides evidence for the summary statement

### **Strategy for Conducting a FBA**

A team of individuals who know the student well and have sufficient knowledge of behavioral theory and practice should be involved in planning and conducting the FBA. This may, but is not required to be, the IEP team. The chart below highlights the basic steps and outcomes of the FBA process:

**Chart 2: Steps and outcomes of the FBA process**

<b>STEP</b>	<b>TEAM ACTION</b>	<b>TEAM OUTCOME</b>
1.	Review archival data and interview individuals who are affected by or have experience with the problem behaviors exhibited by the student	<ul style="list-style-type: none"> <li>➤ Definition of problem behavior, response classes, or response chains.</li> <li>➤ Times and places where problem behavior is likely and not likely to occur.</li> <li>➤ Testable hypothesis.</li> </ul>
2.	Collect direct observation data to confirm or modify testable hypothesis.	<ul style="list-style-type: none"> <li>➤ Summary statement (setting events, antecedents, responses, consequences, functions).</li> </ul>

### **Behavioral Intervention Plans (BIP)**

A Behavioral Intervention Plan is a written, specific, purposeful, and organized plan, which describes positive behavioral interventions and strategies that address a student's social, emotional, and behavioral development.

The purpose of a BIP is to rearrange the social and/or physical environment to prevent a behavior from occurring by making it less effective, efficient, and relevant, **while** teaching alternative behaviors that are acceptable and more effective, efficient, and relevant. If an intervention plan attempts to teach an acceptable alternative behavior, but the new behavior is not more effective, efficient, and relevant than the



problem behavior for the student, the plan is less likely to be successful. An effective behavioral intervention plan should show a clear link between the functional behavioral assessment and the intervention selected.

The BIP is not intended to be a management plan that simply imposes consequences on targeted behavior; it is appropriate interventions that focus on teaching appropriate alternative behavior(s). The chart below highlights the basic steps and outcomes of the Behavioral Intervention Process.

**Chart 3: Steps and Outcomes of a Behavioral Intervention Plan**

STEP	TEAM ACTION	TEAM OUTCOME
3.	Develop features of behavior intervention plan (BIP) based on summary statement outcome (part of the FBA process).	➤ Behavior intervention plan (manipulations for setting events, antecedents, responses, consequences).
4.	Develop plans for implementation of BIP and for monitoring/measuring effectiveness of BIP.	➤ Implementation plan (who, what, when, where, how). ➤ Measurement plan.
5.	Implement BIP and collect behavioral data, modify BIP based on data, as needed.	➤ Behavioral data. ➤ Modified plan

In general, a BIP specifies intervention features in four main areas:

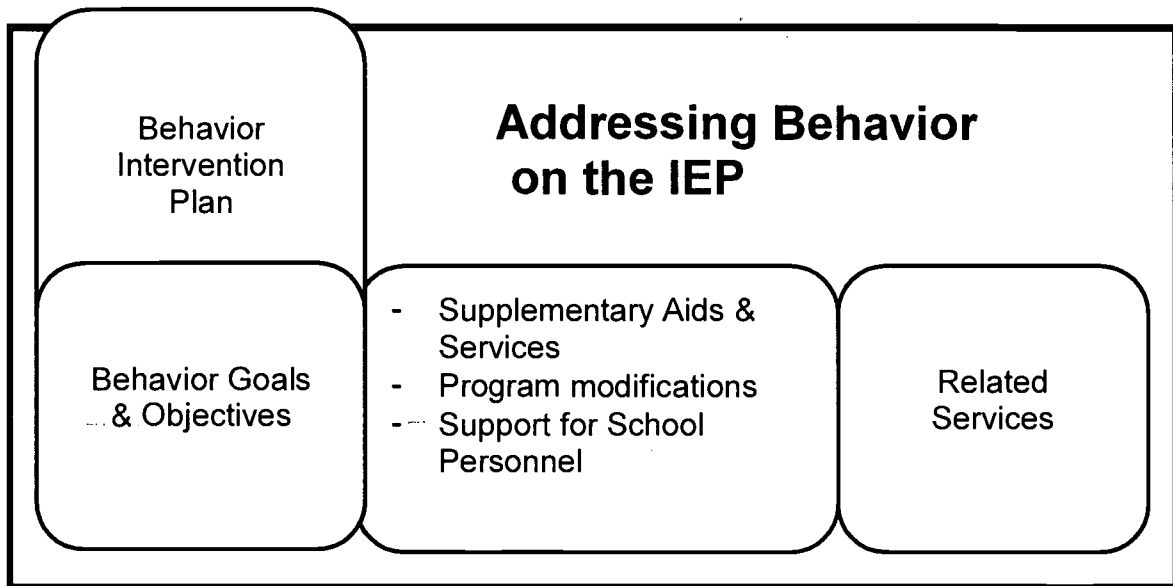
1. **Teaching Acceptable Replacement Behaviors:** strategies for teaching replacement behaviors (e.g. modeling, behavioral rehearsal, guidance, corrective feedback, positive reinforcement).
2. **Antecedent Manipulations:** strategies involving removal or modification of triggering antecedents, or addition of other antecedent stimuli that trigger the replacement behavior.
3. **Consequence Manipulations:** strategies involving removal or modification of maintaining consequence stimuli, or addition of other consequence stimuli that maintain and positively reinforce the replacement behavior.
4. **Setting Event Manipulations:** strategies involving removal or modification of factors that make the problem behavior worse, or addition of strategies that neutralize these factors.

If the student exhibiting problem behavior is a student identified as eligible to receive services under IDEA, the IEP team must consider strategies, including positive behavioral interventions and supports to address the behavior. The team may address these issues through the use of behavioral intervention plans that may be comprised of goals and objectives; through related services, such as counseling, or through modifications and adaptations within the educational setting.

If the level of intervention for a student requires the development of a BIP, this must be addressed at some level within the IEP. For example:

- The IEP identifies an individual BIP as one of the supplementary aids and services to be provided;
- The IEP includes training on BIP implementation as a support for school personnel;
- The IEP includes 60 minutes per week behavior intervention specialist as a related service to observe behavior across settings, chart progress, and develop modifications to the BIP.

**Chart 4: Addressing Behavior on the IEP**



An effective BIP is based on functional behavioral assessment, and should include the following components:

- A baseline level of the behavior
- Measurable goals
- Measurable objectives
- A timeline for review of progress

These components may be included within different areas of the BIP, or elsewhere on the student's IEP, depending on district procedures.

The components of the BIP, based on functional behavioral assessment data, may align with specific content areas of the students IEP.

