



Legal Framework  
of  
School  
Discipline

December 2018

Prepared By:  
Dispute Resolution Team  
Division of Compliance and Assistance

## Contents

OVERVIEW .....	1
COMPONENTS OF DISCIPLINE .....	1
Activity period .....	1
Alternative educational services .....	1
Behavioral intervention plan (BIP) .....	2
Bus suspension (as referenced in the IDEA) .....	3
Class period .....	3
Controlled substance.....	4
Cumulative days .....	4
Dangerous weapon (as referenced by the IDEA) .....	5
Disciplinary change of placement (as referenced by the IDEA) .....	5
Dismissal (as defined by the PFDA) .....	5
Exclusion (as defined by the PFDA) .....	5
Expulsion (as defined by the PFDA).....	5
Firearm (as referenced by the PFDA and the Gun-Free Schools Act).....	6
Free appropriate public education (FAPE) (as defined by the IDEA).....	6
<i>Andrew F.</i> .....	7
Functional behavioral assessment (FBA) (as defined by Minnesota rule) .....	7
General control of schools (as outlined in Minnesota statute).....	8
Grounds for dismissal (as defined by the PFDA) .....	8
Illegal drug (as referenced by the IDEA).....	9
In-school suspension (ISS) (as referenced in the IDEA) .....	9
Informal administrative conference (as referenced in the PFDA).....	9
Interim alternative educational setting.....	10
Mental health screening (as referenced in the PFDA) .....	10

Partial school day (as referenced in the IDEA) .....	11
Positive behavioral interventions and supports (PBIS) (as defined by Minnesota Statute) .....	11
Prior written notice (as defined in the IDEA) .....	12
Readmission plan (as referenced in the PFDA) .....	13
Removal from class and removal (as defined by the PFDA).....	13
School day (as defined by the IDEA).....	14
School discipline policies (as referenced in the PFDA).....	14
Serious bodily injury .....	16
Suspension (as defined by the PFDA).....	16
Unique circumstances (under the IDEA) .....	17
Weapon (as referenced by the IDEA) .....	17
Written notice of grounds for suspension (as required under the PFDA) .....	17
<b>EXCLUSION PROCEDURES.....</b>	<b>18</b>
Definition .....	18
Grounds for dismissal - exclusion .....	18
Same procedural protections outlined under expulsions apply to exclusions.....	18
<b>EXPEDITED DUE PROCESS HEARING PROCEDURES .....</b>	<b>19</b>
Disagreement regarding disciplinary change of placement or manifestation determination, or believe current placement substantially likely to result in injury.....	19
Resolution meeting.....	19
Hearing .....	19
Burden of proof .....	20
Hearing officer may .....	20
Appeal.....	20
Placement pending appeal .....	21
<b>EXPULSION PROCEDURES.....</b>	<b>21</b>

Definition .....	21
Grounds for dismissal - expulsion.....	21
Before initiating an expulsion of a student with a disability - manifestation determination .....	22
Expedited due process hearing .....	22
Right to a hearing .....	22
Written notice of expulsion.....	23
Hearing procedures .....	23
Hearing recommendation .....	24
School board action.....	24
Student’s placement pending school board decision .....	25
Alternative educational services .....	25
Readmission plan.....	25
Appeal of school board decision .....	26
Alternative enrollment following an expulsion .....	26
Area learning centers .....	27
Resident district enrollment.....	27
Open enrollment .....	27
Charter school .....	28
LAW ENFORCEMENT .....	29
Referral to law enforcement under the IDEA.....	29
Transmittal of records .....	30
MANIFESTATION DETERMINATION PROCEDURES .....	30
When to hold a manifestation determination meeting .....	30
Disciplinary change of placement for a student with a disability .....	30
Unique circumstances that school personnel may consider when determining whether a change of placement is appropriate for a student with a disability .....	31

Manifestation determination components .....	31
If the conduct is a manifestation of the student’s disability .....	31
If the conduct is not a manifestation of the student’s disability.....	32
If the parties cannot reach consensus about whether the conduct is a manifestation of the student’s disability.....	33
Special circumstances that allow school personnel to remove a student with a disability to an interim alternative education setting regardless of the outcome of the manifestation determination.....	34
PROTECTIONS FOR STUDENTS NOT YET IDENTIFIED.....	35
Application.....	35
A district must be deemed to have knowledge.....	35
A district would not be deemed to have knowledge .....	35
If a district does not have knowledge .....	35
If a request is made for an evaluation.....	35
Revocation of consent .....	36
SECTION 504 DISCIPLINARY PROCEDURES .....	36
Evaluation required prior to significant change in placement .....	36
Section 504 and the PFDA .....	37
Section 504 procedural safeguards .....	37
SUSPENSION PROCEDURES .....	37
Definition .....	37
Grounds for dismissal - suspension .....	38
Informal administrative conference .....	38
Written notice of suspension .....	38
Alternative educational services .....	39
Readmission plan.....	40
Mental health screening.....	40
Suspension of students with disabilities .....	41

Patterns of suspensions/removals for students without disabilities .....	41
Notice of right to be reinstated .....	41
Suspensions (dismissals/removals) for one day or less – special considerations .....	42
Suspensions (dismissals/removals) for more than five consecutive school days – special considerations.....	42
Suspensions (dismissals/removals) for more than ten cumulative days – special considerations.....	43
Suspensions (dismissals/removals) for more than ten consecutive days – special considerations.....	43
Appendix A: Manifestation Determination Flowchart .....	A
Appendix B: Expulsion Flowchart .....	<b>Error! Bookmark not defined.</b>
Appendix C: Discipline Questions to Keep in Mind .....	C

## OVERVIEW

The purpose of this manual is to provide helpful, general information to the public about discipline in Minnesota’s public schools. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Two major statutes govern the use of discipline in Minnesota. First, there is the federal law, the Individuals with Disabilities Education Act (IDEA)<sup>1</sup> and the implementing regulations,<sup>2</sup> and second, the Minnesota Pupil Fair Dismissal Act (PFDA).<sup>3</sup> There is also case law.

The 2004 amendments of the IDEA were intended to address the needs expressed by school administrators and teachers for flexibility in order to balance school safety issues with the need to ensure that schools respond appropriately to a student’s behavior that was caused by, or directly and substantially related to, the student’s disability.<sup>4</sup>

The PFDA provides due process and equal protection of the law to any Minnesota public school student, including charter school students,<sup>5</sup> involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.<sup>6</sup>

In this manual, the phrase “student with a disability” has the same meaning as “student with a disability” or “pupil with a disability” under Minnesota law and “child with a disability” under the IDEA.<sup>7</sup>

## COMPONENTS OF DISCIPLINE

### ***Activity period***

“Activity period” (as defined by the PFDA) means a period of time as defined in the district’s written discipline policy.<sup>8</sup>

### ***Alternative educational services***

“Alternative educational services” (as defined by the PFDA) may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic

---

<sup>1</sup> 20 U.S.C. §§ 1400 *et seq.*

<sup>2</sup> 34 C.F.R. Part 300 (Aug. 2006); 34 C.F.R. Part 300 (Dec. 2008).

<sup>3</sup> Minn. Stat. §§ 121A.40–121A.56.

<sup>4</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 1 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>5</sup> Minn. Stat. § 124E.03, subd. 2(j).

<sup>6</sup> Minn. Stat. § 121A.42.

<sup>7</sup> Minn. Stat. §§ 121A.41, subd. 7(b), 125A.02; 34 C.F.R. § 300.8.

<sup>8</sup> Minn. Stat. § 121A.60, subd. 2.

media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation requirements although in different setting.<sup>9</sup>

**Note:** The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress towards meeting the graduation requirements and help prepare the student for readmission.<sup>10</sup>

No school shall dismiss any student without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property.<sup>11</sup>

Students shall be provided alternative educational services to the extent a suspension exceeds five consecutive school days.<sup>12</sup>

Alternative educational services must also be provided to students who have been suspended pending expulsion or exclusion, to the extent that suspension exceeds five days.<sup>13</sup>

See also [alternative educational services provided during an expulsion](#).

### **Behavioral intervention plan (BIP)**

A behavioral intervention plan (BIP) (as referenced by the IDEA) is typically developed following a functional behavioral assessment (FBA). (See also [definition of functional behavioral assessment](#).) An FBA can identify the combination of antecedent factors (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the problem behavior and guide the development of BIPs. A complete BIP should describe strategies for 1) addressing the characteristics of the setting and events; 2) removing antecedents that trigger the problem behavior; 3) adding antecedents that maintain appropriate behavior; 4) removing consequences that maintain or escalate the problem behavior; 5) adding consequences that maintain appropriate behavior; and 6) teaching alternative appropriate behaviors, including self-regulation techniques, to replace the problem behaviors.<sup>14</sup>

**Note:** For a student with a disability whose behavior impedes his or her learning or that of others, and for whom the student's IEP team has decided that a BIP is appropriate, or for a student with a disability

---

<sup>9</sup> Minn. Stat. § 121A.41, subd. 11.

<sup>10</sup> Minn. Stat. § 121A.55(a).

<sup>11</sup> Minn. Stat. § 121A.45, subd. 1. See also *In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), *review denied*, (Aug. 7, 2018) (finding a district's responsibility to offer alternative educational services generally starts as soon as the district moves toward dismissal proceedings).

<sup>12</sup> Minn. Stat. §§ 121A.43(c), 121A.46, subd. 4.

<sup>13</sup> Minn. Stat. § 121A.46, subd. 4.

