

New York State Education Law on Disciplining Students with Disabilities

May a student with a disability be suspended or removed from school?

School districts may suspend or remove a disabled student from school in accordance with the procedures and safeguards set forth in both federal and state law and regulations (20 USC § 1415(k)(1)(A)(i); 34 CFR §§ 300.519–00.529; Educ. Law § 3214(g), 4404 (1); 8 NYCRR subpart 201).

Generally, a suspension or removal of a student with a disability constitutes a disciplinary change in placement that requires parental consent if it is for

- more than 10 consecutive school days, or
- 10 consecutive school days or less if the student is subjected to a series of suspension or removal that constitutes a pattern because they add to more than 10 school days in a school year, and because of factors such as the length of each suspension, the total amount of time the child is removed, and the proximity of the suspension to one another (34 CFR § 300.519; 8 NYCRR § 201.2(e)).

Nonetheless, a student with disabilities may be removed without parental consent to an interim alternative educational (IAES) setting for periods of up to 45 days at a time for behavior involving weapons, illegal drugs, controlled substance, or conduct which poses a risk of harm to the student or others (see 13:51).

A school district may also impose a suspension which would otherwise result in a disciplinary change in placement if the committee on special education determines that the student's misconduct was not a manifestation of the student's disability (20 USC §§ 1415(k)(1)(A), 1415(k)(2), (5); 34 CFR §§ 300.121(d), 300.519(a), 300.520(a)(1), 300.521, 300:524, 300.506(c)(3), (4); Educ. Law §§ 3214(3)(g)(iv), (vii); 8 NYCRR §§ 201.7(e), 201.8(a), (b), (d), (f), 201.9(c)(3); see 13:55).

Under New York law, the school district must conduct a disciplinary hearing to determine if the student is guilty of the misconduct before a suspension penalty beyond five school days can be imposed (§ 3214(3)(g)). The same applies to students presumed to have a disability for discipline purposes and to declassified students (20 USC §

1415(k)(8)(A); 34 CFR § 300.527; Educ. Law § 3214(g)(2); 8 NYCRR § 201.5); Appeal of a Student Suspected of Having a Disability, 35 Educ. Dep't Rep. 492 (1996); see 13:58).

Students with disabilities attending summer school are entitled to the same discipline safeguards applicable during the regular school year (LIH v. New York City Bd. of Educ., 33 IDELR 1 (E.D.N.Y. 2000)).

What is an interim alternative education setting (IAES)?

An interim alternative education setting is a temporary educational placement for a period of up to 45 days, other than the student's current placement at the time the behavior precipitating the IAES occurred (8 NYCRR § 201.2(k); see 13:53 for a description of the level of services that must be provided in an IAES).

Under what circumstances may a student with disabilities be placed in an interim alternative education setting?

A superintendent of schools may place a student in an interim alternative educational setting (IAES) for the same amount of time that a child without a disability would be subject to discipline but not more than 45 days for each separate instance where:

- The child possesses a weapon in school, or at a school function.
- The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

In addition, an impartial hearing officer may order the placement of a child in an IAES for up to 45 days at a time if the school district shows by substantial evidence that maintaining the child in his or her current placement is substantially likely to result in injury to the child or others, and that it has taken steps to minimize the risk of harm in the child's current placement (20 USC §§ 1415(k)(1)(A), 1415(k)(2); 34 CFR §§ 300.519(a), 300.521; 300.526(c)(3), (4); Educ. Law § 3214(3)(g)(iv), (vii); 8 NYCRR §§ 201.7(e), 201.8(a), (b), (d)).

A student may be placed in an IAES on grounds of dangerousness and for misconduct relating to weapons, illegal drugs or controlled substance even if the behavior triggering the placement was a manifestation of the student's disability (8 NYCRR §§ 201.9(c)(3), 201.8(f); see 13:53).

Who determines the interim alternative educational setting for a student with disabilities being removed for misconduct involving weapons, illegal drugs or controlled substances, or on grounds of dangerousness?

The committee on special education (CSE) determines the IAES for a student removed for weapons, illegal drugs or controlled substances.

The impartial hearing officer determines the IAES for a student being removed on grounds of dangerousness based on consideration of a setting proposed by school personnel in consultation with the child's special education teacher (20 USC § 1415(k)(2)(3); 34 CFR §§ 300.521, 300.522; 8 NYCRR §§ 201.8(c), 201.10(e)).

What level of services must an appropriate interim alternative educational setting offer a student with a disability?

A student placed in an interim alternative educational (IAES) setting must receive services that enable that student to continue to participate in the general curriculum, although in another setting, and to receive services and modifications, including those in his or her current individualized education program (IEP), that will allow the child to meet the goals of the IEP. The IAES must include services and modifications designed to address the behavior so that it does not reoccur (20 USC § 1415(k)(2), (3); 34 CFR §§ 300.521, 300.522; 8 NYCRR §§ 201.8(c), 201.10(e)).

What level of services must be offered to students with disabilities during suspensions other than those involving placement in an interim alternative educational setting?

During suspensions for periods of up to 10 school days in a school year that do not constitute a disciplinary change in placement (see 13:49), a school district must provide students with disabilities of compulsory education age with alternative instruction on the same basis as nondisabled students. With respect to students who are not of compulsory education age, a district must provide services only to the extent they are provided to nondisabled students of the same age who have been similarly suspended (8 NYCRR § 201.10(b)).

