



Public Schools of North Carolina

Students with Disabilities: Discipline Do's and Don'ts

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NC 1504-2 Discipline Procedures

Policy says...

(a) Case-by-case determination.

School personnel may consider



any **unique circumstances** on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. Circumstances considered should include area of disability, functioning level of the child, intent of the behavior, and other relevant factors.



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NC 1504-2.1 (a)

Unique

Circumstances

“Best determined at the local level by school personnel who know the individual child”

- Disciplinary history
- Ability to understand consequences
- Expression of remorse
- Supports provided prior to violation

OSER Q & A Document
“Questions and Answers On Discipline Procedures,” Revised June 2009
Retrieved from: <https://www2.ed.gov/policy/speced/guid/idea/discipline-q-a.pdf>
(71 Federal Register 46714)



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Do

- Consider each student and incident individually-based on that student
- Be certain to get all of the information about the student and the incident to consider in the determination

Don't

- Make decisions because it is “the way we always do it”
- Make quick decisions without all of the needed information to understand the unique circumstances



Removal of Student with a Disability-Part 1

Policy says...

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for separate incidents of misconduct (as long as those removals do not constitute a change of placement under NC 1504-2.7)



What is a disciplinary removal?

Any instance in which a child with a disability is

- removed from his/her educational placement for disciplinary purposes, including
 - in-school suspension,
 - out-of-school suspension,
 - expulsion
- removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and
- removal by hearing officer for likely injury to the child or others.



Removal of child with disability

Disability (IDEA)

A removal occurs when the student is removed from the student's IEP-determined placement, that is, the educational environment(s) that the IEP team determined was the appropriate placement for the student.

Long, T., and Ruffini, S. (2017, March). IDEA Part B Discipline Data Collection Questions and Answers. (Revised March 2017). IDEA Data Center. Rockville, MD: Westat.

Disability (LEA knowledge)

- Parent expressed concerns in writing that the child is in need of special education and related services
- Parent requested an evaluation
- Personnel of the LEA expressed specific concerns to administrators
- Clear and convincing need for special education based on behavioral and educational performance



Removal of Student with a Disability

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NC 1504-2.1 (b)



Public Schools of North Carolina

Change of Placement

- a) For purposes of removals of a child with a disability from the child's current educational placement under NC 1504-2.1 through NC 1504-2.6, a change of placement occurs if—
- 1) The removal is for more than 10 consecutive school days; or
 - 2) The child has been subjected to a series of removals that constitute a pattern—



Change of Placement - Pattern

- 1) The child has been subjected to a series of removals that constitute a pattern—
 - i. Because the series of removals total more than 10 school days in a school year;
 - ii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
 - iii. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.



Disciplinary Removal?...Possibly!

- A pattern of office referrals, extended time excluded from instruction (e.g., time out), or extended restrictions in privileges
- Repeatedly sending children out of school on “administrative leave” or a “day off” or other method of sending the child home from school;
- Repeatedly sending children out of school with a condition for return, such as a risk assessment or psychological evaluation
- Regularly requiring children to leave the school early and miss instructional time (e.g., via shortened school days).

Dear Colleague Letter on the Inclusion of
Behavioral Supports in Individualized
Education Programs, August 1, 2016.



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Do

- Establish a system for tracking ALL removals
- Review ALL removals each time to begin determining the potential for a disciplinary change of placement BEFORE the 11th day
- Establish a procedure for identifying a change of placement
- Establish a procedure to effectively and efficiently address a change of placement

Don't

- Wait until day 11 to determine if there is a pattern
- Wait until an incident has happened to determine if there is a pattern
- Wait until you establish a change of placement
- Have unclear procedures
- Wait until an incident occurs that must be addressed to figure out how the process must work



Removal of Student with a Disability-Part 2

Policy says...

(b) General.

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.



NC 1504-2 Discipline Procedures

Policy says...

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to (c) or (g) of this section must—

(i) Continue to receive **educational service**, as provided in NC 1501-1.1(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and



NC 1504-2 Discipline Procedures

Policy says...

And....

(ii) Receive, as appropriate, a **functional behavior assessment**, and **behavioral intervention services** and modifications that are designed to address the behavior violation so that it does not recur. If a behavior intervention plan already has been developed, it must be reviewed and modified, as necessary, to address the behavior.