<sup>14</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document 18* (May 2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last accessed Nov. 28, 2018).

whose conduct is determined to be a manifestation of the student’s disability, the IEP team must develop a BIP to address the behavioral needs of the student.<sup>15</sup>

When a student’s behavior impedes the student’s learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.<sup>16</sup> Additionally, the team may address the behavior through annual goals in the IEP.<sup>17</sup> The student’s IEP may include special education and related services, supplementary aids and services, and program modifications or supports for school personnel to enable the student to make progress toward those behavioral goals and to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities.<sup>18</sup> If the student needs a BIP to improve learning and socialization, the BIP can be included in the IEP and aligned with the goals in the IEP.<sup>19</sup>

### ***Bus suspension (as referenced in the IDEA)***

Whether a bus suspension would count as a day of removal (suspension) for a student with a disability would depend on whether the bus transportation is part of the student’s IEP. If the bus transportation is a part of the student’s IEP, a bus suspension is treated as a removal (suspension) unless the district provides the specialized transportation services in some other way, because transportation is necessary for the student to obtain access to the location where services will be delivered.<sup>20</sup> If transportation is not a part of the student’s IEP, a bus suspension is not treated as a removal (suspension). In those cases, the student and the student’s parent have the same obligations to get the student to and from school as a student without a disability who has been suspended from the bus. However, districts should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in the IEP and whether the student’s behavior on the bus should be addressed in an IEP or a BIP for the student.<sup>21</sup>

### ***Class period***

“Class period” (as defined by the PFDA) means a period of time as defined in the district’s written discipline policy.<sup>22</sup>

---

<sup>15</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 14-15 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018); *see also* 34 C.F.R. § 300.530(f).

<sup>16</sup> 34 C.F.R. § 300.324(a)(2)(i).

<sup>17</sup> 34 C.F.R. § 300.320(a)(2)(i).

<sup>18</sup> 34 C.F.R. § 300.320(a)(4).

<sup>19</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 15 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>20</sup> 34 C.F.R. § 300.530; 71 Fed. Reg. 46715 (Aug. 2006).

<sup>21</sup> 34 C.F.R. § 300.530; 71 Fed. Reg. 46715 (Aug. 2006).

<sup>22</sup> Minn. Stat. § 121A.60, subd. 2.

## **Controlled substance**

“Controlled substance” (as referenced by the IDEA when describing special circumstances in which a district may remove a student to an interim alternative educational setting for not more than 45 school days) means a drug or other substance identified under schedules I,<sup>23</sup> II,<sup>24</sup> III,<sup>25</sup> IV,<sup>26</sup> or V<sup>27</sup> in section 202(c) of the Controlled Substance Act.<sup>28</sup> “Controlled substance” under Minnesota law does not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.<sup>29</sup>

**Note:** As controlled substance schedules are updated frequently, districts may wish to check the current list of controlled substances at <https://www.dea.gov/druginfo/ds.shtml>.

## **Cumulative days**

Cumulative days of removal include the number of days the student has been removed from his or her placement for disciplinary reasons during the current school year, even if the removals occurred at different schools or districts.<sup>30</sup>

---

<sup>23</sup> U.S. Drug Enforcement Administration, Drug Scheduling, available at <https://www.dea.gov/druginfo/ds.shtml> (last accessed Nov. 28, 2018) (defining Schedule I drugs, substances, or chemicals as drugs with no currently accepted medical use and a high potential for abuse. Some examples of Schedule I drugs are: heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), 3, 4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote.).

<sup>24</sup> U.S. Drug Enforcement Administration, Drug Scheduling, available at <https://www.dea.gov/druginfo/ds.shtml> (last accessed Nov. 28, 2018) (defining Schedule II drugs, substances, or chemicals as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are considered dangerous. Some examples of Schedule II drugs are: combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin.).

<sup>25</sup> U.S. Drug Enforcement Administration, Drug Scheduling, available at <https://www.dea.gov/druginfo/ds.shtml> (last accessed Nov. 28, 2018) (defining Schedule III drugs, substances, or chemicals as drugs with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs but more than Schedule IV. Some examples of Schedule III drugs are: Products containing less than 90 milligrams of codeine per dosage until (Tylenol with codeine), ketamine, anabolic steroids, and testosterone.).

<sup>26</sup> U.S. Drug Enforcement Administration, Drug Scheduling, available at <https://www.dea.gov/druginfo/ds.shtml> (last accessed Nov. 28, 2018) (defining Schedule IV drugs, substances, or chemicals as drugs with a low potential for abuse and low risk of dependence. Some examples of Schedule IV drugs are: Xanax, Soma, Darvon, Valium, Ativan, Talwin, Ambien, and Tramadol.).

<sup>27</sup> U.S. Drug Enforcement Administration, Drug Scheduling, available at <https://www.dea.gov/druginfo/ds.shtml> (last accessed Nov. 28, 2018) (defining Schedule V drugs, substances, or chemicals as drugs with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes. Some examples of Schedule V drugs are: cough preparations with less than 200 milligrams of codeine or per 100 millimeters (Robitussin AC), Lomotil, Motofen, Lyrcrica, and Parepectolin.).

<sup>28</sup> 34 C.F.R. § 300.530(i)(1); 21 U.S.C. § 812(c).

<sup>29</sup> Minn. Stat. § 152.01, subd. 4; see also 21 U.S.C. § 812(c). See also Minn. Stat. § 152.02 (listing the schedules of controlled substances in Minnesota).

<sup>30</sup> See generally Minn. Stat. § 121.45 (referring to total days of removal from school in a school year, not total days of removal from school in a particular school district in a school year).

***Dangerous weapon (as referenced by the IDEA)***

“Dangerous weapon” (as referenced by the IDEA when describing special circumstances in which a district may remove a student to an interim alternative educational setting for not more than 45 school days) 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.<sup>31</sup> The term does not include a pocket knife with a blade less than 2 ½ inches in length.<sup>32</sup>

***Disciplinary change of placement (as referenced by the IDEA)***

For purposes of removals of a student with a disability from the student’s current educational placement, a change of placement occurs if: 1) the removal is for more than 10 consecutive school days; or 2) the student 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 student’s behavior is substantially similar to the student’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 student has been removed, and the proximity of the removals to one another.<sup>33</sup>

If the removal is a change of placement, the district must follow the [manifestation determination procedures](#).

See also [suspension of students with disabilities](#) under Suspension Procedures.

***Dismissal (as defined by the PFDA)***

“Dismissal” (as defined by the PFDA) means the denial of the current educational program to any student, including exclusion, expulsion, and suspension.<sup>34</sup> Dismissal does not include [removal from class](#).<sup>35</sup>

***Exclusion (as defined by the PFDA)***

“Exclusion” (as defined by the PFDA) means an action taken by the school board to prevent enrollment or reenrollment of a student for a period that shall not extend beyond the school year.<sup>36</sup>

See also [Exclusion Procedures](#).

***Expulsion (as defined by the PFDA)***

“Expulsion” (as defined by the PFDA) means a school board action to prohibit an enrolled student from further attendance for up to 12 months from the date the student is expelled.<sup>37</sup>

---

<sup>31</sup> 34 C.F.R. § 300.530(i)(4); 18 U.S.C. § 930(g)(2).

<sup>32</sup> 18 U.S.C. § 930(g)(2).

<sup>33</sup> 34 C.F.R. § 300.536(a).

<sup>34</sup> Minn. Stat. § 121A.41, subd. 2.

<sup>35</sup> Minn. Stat. § 121A.41, subd. 2.

<sup>36</sup> Minn. Stat. § 121A.41, subd. 4.

<sup>37</sup> Minn. Stat. § 121A.41, subd. 5.

See also [Expulsion Procedures](#).

**Firearm (as referenced by the PFDA and the Gun-Free Schools Act)**

“Firearm” (as referenced by the PFDA and the Gun-Free Schools Act) means a) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; b) the frame or receiver of any such weapon; c) any firearm muffler or firearm silencer; or d) any destructive device.<sup>38</sup> Such term does not include an antique firearm.<sup>39</sup>

**Note:** A BB gun that is powered by compressed air is not a firearm, as it is not “a weapon that propels a projectile using the explosive combustion of gunpowder.”<sup>40</sup>

**Free appropriate public education (FAPE) (as defined by the IDEA)**

“Free appropriate public education” (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state educational agency; include an appropriate preschool, elementary school, or secondary school education; and are provided in conformity with an individualized education program (IEP).<sup>41</sup>

**Note:** A free appropriate public education (FAPE) must be available to all students with disabilities, including students with disabilities who have been suspended or expelled from school.<sup>42</sup>

---

<sup>38</sup> 18 U.S.C. § 921(a)(3). See also 18 U.S.C. § 921(a)(4) (defining “destructive device” as (A) any explosive, incendiary, or poison gas – (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses; (B) any type of weapon (other than a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in (A) or (B) and from which a destructive device may be readily assembled. The term destructive device shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army; or any other device with the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.)

<sup>39</sup> 18 U.S.C. § 921(a)(3); See also Gun-Free Schools Act, 20 U.S.C. § 7961 (requiring each state to have a law requiring districts to expel from school, for a period of not less than one year, a student who is determined to have brought, or possessed, a firearm at school; however, the district must be allowed to modify the expulsion requirement, in writing, for a student on a case-by-case basis); Minn. Stat. § 121A.44 (requiring that a school board must expel for period of at least one year a student who is determined to have brought a firearm to school except the board may modify this expulsion requirement for a student on a case-by-case basis); 20 U.S.C. § 7961(c) (stating that the Gun-Free Schools Act “shall be construed in a manner consistent with the Individuals with Disabilities Education Act [IDEA],” meaning that a student with a disability is still entitled to IDEA procedural safeguards, including a manifestation determination, and FAPE following any disciplinary change in placement).

<sup>40</sup> *State v. Yang*, 887 N.W.2d 40, 43 (Minn. Ct. App. 2016).

<sup>41</sup> 34 C.F.R. § 300.17.

<sup>42</sup> 34 C.F.R. § 300.101(a).

**Andrew F.:** Most recently, the United States Supreme Court, in *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988 (2017), found that to provide FAPE, “a school must offer an IEP reasonably calculated to enable a [student] to make progress appropriate in light of the circumstances” and that a student’s IEP must be developed through an individualized process “aim[ed] to enable the [student] to make progress.” *Id.* at 999. Specifically, the Court stated, “If [grade level advancement] is not a reasonable prospect for a [student], his [or her] IEP need not aim for grade-level advancement. But his [or her] educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most [students] in the regular classroom.” *Id.* at 1000. According to the Court, “the adequacy of a given IEP turns on the unique circumstances of the [student] for whom it was created.” *Id.* at 1001.

