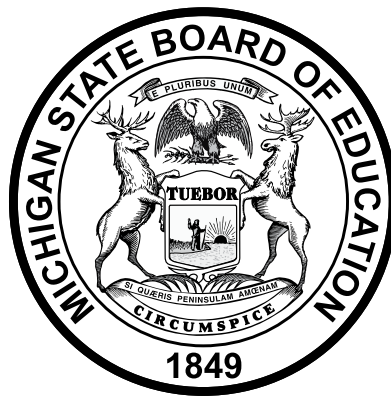


Discipline Procedures

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Introduction

This document is part of a Procedural and Guidance Manual being developed by the Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE-EIS).

The manual is to provide technical assistance, guidance, and best practices where appropriate. Because the information is relevant and timely to districts providing special education programs and services throughout the state, the OSE-EIS staff decided to release chapters as they were finalized rather than waiting for the entire manual to be completed.

The information contained in this document can be used:

- As a basis for monitoring and complaint activities.
- By the OSE-EIS staff when responding to questions generated by the field and parents.
- As a resource for districts and parents to understand federal and state rules and regulations, and how the MDE implements them.
- By a district or intermediate school district (ISD) to supplement existing policies, procedures, or forms.
- To clarify areas of confusion within the field.

The manual is ongoing and dynamic and information will be reviewed and updated as needed.

Resource documents include:

Federal Regulations:

- IDEA regulations, 34 CFR 300 (2004) are indicated by **§ 300** with the following numbers indicating the subsection.
- Federal Register Commentary to the IDEA 2004 regulations are noted in text as **Fed. Reg. p.** with the following numbers indicating the page number. The page numbers are followed by **(2006)**.
- Chapter 18 of the United States Code is noted in text as **18 USC §** with the following numbers indicating the section.

State Statutes and Regulation:

- *Michigan Administrative Rules for Special Education* are noted in text as **R 340** with the following numbers indicating the subsection.
- The Revised School Code, (1976) is noted in the text as **MCL Sec 380** with the following numbers indicating the subsection.

Document Revisions

Revisions to content in the manual can be located by brackets [] in the margins around the text. New text that is either being added or replacing old text is indicated with underlined text. In addition, some typographical and grammatical changes were made.

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Definitions/Guidance

The following definitions are fundamental to implementing the *Individuals with Disabilities Education Act* (IDEA) regarding suspension and expulsion. Federal regulations use the term removal, while most districts use the terms suspension and expulsion. For the purposes of this document, the terms are used synonymously.

I. Change of Placement

§ 300.536

The defining issue in discipline for a student with a disability is the concept of “**change of placement because of disciplinary removals.**”

A change of placement occurs in one of two situations:

1. The removal is for more than 10 consecutive days; or
2. The student has been subjected to a series of removals that constitute a pattern.

Note: If a state complaint is filed about the outcome of a manifestation determination review (MDR), the MDE can investigate the *procedures* the district followed in determining if a change of placement occurred through the state complaint process. However, the *conclusion* of the district regarding the change of placement is not subject to the state complaint process, but must be addressed through a Due Process complaint or Judicial Review.

II. Removals

§ 300.530

Considerations for removal from school for students with a disability:

A. The term “removal” refers to the removal of a student with a disability from instruction for disciplinary reasons, without the opportunity to continue to progress in the general education curriculum, continue to receive services specified on the student’s IEP, and continue to participate with nondisabled students to the extent they would have in their current placement [**Fed. Reg. p. 46715 (2006)**].

B. Code Of Conduct

1. Local educational agencies (LEAs), which includes public school academies (PSAs) and intermediate school districts (ISDs) operating programs, must develop and implement a code of student conduct and enforce the provisions of that code regarding misconduct. Codes of conduct apply to all students, although students with disabilities are afforded specific due process protections. **MCL § 380.1309**
2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other provisions of this section, is appropriate for a child with a disability who violates a code of student conduct. **§ 300.530(a)**. Such circumstances may include:
 - a. Student’s disciplinary history.
 - b. Ability to understand consequences.
 - c. Expression of remorse.
 - d. Supports provided to a student with a disability prior to the violation.**Fed. Reg. p. 46714 (2006)**

C. Partial Days

1. A partial day counts as a full day of removal. **§ 300.11(c)(1)**
2. Partial days should also be considered when looking at repeated behaviors as part of a “pattern.” **Fed. Reg. p. 46715 (2006)**
3. Under Michigan law, if a teacher has good reason to believe that a student’s conduct in a class, subject, or activity constitutes conduct for which the student may be suspended, the

Definitions/Guidance continued

student may be suspended for up to one full school day (snap suspension).

MCL § 380.1309 Suspension for any part of a day is counted as a full day of removal.

Note: For IDEA reporting of discipline data through the Michigan Data System (MSDS), districts are required to report removals of a half a school day or longer.

For counting days of removal when determining whether a change of placement has occurred, a partial day counts as a full day.

D. Counting Days of Removal

1. When counting days of removal, day one begins when the student is directed to leave the school by authorized personnel, whether for the remainder of a day or the next full day(s).
2. Schools may remove a child with a disability who violates a code of student conduct beyond the initial ten consecutive days for additional removals of 10 consecutive days or less in the same school year as long as those removals do not constitute a change of placement (i.e., pattern, see section III below). **Fed. Reg. p. 46715 (2006)**
3. When a student moves into a district or to a new school within a district with documentation that the student was removed from school in the previous district or school within a district, those days of removal should be counted in the new school building's total days of removal when considering a change of placement. For IDEA reporting of discipline data in MSDS, the district should only report days of removal which occurred in the district.