- The baseline of behavior may be included as part of the present level of performance statement;
- The measurable goals and objectives may align with, be included as, or refer to, the annual goals and short term objectives; and,

- The timeline for review of progress may align with the evaluation criteria and schedule for review on the IEP.

Behavioral expectations must be clearly defined. Intervention strategies must be implemented in a way that is effective, yet least intrusive to the student. Personnel responsible for the development and implementation of the Behavior Intervention Plan should be qualified to carry the plan out with integrity: interventions must be implemented in the way in which they were designed, and consistent with established professional standards. The plan should include clear, written directions outlining "who, what, when, where and how."

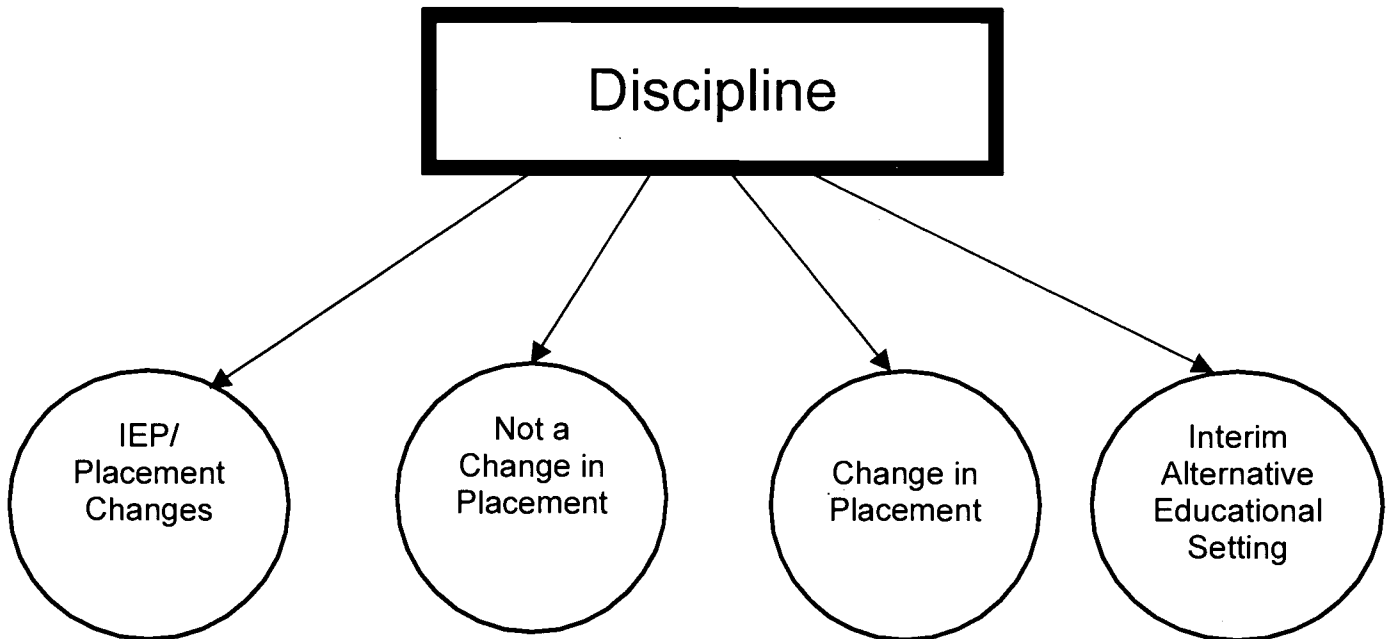
Federal and state regulations guide procedures for dealing with students eligible under IDEA who exhibit behavior that impedes the student's learning, or that of others. These procedures begin at the initial stages of IEP and program development. In order to establish a baseline for student behavior, effective practices suggest the process of behavioral assessment at this level. The regulations require the IEP team to develop a behavioral intervention plan when there is specific behavioral concern.

If this level of intervention is not sufficient to effect change, regulation and the need to achieve success for each student, drive the IEP team to review existing data, and reconvene, if necessary to conduct further assessment and/or adjust the behavioral intervention plan.

If there is a violation of District Code of Conduct, and suspension and/ or expulsion are considered, Oregon Administrative Rules 581-015-0550 through 0558 (see Appendix A) outline very specific guidelines for districts to follow. They require an LEA to conduct a functional behavioral assessment if there has not already been one, and to make a decision as to whether or not the violation is a manifestation of the student's disability.

It is important to remember that parents are a required member of the IEP team, and vital to the process. The discipline provisions laid out in regulation enter into discussion when the district is pursuing disciplinary action. If the district is pursuing a change in the educational placement of the student, they may proceed with this change in placement after providing prior written notice and ensuring that the problem behavior is addressed appropriately in the student's IEP. The level of understanding needed by all team members to make these decisions drives the need for all parties, including the student when appropriate, to be an integral part of the entire IEP process.

Chart 5: Discipline



In the regulations, discipline is arranged in terms of specific procedures that districts, school administrators and/or due process hearing officers must follow and the placement decisions that may occur as a result of those procedures. Chart 5 demonstrates that disciplinary action may result in the following:

1. Changes in the IEP and/or placement changes based on goals and objectives of the IEP;
2. Disciplinary removal that is not a change in placement;
3. Disciplinary removals that are a change in placement; or
4. Disciplinary removals to an interim alternative education setting.

Changes in the IEP and/or placement changes have been previously discussed. The next section will clarify disciplinary removal that is not a change in placement.

### **Disciplinary Removals that are NOT a Change in Placement**

Often school personnel may remove a student for disciplinary reasons but the removal does not constitute a change in placement. These situations are "the first 10 school days either cumulative or sequential in a school year" and "subsequent removals of up to 10 school days for separate incidences of misconduct as long as those removals are not a pattern".

**CHART 6: Procedures and Requirements for Disciplinary Removals that are NOT a Change in Placement**

	<b>First 10 school days (cumulative Or sequential)</b>	<b>Subsequent removals of up to 10 school days each that are not a "pattern"</b>
<b>Must give same type of suspension notice as for non-disabled students?</b>	Yes	Yes
<b>Must services be provided?</b>	No	Yes <ul style="list-style-type: none"> <li>• both regular and special education</li> <li>• school personnel (w/child's special education teacher) decide which services and where provided</li> </ul>
<b>Must do functional behavioral assessment/ behavioral intervention plan?</b>	No	Yes <ul style="list-style-type: none"> <li>• if no functional behavioral assessment, IEP team meets within 10 business days to develop assessment plan (and IEP team meets again after FBA completed)</li> <li>• if behavioral intervention plan in place, individual team members review plan; IEP meeting if one or more team members believe revisions are needed</li> </ul>
<b>Must do manifestation determination?</b>	No	No
<b>Must do prior written notice of change in placement?</b>	No	No

***When disciplinary action (e.g., suspension), that is not considered a change in placement, is implemented by the district is the district required to give the same type of suspension notice to students with disabilities as for students without disabilities?***

Yes, when disciplinary action (e.g., suspension), not considered a change in placement, is implemented by the district, the district is required to give a suspension notice to all students, including students with disabilities.