### **Functional behavioral assessment (FBA) (as defined by Minnesota rule)**

“Functional behavioral assessment” means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns.<sup>43</sup> Further, an FBA is used to analyze environmental factors, including any history of trauma (e.g., physical abuse), that contribute to a student’s inappropriate (e.g., disrespect, noncompliance, insubordination, out-of-seat) behaviors. FBA data are used to develop positive behavioral strategies that emphasize redesigning environmental conditions, which may include changes in staff approaches and techniques, so that appropriate behavior is more likely to occur and inappropriate and dangerous behavior is less likely to occur.<sup>44</sup> An FBA focuses on identifying the function or purpose behind a student’s behavior. Typically, the process involves looking closely at a wide range of student-specific factors (e.g., social, affective, environmental). Knowing why a student misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior.<sup>45</sup> (See also [behavioral intervention plans](#).)

**Note:** FBAs and BIPs are required when the district, parent, and relevant members of the student’s IEP team determine that a student’s conduct was a manifestation of his or her disability. If a student’s conduct is determined to be a manifestation of his or her disability, the IEP team will need to conduct an FBA of the student, unless one has already been conducted. Similarly, the IEP team must develop a BIP for this student, unless one already exists. If a BIP already exists, then the IEP team will need to review the plan and modify it, as necessary, to address the behavior.<sup>46</sup>

---

<sup>43</sup> Minn. R. 3525.0210, subp. 22.

<sup>44</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document 17* (May 2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last accessed Nov. 28, 2018).

<sup>45</sup> U.S. Department of Education, *Questions and Answers on Discipline Procedures 14* (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>46</sup> U.S. Department of Education, *Questions and Answers on Discipline Procedures 14* (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018); 34 C.F.R. § 300.530(f).

FBA and BIPs may also be used proactively, if the IEP team determines that they would be appropriate for the student. Districts must also provide an FBA and behavior intervention services and modifications “as appropriate” when the student’s disciplinary change in placement would exceed 10 consecutive school days or when the student is removed to an interim alternative educational setting for not more than 45 school days, regardless of whether the student’s behavior was a manifestation of his or her disability.<sup>47</sup>

**General control of schools (as outlined in Minnesota statute)**

The teacher of record shall have general control and government of the school and classroom. When more than one teacher is employed in any district, one of the teachers may be designated by the board as principal and shall have general control and supervision of schools of the district, subject to the general supervisory control of the board and other officers.<sup>48</sup> The teacher may remove students from class for violent or disruptive conduct.<sup>49</sup>

**Grounds for dismissal (as defined by the PFDA)**

A student may be dismissed (suspended, expelled, or excluded) on any of the following grounds:<sup>50</sup>

- 1) willful violation of any reasonable school board regulation.<sup>51</sup> Such regulation must be clear and definite to provide notice to students that they must conform their conduct to its requirements;
- 2) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
- 3) willful conduct that endangers the student or other students, or surrounding persons, including school district employees, or property of the school.<sup>52</sup>

---

<sup>47</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 14 (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018); 34 C.F.R. §§ 300.324(a)(2)(i), 300.530(d),(e), (f).

<sup>48</sup> Minn. Stat. § 122A.42(a).

<sup>49</sup> Minn. Stat. §§ 121A.61, subd. 2, 122A.42(b).

<sup>50</sup> Minn. Stat. § 121A.45, subd. 2. See also *In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), review denied, (Aug. 7, 2018) (finding school board may expel a student based on just one of the grounds).

<sup>51</sup> See *In re A.D.*, 883 N.W.2d 251, 258 (Minn. 2016) (finding although the PFDA “does not specifically address whether a student must know of a school’s policy in order for it to be the basis of dismissal . . . [a] knowledge requirement, however, is implicit in the plain meaning of the word ‘willful.’ . . . [T]he plain language of Minn. Stat. § 121A.45, subd. 2(a) [willful violation of any reasonable school board regulation], requires that a student know of a school policy and make a deliberate, intentional decision to violate that policy before the student may be dismissed under the ‘willful violation’ provision of the [PFDA].”).

<sup>52</sup> See also *In re A.D.*, No. A14-1587, 2015 WL 4393395, at \*6 (Minn. Ct. App. July 20, 2015), *aff’d*, 883 N.W.2d 251 (Minn. 2016) (finding the language of Minn. Stat. § 121A.45, subd. 2, indicates that paragraph (c) [willful conduct that endangers the student, other students, surrounding others, or property] requires something more than conduct that creates the mere possibility of harm).

***Illegal drug (as referenced by the IDEA)***

“Illegal drug” means a controlled substance; 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 or other provision of Federal law.<sup>53</sup>

***In-school suspension (ISS) (as referenced in the IDEA)***

In-school suspension (ISS) would not be considered a removal (suspension) of a student with a disability as long as the student is afforded the opportunity to: 1) appropriately participate in the general education curriculum; 2) continue to receive the services specified in the student’s IEP; and 3) continue to participate with non-disabled students to the extent they would have in their current placement.<sup>54</sup>

**Note:** If a student with a disability does not participate in the general educational curriculum, receive the services in the student’s IEP, and participate with non-disabled peers during in-school suspension, the in-school suspension counts as a day or partial day of removal (suspension).<sup>55</sup> Whether a district follows due process procedures for a student disciplined by an in-school suspension, such as notice and an opportunity for the student to present their version of the facts, will depend on the length of the removal (suspension).<sup>56</sup>

***Informal administrative conference (as referenced in the PFDA)***

School administration shall not suspend a student from school without an informal administrative conference with the student.<sup>57</sup> The informal administrative conference shall take place before the suspension, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension.<sup>58</sup>

**Note:** At the informal administrative conference, a school administrator shall notify the student of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the student may present the student’s version of the facts.<sup>59</sup>

---

<sup>53</sup> 34 C.F.R. § 300.530(i)(2).

<sup>54</sup> 34 C.F.R. § 300.530; 71 Fed. Reg. 46715 (Aug. 2006).

<sup>55</sup> Minn. Stat. § 121A.43(b).

<sup>56</sup> See Minn. Stat. § 121A.41, subd. 2 (defining "dismissal" as “the denial of the current educational program to any [student], including exclusion, expulsion, and suspension [but not] removal from class”); Minn. Stat. § 121A.41, subd. 10 (clarifying that suspension does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability); Minn. Stat. § 121A.43(b) (informing that a dismissal for one school day or less is a day or a partial day of suspension if the student with a disability does not receive regular or special education instruction during that dismissal period and that the notice requirements under the PFDA do not apply to a dismissal of one day or less).

<sup>57</sup> Minn. Stat. § 121A.46, subd. 1.

<sup>58</sup> Minn. Stat. § 121A.46, subd. 1.

<sup>59</sup> Minn. Stat. § 121A.46, subd. 2.

### ***Interim alternative educational setting***

A student with a disability may be removed to an interim alternative educational setting for not more than 45 school days if special circumstances apply or by order of a hearing officer following an expedited due process hearing.<sup>60</sup>

See also [Special circumstances that allow school personnel to remove a student with a disability to an interim alternative education setting regardless of the outcome of the manifestation determination.](#)

See also [Expedited Due Process Hearing Procedures.](#)

Any interim alternative educational setting is determined by the student's IEP team.<sup>61</sup> What constitutes an appropriate interim alternative educational setting will depend on the circumstances of each individual case.<sup>62</sup>

Whether a student's home would be an appropriate interim alternative educational setting would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the student previously has been removed from his or her regular placement, and the student's individual needs and educational goals.<sup>63</sup> In general, because removals will be for periods of time up to 45 days, care must be taken to ensure that if home instruction is provided for a student, the services that are provided will satisfy the requirements for a removal.<sup>64</sup>

The district is not required to provide all services in the student's IEP when a student is removed to an interim alternative educational setting. In general the student's IEP team will make an individualized decision for each student with a disability regarding the type and intensity of services to be provided in the interim alternative educational setting.<sup>65</sup>

### ***Mental health screening (as referenced in the PFDA)***

If a student's total days of removal from school exceeds ten cumulative school days in a school year, the district shall make reasonable attempts to convene a meeting with the student and the student's parent or guardian before subsequently removing the student from school and, with the permission of the parent or guardian,

---

<sup>60</sup> 34 C.F.R. §§ 300.530(g), 300.532.

<sup>61</sup> 34 C.F.R. § 300.531; see also Minn. Stat. § 121A.43(a).

<sup>62</sup> 71 Fed. Reg. 46722 (Aug. 2006).

<sup>63</sup> 71 Fed. Reg. 46722 (Aug. 2006).

<sup>64</sup> 71 Fed. Reg. 46722 (Aug. 2006).

<sup>65</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 12 (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

arrange for a mental health screening for the student.<sup>66</sup> The district is not required to pay for the mental health screening.<sup>67</sup>

**Note:** The purpose of this meeting is to attempt to determine the student’s need for assessment or other services or whether the parent or guardian should have the student assessed or diagnosed to determine whether the student needs treatment for a mental health disorder.<sup>68</sup>

***Partial school day (as referenced in the IDEA)***

Portions of a school day that a student with a disability had been suspended may be considered as a removal (suspension) in regard to determining whether there is a pattern of removals.<sup>69</sup> A dismissal for one school day or less is a day or a partial day of suspension if the student with a disability does not receive regular or special education instruction during that dismissal period.<sup>70</sup>

**Note:** The notice requirements under the PFDA do not apply to a dismissal of one day or less.<sup>71</sup>

***Positive behavioral interventions and supports (PBIS) (as defined by Minnesota Statute)***

“Positive behavioral interventions and supports” (PBIS) means an evidence-based framework for preventing problem behavior, providing instruction and support for positive and prosocial behaviors, and supporting social, emotional, and behavioral needs for all students. Schoolwide implementation of PBIS requires training, coaching, and evaluation for school staff to consistently implement the key components that make PBIS effective for all students, including: (1) establishing, defining, teaching, and practicing three to five positively stated schoolwide behavioral expectations that are representative of the local community and cultures; (2) developing and implementing a consistent system used by all staff to provide positive feedback and acknowledgment for students who display schoolwide behavioral expectations; (3) developing and implementing a consistent and specialized support system for students who do not display behaviors representative of schoolwide positive expectations; (4) developing a system to support decisions based on data related to student progress, effective implementation of behavioral practices, and screening for students requiring additional behavior support; (5) using a continuum of evidence-based interventions that is integrated

---

<sup>66</sup> Minn. Stat. § 121A.45, subd. 3. *See also In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), *review denied*, (Aug. 7, 2018) (finding the PFDA recognizes that a student who engages in behavior that prompts expulsion may also require restorative or behavioral services, but such services are complementary to, not part of, alternative educational services) (*citing* Minn. Stat. § 121A.45, subd. 3 (recognizing that severe student misconduct that warrants repeated or prolonged removals from school may necessitate mental health intervention)).