E. Other Considerations in Counting Days of Removal

1. If the district imposes restrictions or conditions upon the student's return to school, each day, until the conditions are met, is considered a day of removal (e.g., parent meeting, psychiatric evaluation).
2. If a student is removed **at district request**, it is considered a day of removal. **Fed. Reg. p. 46715 (2006)**
3. If a student is removed by the **parent**, it does not count as a day of removal. This practice is discouraged.

Districts must carefully consider situations that may constitute a removal. Continued and frequent use of these practices which may result in a removal from instruction, may indicate a pattern of removals which would constitute a change of placement. The local district should have written procedures for these removal practices, and provide guidelines which indicate when such behaviors are excessive.

Districts are reminded that all suspensions (greater than and less than ten days, in-school and out of school) and expulsions reported through MSDS are used in the calculation for significant disproportionality related to suspension and expulsion.

F. Transportation

1. Any day of school missed because of suspension from special education transportation, if transportation is included in the student's Individualized Education Program (IEP), is considered a removal from school.
2. If transportation is not included on the IEP, the parent has the same responsibility to transport the student as students without disabilities, and any days of school missed because the parent does not transport are not counted as a removal from school. Districts should follow the same procedures as for nondisabled peers regarding student absences due to parent failure to provide transportation.
3. The IEP team may want to review the behavior on the bus which resulted in the removal to determine if the behavior on the bus should be addressed on an IEP or a behavior plan. **Fed. Reg. p. 46715 (2006)**

Definitions/Guidance continued

G. Removal Part of Behavior Plan

1. If a removal from school is written into a behavior plan that **is part of the student's IEP**, (See Appendix C, Functional Behavior Assessment/Behavior Intervention Plan, for guidance related to behavior plans which are part of an IEP), the removal does not count as days of removal for disciplinary reasons. However, those days are counted as suspension for IDEA reporting purposes in MSDS.
2. Implementation of the behavioral strategies identified in the child's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate under the Act and section 504, even if the behavior is a manifestation of the child's disability.
Fed. Reg. p.46721 (2006)
3. When a removal from school is written into a behavior plan that is not part of the student's IEP, the removal counts toward the days of removal for disciplinary reasons and the days are counted as suspension for IDEA reporting purposes in MSDS.

H. In-School Suspension

1. An in-school suspension does not count as a removal if all the following are met:
 - a. The student is offered the opportunity to continue to appropriately participate in the general education curriculum.
 - b. The student continues to receive the services specified in the child's IEP.
 - c. The student continues to participate with non-disabled children to the extent they would in their current IEP. **Fed. Reg. p. 46715 (2006)**
 - d. The personnel staffing the In-school suspension must be physically in the same location as students under their supervision; and
 - 1) Be a certified teacher; or
 - 2) Meet the criteria in the State Board policy on **"Utilization of Noncertified Personnel in Elementary and Secondary Schools."** March 2006 (see Appendix H)

Note: For IDEA reporting of discipline data through MSDS, even if the student receives special education services specified in the IEP during the duration of the removal, continues to participate in the general curriculum, continues to receive the services specified on the IEP, and continues to participate with nondisabled children, as stated in the MSDS, districts are required to report the number of students with in- or out-of-school suspensions:

1. "Instances in which a student is temporarily removed from his/her regular classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means a school staff member is physically in the same location as students under its supervision."
2. "Instances in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g. home, behavior center). For students with disabilities receiving special education programs or services, this includes both removals in which no IEP services are provided because the removal is ten (10) days or less, and removals in which the child continues to receive services according to his/her IEP." **Michigan Student Data System Manual, Revised 2/19/2010, Center For Educational Performance and Information, P. 96.**

For counting days of removal when determining whether a change of placement has occurred, if the in-school suspension meets the requirements in Fed. Reg. p. 46715 (2006) and the personnel staffing the in-school suspension is a certified teacher or meets the criteria in the Michigan State Board policy on "Utilization of Noncertified Personnel," then it does not count as a day of removal.

Definitions/Guidance continued

LEAs may implement disciplinary policies as they deem necessary to create safe classrooms and schools for teachers and students as long as those policies are fair and equitable for all students and protect the rights of students with disabilities, following rules § 300.530 through § 300.536. [Fed. Reg. p. 46728 (2006)] Districts have the obligation to evaluate the effectiveness of such practices for students with disabilities on a regular and timely basis.

Districts must ensure that a student continues to receive the services specified in his or her IEP during an in-school suspension, and document those supports if focused monitored or involved in a Due Process hearing or State level complaint.

III. Pattern of Removals

§ 300.536(a)(2)

A. Criteria for Pattern

The student has been subjected to a series of removals that constitute a pattern if there are:

1. A series of removals that total more than 10 school days in a year.
2. A recurrence of substantially similar behavior in a series of removals subject to discipline.
3. Such additional factors as:
 - a. Length of each removal.
 - b. Total time removed.
 - c. Proximity of removals to each other.

B. Analysis

All three criteria identified above (section A, 1-3) must be met for the school to determine that a "pattern" has been established.

1. To determine if the student meets the first criterion (section A, 1), **more than 10 non-consecutive school days** see section II, Removals for guidance related to "removals."
2. For the second criterion (section A, 2), **recurrence of substantially similar behaviors**, the regulations focus the analysis on the behaviors. Substantially similar is not defined in IDEA, and the commentary states that districts must look at behaviors on a "case-by-case basis" and include any relevant information regarding the child's behaviors, including information from the IEP. **Fed. Reg. p. 46729 (2006)**

Staff should not confuse language contained in the building/district code of conduct, or MSDS reporting language when looking at a pattern. Regardless of how a behavior is coded for reporting purposes, districts must look at the actual incident and the description of the behavior when determining if a pattern exists.