***Must the district provide educational services?***

Educational services for a student with disabilities are not required for the first 10 school days unless a district provides services for students without disabilities during the first 10 school days of suspension.

For subsequent removals of up to 10 school days each that are not a "pattern", the district must provide services to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP. School personnel, including the student's special education teacher, decide which services the student will receive and where those services will be provided.

- ✎ It is important to remember the adverse impact a cessation of educational services can have on a student's ability to achieve in school and to become a self-supporting adult who is contributing to our society.
- ✎ Districts are encouraged to look at educational material that would reinforce concepts and content so regression does not occur during the suspension. In addition, if the student is receiving related services, such as occupational therapy, anger management, or counseling, the district may want to continue those services.

***Must the district conduct a FBA/BIP?***

The regulations do not specifically require districts to complete an FBA/BIP during the first 10 days of suspension.

- ✎ If the student's behavior is a concern, effective practice would encourage districts to pursue behavior assessment and intervention as early as possible. For example:

Jeffery, an 8-year-old student eligible for special education services under IDEA, bites the student next to him during oral reading class. When confronted by the teacher, he kicks her. Jeffery is sent to the principal's office and the principal suspends him for three days. Jeffery returns to school after those three days and throws a stapler at another student during reading class. Jeffery is again removed from

class and suspended for an additional three days. Jeffery has accumulated 6 days of removal from school. The IEP team reconvened at this time to (1) review his current IEP—behavior was not previously a concern and (2) begin to identify and address the behavioral concerns through a functional behavioral assessment and behavior intervention plan. The FBA revealed that Jeffery's aggressive behavior only occurred during reading class and appeared to be a result of extreme frustration and embarrassment to oral reading in front of his peers. The IEP team developed an intervention plan to include oral reading only to teacher until reading fluency improved and comfort level increased.

The regulations require that districts conduct a FBA/BIP for subsequent removals of up to 10 school days each that are not a "pattern". Furthermore, the IEP team must meet within 10 business days to develop an assessment plan. The IEP team may meet again after the FBA is completed. If a Behavioral Intervention Plan is in place, individual team members must review the plan and hold an IEP meeting if one or more team members believe revisions are needed.

***Must the district conduct a manifestation determination?***

The regulations do not require districts to conduct a manifestation determination for disciplinary removals that are not a change in placement.

***Must the district provide prior written notice of change in placement?***

Disciplinary removals of up to 10 days, or subsequent removals that are not a "pattern" are not considered a change in placement and therefore do not require prior written notice of a change in placement.

***Are in-school suspensions considered a part of the days of suspension?***

An in-school suspension would NOT be considered a part of the days of suspension as long as the student is afforded the opportunity to continue to appropriately progress in the general curriculum; receive the services specified on his or her IEP; and, participate with non-disabled students to the extent they would have in their current placement.

***Are portions of a school day considered a part of the days of suspension?***

Portions of a school day that a student had been suspended would be included in determining whether the student had been removed for more than 10 cumulative school days or subjected to a change of placement.

**Would a bus suspension count as a day of suspension?**

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the student's IEP. If the bus transportation is a part of the student's IEP, a bus suspension would be treated as a suspension unless the district provides transportation in some other way, because that transportation is necessary for the student to obtain access to the location where all other services will be delivered.

If the bus transportation is not a part of the student's IEP, a bus suspension would not be a suspension. In those cases, the student and his or her parents would have the same obligations to get to and from school as a student without disabilities who had been suspended from the bus.

**Chart 7: What is a Pattern?**

<b>Basis of Determination</b>	<b>Who decides?</b>
<ul style="list-style-type: none"><li>• Length of removal</li><li>• Total amount of time removed</li><li>• Proximity of removals to one another</li></ul>	<ul style="list-style-type: none"><li>• Regulations don't specify</li><li>• Could be school personnel</li><li>• Does not require meeting</li></ul>

**Who makes the decision?**

The regulations do not specify who determines whether the behavior constitutes a pattern. Also, the regulations do not specify that a meeting must be held to make the decision. In most, if not all cases, the assistant principal should confer with the student's special education teacher to review the removal, and the impact of the removals on the student's education.

- ✎ School personnel may also want to confer with parents or other members of the IEP team to determine whether there has been a "pattern" of exclusion.



## Disciplinary Removals that are a Change in Placement

These are defined as removals for more than 10 consecutive days or removals after first 10 school days that constitute a "pattern".

**Chart 8: Disciplinary Removals that are a Change in Placement**

	<b>More than 10 consecutive school days</b>	<b>Removals after first 10 school days that are a "pattern"</b>
<b>Must notify parent of intended action (e.g., pursue expulsion hearing or additional suspension)?</b>	Yes <ul style="list-style-type: none"> <li>Notify parents of decision to pursue disciplinary action (by date of decision)</li> <li>Enclose notice of procedural safeguards</li> </ul>	
<b>Must do functional behavioral assessment/behavioral intervention plan?</b>	Yes Within 10 business days, must convene IEP meeting to: <ul style="list-style-type: none"> <li>if no functional behavioral assessment, develop assessment plan, or</li> <li>if behavioral intervention plan in place, review and revise</li> </ul>	
<b>Must do prior written notice of change in placement?</b>	Yes <ul style="list-style-type: none"> <li>Proposal to change placement to _____</li> <li>Because of disciplinary removal (expulsion or repeated suspension that is a pattern)</li> <li>List other options considered and reasons for rejecting them</li> </ul>	
<b>Must do manifestation determination?</b>	Yes <ul style="list-style-type: none"> <li>IEP team decides – within 10 school days of when this action is contemplated</li> <li>Can only proceed with disciplinary removal if misconduct is <b>not</b> a manifestation</li> <li>If misconduct <b>is</b> a manifestation, then address through IEP/placement process</li> </ul>	
<b>Must services be provided if misconduct is not a manifestation of the student's disability?</b>	Yes <ul style="list-style-type: none"> <li>Both regular and special education</li> <li>IEP team decides services to be provided</li> <li>Include parents in team that makes placement decision</li> </ul>	

Disciplinary removals of more than 10 consecutive school days and removals after the first 10 school days that are a pattern are considered a change in placement.

