



## Arc Guide to Suspension and Manifestation Determination

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The Individuals with Disabilities Improvement Act (IDEIA) of 2007 states all students with disabilities have a right to a Free Appropriate Public Education (FAPE) in a Least Restrictive Environment (LRE), including students who have been suspended or expelled from school (20 U.S.C. 142(a)(10)(A)). Students are entitled to continue to receive an appropriate education if suspended for more than a total of 10 consecutive or cumulative school days (same application as for students without disabilities).

Students with disabilities are subject to the same policy procedures as any other student in the district. In rare circumstance, an IEP team may decide a student with a disability is “exempt” from following district discipline policy, which will be clearly stated in their Individualized Education Program (IEP). Students who violate a student code of conduct may be removed from their current placement to an appropriate interim alternative educational setting, another setting or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 cumulative school days in the same school year for separate incidents of misconduct. After a student with a disability has been removed from their current placement for 10 school days in the same school year, the district must provide services to the student. Districts may consider unique circumstances on a case-by-case basis when deciding whether a change in placement is appropriate for a student with a disability who violates a code of student conduct.

MN Statute 121A.40 provisions The Pupil Fair Dismissal Act, which protects all students, with or without disabilities. The Act defines how a district may remove a student:

- Dismiss - deny the student’s current education program through suspension, exclusion, or expulsion
  - Suspension - remove the student from school for up to 10 school days. The superintendent must be notified for suspensions of more than 5 days.
  - Exclusion - prohibit a student from enrollment or reenrollment in the district - may last for one full year.
  - Expulsion - prohibit an enrolled student to attend school - may be kept out for one full year.
- In- school suspension (ISS) - holding students accountable for conduct issue while remaining in school. Student receives regular educational program while developing strategies for better behavior.

Certain behaviors may trigger a placement change for up to 45 school days. An “interim alternative educational setting” is considered when a student carries a dangerous weapon to school or a school function; knowingly possesses, uses, sells or attempts to sell illegal drugs at

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school or at a school function; or has inflicted serious bodily injury upon another while at school or at a school function.

Except in an emergency, a district may not suspend a student without first having an informal administrative conference with the student. The school administrator must:

- Tell the student why s/he is being suspended.
- Provide an explanation of evidence of the student's behavior.
- Provide opportunity for the student to relay his/her side of the story.
- Prior to the start of a suspension, the district must give the student:
  - Written reason for the suspension.
  - A statement of facts, including a description of evidence.
  - A plan that outlines what the student must do before returning to school.
  - A copy of the Pupil Fair Dismissal Act.
- The district must inform the parent about the suspension (in person or by phone) as soon as possible.
- The district must mail a copy of all suspension documents to parents within 48 hours.

Should a student with a disability receive a suspension that exceeds 10 consecutive school days and/or exceeds 10 cumulative school days, a **Manifestation Determination** meeting must be conducted within 10 school days of a student placement decision. At the Manifestation Determination, district administration, parent(s) and appropriate IEP team members (as determined by the parent and the district) must review all pertinent information in the student's file, including the IEP, any teacher observations and other relevant information provided by the parents to determine:

- If the conduct was caused by, or had a direct and substantial relationship to the student's disability.
- If the conduct was the direct result of the district's failure to implement the IEP.

If meeting members determine a criterion was met, the district must take immediate steps to remedy deficiencies. A district cannot suspend or expel a student with special education needs if the behavior was determined a manifestation of the disability.

When behavior is a manifestation, the team must:

- Conduct a Functional Behavioral Assessment (FBA) unless the district had conducted an assessment prior to the behavior and implemented a Behavioral Intervention Plan (BIP).
- If a BIP had already been developed and implemented, it must be reviewed and modified as necessary to address the behavior.

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- Return the student to the placement from which s/he was removed, unless the parent(s) and district agree to a change of placement as modification of the BIP.

The interim setting must provide FAPE. It must be designed to enable the student to continue to participate in general curriculum (although in another setting) and to progress toward meeting the goals set in the IEP. The placement must also include services to address the behavior for which the student is suspended. A home tutoring program does not normally satisfy the behavior requirement, but if the only alternative is an inappropriate program setting, a home-bound instruction program may be better suited than placement with an inappropriate peer group.

Unless an appropriate 45-day alternative placement is found and agreed upon by all members, the student is entitled to remain in the current placement. If the student has already moved to alternative placement, s/he will remain until either a hearing officer orders a change or the assigned time period for the interim placement expires.

Students already identified with a disability are protected under this provision. The law also applies when the district already knew, or should have known the student had a disability. A district “knows” about a disability if a parent expressed concern for special education need (which must be in writing); a parent requested an evaluation for special education services for the student; and/or teacher or other district staff expressed concern about behavior or performance to parent(s) or other district staff.

Parent(s) must agree with all decisions made, including change in placement through signed consent. If your child is faced with long-term suspension or expulsion, it is recommended that you contact The Arc Greater Twin Cities to discuss the situation.

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