Example: If a student eligible as Other Health Impairment (OHI) with Attention Deficit Hyperactivity Disorder (ADHD) is suspended one time for talking back to the teacher, another time for walking out of the classroom without permission, and a third time for getting into a fight with another student, and after reviewing all available and relevant data, the district determines all three incidents have the same cause (in this example, impulsivity), they would meet the criteria for similar behaviors, since the "cause" of each of the behaviors is substantially similar.

Example: If a student eligible as OHI with ADHD is suspended one time for talking back to the teacher, another time for walking out of the classroom without permission, and a third time for smoking in the bathroom, and after reviewing all available and relevant data, the district determines that there is not common cause for all three incidents, the incidents would not meet the criteria for similar behaviors. In this example, talking back and walking out of the classroom are considered "impulsive" behaviors, whereas smoking in the bathroom is seen as a planned behavior.

Definitions/Guidance continued

3. The third criterion is a group of additional factors (section A, 3) related to time: **the length of each removal; total time removed including and beyond the 10 days; and the proximity of removals.** There are no guidelines in federal regulations in this area, however, the district must look at the removals through the lenses of these additional factors. One or all of these factors may contribute to the establishment of a pattern.
- Multiple removals over a year may or may not be a pattern, however, multiple removals within a three-month period would warrant careful consideration of a pattern.
 - The ratio of the number of days of suspension to the total number of school days may reveal a significant pattern of “out of school” time. Districts could establish their own “proximity” ratio based on that calculation.
 - Removals of one or two days per incident may not be a pattern, however, if each incident is serious enough to result in a four- or five-day removal for each infraction, the district may see a pattern of serious behaviors.
 - Time of day and location of incident may factor in to a pattern (e.g. cafeteria, recess, PE class, etc.).

C. Written Procedures

Districts should have written procedures, that specify **who constitutes the team to make the decision** for the determination of a “pattern of removals” so all staff are informed and make this decision based on the same criteria, and if challenged, could support the decision-making process.

D. Documentation of Pattern

Districts should be prepared to provide evidence of the decision-making process when determining whether there was a pattern of removals. (See model worksheet—*Documentation of Pattern*—which is not a required form, but can be used to document the district’s decision.)

IV. Special Circumstances: Weapons/Drugs/Serious Bodily Injury § 300.530(g)

- A. IDEA allows for different procedures for a student who while at school, on school premises, or at a school function:
1. Carries a weapon or possesses a weapon.
 2. Knowingly possesses/uses illegal drugs or sells/solicits the sale of a controlled substance.
 3. Inflicts serious bodily injury upon another person.
- B. A dangerous 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. Such a term does not include a pocket knife with a blade of less than two and one-half inches in length. **18 USC § 930(g)(2)**
- C. A drug refers to a controlled substance or other substance identified under section (c) of the *Controlled Substances Act* (see Appendix G), but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority. **§ 300.531(g)(2)**
- D. Serious bodily injury is defined as injury that involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. **18 USC § 1365(h)(3)**

Definitions/Guidance continued

Relationship to Michigan Mandatory Expulsion

If a student:

1. Possesses, in a weapon-free school zone, a weapon that constitutes a dangerous weapon, (firearm, dirk, dagger, stiletto, iron bar, knife with a blade over three inches, pocket knife opened by a mechanical device, brass knuckles, any weapon—including starter gun—which will or is designed or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer or any destructive device),
2. Commits arson in a school building or on school grounds, or
3. Commits criminal sexual conduct in a school building or on school grounds,

the school board, or the designee of the school board on behalf of the school board, shall expel the pupil from the district permanently. **MCL § 380.1311(2)**

For students with a disability who are expelled under Michigan Mandatory Expulsion statute, the district must follow procedures for a change of placement. [Student is entitled to a free, appropriate public education (FAPE)]. **§ 300.530(d)**

If the incident also meets the federal rules for a weapon or serious bodily injury, then follow procedures for Special Circumstances [45 day Interim Alternative Educational Placement (IAES)]. At the end of the 45 day IAES, the district follows general education discipline procedures, and follows the procedures for a change of placement, unless the behavior was found to be a manifestation of the student's disability, in which case the student returns to the placement prior to the removal to the IAES (see scenario for Special Circumstances).

Scenarios

The following scenarios depict situations where a student with a disability receives disciplinary action by the district. Each scenario illustrates procedures to be followed when a student is removed from school for disciplinary reasons.

I. General Considerations

- A. In situations when a student with a disability exhibits behaviors which may result in disciplinary removal, the district must:
 - 1. Refer to district discipline procedures.
 - 2. Provide general education protections (see Appendix A).
 - 3. Invoke procedures specific to students with a disability.
 - 4. Count previous removals if any exist.
- B. On the date on which the decision is made to make removal that constitutes a change of placement, the district must notify the parent of that decision and provide the parents with procedural safeguards. **§ 300.530(h)**
- C. If a district believes that maintaining a student in their current placement as a result of a Manifestation Determination Review (MDR) is substantially likely to result in an injury to the child or others, the district may appeal the decision of the placement of the student by requesting a hearing. The hearing officer may:
 - 1. Return the student to the placement from which the student was removed; or
 - 2. Order a change of placement to an appropriate IAES for 45 school days, which may be repeated if the student still poses a threat. **§ 300.532**

II. Removal of 10 or Less Cumulative Days (Not a change of placement) § 300.530(b)(1)

Scenario 1: Student is involved in a fight. District suspends for three consecutive days. There are no previous removals.

- A. District must:
 - 1. Provide general education protections (see Appendix A).
 - 2. Count previous removals if any exist.
- B. If no previous removals and discipline is 10 school days or less, the student completes disciplinary removal of three days and returns to previous placement.