***Must the district notify the parent of the intended action?***

Yes! Notification must be by date of decision to pursue disciplinary action. The district must also provide notice of procedural safeguards at this time.

- ☞ For example, if the district decides to pursue expulsion on January 7<sup>th</sup>, then on January 7<sup>th</sup> the parent must be notified. School districts typically provide Notice of Suspension pending expulsion.

***Must the district provide educational services?***

Yes, the district must provide educational services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

***Who decides what services are to be provided?***

The student's IEP Team determines the extent to which services are necessary. Parents are members of their child's IEP Team and should be active participants in the decision of what educational services are to be provided.

***Must districts conduct a FBA and develop a BIP?***

Yes, districts must convene an IEP meeting immediately or within ten (10) business days to develop an assessment plan or review and revise a BIP. If a FBA has not been completed, then the district must complete the FBA and reconvene the IEP meeting to develop the BIP. If the student already had a BIP then the IEP Team must review the BIP and meet if one or more team members feel revisions are necessary.

- ☞ Effective practice would indicate that districts could start the FBA/BIP process by the seventh or eighth day of removal if the behavior is escalating and/or the behavior is starting to repeat.

***Must the district provide prior written notice of change in placement?***

Yes. The prior written notice must include:

1. A description of the action proposed by the district;
2. A definite reason for change of placement as a disciplinary removal (expulsion or repeated suspension that is a pattern);
3. A list of other options that were considered and reasons for rejecting them;
4. A description of each evaluation procedure test record or report the district used as a basis for the change in placement;

5. A description of any of factors that are relevant to the district's proposal; and
6. A notice of Procedural Safeguards and sources for the parent to contact to obtain assistance and understanding the provisions.

***Must the district conduct a manifestation determination?***

Yes, within 10 school days of the date of decision to pursue disciplinary action.

**Manifestation Determination**

**Chart 9: Manifestation Determination**

Who decides?	IEP team and other qualified personnel
How does IEP team decide?	The IEP team must consider all information, based on the individual and not the category of disability.
What information does the team consider?	<ul style="list-style-type: none"> <li>• Evaluations, including functional behavioral assessments</li> <li>• Information from the parents</li> <li>• Observations of the student</li> <li>• IEP and placement information</li> </ul>

The IEP Team and other qualified personnel must decide if the behavior in question is a manifestation of the student's disability.

- ✎ They may do this at the same IEP meeting that is convened to develop an assessment plan if proper meeting notice has been given.

The regulations state, "The IEP Team conducts a review of the relationship between the student's disability and the behavior subject to the disciplinary action."

- ✎ In other words, the IEP Team considers all information, based on the individual and not the category of disability.

In making the manifestation determination the IEP Team must consider:

- Evaluations, including functional behavior assessments and diagnostic results.
- Information from the parents.
- Observations of the student.
- The appropriateness of the current IEP and placement information.

Based on this information, the IEP Team discusses the following questions:

1. ***In relationship to the misconduct, were the IEP and placement appropriate?***

If the team determines that in relationship to the misconduct, the IEP and placement are appropriate, then the standard has been met.

- ✎ It is important to note here that regulatory language specifically says “in relationship to the behavior subject to disciplinary action”; therefore the IEP team is not considering every infraction the student made in his school career but only the behavior for which he may be removed from school or whether every aspect of the IEP/placement were appropriate. Some considerations the IEP Team may discuss are: Was the student responsive to behavioral, social and emotional needs that impact educational performance? Was the student deriving reasonable educational benefit from the IEP before the misconduct?
- ✎ If the team identifies deficiencies in the student’s IEP or placement or in the team’s implementation of the IEP or placement, the district must take immediate steps to remedy those deficiencies.

**2. *In relationship to the misconduct, were the special education services, supplementary aids and services, and behavioral intervention strategies implemented consistent with the IEP and placement?***

If, the IEP team determines that in relationship to the misconduct, the special education services, supplementary aids and services and behavioral intervention strategies were implemented consistent with the IEP and placement, then the standard has been met.

- ✎ If behavior was addressed in the IEP (e.g. a behavioral intervention plan, behavioral goals and objectives, supplementary aids and services, program modification, related services etc.) then the IEP team must ask if those services on the student’s IEP were delivered in good faith.

**3. *Did the disability impair the student’s ability to understand the impact and consequences of the behavior?***

If the disability did not impair the student’s ability to understand the impact and consequences of the behavior, then the standard has been met.

- ✎ This does not mean that the only basis for making the decision is asking the student if he/she understands the impact and consequences of the behavior; it is not based solely on self-report. This requirement means that the IEP Team must make this determination based on the student’s cognitive, and emotional capacity and the specific facts surrounding the misconduct.

**4. *Did the disability impair the student’s ability to control the behavior?***

If the disability did not impair the student’s ability to control the behavior, then the standard has been met.

- ✎ Determine if the behavior was impulsive or intentional misconduct.

A district can only proceed with disciplinary removal if the misconduct is NOT a manifestation of the student’s disability. If the IEP team and other qualified personnel

determine that any of the standards mentioned above were not met, the behavior must be considered a manifestation of the student's disability. If the misconduct IS determined to be a manifestation of the student's disability, the IEP Team should address the behavior through the IEP/Placement process.

**What is a Weapon?**

Requirements under regulation for students who carry a weapon to school or to a school function or knowingly possess or use illegal drugs, sell or solicit the sale of a controlled substance while at school or a school function will now be addressed. First we must define weapon.

**Chart 10: What is a weapon?**

<b>What is a Weapon? (IDEA)</b>
"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 a term does not include a pocket knife with a blade of less than 2 ½ inches in length." 18 USC § 930.
<b>What is a Weapon? (under Oregon Law)</b>
<ul style="list-style-type: none"> <li>• <b>Firearm:</b> "(a) any weapon(including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) any destructive device [any explosive, incendiary, or poison gas bomb, grenade, rocket with charge of more than four ounces, missile with charge of more than ¼ ounce, mine, or similar device]." Does not include antique firearm.</li> <li>• <b>Dangerous weapon:</b> "any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious injury." ORS 161.015(1)</li> <li>• <b>Deadly weapon:</b> "any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury." ORS 161.015(2)</li> </ul>

On Chart 10, we have listed the federal and state definition of weapon. As you can see there are differences between the two. It is important to note that anytime the district is considering a 45-day Interim Alternative Educational Placement, they must use the IDEA definition for weapon. The district may invoke this definition if the student carries a weapon to school or school function. This requirement also applies to a student who acquires a weapon at school.