<sup>67</sup> Minn. Stat. § 121A.45, subd. 3.

<sup>68</sup> Minn. Stat. § 121A.45, subd.3. *See also* Minn. Stat. § 245.4874, subd. 1(a)(1), (4) (tasking county boards to create a system of affordable and locally available children’s mental health services, consistent with the Minnesota Comprehensive Children’s Mental Health Act, which include mental health screening and coordinating the delivery of children’s mental health services provided by social services, education, corrections, health, and vocational agencies to improve the availability of mental health services to children and the cost-effectiveness of their delivery).

<sup>69</sup> 34 C.F.R. § 300.530; 71 Fed. Reg. 46715 (Aug. 2006).

<sup>70</sup> Minn. Stat. § 121A.43(b).

<sup>71</sup> Minn. Stat. § 121A.43(b).

and aligned to support academic and behavioral success for all students; and (6) using a team-based approach to support effective implementation, monitor progress, and evaluate outcomes.<sup>72</sup>

**Note:** PBIS means interventions and strategies to improve the school environment and teach students the skills to behave appropriately.<sup>73</sup> Character education curriculum and programs may be used to support implementation of the key components of PBIS.<sup>74</sup>

PBIS is a multi-tiered school-wide approach to establishing the social culture that is helpful for schools to achieve social and academic gains while minimizing problem behavior for all students.<sup>75</sup> PBIS frequently results in significant reductions in the behaviors that lead to office disciplinary referrals, suspensions, and expulsions.<sup>76</sup>

Planned behavioral strategies should be in place and used to: 1) de-escalate potentially problematic behavior; 2) identify and support competing positive behavior to replace problem behavior; and 3) support appropriate behavior in class and throughout the school, especially if a student has a history of problem behavior.<sup>77</sup>

For more information about PBIS, see <http://pbismn.org/>.

#### ***Prior written notice (as defined in the IDEA)***

Prior written notice must be given to the parents of a student with a disability a reasonable time before the district — (1) proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.<sup>78</sup> Districts should refer to the content requirements in both federal regulations and Minnesota law when drafting prior written notice.<sup>79</sup>

**Note:** Many discipline-related actions by the district may require the district to provide prior written notice to the parents of students with disabilities. They include but are not limited to: 1) revising a student's IEP or BIP to include new or additional positive behavioral interventions and supports and other strategies to address the student's behavior;<sup>80</sup> 2) proposing an evaluation or reevaluation to conduct a functional behavioral assessment;<sup>81</sup> 3) changing a student's placement as part of the

---

<sup>72</sup> Minn. Stat. § 122A.627.

<sup>73</sup> Minn. Stat. § 125A.0941(d).

<sup>74</sup> Minn. Stat. § 122A.627.

<sup>75</sup> U.S. Department of Education, Restraint and Seclusion: Resource Document 3 (May 2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last accessed Nov. 28, 2018).

<sup>76</sup> U.S. Department of Education, Restraint and Seclusion: Resource Document 3 (May 2012) available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last accessed Nov. 28, 2018)..

<sup>77</sup> U.S. Department of Education, Restraint and Seclusion: Resource Document 15 (May 2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last accessed Nov. 28, 2018).

<sup>78</sup> 34 C.F.R. § 300.503(a).

<sup>79</sup> 34 C.F.R § 300.503(b); Minn. Stat. § 125A.091, subd. 3a; Minn. R. 3525.3600.

<sup>80</sup> 34 C.F.R §§ 300.324(a)(2)(i), 300.530(f)(1).

<sup>81</sup> 34 C.F.R. § 300.530(d)(1)(ii), (f)(1)(i).

modification of the student's BIP;<sup>82</sup> 4) removing the student to an interim alternative educational setting;<sup>83</sup> or 5) proposing alternative educational services and special education and related services to be provided to a student during a dismissal such as a suspension or expulsion.<sup>84</sup>

### ***Readmission plan (as referenced in the PFDA)***

Each suspension action may include a readmission plan.<sup>85</sup> The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension.<sup>86</sup> The readmission plan must not obligate a parent to provide a sympathomimetic medication<sup>87</sup> for the student as a condition of readmission.<sup>88</sup> A readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student or to consent to a psychiatric evaluation, screening or examination of the student as a ground, by itself, to prohibit the student from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect or medical or educational neglect.<sup>89</sup>

**Note:** A school administrator shall prepare and enforce an admission or readmission plan for any student who is expelled or excluded from school.<sup>90</sup> The plan may include measures to improve the student's behavior, including completing a character education program and require parental involvement in the admission or readmission process, and may indicate the consequences to the student of not improving the student's behavior.<sup>91</sup>

### ***Removal from class and removal (as defined by the PFDA)***

"Removal from class" means any actions taken by a teacher, principal, or other school district employee to prohibit a student from attending a class or activity period for a period of time not to exceed five days, pursuant to procedures established in the district discipline policy adopted by the school board.<sup>92</sup> The school administrator must notify and meet with a student's parent or guardian to discuss the problem that is causing the student to be removed from class after the student has been removed from class more than ten times in one school year.<sup>93</sup>

---

<sup>82</sup> 34 C.F.R. § 300.530(f)(2).

<sup>83</sup> 34 C.F.R. § 300.530(g).

<sup>84</sup> 34 C.F.R. § 300.530(d).

<sup>85</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.47, subd. 14(b).

<sup>86</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>87</sup> Minnesota does not have a definition of sympathomimetic medications. In general, the term refers to stimulants for the treatment of attention deficit/hyperactivity disorder (ADHD), such as Ritalin and Adderall.

<sup>88</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.47, subd. 14(b).

<sup>89</sup> Minn. Stat. § 121A.47, subd. 14(b).

<sup>90</sup> Minn. Stat. § 121A.47, subd. 14(a).

<sup>91</sup> Minn. Stat. § 121A.47, subd. 14(a).

<sup>92</sup> Minn. Stat. §§ 121A.60, subd. 1, 121A.61, subd. 2.

<sup>93</sup> Minn. Stat. § 121A.61, subd. 2.

**Note:** Under the IDEA, the term “removal” refers to any removal of a student with a disability from his or her current placement, including a removal to interim alternative educational setting, another setting, or suspension.<sup>94</sup>

***School day (as defined by the IDEA)***

“School day” means any day, including a partial day that students are in attendance at school for instructional purposes.<sup>95</sup>

***School discipline policies (as referenced in the PFDA)***

Each school board must adopt a written districtwide school discipline policy which includes written rules of conduct for students, minimum consequences for violations of the rules, and grounds and procedures for removal of a student from class.<sup>96</sup> The policy must be developed in consultation with administrators, teachers, employees, students, parents, community members, law enforcement agencies, county attorney offices, social service agencies, and such other individuals or organizations as the board determines appropriate.<sup>97</sup> A school site council may adopt additional provisions to the policy subject to the approval of the school board.<sup>98</sup>

Each school board shall establish uniform criteria for dismissal and adopt written policies and rules to effectuate the purposes of the PFDA.<sup>99</sup> The policies shall emphasize preventing dismissals through early detection of problems and shall be designed to address students’ inappropriate behavior from recurring.<sup>100</sup> The policies shall recognize the continuing responsibility of the school for the education of the student during the dismissal period.<sup>101</sup> The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress towards meeting the graduation requirements and help prepare the pupil for readmission.<sup>102</sup>

Each district shall develop a policy and report it to the commissioner on the appropriate use of peace officers and crisis teams to remove students who have an IEP from school grounds.<sup>103</sup> And must include at least the following components:<sup>104</sup>

- a) rules governing student conduct and procedures for informing students of the rules;

---

<sup>94</sup> 34 C.F.R. § 300.530(b).

<sup>95</sup> 34 C.F.R. § 300.11(c)(1).

<sup>96</sup> Minn. Stat. § 121A.61, subd. 1.

<sup>97</sup> Minn. Stat. § 121A.61, subd. 1.

<sup>98</sup> Minn. Stat. § 121A.61, subd. 1.

<sup>99</sup> Minn. Stat. § 121A.55(a).

<sup>100</sup> Minn. Stat. § 121A.55(a).

<sup>101</sup> Minn. Stat. § 121A.55(a).

<sup>102</sup> Minn. Stat. § 121A.55(a).

<sup>103</sup> Minn. Stat. § 121A.55(c).

<sup>104</sup> Minn. Stat. § 121A.61, subd. 3.