Scenarios continued

III. Removal of Over 10 Consecutive Days

§ 300.536

(Change of placement)

§ 300.530(b)(2)

Scenario 2: Student is involved in a fight. District suspends for more than 10 consecutive days. There are no previous removals.

- A. District must:
1. Provide general education protections (see Appendix A).
 2. Provide parent with *Special Education Procedural Safeguards*.
 3. Count previous removals if any exist.
 4. Hold a manifestation determination review (MDR) within 10 school days of the decision to remove the student (see Appendix B for MDR procedures).
- B. MDR team makes a decision:

| Is a manifestation of disability: | Is not a manifestation of disability (change of placement): |
|--|---|
| <ul style="list-style-type: none"> • Student immediately returns to previous placement or other placement determined by the Individualized Educational Program (IEP) team. | <ul style="list-style-type: none"> • District may use general discipline procedures and provide educational services on the 11th day [free appropriate public education (FAPE)] to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP (see Appendix D). |
| <ul style="list-style-type: none"> • Immediately initiate a functional behavior assessment (FBA)/Behavior Intervention Plan (BIP) process (see Appendix C) or review an existing FBA/BIP to address the behavior. | <ul style="list-style-type: none"> • Setting and services are determined by the IEP team. |
| <ul style="list-style-type: none"> • Take immediate steps to remedy any deficiencies in the implementation of the current IEP. | <ul style="list-style-type: none"> • Immediately initiate, <u>as appropriate</u>, an FBA and <u>behavioral intervention services and modifications designed to address the behavior violation so that it does not recur</u>, or review an existing FBA/BIP to address the behavior. |

Scenarios continued

IV. Removal of Over 10 Cumulative Days (Pattern of removals—change of placement)

§ 300.536

Scenario 3: Student is involved in a fight. (Student already has two removals for six cumulative days). District suspends for six days.

- A. District must:
1. Provide general education protections (see Appendix A).
 2. Provide parent with *Special Education Procedural Safeguards*.
 3. Count the number of days student has been suspended (student has six previous removals, six additional will be more than 10 cumulative days).
 4. Plan for 11th day services (see Appendix D).
- B. Determine if the three removals establish a pattern (see II. Removals and III. Pattern of Removals in Definition/Guidance section).

| If there is a pattern (change of placement): | | If there is no pattern (no change of placement): |
|--|---|--|
| <ul style="list-style-type: none"> • Conduct an MDR within 10 school days of decision to change the placement. (It is possible that a student returns to school before the MDR is held.) • Provide FAPE on the 11th day. | | <ul style="list-style-type: none"> • No requirement to hold MDR. • Student receives general education discipline as if no change in placement. |
| Is a manifestation: | Is not a manifestation: | <ul style="list-style-type: none"> • Provide FAPE on 11th day, setting and services determined by school personnel in consultation with at least one of the child's teachers. |
| <ul style="list-style-type: none"> • Terminate general disciplinary removals; student immediately returns to school, (unless other placement agreed to by parent). | <ul style="list-style-type: none"> • District may use general discipline procedures and provide FAPE on the 11th day. | |
| <ul style="list-style-type: none"> • Immediately initiate an FBA/BIP or review an existing FBA/BIP to address the behavior. | <ul style="list-style-type: none"> • Setting and services are determined by the IEP team. | |
| <ul style="list-style-type: none"> • Take immediate steps to remedy any deficiencies in the implementation of the current IEP. | <ul style="list-style-type: none"> • <u>Immediately initiate, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur, or review an existing FBA/BIP to address the behavior.</u> | |
| <ul style="list-style-type: none"> • Student immediately returns to previous placement or other placement determined by the IEP team. | <ul style="list-style-type: none"> • Student returns to previous placement on the 13th day. | |
| | | <ul style="list-style-type: none"> • Student returns to previous placement on 13th day. |

See Appendix B for guidance on holding MDRs for subsequent MDRs after the first 10 days of removal. The parent has right to due process hearing if in disagreement with the results of MDR.

Scenarios continued

V. Special Circumstances: Weapons/Drugs/Serious Bodily Injury § 300.530(g)

Scenario 4: Student is found with illegal drugs at school. District suspends for 90 days.

A. District must:

1. Provide general education protections (see Appendix A).
2. Invoke procedures specific to students with a disability.
 - Provide parent with *Special Education Procedural Safeguards*.
 - School personnel determine a change of placement to a 45 school day IAES.
 - Conduct an MDR within 10 days of first day of decision to change the placement (see Appendix B for MDR process).
 - District convenes an IEP team meeting to determine the appropriate setting for the IAES.

B. MDR makes a decision:

| Is a manifestation of disability: | Is not a manifestation of disability: |
|--|---|
| <ul style="list-style-type: none"> • Immediately initiate or review/revise an existing FBA/BIP. | <ul style="list-style-type: none"> • <u>Immediately initiate, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur, or review an existing FBA/BIP to address the behavior.</u> |
| <ul style="list-style-type: none"> • District may decide the student returns to the placement prior to <u>the removal</u>, or the student may remain in the IAES for the remainder of the 45 school days. | <ul style="list-style-type: none"> • Student may remain in IAES for up to 45 school days. |
| | <ul style="list-style-type: none"> • District may impose discipline for as long as they would for a student without disabilities. • District must provide services for the length of the discipline removal that goes beyond the 45 school days. |

C. Parent has a right to an expedited hearing on placement or MDR. **§ 300.532(a)** Student remains in the IAES pending the outcome of the hearing.

Scenarios continued

VI. Removal of Student Not Yet Determined Eligible for Special Education

§ 300.534

Prior Knowledge

Scenario 5: A general education student is involved in a fight and receives a 15-day suspension. The student is suspected of having a disability prior to the incident because the parents have expressed concern in writing to the school principal that their child is in need of special education (see Appendix E, Basis of Knowledge).