## Disciplinary Removals to an Interim Alternative Educational Setting


**Chart 11: Disciplinary Removals to an Interim Alternative Educational Setting**

	<b>Weapons or Drugs/Controlled Substances</b>	<b>Substantially likely to Injure Themselves or Others</b>
<b>Who decides?</b>	<ul style="list-style-type: none"> <li>School personnel decide on removal</li> <li>IEP team decides on particular setting</li> </ul>	Special education due process hearing officer decides (or court)
<b>Must notify parent of intended action?</b>	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> <li>Notify parents of decision to pursue disciplinary action (by date of decision)</li> <li>Enclose notice of procedural safeguards</li> </ul>	
<b>Must do manifestation determination?</b>	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> <li>IEP team decides – within 10 school days of when this action is contemplated</li> </ul>	
<b>Must services be provided?</b>	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> <li>Both regular and special education</li> <li>Services and modifications to address the behavior</li> </ul>	
	IEP team decides	Hearing officer reviews/decides
<b>Must do functional behavioral assessment/ behavioral intervention plan?</b>	<p style="text-align: center;">Yes</p> <p>Within 10 business days, must convene IEP meeting to:</p> <ul style="list-style-type: none"> <li>if no functional behavioral assessment, develop assessment plan, or</li> <li>if behavioral intervention plan in place, review and revise</li> </ul>	
<b>Must do prior written notice of change in placement?</b>	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> <li>Proposal to change placement to _____</li> <li>List other options considered and reasons for rejecting them</li> </ul>	
<b>How long?</b>	45 days	45 days, can seek extensions of 45 days

The interim alternative educational setting (IAES) regulation applies to students who:


- Carry a weapon to school or to a school function.
- Knowingly possess or use illegal drugs.
- Sell or solicit the sale of a controlled substance while at school or a school function.

This change in placement also applies to a student who a hearing officer finds substantially likely to injure themselves or others. The 45-day IAES is not mandatory. If the parents agree with school officials to a change in the student's placement there may not be a need to use a 45-day IAES.

-  In some instances school officials or hearing officers may determine that a shorter period of removal is appropriate and that a child can be returned to his or her current educational placement at an earlier time.


### ***Who decides if a student should be removed to an IAES?***

In the case of weapons, drugs or controlled substances, school personnel may order a change in placement of a student with a disability to an appropriate IAES for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 days.

-  Federal regulations do not specifically state who the school personnel would be; this could be the Principal, Vice-Principal, or other staff. District Policy and Procedure should include a statement identifying who in the district would be involved in this decision. Effective practice would encourage the school personnel to include the special education teacher and other staff who would have significant contact with the student to make the final decision.

The IAES setting must be determined by the IEP team and must:

- be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and
- to continue to receive those services and modifications, including those described in the student's current IEP that will enable the student to meet the goals set out in that IEP; and
- include services and modifications to address the inappropriate behavior and that are designed to prevent the behavior from recurring.

-  Whether home instruction or independent study would be an appropriate alternative educational setting would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the student previously has been removed from their regular placement, and include consideration of the child's needs and educational goals. In general, though, because removals to IAES will be for periods of time up to 45 days, care must be taken to ensure that if homebound instruction is provided for



removals to IAES the services that are provided will satisfy the requirements of removal to an IAES listed above.

If a student is injuring himself or others, the special education due process hearing officer decides if the students will be moved to an IAES. The hearing officer also decides the appropriate setting for the IAES. These decisions shall be made in an expedited due process hearing. Districts also have the right to seek injunctive relief from a court when they believe it is necessary.

The hearing officer makes this decision based on:

- determination that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;
- considers the appropriateness of the student's current placement;
- considers whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher, meets the requirements of an interim alternative educational setting.

***Must the district notify the parent of intended action?***

Yes, the district is required to notify the parent of the intended action no later than the date the decision to take the action is made. The parents must also be provided notice of procedural safeguards at this time.

***Must the district provide educational services?***

Yes, the district must provide educational services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

***Who decides what educational services are to be provided?***

In the case of weapons, drugs or controlled substances, the student's IEP Team determines what educational services are to be provided. If a student is injuring himself or others the special education due process hearing officer reviews and/or decides what educational services are to be provided.

***Must the district conduct a FBA and BIP?***

Yes, districts must convene an IEP meeting immediately or within ten (10) business days to develop an assessment plan or review and revise a BIP. If a FBA has not been completed then the district must complete the FBA and reconvene the IEP meeting to develop the BIP. If the student already had a BIP then the IEP Team



must review the BIP and meet if one or more team members feel revisions are necessary.

***Must the district provide prior written notice of change in placement?***

Yes. The prior written notice must include:

1. A description of the action proposed by the district;
2. A definite reason for change of placement as a disciplinary removal (expulsion or repeated suspension that is a pattern);
3. A list of other options that were considered and reasons for rejecting them;
4. A description of each evaluation procedure test record or report the district used as a basis for the change in placement;
5. A description of any of factors that are relevant to the district's proposal;
6. A notice of Procedural Safeguards and sources for the parent to contact to obtain assistance and understanding the provisions.

***Must the district conduct a manifestation determination?***

Yes, the IEP team must determine if the behavior was a manifestation of the student's disability, within 10 school days of when this action is contemplated.

***Must educational services be provided?***

Yes, the district must provide the educational services that are necessary to enable the student to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals set out in the student's IEP. Also, this change in placement must include services and modifications to address the behavior designed to prevent the behavior from recurring. In the case of weapons, drugs or controlled substances, the IEP team decides the services to be provided and, in the case of injury to self or others, the hearing officer decides the services to be provided.

***Must the district conduct a FBA and BIP?***

Yes, districts must convene an IEP meeting immediately or within ten (10) business days to develop an assessment plan or review and revise a BIP. If a FBA has not been completed then the district must complete the FBA and reconvene the IEP meeting to develop the BIP. If the student already had a BIP then the IEP Team must review the BIP and meet if one or more team members feel revisions are necessary.

***Must the district provide prior written notice of change in placement?***

Yes, prior written notice of change in placement must be sent to parents. It must include a statement that says there is a proposal to change the student's placement to (wherever) and a list of other options that were considered and reasons for rejecting them.

### ***How long can a student remain in an interim alternative educational setting?***

If a district is considering an IAES placement for weapons, drugs or controlled substance, the district may first remove the student for up to 10 consecutive school days while convening the IEP team to determine the IAES. At the end of that 10-day period, the student would be placed into the IAES for up to 45 calendar days.

IAES are limited to 45 **calendar** days. For a student who would be dangerous to return to the current placement the hearing officer or courts may extend the IAES an additional 45 days.