- b) the grounds for removal of a student from a class;<sup>105</sup>
- c) the authority of the classroom teacher to remove students from the classroom pursuant to procedures and rules established in the district's policy;
- d) the procedures for removal of a student from a class by a teacher, school administrator, or other school district employee;
- e) the period of time for which a student may be removed from a class, which may not exceed five class periods for a violation of a rule of conduct;
- f) provisions relating to the responsibility for and custody of a student removed from a class;
- g) the procedures for return of a student to the specified class from which the student has been removed;
- h) the procedures for notifying a student and the student's parents or guardian of violations of the rules and conduct and of resulting disciplinary actions;
- i) any procedures determined appropriate for encouraging early involvement of parents or guardians in attempts to improve a student's behavior;
- j) any procedures determined appropriate for encouraging early detection of behavioral problems;
- k) any procedures determined appropriate for referring a student in need of special education services to those services;
- l) the procedures for consideration of whether there is a need for further assessment or of whether there is a need for a review of the adequacy of a current IEP of a student with a disability who is removed from class;
- m) procedures for detecting and addressing chemical abuse problems of a student while on the school premises;
- n) the minimum consequences for violations of the code of conduct;
- o) procedures for immediate and appropriate interventions tied to violations of the code;

---

<sup>105</sup> Under Minn. Stat. § 121A.121A.61, subd. 2, the grounds in a school's discipline policy for removal from class must include at least the following provisions as well as other grounds determined appropriate by the school board: a) willful conduct that significantly disrupts the rights of others to an education, including conduct that interferes with a teacher's ability to teach or communicate effectively with students in a class or with the ability of other students to learn; b) willful conduct that endangers surrounding persons, including school district employees, the student or other students, or the property of the school; and c) willful violation of any rule of conduct specified in the discipline policy adopted by the school board.

- p) a provision that states that a teacher, school employee, school bus driver, or other agent of a district may use reasonable force in compliance with state laws;
- q) an agreement regarding procedures to coordinate crisis services to the extent funds are available with the county board responsible for students with a serious emotional disturbance or other students who have an IEP whose behavior may be addressed by crisis intervention; and
- r) a provision that states a student must be removed from class immediately if the student engages in assault or violent behavior. For purposes of this paragraph “assault” has the following meaning: an act done with intent to cause fear in another of immediate bodily harm or death; or the intentional infliction of or attempt to inflict bodily harm upon another.<sup>106</sup> The removal shall be for a period of time deemed appropriate by the principal, in consultation with the teacher.

**Note:** The principal or other person having general control and supervision of the school, and representatives of parents, students, and staff in a school building shall confer at least annually to review the discipline policy and to assess whether the policy has been enforced.<sup>107</sup> A school board must conduct an annual review of the districtwide discipline policy.<sup>108</sup>

***Serious bodily injury***

“Serious bodily injury” (as referenced by the IDEA when describing special circumstances in which a district may remove a student to an interim alternative educational setting for not more than 45 school days) means bodily injury which involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss of impairment of the function of a bodily member, organ, or mental faculty.<sup>109</sup>

***Suspension (as defined by the PFDA)***

“Suspension” means an action by the school administration, under rules promulgated by the school board, prohibiting a student from attending school for a period of no more than ten school days, except where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.<sup>110</sup> Suspension does not apply to dismissal from school for one day or less (general education student) except as provided in federal law for a student with a disability (special education).<sup>111</sup>

**Note:** For students with a disability, a partial or one school day or more of suspension counts when determining whether a change of the student’s placement has occurred because the student has been subjected to a series of disciplinary removals that constitute a pattern. Check to see if there has been a

---

<sup>106</sup> Minn. Stat. § 609.02, subd. 10.

<sup>107</sup> Minn. Stat. § 121A.65.

<sup>108</sup> Minn. Stat. § 121A.65.

<sup>109</sup> 34 C.F.R. § 300.530(i)(3); 18 U.S.C. § 1365(h)(3).

<sup>110</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>111</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.43(b), 121A.47, subd. 14(b); 34 C.F.R. § 300.530.

series of removals that constitute a pattern ([disciplinary change of placement](#)), as additional procedures apply.<sup>112</sup>

The school administration may not impose consecutive suspensions against the same student for the same course of conduct, or incident of misconduct, except where the student will create an immediate and substantial danger to self or to surrounding persons or property.<sup>113</sup>

See also [Suspension Procedures](#).

### ***Unique circumstances (under the IDEA)***

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct.<sup>114</sup>

**Note:** Unique circumstances are best determined at the local level by school personnel who know the individual student and are familiar with the facts and circumstances regarding a student’s behavior. Factors such as a student’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided prior to the violation of a school code of student conduct could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a student with a disability.<sup>115</sup>

### ***Weapon (as referenced by the IDEA)***

“Weapon” (as referenced by the IDEA when describing special circumstances in which a district may remove a student to an interim alternative educational setting for not more than 45 school days) has the meaning given the term “dangerous weapon.”<sup>116</sup> See also [definition of dangerous weapon](#).

### ***Written notice of grounds for suspension (as required under the PFDA)***

A written notice of suspension containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the PFDA shall be personally served upon the student at or before the suspension is to take effect and upon the student’s parent or guardian by mail within 48 hours of the administrative conference.<sup>117</sup> The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following the suspension.<sup>118</sup> In the event a student is suspended without an informal administrative conference on the grounds that the student will create an immediate and

---

<sup>112</sup> 34 C.F.R. §§ 300.530, 300.536; Minn. Stat. §§ 121A.41, subd. 10, 121A.43(b), 121A.47, subd. 14(b).

<sup>113</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>114</sup> 34 C.F.R. § 300.530(a).

<sup>115</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 9-10 (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>116</sup> 34 C.F.R. § 300.530(i)(4); see also 18 U.S.C. § 930(g)(12).

<sup>117</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>118</sup> Minn. Stat. § 121A.46, subd. 3.

substantial danger to surrounding persons or property, the written notice shall be served upon the student and student’s parent or guardian within 48 hours of the suspension.<sup>119</sup> Service by mail is complete upon mailing.<sup>120</sup>

See also [Suspension Procedures](#).

## EXCLUSION PROCEDURES

### **Definition**

Exclusion means an action taken by the school board to prevent enrollment or reenrollment of a student for a period that shall not exceed beyond the school year.<sup>121</sup>

**Grounds for dismissal - exclusion** (as defined by the PFDA) a student may be dismissed (suspended, expelled, or excluded) on any of the following grounds:<sup>122</sup>

- 1) willful violation of any reasonable school board regulation.<sup>123</sup> Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
- 2) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
- 3) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school.<sup>124</sup>

### **Same procedural protections outlined under expulsions apply to exclusions**

The same [procedural protections outlined under expulsions](#) apply to exclusions, including [manifestation determination](#) for a student with a disability, [expedited due process hearing](#) for disagreements, [the right to a hearing](#), [written notice](#), [hearing procedures](#), [hearing recommendation](#), [school board action](#), [student’s placement pending school board action](#), [readmission plan](#), [appeal of school board decision](#), and the provision of [alternative](#)

---

<sup>119</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>120</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>121</sup> Minn. Stat. § 121A.41, subd. 4.

<sup>122</sup> Minn. Stat. § 121A.45, subd. 2.

<sup>123</sup> See *In re A.D.*, 883 N.W.2d 251, 258 (Minn. 2016) (finding although the PFDA “does not specifically address whether a student must know of a school’s policy in order for it to be the basis of dismissal . . . [a] knowledge requirement, however, is implicit in the plain meaning of the word ‘willful.’ . . . [T]he plain language of Minn. Stat. § 121A.45, subd. 2(a) [willful violation of any reasonable school board regulation], requires that a student know of a school policy and make a deliberate, intentional decision to violate that policy before the student may be dismissed under the ‘willful violation’ provision of the [PFDA].”).

<sup>124</sup> See also *In re A.D.*, No. A14-1587, 2015 WL 4393395, at \*6 (Minn. Ct. App. July 20, 2015), *aff’d*, 883 N.W.2d 251 (Minn. 2016) (finding the language of Minn. Stat. § 121A.45, subd. 2, indicates that paragraph (c) [willful conduct that endangers the student, other students, surrounding others, or property] requires something more than conduct that creates the mere possibility of harm).

[educational services](#) (including special education and related services for a student with a disability) throughout the duration of the exclusion, as well as [alternative enrollments](#).

Although an expulsion may prohibit a student's attendance for up to twelve months,<sup>125</sup> an exclusion may not exceed beyond the school year.<sup>126</sup>

## EXPEDITED DUE PROCESS HEARING PROCEDURES

### ***Disagreement regarding disciplinary change of placement or manifestation determination, or believe current placement substantially likely to result in injury***

The parent of a student with a disability who disagrees with any decision regarding a disciplinary change of placement or the manifestation determination, or a district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting an expedited due process hearing.<sup>127</sup>

### ***Resolution meeting***

Unless the parents and the district agree in writing to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven days of receiving notice of the due process complaint, and the expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.<sup>128</sup>

The intent of the resolution process is to allow the parties sufficient time to consider the resolution options discussed in the resolution meeting. However, if the parties do not reach agreement within 15 days of receipt of the parent's due process request, the expedited hearing may proceed and all the applicable timelines for an expedited due process hearing commence.<sup>129</sup>

### ***Hearing***

The hearing is requested by filing a due process complaint.<sup>130</sup>

This includes all hearing rights, such as a right to counsel, presenting evidence and cross examining witnesses, and obtaining a written decision, except that the timelines for the hearings are expedited.<sup>131</sup>

---

<sup>125</sup> Minn. Stat. § 121A.41, subd. 5.

<sup>126</sup> Minn. Stat. § 121A.41, subd. 4.

<sup>127</sup> 34 C.F.R. § 300.532(a); *see also* Minn. R. 3525.4750.

<sup>128</sup> 34 C.F.R. § 300.532(c)(3).

<sup>129</sup> 71 Fed. Reg. 46725 (Aug. 2006).

<sup>130</sup> 34 C.F.R. § 300.532(a).

<sup>131</sup> 34 C.F.R. § 300.532(c)(1); 71 Fed. Reg. 46724 (Aug. 2006).