A. District must:

1. Provide general education protections (see Appendix A).
2. Afford the student the same protections as students with a disability until the question of eligibility is resolved.
 - Have parent sign consent for evaluation, if not already signed.
 - Provide parent copy of *Special Education Procedural Safeguards*.
3. Initiate/complete the evaluation to determine special education eligibility.
4. Allow the student to return to the previous placement until the evaluation is completed, or provide educational services (FAPE) to enable the student to continue to participate in the general education curriculum, although in another setting, on the 11th day if evaluation is not completed within 10 days.

B. After the expedited evaluation is completed, the IEP team finds:

| Student is eligible | | Student is ineligible |
|--|---|--|
| <ul style="list-style-type: none"> • Conduct an MDR. | | <ul style="list-style-type: none"> • If the evaluation is completed in less than recommended days of suspension, student remains out for remainder of the days. |
| Is a manifestation: | Is not a manifestation: | <ul style="list-style-type: none"> • Student is treated as general education student in any subsequent disciplinary removals. |
| <ul style="list-style-type: none"> • Terminate general disciplinary removals if evaluation is completed before the end of the suspension. | <ul style="list-style-type: none"> • District may use general discipline procedures. | |
| <ul style="list-style-type: none"> • Immediately initiate an FBA/BIP or review an existing FBA/BIP to address the behavior. | <ul style="list-style-type: none"> • Setting and services are determined by the IEP team. • <u>Immediately initiate, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur, or review an existing FBA/BIP to address the behavior.</u> | |
| <ul style="list-style-type: none"> • Student immediately returns to previous placement or other placement determined by the IEP team. | <ul style="list-style-type: none"> • Student returns to previous placement on the 16th day. | <ul style="list-style-type: none"> • Student returns to previous placement on the 16th day. |
| | | |

Scenarios continued

No Prior Knowledge

Scenario 6: A general education student is involved in a fight and receives a 15-day suspension. When the parent receives notice of suspension, they call the school and request a special education evaluation.

A. District must:

1. Provide general education protections (see Appendix A).
2. Proceed with general education discipline procedures.
3. Initiate an expedited evaluation.
 - Have parent sign consent for evaluation.
 - Give parent copy of *Special Education Procedural Safeguards*.
 - Student remains in the educational placement recommended by the district, which can include suspension or expulsion without educational services, until evaluation is completed.

B. After the expedited evaluation is completed, the IEP team finds:

| Student is eligible | | Student is ineligible |
|--|--|---|
| <ul style="list-style-type: none"> • Conduct an MDR. | | <ul style="list-style-type: none"> • If expedited evaluation is completed in less than recommended removal, student remains out for remainder of days. |
| <p style="text-align: center;">Is a manifestation:</p> <ul style="list-style-type: none"> • Terminate general disciplinary removals if expedited evaluation is completed before the end of the suspension. • Immediately initiate an FBA/BIP or review an existing FBA/BIP to address the behavior. | <p style="text-align: center;">Is not a manifestation:</p> <ul style="list-style-type: none"> • District may use general discipline procedures. • Setting and services are determined by the IEP team. • <u>Immediately initiate, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur, or review an existing FBA/BIP to address the behavior.</u> | <ul style="list-style-type: none"> • Student treated same as general education in subsequent suspensions. |
| <ul style="list-style-type: none"> • Student immediately returns to previous placement or other placement determined by the IEP team. | <ul style="list-style-type: none"> • Student returns to previous placement on the 16th day. | |
| <ul style="list-style-type: none"> • If expedited evaluation is completed after the student serves the disciplinary suspension, the IEP team must initiate an FBA and a BIP to address the behavior and determine an appropriate program and/or service. | <ul style="list-style-type: none"> • Student returns to previous placement on the 16th day. | |
| <ul style="list-style-type: none"> • Student is subject to special education safeguards in subsequent suspensions. | | |

Appendices

Appendix A

General Education Discipline Protections

All students must be given their due process protections established in *Goss v. Lopez, 1975*. At a minimum, students must be given:

- Oral or written explanation of what he or she is being accused of doing.
- The basis of the accusation.
- The opportunity to give his or her side of the facts.
- The proposed disciplinary measures.

When severe disciplinary measures are proposed, the student shall be given reasonable time to prepare for the hearing, and the person conducting the disciplinary hearing must be impartial.

Appendix B

Manifestation Determination Review (MDR)

§ 300.530(e)

- I. An MDR must be held whenever a district proposes a change of placement for disciplinary reasons.
 - A. The district must conduct an MDR within **10 school days of any decision to change the student's placement** because of a violation of a code of student conduct,
 1. For any removal over 10 days (consecutive); or
 2. A series of removals that constitute a pattern of removals (cumulative).
 - B. The MDR team includes the parent and the relevant members of the IEP team.
 - C. The team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:
 1. If the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or
 2. If the conduct in question was the direct result of the LEA's failure to implement the IEP.
 - D. Regardless of previous MDRs held for the same or similar behaviors, the MDR team must hold a new MDR. They may take into account the previous MDR and look at any new or additional information to make the determination.
 - E. If a student is removed again after an MDR has been held, the MDR team must consider if the additional removal, along with the previous removals constitutes a pattern of removals. If it does, an MDR must be held. If the team determines that the new removal does not constitute a pattern, an MDR is not required.
 - F. If the MDR team determines that the behavior was related to the student's disability, all disciplinary removals are terminated and the student returns to the previous placement.
- II. It is not required that an MDR be held as part of an IEP team meeting.
 - A. The regulations require a district representative, the parent, and **relevant** members of the IEP team.
 - B. However, since the outcome of the MDR may result in a change of placement for the student, which would require an IEP team meeting, it may be expeditious to combine the MDR with an IEP team meeting.
 - C. When holding an IEP under this circumstance, the parent must be informed that the purpose of the IEP team meeting is to consider an alternative educational setting.
- III. Consider the following information when conducting an MDR:
 - A. Description of the incident, and reports from participants and witnesses.
 - B. Relevant information in the student records, including:
 1. Evaluations.
 2. IEPs to assist the team in considering certain behaviors of the student.