### **Protection for Children not yet Eligible for Special Education and Related Services**

IDEA discipline rules apply to students not yet identified when the school district "had knowledge" that the student was a student with a disability. A school district is considered to have knowledge that a student is a student with a disability if:

1. The parent of the student has expressed concern in writing to district personnel that the student is in need of special education and related services;
  - ✎ The concern may be given orally if the parent does not know how to write or a disability prevents a written statement. If this is the case it is the district's responsibility to document the parental concern in the student's file.
  - ✎ The written concern must include enough information to indicate child is in need of special education and related services.
2. The behavior or performance of the student demonstrates the need for special education and related services in relation to eligibility criteria in OAR 581-015-0051.
  - ✎ The behavior or performance is in relation to IDEA disability definitions (eligibility criteria)
3. The parent of the student has requested an evaluation of their child; or,
4. The teacher of the student, or other personnel of the district, has expressed concern about the behavior or performance of the student to the director of special education or to other personnel. This would not include a TAG evaluation. The evaluation must be specifically related to the student's eligibility for special education services.

If the district conducted a special education evaluation, determined that the student was not eligible and gave the parent prior written notice, or if the district determined

that a special education evaluation was not necessary and gave the parent prior written notice, there would not be a “basis of knowledge”.

If a district does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors.

If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services.

### **Reporting Crimes**

School district personnel can report crimes committed by a student with a disability to the same extent that they would report a crime if the student were not disabled. Juvenile or criminal law establishes the procedural safeguards in this case.

When reporting a crime, school district personnel may transfer special education and disciplinary records to the “appropriate authorities” only when permitted by the Family Educational Rights and Privacy Act. (FERPA). The following restrictions apply in these situations:

1. only with written consent of the parent; or
2. with a subpoena or court order;
3. when there is a health and safety emergency;
4. if the state has a statute creating information sharing system protecting against redisclosure.

# **APPENDIX A**

## **Oregon Administrative Rules on Discipline for Students with Disabilities under the IDEA**

## OAR 581-015-0550

### Definitions

For the purposes of OAR 581-015-0550 to 581-015-0559, the following definitions apply:

- (1) "**Behavioral intervention plan**" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- (2) "**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.).
- (3) "**Disciplinary removal**" means suspension, expulsion, or other removal from school for disciplinary reasons. It does not include:
  - (a) Removals by other agencies;
  - (b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);
  - (c) 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
  - (d) Bus suspensions, unless the student's IEP includes transportation as a related service and the district makes no alternative transportation arrangements for the student.

*Note: Under ORS 339.250, each school board shall develop policies "on managing students who threaten violence or harm in public schools. The policies adopted by a school district shall include staff reporting methods and shall require an administrator to consider: . . . (C) Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting." This is an example of a disciplinary removal that is not a suspension or expulsion. But the timelines under the IDEA still apply to this type of removal.*

- (4) "**Functional behavioral assessment**" means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.
- (5) "**Suspension**" means any disciplinary removal other than expulsion.

## OAR 581-015-0551

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

- (1) School districts 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.
- (2) During disciplinary removals described in section (1) of this rule:

- (a) 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.
  - (b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.
- (3) For the purpose of **counting days of suspensions**:
- (a) Suspensions of a half day or less are counted as a half day; and
  - (b) Suspensions of more than a half day are counted as a whole day.
- (4) For the purposes of determining "current educational placement" in subsection (1) of this rule:
- (a) 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.
  - (b) 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:
    - (A) The new school district actually changes the child's educational placement through the IEP/placement procedures, and provides prior written notice of change in placement to the parent; or
    - (B) The school district does not have actual knowledge of the previous suspensions.
- (5) 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 unless the provisions of OAR 581-015-0552, 581-015-0555 or 581-015-0556 apply, or the parent and school district agree to another placement pending the hearing.
- (6) The Department shall provide guidance to school districts on the benefits of conducting functional behavioral assessments and developing behavioral intervention plans for students who are removed from school under this rule.

**OAR 581-015-0552**

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

- (1) School 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 under section (2) of this rule. These removals are not considered a change in placement.
- (2) In determining whether removals of additional periods of up to 10 school days constitute a pattern of removals from the child's current educational placement in a school year, school personnel shall consider:
  - (a) The length of each removal;
  - (b) The total time of removals; and
  - (c) The proximity of the removals to one another.

- (3) During removals described in section (1) of this rule:
- (a) School districts shall provide services that are necessary to enable the child:
    - (A) To appropriately progress in the general curriculum; and
    - (B) To appropriately advance toward achieving the goals in the child's IEP.
  - (b) The services described in subsection (a) of this rule, 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.
  - (c) Within 10 business days of the first day of removal under section (1) of this rule, school districts shall hold an IEP meeting to:
    - (A) 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
    - (B) If there is a behavioral intervention plan in place, to review the plan if one or more team members believe that revisions are needed.
  - (d) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection (3)(c) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop appropriate behavioral interventions to address the behavior.
  - (e) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.
- (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 pending the hearing unless:
- (a) The provisions of OAR 581-015-0555 or 581-015-0556 apply; or
  - (b) The parent and school district agree to another placement.

#### **OAR 581-015-0553**

##### **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 shall follow special education due process procedures if:
- (a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or
  - (b) 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 under OAR 581-015-0552(2).
- (2) If a school district intends to initiate a removal under section (1) of this rule:
- (a) School districts shall:
    - (A) Immediately schedule an IEP meeting for the purposes of subsection (2)(b) of this rule;

- (B) Provide notice of disciplinary action under OAR 581-021-0065(1)(for a suspension) or OAR 581-021-0070(3)(for an expulsion); and
  - (C) Provide notice of procedural safeguards under OAR 581-015-0079.
- (b) Immediately or within 10 business days, school districts shall hold an IEP meeting to:
- (A) Develop an assessment plan unless a functional behavioral assessment has been completed on the behavior that resulted in the disciplinary removal or, if there is a behavioral intervention plan in place, to review the plan and revise as appropriate;
  - (B) Determine whether the child's behavior is a manifestation of the child's disability under OAR 581-015-0554; and
  - (C) Review the child's IEP and placement, and revise as appropriate.
- (c) If the IEP team determines that the child's behavior is a manifestation of the student's disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under section (1) of this rule. However:
- (A) The IEP team may review and revise the child's IEP and placement;
  - (B) A school district may initiate removal to an interim alternative educational setting under OAR 581-015-0555 for a weapons or drug violation; or
  - (C) A school district may seek a hearing officer removal under OAR 581-015-0556 for injurious behavior.
- (d) If the IEP team determines that the child's behavior is not a manifestation of the student's disability under OAR 581-015-0554, the school district may proceed with disciplinary action under section (1) of this rule. If the school district takes such action, the school district shall:
- (A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and
  - (B) Provide the services, determined by the IEP team, that are necessary to enable the child:
    - (i) To appropriately progress in the general curriculum; and
    - (ii) To appropriately advance toward achieving the goals in the child's IEP.
- (e) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection(2)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop appropriate behavioral interventions to address the behavior.
- (f) If a child's educational placement changes as a result of the IEP/placement reviews under subsections (2)(c) or (2)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.
- (3) 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 in section (1) of this rule, the child shall complete any suspension under OAR 581-015-0551 or 581-015-0552 and return to their current educational placement unless:



- (a) The provisions of OAR 581-015-0555 or 581-015-0556 apply; or
- (b) The parent and school district agree to another placement pending the hearing.