The expedited due process hearing must occur within 20 school days of the date the request is filed.<sup>132</sup>

The hearing officer must make a determination within 10 school days after the hearing.<sup>133</sup>

### ***Burden of proof***

Under *Schaffer*, the United States Supreme Court noted that the term “burden of proof” is commonly held to encompass both the burden of persuasion (i.e., which party loses if the evidence is closely balanced) and the burden of production (i.e., the party responsible for going forward at different points in the proceedings).<sup>134</sup> In *Schaffer*, only the burden of persuasion was at issue.<sup>135</sup> The Court held that the burden of persuasion in a hearing challenging the validity of an IEP is placed on the party on which this burden usually falls – on the party seeking relief – whether that is the parent of student with a disability or the district.<sup>136</sup> Where the district has requested that a hearing officer remove a student to an interim alternative education setting, the burden of persuasion is on the district.<sup>137</sup>

### ***Hearing officer authority***

The hearing officer may: 1) return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of 34 C.F.R. § 300.530 or that the student’s behavior was a manifestation of the student’s disability; or 2) order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.<sup>138</sup>

These procedures may be repeated, if the district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.<sup>139</sup>

### ***Appeal***

The decisions of expedited due process hearings are final and appealable.<sup>140</sup>

---

<sup>132</sup> 34 C.F.R. § 300.532(c)(2). *See also* 34 C.F.R. § 300.11(c)(1) (defining “school day” as any day, including a partial day, on which students are in attendance at school for instructional purposes).

<sup>133</sup> 34 C.F.R. § 300.532(c)(2); *accord* Minn. R. 3525.4770, subp. 8.

<sup>134</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

<sup>135</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

<sup>136</sup> Minn. Stat. § 125A.091, subd. 16.

<sup>137</sup> 71 Fed. Reg. 46723 (Aug. 2006).

<sup>138</sup> 34 C.F.R. § 300.532(b).

<sup>139</sup> 34 C.F.R. § 300.532(b)(3).

<sup>140</sup> 34 C.F.R. § 300.532(c)(5); *see also* 34 C.F.R. § 300.514.

Any party aggrieved by the findings and decision of an expedited due process hearing has the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.<sup>141</sup>

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action.<sup>142</sup>

### ***Placement pending appeal***

When an appeal has been made by either the parent or the district, the student must remain in the interim alternative educational setting pending the decision of the hearing office or until the expiration of the time period specified, whichever occurs first, unless the parent and the district agree otherwise.<sup>143</sup> This changes the stay-put provision applying to disciplinary actions.<sup>144</sup>

## **EXPULSION PROCEDURES**

### ***Definition***

Expulsion, as defined by the PFDA, means a school board action to prohibit an enrolled student from further attendance for up to 12 months from the date the student is expelled.<sup>145</sup>

***Grounds for dismissal - expulsion*** (as defined by the PFDA) a student may be dismissed (suspended, expelled, or excluded) on any of the following grounds:<sup>146</sup>

- 1) willful violation of any reasonable school board regulation.<sup>147</sup> Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
- 2) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or

---

<sup>141</sup> 34 C.F.R. § 300.516.

<sup>142</sup> 34 C.F.R. § 300.516(b).

<sup>143</sup> 34 C.F.R. § 300.533.

<sup>144</sup> 71 Fed. Reg. 46726 (Aug. 2006).

<sup>145</sup> Minn. Stat. § 121A.41, subd. 5.

<sup>146</sup> Minn. Stat. § 121A.45, subd. 2.

<sup>147</sup> See *In re A.D. v. United South Central*, 883 N.W.2d 251, 258 (Minn. 2016) (finding although the PFDA “does not specifically address whether a student must know of a school’s policy in order for it to be the basis of dismissal . . . [a] knowledge requirement, however, is implicit in the plain meaning of the word ‘willful.’ . . . [T]he plain language of Minn. Stat. § 121A.45, subd. 2(a) [willful violation of any reasonable school board regulation], requires that a student know of a school policy and make a deliberate, intentional decision to violate that policy before the student may be dismissed under the ‘willful violation’ provision of the [PFDA].”).

- 3) willful conduct that endangers the student or other students, or surrounding persons, including school district employees, or property of the school.<sup>148</sup>

### ***Before initiating an expulsion of a student with a disability - manifestation determination***

Before initiating an expulsion because of a violation of a code of student conduct, the district, the parent, and relevant members of the student's IEP team shall, consistent with federal law, determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or whether the conduct in question was the direct result of the district's failure to implement the student's IEP.<sup>149</sup> The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the child's IEP team determine that either condition was met.<sup>150</sup>

A district cannot expel a student with a disability if the conduct is a manifestation of the student's disability.<sup>151</sup>

When a student with a disability who has an IEP is expelled for misbehavior that is not a manifestation of the student's disability, the district shall continue to provide special education and related services during the expulsion.<sup>152</sup>

See also [manifestation determination procedures](#).

### ***Expedited due process hearing***

The parent of a student with a disability who disagrees with any decision regarding a disciplinary change of placement or the manifestation determination, or the district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting an expedited due process hearing.<sup>153</sup>

See also [expedited due process hearing procedures](#).

### ***Right to a hearing***

No expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the student and parent or guardian.<sup>154</sup> The action shall be initiated by the school board or its agent.<sup>155</sup>

---

<sup>148</sup> See also *In re A.D.*, No. A14-1587, 2015 WL 4393395, at \*6 (Minn. Ct. App. July 20, 2015), *aff'd*, 883 N.W.2d 251 (Minn. 2016) (finding the language of Minn. Stat. § 121A.45, subd. 2, indicates that paragraph (c) [willful conduct that endangers the student, other students, surrounding others, or property] requires something more than conduct that creates the mere possibility of harm).

<sup>149</sup> Minn. Stat. § 121A.43(d); 34 C.F.R. § 300.530(e)(1).

<sup>150</sup> 34 C.F.R. § 300.530(e)(2).

<sup>151</sup> See Minn. Stat. § 121A.43(d); 34 C.F.R. § 300.530(f)(2).

<sup>152</sup> Minn. Stat. § 121A.43(d).

<sup>153</sup> 34 C.F.R. § 300.532(a); see also Minn. R. 3525.4750.

<sup>154</sup> Minn. Stat. § 121A.47, subd.1.

<sup>155</sup> Minn. Stat. § 121A.47, subd. 1.

### ***Written notice of expulsion***

Written notice of intent to expel shall be serviced upon the student and the student's parent or guardian or by mail.<sup>156</sup> The written notice must:<sup>157</sup>

- contain a complete statement of the facts;
- contain a list of the witnesses and a description of their testimony;
- state the date, time, and place of the hearing;
- be accompanied by a copy of the PFDA;
- describe alternative educational services accorded the student in an attempt to avoid the expulsion proceedings;<sup>158</sup> and
- inform the student and parent or guardian of the right to:
  - have a representative of the student's own choosing, including legal counsel, at the hearing and that free or low-cost legal assistance may be available and that a legal assistance resource list is available from the Department of Education;
  - examine the student's records before the hearing;
  - present evidence; and
  - confront and cross-examine witnesses.

### ***Hearing procedures***

The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed five days, is requested for good cause by the school board, student, parent or guardian.<sup>159</sup>

The hearing shall be at a time and place reasonably convenient to student, parent or guardian.<sup>160</sup>

The hearing shall be closed unless the student, parent or guardian requests an open hearing.<sup>161</sup>

The hearing shall take place before: 1) an independent hearing officer; 2) a member of the school board; 3) a committee of the school board; or 4) the full school board; as determined by the school board.<sup>162</sup>

The hearing shall be conducted in a fair and impartial manner.<sup>163</sup>

---

<sup>156</sup> Minn. Stat. § 121A.47, subd. 2(a).

<sup>157</sup> Minn. Stat. § 121A.47, subd.2.

<sup>158</sup> Minn. Stat. § 121A.45, subd. 1. *See also* Minn. Stat. § 121A.41, subd. 11 (defining alternative educational services as including, but not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation requirements although in different setting).

<sup>159</sup> Minn. Stat. § 121A.47, subd. 3.

<sup>160</sup> Minn. Stat. § 121A.47, subd. 4.

<sup>161</sup> Minn. Stat. § 121A.47, subd. 5.

<sup>162</sup> Minn. Stat. § 121A.47, subd. 6.

<sup>163</sup> Minn. Stat. § 121A.47, subd. 6.

The school board shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense.<sup>164</sup>

Testimony shall be given under oath.<sup>165</sup>

The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.<sup>166</sup>

A reasonable time prior to the hearing, the student, parent or guardian, or representative, shall be given access to all public school system records pertaining to the student, including any tests or reports upon which the proposed action may be based.<sup>167</sup>

The student, parent or guardian, or representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system.<sup>168</sup>

The student, parent or guardian, or representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.<sup>169</sup>

The student cannot be compelled to testify in the dismissal proceedings.<sup>170</sup>

### ***Hearing recommendation***

The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and must be made to the school board and served upon the parties within two days of the end of the hearing.<sup>171</sup>

### ***School board action***

The school board shall base its decision upon the recommendation of the hearing officer or school board member or committee and shall render its decision at a meeting held within five days after receiving the recommendation.<sup>172</sup> The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's recommendations provided that neither party presents any evidence not admitted at the hearing.<sup>173</sup>

---

<sup>164</sup> Minn. Stat. § 121A.47, subd. 7.

<sup>165</sup> Minn. Stat. § 121A.47, subd. 7.

<sup>166</sup> Minn. Stat. § 121A.47, subd. 7.

<sup>167</sup> Minn. Stat. § 121A.47, subd. 8.

<sup>168</sup> Minn. Stat. § 121A.47, subd. 9.

<sup>169</sup> Minn. Stat. § 121A.47, subd. 10.

<sup>170</sup> Minn. Stat. § 121A.47, subd. 11.

<sup>171</sup> Minn. Stat. § 121A.47, subd. 12.

<sup>172</sup> Minn. Stat. § 121A.47, subd. 13.

<sup>173</sup> Minn. Stat. § 121A.47, subd. 13.