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3. The current IEP regarding:
 - a. Relevant behaviors and student needs, including those which may be outside the student's eligibility, but included in the PLAAFP statement or referenced in reports.
 - b. Implementation, including whether any behavior intervention plan incorporated in the IEP has been followed.
- C. Relevant information from parents.
- D. Input of district members who:
 1. Are familiar with the student.
 2. Can interpret assessment results in relation to the student's disability and the behavior in question.

Note: If a state complaint is filed about the outcome of an MDR, the MDE can investigate the **procedures** the district followed in the MDR process through the state complaint process, but the **conclusion** of the district team regarding the manifestation of the student's disability is not subject to the complaint process but must be addressed through a Due Process complaint or Judicial Review.

In the Focused Monitoring process for State Performance Plan (SPP) Indicator 4, Suspension and Expulsion, the MDE may review the district policies, practices and procedures which may impact this target area. The MDR procedures, including the determination of a pattern of behavior may be included in this review. Lack of consistently implemented procedures could result in a finding of non-compliance.

In either a state complaint, Due Process complaint or Focused Monitoring, the district must be prepared to demonstrate that it has policies, practices and procedures in place which ensure compliance with the IDEA. This assurance could be in the form of (1) written procedures, with confirmation from staff that they are utilized; or (2) consistent verbal statements from staff involved in the MDR of the process followed; or (3) documentation of the process in forms. The model form included in this document would meet documentation requirements.

Appendix C

Functional Behavior Assessment (FBA)/Behavior Intervention Plans (BIP)

Functional behavior assessment (FBA) and behavior intervention plan (BIP) are not defined in the regulations. Generally:

1. An FBA involves collecting data about behavior, which can be analyzed to determine the function the behavior serves, and analyzed to determine any antecedent situations which may have impacted the behavior.
2. A BIP is designed to reduce the occurrence of problem behaviors which led to the removal and increase desired behaviors.
3. The team conducting the FBA may conclude that a BIP is not necessary once they have analyzed the collected data.
4. As part of the MDR process, if behavior violations are found not to be a manifestation of a student's disability, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur must be initiated as appropriate. Districts must document their process for determining whether a BIP or other behavioral intervention services or modifications are appropriate or not. The MDE recommends using the FBA process as documentation of meeting this requirement.
5. In order for a BIP to be considered part for an IEP:
 - a. It must be explicitly written in the IEP. The MDE recommends that BIPs be written in the Supplementary Aids and Services or Special Factors section of the IEP, and include the time, frequency, condition, and location for the implementation of the BIP. It should be dated and attached to the IEP.
 - b. The district must convene an IEP or develop an amendment to change the BIP.

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- c. If removal is part of the BIP, Procedural Safeguards should be provided to the parent.
6. When BIPs are part of the IEP, they:
 - a. Are documented and follow the student;
 - b. Are considered at least on a yearly basis; and
 - c. Provide for accountability and visibility to parents.
7. Districts may use the amendment process to make changes in BIPs.
8. For further information on functional behavior assessment and behavior interventions, see MDE documents:
 - *School-Wide Positive Behavior Support Implementation Guide, 2008.*
 - *Supporting Student Behaviors: Standards for the Emergency Use of Seclusion and Restraint, December 2006*
 - Michigan Integrated Behavior and Learning Support Initiative (MiBLSi)
<http://miblsi.cenmi.org>

Appendix D

Provision of FAPE/Interim Alternative Educational Placements

Requirements for FAPE/Interim Alternative Educational Placements:

1. A student placed in an IAES must:
 - a. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum.
 - b. Progress toward meeting goals set out in the student's IEP.
 - c. Receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. **§ 300.530(d) (i-ii)**
2. IAES services should not be "one size fits all" and should be individualized for the student.
 - a. The extent of the services should be determined by the length of the removal, the extent to which the student was removed in the past, and **the student's needs and his or her educational goals as found in the student's IEP.**
 - b. For example, the student who is performing below grade level may need more services than the student who is performing near grade level. **Fed. Reg. p. 46717 (2006)**
 - c. The IAES must be determined on an individual basis according to the needs of the student and is not analogous to the rule requiring two hours of non-consecutive instruction in homebound or hospitalized services.
3. Determination of setting:
 - a. **Change of placement §§ 300.530(d), 300.531:** The district determines a change of placement (through recommendation of suspension or expulsion), but the IEP team determines the IAES. The team must:
 - (1) Include all required IEP team members including the parent and, if appropriate, the student.
 - (2) Include notice to the parent as to the purpose of the IEP team meeting.
 - (3) Consider how the setting will assist the student to progress in the general curriculum and on goals in the student's IEP.
 - (4) Provide a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so it does not occur again.
 - (5) Describe the setting or the environment in which the child will receive services. The district may choose the location where that service will take place. Districts may have more than one location that meets the IEP criterion for where the services will be provided. **Fed. Reg. p. 46719 (2006)**
 - (a) Document the team's recommendation (see sample IAES form).
 - (b) The district does not need to use an IEP form.
 - (6) The existing IEP remains in effect until the student returns to the previous placement or the district holds a new IEP at the end of the removal.