#### **OAR 581-015-0554**

##### **Manifestation Determination**

- (1) In determining whether the child's behavior is a manifestation of the child's disability, the child's IEP team and other qualified personnel shall consider all relevant information related to the behavior subject to disciplinary action, including:
  - (a) Evaluation and diagnostic results, including information from the parents;
  - (b) Observations of the child; and
  - (c) The child's IEP and placement.
- (2) The child's IEP team shall determine that the child's behavior is not a manifestation of the child's disability only if:
  - (a) The child's IEP and placement were appropriate in relationship to the behavior subject to the disciplinary action;
  - (b) The special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
  - (c) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
  - (d) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.
- (3) If the IEP team and other qualified personnel determine that any of the standards in subsection (2), of this rule, were not met, the behavior must be considered a manifestation of the child's disability.
- (4) If, in conducting this review, the school district identifies deficiencies in the child's IEP or placement or with their implementation, the school district shall take immediate steps to remedy those deficiencies.
- (5) If a parent requests a due process hearing to contest an IEP team's manifestation determination, the hearing officer shall determine whether the school district has applied the standards in subsection (2) of this rule.

#### **OAR 581-015-0555**

##### **Removal to an Interim Alternative Educational Setting by School District (Drugs & Weapons)**

- (1) Definitions:
  - (a) "**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.

- (b) "**Drug violation**" means the use, possession, sale or solicitation of drugs at school or a school function.
  - (c) "**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.
  - (d) "**Weapon violation**" means carrying a weapon to school or to a school function or acquiring a weapon at school.
- (2) School districts may remove a child with disabilities from their current educational placement for up to 45 calendar days in a school year for a drug or weapon violation. This removal is considered a change in placement.
- (3) During removals described in subsection (2) of this rule:
- (a) School districts shall:
    - (A) Immediately schedule an IEP meeting for the purposes of subsection (3)(b);
    - (B) Provide notice of disciplinary action under OAR 581-021-0065(1) (for a suspension) or OAR 581-021-0070(3) (for an expulsion); and notice of the school district's decision to remove the child to an interim alternative educational setting under this rule; and
    - (C) Provide notice of procedural safeguards under OAR 581-015-0079.
  - (b) Immediately or within 10 business days, school districts shall convene an IEP meeting to:
    - (A) Develop an assessment plan 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 and revise as appropriate;
    - (B) Determine whether the child's behavior is a manifestation of the child's disability under OAR 581-015-0554; and
    - (C) Review the child's IEP, and revise as appropriate, and determine the specific interim alternative educational setting, consistent with the requirements of OAR 581-015-0557.
  - (c) If the IEP team determines that the child's behavior is a manifestation of the student's disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under OAR 581-015-0553(1). However:
    - (A) The school district may continue the child's placement in the interim alternative educational setting until the end of the 45 day period;
    - (B) The IEP team may review and revise the child's IEP and placement; and
    - (C) A school district may seek a hearing officer removal under OAR 581-015-0556 for injurious behavior.
  - (d) If the IEP team determines that the student's behavior is not a manifestation of their disability under OAR 581-015-0554, the school district may proceed with disciplinary action under OAR 581-015-0553(1). If the school district takes such action, the school district shall:

- (A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and
  - (B) Provide the services, determined by the IEP team, that are necessary to enable the child:
    - (ii) To appropriately progress in the general curriculum; and
    - (ii) To appropriately advance toward achieving the goals in the child's IEP.
  - (e) If a child's educational placement changes as a result of the IEP/placement reviews under subsections (2)(c) or (2)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.
  - (f) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection (3)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop and implement appropriate behavior interventions to address the behavior.
- (4) 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 under section (1) of this rule, the child shall:
- (a) Complete any suspension under OAR 581-015-0551 or 581-015-0552; and
  - (b) Remain in the interim alternative educational setting pending the decision of the hearing officer or for 45 calendar days, whichever occurs first; unless:
    - (A) The parent and school district agree otherwise; or
    - (B) The provisions of OAR 581-015-0556 apply.

#### **OAR 581-015-0556**

#### **Removal to an Interim Alternative Educational Setting by Hearings Officer (Injurious Behavior)**

##### (1) Definitions:

- (a) "**Injurious behavior**" means behavior that is substantially likely to result in injury to the child or to others.
  - (b) "**Substantial evidence**" means beyond a preponderance of the evidence.
- (2) School districts may request an expedited due process hearing under OAR 581-015-0559 to obtain a hearing officer's order to remove a child to an interim alternative educational setting for not more than 45 days for injurious behavior. Under these circumstances, the specific interim alternative educational setting may be determined by school personnel in consultation with the child's special education teachers, consistent with the requirements of OAR 581-015-0557, or by the IEP team.
- (3) A special education hearing officer may order a change in placement, under section (2) of this rule, if the hearing officer:

- (a) Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
  - (b) Considers the appropriateness of the child's current placement;
  - (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - (d) Determines that the interim alternative educational setting meets the requirements of OAR 581-015-0557.
- (4) During removals described in section (2):
- (a) School districts shall:
    - (A) Immediately schedule an IEP meeting for the purposes of subsection (4)(b);
    - (B) Provide notice of disciplinary action under OAR 581-021-0065(1)(for a suspension) or OAR 581-021-0070(3)(for an expulsion); notice of the school district's decision to remove the child to an interim alternative educational setting under this rule, and, if determined under subsection (2), the specific interim alternative educational placement,; and
    - (C) Provide notice of procedural safeguards under OAR 581-015-0079.
  - (b) Immediately or within 10 business days, school districts shall convene an IEP meeting to:
    - (A) Develop an assessment plan 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 and revise as appropriate;
    - (B) Determine whether the child's behavior is a manifestation of the child's disability under OAR 581-015-0554; and
    - (C) Review the child's IEP, and revise as appropriate, and determine the specific interim alternative educational setting, consistent with the requirements of OAR 581-015-0557, if not already determined under subsection (2) of this rule.
  - (c) If the IEP team determines that the child's behavior is a manifestation of the student's disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under OAR 581-015-0553(1). However:
    - (A) The school district may continue the child's placement in the interim alternative educational setting until the end of the 45 day period; and
    - (B) IEP team may review and revise the child's IEP and placement.
  - (d) If the IEP team determines that the student's behavior is not a manifestation of their disability under OAR 581-015-0554, the school district may proceed with disciplinary action under OAR 581-015-0553(1). If the school district takes such action, the school district shall:
    - (A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and