During subsequent suspensions for periods of 10 consecutive school days or less that in the aggregate total more than 10 school days in a school year but do not constitute a disciplinary change in placement (see 13:49), students must receive services necessary to enable them to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in their individualized education program (IEP). The building principal, superintendent of schools or other school official imposing the suspension, in consultation with the student's special education teacher, makes the determination regarding the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and advance toward achieving the IEP goals.

The same level of services applies for students suspended in excess of 10 school days in a school year where the suspension constitutes a disciplinary change of placement for behavior determined by the committee on special education (CSE) not to be a manifestation of student's disability. However, in this last situation, it is the CSE that determines the extent to which services are necessary (34 CFR §§ 300.520(a)(1)(ii), 300.121(d); 8 NYCRR § 201.10(c), (d)).

When must a committee on special education conduct a manifestation determination of the student's behavior?

The CSE must conduct a review regarding the relationship between the child's disability and his or her behavior whenever a school district decides to place the child in an interim alternative educational setting (IAES) for one of the following reasons:

- The child's misconduct involves weapons, illegal drugs or controlled substances.
- The child's current placement in his or her current educational setting poses a risk of harm to the student or others.
- The district decides to impose a suspension that constitutes a disciplinary change in placement.

The purpose of this review is to determine whether the student's behavior is related to, or a manifestation of, his or her disability in accordance with the criteria set forth in law and regulations. If the behavior is a manifestation of the student's disability, no further disciplinary action may be taken, except placement in an IAES in cases involving weapons, illegal drugs or controlled substances, or dangerous behavior.

The CSE must conduct the manifestation determination immediately if possible, but no later than 10 days after the date on which the decision to take action is made (20 USC § 1415(k)(4)(B); 34 CFR § 300.523(a)(2), (b); Educ. Law § 4402(1)(b)(3)(j); 8 NYCRR § 201.4(a)(1), (2), (3)).

Must a committee on special education conduct a functional behavioral assessment of a student with disabilities subjected to disciplinary action?

The CSE must develop an assessment plan and conduct a functional behavioral assessment to address the student's behavior if it had not conducted such an assessment and implemented a behavioral intervention plan for the student before the behavior in question occurred. Or, if the child already has a behavioral intervention plan, the CSE must review and modify the plan, as necessary, to address the behavior.

A functional behavioral assessment involves the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment (8 NYCRR § 200.1(r)).

In either case, this meeting must take place no later than 10 business days after the district first suspends the student for more than 10 school days in a school year or imposes a suspension that constitutes a disciplinary change in placement, including placement in an interim alternative educational setting for behavior involving weapons, illegal drugs, or controlled substances (20 USC § 1415(k)(1)(B); 34 CFR § 300.520(b); Educ. Law § 4402(1)(b)(3)(1); 8 NYCRR §§ 201.3, 201.2(r)).

May parents challenge the placement of their child in an interim alternative educational setting (IAES) and/or the determination of a committee on special education that the child's behavior is not a manifestation of his or her disability?

Yes, In such an instance, the school district must conduct an expedited due process hearing which must be completed within 15 business days of the district's receipt of a parental request for a hearing (8 NYCRR § 201.11(c)).

During the pendency of the hearing or appeal, the child remains in the IAES pending the outcome of the decision or until expiration of the IAES, whichever occurs first, unless the parents and the district agree otherwise (20 USC § 1415(k)(7)(A); 34 CFR § 300.526(a); 8 NYCRR § 201.11(d)).

Are the procedures that apply to the discipline of disabled students also applicable to students who have not been classified as students with disabilities?

Yes, if the student is a student presumed to have a disability for discipline purposes, i.e., the school district is deemed to have had knowledge, as defined by statute, that the child was a child with a disability before the misconduct occurred (20 USC § 1415(k)(8)(A); 34 CFR § 300.526(7); Educ. Law § 3214(g)(2); 8 NYCRR §§ 201.2(m), 201.5)).

In addition, certain due process safeguards apply to students who have been declassified but later exhibit behavioral problems (Appeal of a Student Suspected of Having a Disability (South Country CSD), 35 Educ. Dep't Rep. 492 (1996)).

If a request for an individual evaluation is made on behalf of a student subject to disciplinary removal who is not presumed to have a disability for disciplinary purposes, the CSE must conduct and complete an expedited evaluation within 15 school days after receipt of the request and make an eligibility determination within five school days after completion of the expedited evaluation (20 USC § 1415(k)(8)(C); 34 CFR § 300.527 (d)(1), (2); 8 NYCRR § 200-1.6). Until that evaluation is completed, the student remains in the educational placement determined by the district, which can include suspension (20 USC § 1415(k)(8)(C)(ii); 34 CFR § 300.527(d)(1), (2)(ii); 8 NYCRR § 201.6(c)).

Are students with disabilities subject to a school district's attendance policy?

Yes. However, a school district may not apply its attendance policy to a student with disabilities in order to deny the student course credit where the absences are related to the student's disability or to a medical condition which would constitute a handicap under section 504 of the Rehabilitation Act (Appeal of a Child with a Handicapping Condition, 32 Educ. Dep't Rep. 56 (1992)).