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- (7) If the IEP in place during the removal while the student is in the IAES the district should hold a new IEP within the required timeline.
- (8) If a parent disagrees with the placement recommendation, he or she may appeal the decision through a due process complaint or judicial review.

b. No change of placement:

- (1) School personnel, in consultation with at least one of the student's teachers, may determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP, when a student is removed from his or her placement for more than 10 cumulative school days, and it is **not a change of placement. § 300.530(d)(4)**
- (2) Document the team's recommendation (see model IAES form). The district does not need to use an IEP form.

4. Other considerations:

- a. Districts must address core curriculum requirements for the student and any course identified on the student's IEP.
- b. The student must receive credit for work successfully completed.
- c. The IEP team must determine what services the student will continue to receive and what goals are appropriate in the new setting. **Fed. Reg. p. 46716 (2006)**
- d. The services must allow the student to "participate" in the general curriculum. There is no requirement that the student must "progress" in the general curriculum during disciplinary removal. **Fed. Reg. p. 46716 (2006)**
- e. The student must be included in state- and/or district-wide assessments. **Fed. Reg. p. 46718 (2006)**
- f. The district does not have to replicate all of the services a child would receive in his or her normal classroom. For example, the school would not have to duplicate a biology or auto mechanics lab which may have specialized equipment and/or hands-on learning. **Fed. Reg. p. 46716 (2006)**
- g. There may be situations where an IEP team may determine that a student should get additional services that were not included in the student's existing IEP. For example, a student eligible as having a learning disability receives a long-term suspension for threatening another student. The existing IEP does not include any School Social Work (SSW) support, but the IEP team determines that addressing the behavior during the IAES will benefit the student's return to general education.

5. Examples of an FAPE/IAES include:

- a. A classroom in an alternative setting designated for students with disabilities during suspension where their educational and IEP goals could be met on an individual basis. The number of hours per day may be adjusted based on the educational needs of the students. **Fed. Reg. p. 46722 (2006)**
- b. A home-based program may be appropriate for some students and may be considered on a case by case basis. The number of hours would be based on the student's educational needs. The student would not be considered a homebound student and should not be coded that way for student attendance purposes.
- c. A teacher may meet students at an off-site location such as a public library or at the district administrative offices. The number of hours would be based on the student's educational needs.
- d. For a student receiving weekly speech services with goals related to social language in the workplace, the IEP team may determine that a monthly consultation by the speech and language pathologist is appropriate since the student is suspended from his or her work place experience.

6. For compliance purposes, districts must document when and how they provide FAPE

to the student. (The model form included with this document would meet compliance requirements.)

Appendix E Basis of Knowledge

1. A “basis of knowledge” exists if:
 - a. Parent expresses concern in writing to school administrative staff or teacher that the child is in need of special education and related services (or if the parent verbally expresses concern and staff can corroborate); or
 - b. Parent request for a special education evaluation, or an evaluation is otherwise in process prior to incident; or
 - c. Teacher or other school personnel have expressed concern about a pattern of behavior directly to the director of special education or supervisory personnel of the district.
- § 300.534(b)**
2. A “basis of knowledge” would **not** exist if:
 - a. The parent of the student:
 - (1) Has not allowed an evaluation of the child.
 - (2) Has refused services.
 - b. The child has been evaluated and determined not to be a student with a disability.
- § 300.534(c)**

Appendix F Expedited Evaluation

There is no language in IDEA that defines an expedited evaluation. There is reference in the commentary that “expedited” means that an evaluation should be conducted in a **shorter period of time than a typical evaluation (60 days federal, 30 school days Michigan) Fed. Reg. p. 46728 (2006)** Districts should have written policies which define an expedited evaluation.

Appendix G Federal Definitions

TITLE 21—FOOD AND DRUGS; CHAPTER 13—DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I—CONTROL AND ENFORCEMENT; Part B—Authority To Control; Standards and Schedules

Sec. 812. Schedules of controlled substances

(a) Establishment

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

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- (1) Schedule I—
 - (A) The drug or other substance has a high potential for abuse.
 - (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
 - (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- (2) Schedule II—
 - (A) The drug or other substance has a high potential for abuse.
 - (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
 - (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.
- (3) Schedule III—
 - (A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
 - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
 - (C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
- (4) Schedule IV—
 - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.
 - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
 - (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.
- (5) Schedule V—
 - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substance.
 - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
 - (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Appendix H

MICHIGAN DEPARTMENT OF EDUCATION Office of Professional Preparation Services

UTILIZATION OF NONCERTIFIED PERSONNEL IN ELEMENTARY AND SECONDARY SCHOOLS March 2006

Purpose

Districts may employ noncertified personnel to assist teachers and support instruction. This includes instructional personnel, clerical support personnel, and other paraprofessional personnel. The purpose of this document is to clarify conditions governing the assignment of noncertified personnel employed to support teachers and instruction at the elementary and secondary level.

The term "noncertified personnel," as used in this document, refers to teacher aides/assistants and other support personnel for whom a valid Michigan teaching certificate is not required as a condition for employment.

The document does not apply to occupational and physical therapists, school nurses, or other licensed, certified, approved professional support personnel, or to personnel assigned to

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noneducational activities, such as athletic events, leisure time instruction, or community service programs which are operated as extracurricular activities.

Legal Authority

The board of a school district is required under § 388.1763 of the *State School Aid Act* to ensure that only qualified teachers who hold a valid Michigan teaching certificate are assigned the responsibility of providing instruction and are required under § 380.1231 of the Revised School Code to hire and contract with qualified teachers.

Districts are prohibited from allowing noncertified personnel employed as teacher aides/assistants or instructional paraprofessional to assume the responsibility of teachers in elementary or secondary schools within the state of Michigan, as indicated in the following quote from § 380.1233(1) of the Revised School Code:

“...the board of a school district or intermediate school board of an intermediate school district shall not permit a teacher who does not hold a valid teaching certificate to teach in a grade or department of the school.”