- (B) Provide the services, determined by the IEP team, that are necessary to enable the child:
  - (i) To appropriately progress in the general curriculum; and
  - (ii) To appropriately advance toward achieving the goals in the child's IEP.
- (e) If a child's educational placement changes as a result of the IEP/placement reviews under subsections (4)(c) or (4)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.
- (f) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection (4)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop appropriate behavior interventions to address the behavior.
- (5) If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement, the child shall:
  - (a) Complete any suspension under OAR 581-015-0551 or 581-015-0552; and
  - (b) Remain in the interim alternative educational setting pending the decision of the hearing officer or for 45 calendar days, whichever occurs first, unless:
    - (A) The parent and school district agree otherwise, or
    - (B) The procedures in sections (2) and (3) are repeated.
- (6) 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.

**OAR 581-015-0557**

**Requirements of an Interim Alternative Educational Setting**

An interim alternative educational setting shall:

- (1) Enable the child to continue to:
  - (a) Progress in the general curriculum, although in another setting; and
  - (b) Receive special education services and modifications described in the child's IEP that will enable the child to meet IEP goals; and
- (2) Include services and modifications that:
  - (a) Address the misconduct; and
  - (b) Are designed to prevent the misconduct from recurring.

## **OAR 581-015-0558**

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

- (1) The provisions of OAR 581-015-0550 through 581-015-0557 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 subsection (1) of this rule, a school district "had knowledge" if:
  - (a) The parent of the child has expressed a 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 that the child is in need of special education and related services;
  - (b) The behavior or performance of the child demonstrates the need for special education and related services in relation to eligibility criteria in OAR 581-015-0051;
  - (c) The parent of the child has requested a special education evaluation of the child; or
  - (d) The teacher of the child, or other school personnel, has expressed a concern about the behavior or performance of the child to a school district special education representative in accordance with the school district's child find or referral system under OAR 581-015-0037(1).
- (3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the child was a child with a disability if:
  - (a) The school district conducted a special education evaluation under OAR 581-015-0559, determined that the child was not eligible, and gave the parent prior written notice of that determination under OAR 581-015-0075; or
  - (b) The school district determined that a special education evaluation was not necessary and gave the parent prior written notice of that determination under OAR 581-015-0075.
- (4) If the school district did not have knowledge, the district may treat the child as a child without a disability for the purposes of taking disciplinary action. However:
  - (a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation shall be conducted in an expedited manner.
  - (b) 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 under OAR 581-021-0559.
  - (c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district shall conduct an IEP meeting to develop an IEP and determine placement.
  - (d) The provisions of OAR 581-015-0550 through 581-015-0557 shall apply beginning on the date of the eligibility determination.

## **OAR 581-015-0559**

### **Expedited Due Process Hearings in Disciplinary Actions**

- (1) When either party requests, an expedited due process hearing shall be held in a dispute over a disciplinary action for a child with a disability if:

- (a) 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
  - (b) The school district maintains that it is dangerous for the child to be in the child's current educational placement during the pendency of the hearing.
- (2) Expedited due process hearings must:
- (a) Meet the requirements of OAR 581-015-0080 through 581-015-0093; except that
    - (A) The time period identified in OAR 581-015-0080 for disclosing evidence to the other party shall be two business days; and
    - (B) The written decision shall be mailed to the parties within 30 days of the public agency's receipt of the request for the hearing, however the hearing office may grant an extension of no more than 15 days if the hearing officer finds substantial justification for this extension.
  - (b) Be conducted by a due process hearing officer who satisfies the requirements of OAR 581-015-0096.

# **APPENDIX B**

## **Resources**



## Resources

Axelrod, S. (1987). Functional and Structural Analysis of Behavior: Approaches Leading to Reduced Use of Punishment Procedures. Research in Developmental Disabilities, 8, pp 165-278.

Cooper, L.J. & Harding, J. (1993). Extending Functional Analysis Procedures to Outpatient and Classroom Settings for Children with Mild Disabilities. In J. Reichle & D.P. Wacker (Eds.), Communicative Alternatives to Challenging Behavior: Integrating Functional Assessments and Intervention Strategies, pp 41-62. Baltimore: Paul H. Brookes.

Dunlap, G., Kern, L., De Perczel, M., Clarke, S., Wilson, D., Childs, K.E., White, R., & Falk, G.D. (1993). Functional Analysis of Classroom Variables for Students with Emotional and Behavioral Challenges. Behavioral Disorders, 18, pp 275-291.

Foster-Johnson, L., & Dunlap, G. (1993). Using Functional Assessment to Develop Effective, Individualized Interventions for Challenging Behaviors. Teaching Exceptional Children, 25, pp 44-50.

Groden, G. (1989). A Guide for Conducting a Comprehensive Behavioral Analysis of a Target Behavior. Journal of Behavioral Therapy and Experimental Psychiatry, 20, pp 163-169.

Hicks, Graham M. (2000). The Educator's Guide: Student Discipline in Oregon.

Horner, R.H., O'Neill, R.E., & Flannery, K.B. (1993). Building Effective Behavior Support Plans from Functional Assessment Information. In M. Snell (Ed.) Instruction of Persons with Severe Handicaps, 4<sup>th</sup> ed., pp. 184-214. Columbus, OH: Merrill.

Nelson, J.R., Roberts, M.L., Bullis, M., Albers, C., and Ohland, B. Functional Behavioral Assessment: Looking Beyond Applied Behavioral Analysis. Communique, February 1999, Volume 27, No. 5.

O'Neill, Horner, Albin, Sprague, Storey, Newton. Functional Assessment and Program Development for Problem Behavior, 2<sup>nd</sup> ed.

Wacker, D., Steege, M., Northup, J., Reimers, T., Berg, W., & Sasso, G. (1990). Use of Functional Analysis and Acceptability Measures to Assess and Treat Severe Behavior Problems: An Outpatient Model. In A.C. Repp & N.N. Singh (Eds.) Perspectives on the Use of Nonaversive and Aversive Interventions for Persons with Developmental Disabilities, pp 349-359. Pacific Grove, CA: Borks/Cole.



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