**Who determines
the services?**

It Depends!

Do

- Provide services to students who a removed from placement more than 10 days
- Consider the individual needs of the student and make individual decisions to support involvement in the general curriculum and progress toward goals.
- Review the IEP, request an FBA and develop a BIP or review and adjust if already in place

Don't

- Wait long periods after removals to begin services
- Make decisions that are one-size-fits-all limited
- Delay requesting an FBA and developing a BIP when needed
- Use cookie-cutter intervention plans



Remember Change of Placement rules

If the removals are:

- ✓ more than 10 consecutive school days ⇔
Change of placement
- ✓ total more than 10 cumulative school days
in a school year then consider...
 - Is the behavior substantially similar to the child's behavior in previous incidents that resulted in the series of removals
 - The length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another

? ? ? ? ?



Is there a pattern
constituting a
change of
placement?



For Cumulative
days/Series of
short removals

Do

If **No** Pattern then....



- Consult with at least one of the child's teachers to determine the extent to which services are needed as provided NC 1501-1.1 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
- Provide, as appropriate, an FBA and BIP to address the behavior OR if already in place, it **MUST** be reviewed and revised as necessary



If there **IS** a pattern

DO

**OR would exceed
10 consecutive
school days then....**

- **Notify the parent** of the decision to make a removal that constitutes a change of placement and provide procedural safeguards
- **Provide educational services**, as provided in NC 1501-1.1(a) so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP
- Have the child's **IEP team determine** the appropriate services
- **Conduct a Manifestation Determination** within 10 school days of the decision to change the placement

**CHANGE
OF
PLACEMENT**



NC 1504-2 Discipline Procedures

Policy says...

(e) Manifest determination.

(1) ~~Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team must review all and any relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents~~



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NC 1504-2.1 (e)

MANIFESTATION DETERMINATION

Student: Student Name

Birth Date: 00 / 00 / 2000 **Date:** 00 / 00 / 2000

School: School Name

Grade: Grade

Area of Disability: _____

Current Educational Setting (LRE): _____

Data being considered (check each one):

- IEP
- Assessment/evaluations
- Medical information, including diagnosis and medication
- Interviews conducted
- Direct observations
- Discipline reports for the current school year
- Functional Behavioral Assessment (attach)
- Behavioral Intervention Plan (attach)
- Other

- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000
- Dates: 00 / 00 / 2000

History of disciplinary actions during current school year:

Number of incidents: _____ Dates: _____, total # of actual days: _____

Number of administrative assignments of in-school suspension: _____, total # of actual days: _____

Number of administrative assignments of out-of-school suspension: _____, total # of actual days: _____

Longest # of consecutive days suspended: _____ days.

Current Disciplinary Incident:

Was a weapon involved? _____

Were drugs involved? _____

Did serious bodily injury occur? _____

<https://ec.ncpublicschools.gov/policies/forms/statewide-forms>

Summarize the administrative authority's written findings: _____

Summarize the available information from persons who observed the violation of the student code of conduct when it occurred: _____

Implementation of IEP:

- Describe how the academic and behavioral goals on the child's IEP are being implemented: _____
- Describe how the accommodations, modifications and supplementary services included in the child's IEP are being implemented: _____
- Describe how the related services included in the child's IEP are being implemented: _____



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[MD Form](#)

Manifestation Determination- DOs

NOT Manifestation

- May apply the disciplinary procedures in the same manner and for duration as would be applied to children without disabilities EXCEPT:
- MUST continue to receive educational services determined by IEP team
- MUST receive, as appropriate, an FBA and behavioral intervention services and modifications to address the behavior OR if already in place, it MUST be reviewed and revised as necessary

WAS a Manifestation

- If “failure to implement IEP” then MUST remedy those deficiencies.
- If caused by, or direct and substantial relationship to disability then MUST
 - Conduct FBA and implement BIP
 - OR
 - Review BIP and modify as needed to address the behavior
- Return the child to the placement from which the child was removed* (unless special circumstance)



Cases to Consider

- *J.H. v. Rose Tree Media Sch. Dist.*, [118 LRP 38235](#) (E.D. Pa. 09/17/18)
- *South Bronx (NY) Classical Charter School Office for Civil Rights*, Eastern Division, NY 02-12-1064 June 7, 2012



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Questions?