Noncertified personnel may be employed and assigned to assist and support teachers or other approved professional personnel as authorized in Rule 390.1105 of the Michigan Administrative Code.

Authorized Activities

School districts may employ noncertified personnel to assist and support:

1. Noninstructional activities, including:
 - a. Maintaining safety and discipline in the lunchrooms, on the playground, or in other school settings.
 - b. Functioning as health care aides, library assistants, or other responsibilities of non-instructional support for the students; and
 - c. Supervising before and after school programs and noninstructional periods (i.e., study hall periods not counted as part of the required minimum number of hours of pupil instruction as required by § 380.1284 of the Revised School Code).
2. Instructional and related activities, including:
 - a. Assisting the development of instructional and related materials, performance or clerical tasks, correction of papers, etc.
 - b. Complementing instruction, such as assisting the teacher during the lesson by helping students who may need additional support with instruction.
 - c. Supplementing instruction by assisting the teacher with individuals or small groups of pupils on follow-up activities as specified.
 - d. Reinforcing instruction, by assisting the teacher in administering drill activities for individuals or small groups.

Supervision of Noncertified Personnel Providing Instructional Support

Noninstructional personnel may supervise students during library periods, study halls, lunch hour, and other times not counted as part of the student's instructional day or defined in R 340.10 of the Michigan Administrative Code.

Each educational agency must ensure that certified teachers are responsible for students during instructional periods each and every day; however, certified teachers may temporarily be absent during part of an instructional period to handle emergencies, discipline problems, or other unforeseen problems of a temporary nature.

Noncertified personnel engaged in complementing, supplementing, or reinforcing instruction, which is counted as part of the instructional day under Rule 340.2(2) of the Michigan Administrative Code, shall be under the meaningful direction and supervision of a certified classroom teacher.

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“Meaningful direction” means that the teacher is responsible for:

1. Planning and coordinating all lessons.
2. Presenting the initial lesson.
3. Identifying the type of complementing, supplementing, or reinforcing instruction to be provided.
4. Specifying the type of methods, materials, and techniques to be used by noncertified staff.

“Supervision” means the certified teacher periodically:

1. Evaluates the performance of noncertified personnel providing instructional support.
2. Reviews the work plans.
3. Evaluates student progress.

Noncertified personnel may not be given full responsibility for instruction. They may provide complementing, supplementing, or reinforcing instruction to individuals or small groups of students without the teacher physically being present for a limited period of time as long as the teacher knows the whereabouts of the aide and students at all times, the noncertified personnel are never given full responsibility for instruction, and the activities of the noncertified personnel are always under the meaningful direction and supervision of the teacher.

Role and Responsibility of Noncertified Personnel

Districts are authorized to employ teacher aides/assistants and other paraprofessionals to support teachers in the day-to-day operation of school programs. Noncertified personnel in the following programs have special responsibilities or functions as established in rule or as a condition for receipt of state or federal funds.

1. Bilingual Education:

Under Section 41 Michigan Bilingual Education grant, a teacher with a bilingual endorsement must teach or supervise the instruction of students served under this grant. If the bilingual endorsement of the teacher is not in the language of the student, then teacher aides/assistants, paraprofessionals or tutors who assist with the instruction must speak the home language. This condition should be met for funding eligibility, because bilingual education is defined as instruction in two languages, one of which is English and the other is the home language.

2. Title I:

On January 8, 2002, President Bush signed the *No Child Left Behind Act* (NCLB) federal legislation that mandates 100 percent proficiency in the core academic areas of reading, writing, and mathematics for all students by the 2013-2014 school year. To reach this goal, the law requires that instructional paraprofessionals demonstrate competence needed to support the instruction of students in these areas.

For the purposes of Title I, Part A, an instructional paraprofessional is defined as an employee who provides instructional support in a program supported with Title I, Part A funds. This includes paraprofessionals who do the following:

- (1) provide one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
- (2) assist with classroom management, such as organizing instructional and other materials;
- (3) conduct parental involvement activities;
- (4) provide instructional assistance in a computer laboratory;
- (5) provide support in a library or media center;
- (6) act as a translator; or
- (7) provide instructional support services under the direct supervision of a teacher.

Individuals who work in food services, cafeteria or playground supervision, personal care services, noninstructional computer assistance, and similar positions are not considered

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paraprofessionals under Title I. These individuals do not need to meet the federal requirements.

As partners in the instructional process, paraprofessionals who work in programs supported with Title I funds must meet one of the following requirements:

- (1) complete at least two years of study at an institution of higher education;
- (2) obtain an associate's degree (or higher); or
- (3) meet a rigorous standard of quality and demonstrate, through a formal state or local academic assessment,
 - knowledge of, and the ability to assist in, instructing reading, writing, and mathematics; or
 - knowledge of, and the ability to assist in, instructing reading readiness, writing readiness, and mathematics readiness, as appropriate.

3. Special Education:

Paraprofessional personnel employed in special education programs are qualified under requirements established by their respective intermediate school district plan. Special education paraprofessional personnel include, but are not limited to, teacher aides, health care aides, bilingual aides, instructional aides, and program assistants in programs for students with cognitive impairments or severe multiple impairments. (Rule 340.1792)

4. Vocational/Technical Education:

Vocational/technical education paraprofessionals are noncertified aides assigned to vocational education teachers. Paraprofessional's who substitute for vocational/technical teachers need an Annual Vocational Authorization (AVA). An AVA requires a minimum of 4,000 hours of recent and relevant work experience within the past six years. A substitute AVA may be issued with a minimum of 2,000 hours.