The decision by the school board must:<sup>174</sup>

- be based on the record,
- be in writing, and
- state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

### ***Student's placement pending school board decision***

The student may be suspended pending the school board's decision in the expulsion hearing; provided that alternative educational services are implemented to the extent that suspension exceeds five days.<sup>175</sup>

### ***Alternative educational services***

Under the PFDA's plain language, a district has a "continuing responsibility" for a student's education when the student is denied their "current educational program" because of an expulsion.<sup>176</sup> In practice, that responsibility means the district must offer "alternative education services" to an expelled student, to continue his or her academic progress.<sup>177</sup> A district's responsibility to offer such services generally starts as soon as it moves toward expelling a student.<sup>178</sup> Specifically, the PFDA requires a district to offer alternative educational services but does not require that they be used to prevent an otherwise appropriate expulsion.

See also [definition of alternative educational services](#).

### ***Readmission plan***

A school administrator shall prepare and enforce an admission or readmission plan for any student who is expelled from school.<sup>179</sup> The plan may include measures to improve the student's behavior, including completing a character education program, and require parental involvement in the admission or readmission process, and may indicate the consequences to the student of not improving the student's behavior.<sup>180</sup>

---

<sup>174</sup> Minn. Stat. § 121A.47, subd. 13.

<sup>175</sup> Minn. Stat. § 121A.46, subd. 4.

<sup>176</sup> Minn. Stat. §§ 121A.41, subd. 2, 121A.55(a).

<sup>177</sup> Minn. Stat. § 121A.55(a).

<sup>178</sup> *In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), *review denied*, (Aug. 7, 2018) (finding the PFDA provides that willfully disobedient, disruptive, or dangerous behavior is grounds for expulsion and the requirement to offer alternative educational services merely mitigates the disruptive effect of expulsion on the student's education, to which he has a fundamental right).

<sup>179</sup> Minn. Stat. § 121A.47, subd. 14(a).

<sup>180</sup> Minn. Stat. § 121A.47, subd. 14(a).

### ***Appeal of school board decision***

A party to an expulsion decision may appeal the decision to the commissioner of education within 21 calendar days of school board action.<sup>181</sup>

The decision of the commissioner of education is subject to judicial review.<sup>182</sup>

The decision of the commissioner is stayed pending an appeal.<sup>183</sup>

The commissioner shall issue a decision with 30 calendar days of receiving the entire record and the parties' written submission on appeal.<sup>184</sup>

The commissioner's decision shall be final and binding upon the parties after the time for appeal expires.<sup>185</sup>

The commissioner may affirm the decision of the school board, may remand the decision for additional findings, or may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because of the administrative findings, inferences, conclusions, or decisions are: if the substantial rights of the student or student's parent or guardian have been prejudiced because the school board findings, inferences, conclusions, or decisions are:<sup>186</sup>

- 1) in violation of constitutional provisions;
- 2) in excess of the statutory authority or jurisdiction of the school district;
- 3) made upon unlawful procedure, unless the good faith exception applies;
- 4) affected by other error of law;
- 5) unsupported by substantial evidence in view of the entire record submitted; or
- 6) arbitrary or capricious.

### ***Alternative enrollment following an expulsion***

The definition of alternative educational services includes enrollment in another district or in an alternative learning center selected to allow the student to progress toward meeting graduation requirements although in different setting.<sup>187</sup>

---

<sup>181</sup> Minn. Stat. § 121A.49.

<sup>182</sup> Minn. Stat. § 121A.50.

<sup>183</sup> Minn. Stat. § 121A.50.

<sup>184</sup> Minn. Stat. § 121A.49.

<sup>185</sup> Minn. Stat. § 121A.49.

<sup>186</sup> Minn. Stat. § 121A.49.

<sup>187</sup> Minn. Stat. § 121A.41, subd. 11.

## Area learning centers

An area learning center may not prohibit an expelled student from enrolling solely because a district expelled the student.<sup>188</sup> The board of the area learning center may use the provisions of the PFDA to exclude a student or to require an admission plan.<sup>189</sup>

## Resident district enrollment

When a student is enrolled in a district that is not their resident district and that enrollment or placement ends (i.e., the student is expelled) the student may enroll in their resident school district. The law does not permit a resident district to deny the enrollment of a resident student, for any reason.<sup>190</sup> If the resident district determines that exclusion is appropriate, then the resident district may go through the exclusion process as outlined in the PFDA. However, the resident district is obligated to provide the appropriate alternative educational services until the student is enrolled elsewhere or the term of the exclusion ends.<sup>191</sup>

## Open enrollment

If a student attempts to open-enroll into a district following an expulsion, the open enrolling district may deny enrollment if the student was expelled for (1) possessing a [dangerous weapon](#), as defined by United States Code, title 18, section 930, paragraph (g)(2), at school or a school function; (2) possessing or using an [illegal drug](#) at school or a school function; (3) selling or soliciting the sale of a [controlled substance](#) while at school or a school function; or (4) committing a third-degree assault as described in section 609.223, subdivision 1 (124D.03.)<sup>192</sup>

---

<sup>188</sup> Minn. Stat. § 121A.55(b).

<sup>189</sup> Minn. Stat. § 121A.55(b).

<sup>190</sup> See Minn. Stat. § 120A.20, subd. 1(a) (“All schools supported in whole or in part by state funds are public schools. Admission to a public school is free to any person who: (1) resides within the district that operates the school; (2) is under 21 years of age or who meets the requirements of paragraph (c); and (3) satisfies the minimum age requirements imposed by this section.”); Minn. Stat. § 120A.22, subd. 3(e) (“If a district reasonably believes that a student does not meet the residency requirements of the school district in which the student is attending school, the student may be removed from the school only after the district sends the student's parents written notice of the district's belief, including the facts upon which the belief is based, and an opportunity to provide documentary evidence of residency in person to the superintendent or designee, or, at the option of the parents, by sending the documentary evidence to the superintendent, or a designee, who will then make a determination as to the residency status of the student.”). See also Minn. Stat. § 123B.02, subd. 2 (“It is the duty and the function of the district to furnish school facilities to every child of school age residing in any part of the district.”); Minn. R. 3525.0800, subp. 1 (“[Student’s] district of residence. As provided in Minnesota Statutes, section 125A.05, a [student’s] district of residence is responsible for assuring that an appropriate program is provided for all eligible [students] placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.”)

<sup>191</sup> Minn. Stat. §§ 121A.41, subd. 11, 121A.43, 121A.45, subd. 1, 121A.55(a).

<sup>192</sup> Minn. Stat. § 124D.03, subd. 1(b).

If the student was not expelled for one of those four reasons, the open enrolling school must follow their enrollment policy as described in section 124D.03, subd. 6b, which is based on making equitable decisions, not based on an individual student's past enrollment or past disciplinary proceedings.<sup>193</sup> If the open enrolling district determines that exclusion is appropriate, then the district may go through the [exclusion procedures](#) as outlined in the PFDA. However, the excluding district is obligated to provide the appropriate alternative educational services until the student is enrolled elsewhere or the term of the exclusion ends.<sup>194</sup>

Likewise, when a student is expelled from a district he or she is open enrolled in, the open-enrolling district is obligated to provide the appropriate alternative educational services until the student is enrolled elsewhere or the term of the expulsion is over.<sup>195</sup>

## Charter school

Minnesota Statutes section 124E.11 allows charter schools to limit admission into the school to (1) students within an age group or grade level; (2) students who are eligible to participate in the graduation incentives program under section 124D.68;<sup>196</sup> or (3) residents of a specific geographic area in which the school is located when the majority of students served by the school are members of underserved populations.<sup>197</sup> Open enrollment does not apply to charter schools, as there is a specific charter school enrollment law that applies.<sup>198</sup> Nothing in the law allows charter schools to deny enrollment to a student based on the details of their previous enrollment.<sup>199</sup> If a student attempts to enroll in a charter school following an expulsion, the charter school must enroll the student if the student otherwise meets the school's admissions criteria.<sup>200</sup> If the charter school determines that exclusion is appropriate, then the charter school may go through the [exclusion procedures](#) as outlined in the PFDA. However, the excluding district is obligated to provide the appropriate alternative educational services until the student is enrolled elsewhere or the term of the exclusion ends.<sup>201</sup>

Likewise, when a student is expelled from a charter school, the charter school is obligated to provide the appropriate alternative educational services until the student is enrolled elsewhere or the term of the expulsion is over.<sup>202</sup>

---

<sup>193</sup> Minn. Stat. § 124D.03, subd. 6. ("The board must adopt, by resolution, specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, excluding special education services; class; or school building. . . . Standards may not include . . . previous disciplinary proceedings . . .").

<sup>194</sup> Minn. Stat. §§ 121A.41, subd. 11, 121A.43, 121A.45, subd. 1, 121A.55(a).

<sup>195</sup> Minn. Stat. §§ 121A.41, subd. 11, 121A.43, 121A.45, subd. 1, 121A.55(a).

<sup>196</sup> This includes students who have undergone expulsion proceedings at previous schools. See Minn. Stat. § 124D.68, subd. 2(a)(5).

<sup>197</sup> Minn. Stat. § 124E.11(a).

<sup>198</sup> Minn. Stat. § 124E.11(a).

<sup>199</sup> Minn. Stat. § 124E.11(a).

<sup>200</sup> Minn. Stat. § 124E.11(a).

<sup>201</sup> Minn. Stat. §§ 121A.41, subd. 11; 121A.43; 121A.45, subd. 1; 121A.55(a).

<sup>202</sup> Minn. Stat. §§ 121A.41, subd. 11, 121A.43, 121A.45, subd. 1, 121A.55(a).

## LAW ENFORCEMENT

### *Referral to law enforcement under the IDEA*

Nationwide, students with disabilities are disproportionately referred to law enforcement. According to the U.S. Department of Education Office for Civil Rights 2015-16 Civil Rights Data Collection on School Climate and Safety, students with disabilities (IDEA) represented 12 percent of the overall student enrollment and 28 percent of students referred to law enforcement or arrested.<sup>203</sup>

In 2016, the U.S. Departments of Justice and Education released guidance on "preventing unnecessary or inappropriate arrests, referrals to law enforcement, contact with the juvenile justice system, and violations of civil rights laws" aimed at school resource officer interactions with students.<sup>204</sup>

Nothing in the IDEA prohibits a district from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.<sup>205</sup>

However, if a student with a disability does not pose a threat of harm to him or herself or to others, school staff should first implement the behavioral interventions contained in the student's IEP before calling law enforcement.<sup>206</sup>

If a student who has an IEP is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the student's IEP team must meet to determine if the student's IEP is adequate or if additional evaluation is needed.<sup>207</sup>

See also [Protections for Students Not Yet Identified](#).

