

Special Education and School Discipline

(What rights does my student have when facing a suspension?)

How should schools address misbehavior by students with disabilities?

Many children with disabilities experience behavior challenges in school. If your student's education – or that of others – is affected by your student's behavior, the following interventions should be implemented.

- A **Functional Behavioral Assessment (FBA)** is used to help the IEP team figure out why the student's behaviors are happening and what interventions will address the behaviors. The FBA should identify a target behavior, and then include observations, interviews, and an information review, such as previous discipline referrals and teacher behavior logs related to that behavior.
 - A parent/guardian may request a FBA at any time.
 - If a behavior is found to be related to a child's disability following a manifestation determination review (MDR) (*see below*), the school **must** conduct or review a FBA.

More info: Functional Behavioral Assessments

- **Target behaviors** can include externalizing behaviors (e.g. disruptiveness, aggression, talking back, leaving the classroom), internalizing behaviors (e.g. sleeping, daydreaming), or other behaviors (e.g. tardiness).
- **Aim of FBA:** The FBA should seek to answer the following questions:
 - In what settings does the behavior occur?
 - Are there any settings where the behavior does not occur?
 - Who is present when the behavior occurs?
 - What activities or interactions (triggers) take place just prior to the behavior?
 - What usually happens immediately after the behavior?
 - Is the student trying to gain attention or approval of a classmate, avoid instruction/difficult assignments, or achieve some other goal?



- A **Behavior Intervention Plan (BIP)** is a tool to assist parents, teachers, and the student to deal with a child's behavior in an appropriate and beneficial way. The BIP is created using the information obtained in the FBA.
 - Creation of a BIP, or revision of the BIP, can be requested by the parent/guardian at any time. If the school has not already done so, they should complete an FBA prior to a BIP.
 - If a behavior is found to be related to a child's disability following an MDR (*see below*), the school **must** conduct or review a BIP.
 - Once created, the BIP becomes an enforceable part of the student's IEP.

More info: Behavior Intervention Plans

Effective BIPs are not punishment; instead, they should:

- be proactive and strengths-based;
- include multiple interventions or support strategies;
- make changes to the child's school environment to prevent the behavior;
- teach the child coping strategies and self-management skills;
- identify supports or strategies that will improve behavior;
- be developed with input from the student;
- establish constructive steps to be taken when misconduct happens;
- establish when and how the plan will be reviewed to determine its effectiveness;
- establish when and how information will be shared between home and school; and
- determine how the student's behavior will be handled should it reach crisis proportions, particularly without the use of seclusion, restraints, or law enforcement involvement.



When are special protections triggered during the discipline of students with IEPs?

- Once a student with an IEP has been suspended for more than 10 days in a school year due to his behavior, special protections must be provided to that student. The following “suspensions” can trigger protections:
 - A long-term suspension (LTS) (e.g. a suspension lasting more than 10 days)
 - A series of short-term suspensions (STS) that involve similar types of behaviors
 - A series of in-school suspensions (ISS) that involve similar types of behaviors if the student doesn’t receive all services in his IEP or spends less time with non-special education peers while removed
 - A series of removals in which a parent/guardian is told to come pick their child up before the end of the school day and, as a result, the child misses required services under his IEP
 - A disciplinary transfer to an alternative program that changes how a student’s services are delivered or reduces the amount of time the student spends with students who do not have IEPs
 - An expulsion

What special protections are students with IEPs entitled to when facing a suspension?

- Once a suspension that falls into one of the categories above occurs, the following protections are triggered:
 - a. Beginning no later than the 11th total day of suspension and continuing throughout any resulting suspension, the student must be provided **uninterrupted access to an appropriate education**.
 - This includes any educational and related services needed to help the student make progress on his IEP goals and in the general curriculum – i.e. a Free and Appropriate Public Education (FAPE). *See “Special Education Service Delivery” for more information about FAPE.*
 - These services may be provided in a different environment.
 - b. The student’s IEP team must meet as soon as possible (but no later than 10 days after the suspension) to hold a **Manifestation Determination Review (MDR)**.
 - The purpose of the MDR is to answer two questions:
 - 1) Was the student’s conduct caused by, or did it have a direct and substantial relationship to, the student’s disability?; or
 - 2) Was the student’s conduct the direct result of the school’s failure to follow the IEP?
 - If the answer to either of the questions above is yes, then the student may not be suspended.
 - **EXCEPTION:** If conduct involved a weapon, drugs, or serious bodily injury, the student can still be removed to a different environment for up to 45 school days.
 - c. Creation or review of a **FBA and BIP** (*see above*) to prevent future incidents
 - If the behavior is found to be a manifestation, an FBA/BIP is *required*
 - If the behavior is not found to be a manifestation, and FBA/BIP is *strongly recommended*

Red Flag: Children who need but don’t yet have an IEP

If a student does not have an IEP, these protections must still be provided ***IF*** the school had reason to know the student needed an IEP **before** the incident occurred:

- a. Parent/guardian requested an evaluation, or put in writing concerns about child’s need for an IEP
- b. A teacher or other staff member expressed specific concerns about the child to an administrator; or
- c. The child’s behavior and educational performance clearly showed the need for special education.

If an evaluation is requested during a suspension, it must be completed **faster than the 90-day timeline**



GOLD STAR TIPS

Be proactive – don’t wait for a suspension to request an FBA/BIP or other changes to your child’s IEP. (*See “Special Education and Service Delivery” overview*)

At the MDR, **be prepared** to discuss why the behavior is related to the student’s disability. If possible, **bring your child’s therapist, mentor, or physician** with you.

If the MDR does not end the suspension, **use the general appeal process** to challenge the LTS. (*See “School Discipline” overview*)

Advocates for Children’s Services of Legal Aid of North Carolina
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You can request a FBA/BIP creation/revision at any time. If helpful, you can use the attached sample form. You may want to contact a lawyer if your child has missed a lot of school due to disciplinary incidents, or if your child is facing LTS or expulsion.