---

<sup>203</sup> See U.S. Department of Education Office for Civil Rights 2015-16 Civil Rights Data Collection on School Climate and Safety, available at <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf> (last accessed Nov. 28, 2018).

<sup>204</sup> See U.S. Departments of Education and Justice, SECURE [Safe School-Based Enforcement through Collaboration, Understanding, and Respect] Local Implementation Rubric, available at <https://www2.ed.gov/documents/press-releases/secure-implementation.pdf> (last accessed Nov. 28, 2018).

<sup>205</sup> 34 C.F.R. § 300.535(a).

<sup>206</sup> See generally 34 C.F.R. § 300.17.

<sup>207</sup> Minn. Stat. § 121A.67, subd. 2.

### ***Transmittal of records***

A district reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reports the crime.<sup>208</sup>

A district reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by FERPA.<sup>209</sup>

## **MANIFESTATION DETERMINATION PROCEDURES**

### ***When to hold a manifestation determination meeting***

A manifestation determination must happen before initiating an expulsion or exclusion of a student with a disability<sup>210</sup> or within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct.<sup>211</sup>

The IEP team is required to hold a manifestation determination each time a student is removed for more than 10 consecutive days or each time the district determines that a series of removal constitutes a change of placement.<sup>212</sup>

### ***Disciplinary change of placement for a student with a disability***

For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if: 1) the removal is for more than 10 consecutive school days; or 2) the student has been subjected to a series of removals that constitute a pattern: a) because the series or removals total more than 10 school days in a school year; b) because the student's behavior is substantially similar to the student's behavior in previous incidents that results in a series of removals; and c) because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.<sup>213</sup>

---

<sup>208</sup> 34 C.F.R. § 300.535(b)(1).

<sup>209</sup> 34 C.F.R. § 300.535(b)(2).

<sup>210</sup> Minn. Stat. 121A.43(d).

<sup>211</sup> 34 C.F.R. § 300.530(e)(1).

<sup>212</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 17-18 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018) ("34 C.F.R. § 300.530(e) requires that 'within 10 school days of **any** decision to change the placement of a [student] with a disability because of a violation of a code of student conduct' the LEA, the parent, and relevant members of the [student's] IEP Team must conduct a manifestation determination.") (emphasis in original).

<sup>213</sup> 34 C.F.R. § 300.536(a).

The district determines on a case-by-case basis whether a pattern of removals constitutes a change in placement.<sup>214</sup> This determination is subject to review through due process and judicial proceedings.<sup>215</sup>

A change in placement that is appropriate and consistent with the student's needs may be implemented subject to the parent's procedural safeguards regarding prior notice, mediation, due process and pendency.<sup>216</sup>

***Unique circumstances that school personnel may consider when determining whether a change of placement is appropriate for a student with a disability***

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct.<sup>217</sup>

The U.S. Department of Education believes that "unique circumstances" are best determined at the local level by school personnel who know the individual student and are familiar with the facts and circumstances regarding a student's behavior. Factors such as a student's disciplinary history, ability to understand consequences, expression of remorse, and supports provided prior to the violation of a school code of student conduct could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability.<sup>218</sup>

***Manifestation determination components***

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the district, parent, and relevant members of the student's IEP team (as determined by the district and the parents) must review all relevant information in the student's file including the student'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 student's disability; or 2) if the conduct in question was the direct result of the district's failure to implement the student's IEP.<sup>219</sup>

***If the conduct is a manifestation of the student's disability***

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or the conduct in question was the direct result of the district's failure to implement the IEP.<sup>220</sup>

---

<sup>214</sup> 34 C.F.R. § 300.536(b).

<sup>215</sup> 34 C.F.R. § 300.536(c).

<sup>216</sup> 34 C.F.R. § 300.530(h); 71 Fed. Reg. 46720-21 (Aug. 2006).

<sup>217</sup> 34 C.F.R. § 300.530(a).

<sup>218</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 9-10 (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>219</sup> 34 C.F.R. § 300.530(e)(1).

<sup>220</sup> 34 C.F.R. § 300.530(e)(2).

If the district, parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the student's disability, the IEP team must:

(1) Either (i) conduct an FBA, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or (ii) if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and

(2) Unless special circumstances as defined by 34 C.F.R. 300.530(g) apply, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.<sup>221</sup>

When the behavior is related to the student's disability, proper development of the student's IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior.<sup>222</sup>

When the behavior is determined to be a manifestation of a student's disability but has not previously been addressed in the student's IEP, the IEP team must review and revise the student's IEP so that the student will receive services appropriate to his or her needs.<sup>223</sup>

Implementation of the behavioral strategies identified in a student's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate even if the behavior is a manifestation of the student's disability.<sup>224</sup>

A district cannot expel or exclude a student with a disability if the behavior is a manifestation of the student's disability.<sup>225</sup>

***If the conduct is not a manifestation of the student's disability***

If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to the student with a disability in the same manner and for the same duration as the procedures would be applied to students without disabilities.<sup>226</sup>

When a student with a disability who has an IEP is excluded or expelled for misbehavior that is not a manifestation of the student's disability, the district shall continue to provide special education and related services during the exclusion or expulsion.<sup>227</sup>

---

<sup>221</sup> 34 C.F.R. § 300.530(f).

<sup>222</sup> 71 Fed. Reg. 46720-21 (Aug. 2006).

<sup>223</sup> 71 Fed. Reg. 46720-21 (Aug. 2006).

<sup>224</sup> 71 Fed. Reg. 46720-21 (Aug. 2006).

<sup>225</sup> See Minn. Stat. § 121A.43(d); see also 34 C.F.R. § 300.530(f)(2).

<sup>226</sup> 34 C.F.R. § 300.530(c).

<sup>227</sup> Minn. Stat. § 121A.43(d); 34 C.F.R. § 300.530(d).

A student with a disability must continue to receive educational services so as 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; and receive as appropriate, an FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.<sup>228</sup> These services may be provided in an interim alternative educational setting.<sup>229</sup>

Any interim alternative educational setting for such services under this provision is determined by the student's IEP team.<sup>230</sup> In general the student's IEP team will make an individualized decision for each child with a disability regarding the type and intensity of services to be provided in the interim alternative educational setting.<sup>231</sup>

***If the parties cannot reach consensus about whether the conduct is a manifestation of the student's disability***

If the parents of a student with a disability, the district, and the relevant members of the student's IEP team cannot reach consensus on agreement on whether the student's behavior was or was not a manifestation of the disability, the district must make the determination and provide the parent with prior written notice.<sup>232</sup>

The parent of the student with a disability has the right to exercise his or her procedural safeguards by requesting mediation and/or a due process hearing, or may file a state complaint to resolve a disagreement about the manifestation determination.<sup>233</sup>

A parent who disagrees with any decision regarding any disciplinary change of placement or the manifestation determination may appeal the decision by requesting an expedited due process hearing.<sup>234</sup>

A district that believes maintaining the current placement of the student is substantially likely to result in injury to the student or others may appeal the decision by requesting an expedited due process hearing.<sup>235</sup>

The hearing officer may: 1) return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the authority of school personnel or that the student's behavior was a manifestation of the student's disability; or 2) order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45

---

<sup>228</sup> 34 C.F.R. § 300.530(d)(1).

<sup>229</sup> 34 C.F.R. § 300.530(d)(2).

<sup>230</sup> 34 C.F.R. § 300.531. *See also* Minn. Stat. § 121A.43(a).

<sup>231</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 12 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>232</sup> 34 C.F.R. §§ 300.503, 300.532(a); U.S. Department of Education, Questions and Answers on Discipline Procedures 17 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>233</sup> 34 C.F.R. §§ 300.503, 300.506, 300.530(h), 300.532(a); U.S. Department of Education, Questions and Answers on Discipline Procedures 17 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>234</sup> 34 C.F.R. § 300.532(a), (c); *see also* Minn. R. 3525.4750.

<sup>235</sup> 34 C.F.R. § 300.532(a); *see also* Minn. R. 3525.4750.

school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.<sup>236</sup>

These procedures may be repeated, if the district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.<sup>237</sup>

***Special circumstances that allow school personnel to remove a student with a disability to an interim alternative education setting regardless of the outcome of the manifestation determination***

School personnel may remove a student to an interim alternative education setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:<sup>238</sup>

- 1) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or LEA [*see also* [definition of dangerous weapon](#)];
- (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at a school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA [*see also* [definition of illegal drug](#) and [definition of controlled substance](#)]; or
- (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA [*see also* [definition of serious bodily injury](#)].

A student with a disability must continue to receive educational services so as 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; and receive as appropriate, an FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.<sup>239</sup>

These services may be provided in an interim alternative educational setting.<sup>240</sup> Any interim alternative educational setting for such services under this provision is determined by the student's IEP team.<sup>241</sup> In general the student's IEP team will make an individualized decision for each student with a disability regarding the type and intensity of services to be provided in the interim alternative educational setting.<sup>242</sup>

*See also* [interim alternative educational setting](#).

---

<sup>236</sup> 34 C.F.R. § 300.532(b).

<sup>237</sup> 34 C.F.R. § 300.532(b)(3).

<sup>238</sup> 34 C.F.R. § 300.530(g).

<sup>239</sup> 34 C.F.R. § 300.530(d)(1).

<sup>240</sup> 34 C.F.R. § 300.530(d)(2).

<sup>241</sup> 34 C.F.R. § 300.531; Minn. Stat. § 121A.43(a); *see also* 71 Fed. Reg. 46722 (Aug. 2006).

<sup>242</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 12 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018)

## PROTECTIONS FOR STUDENTS NOT YET IDENTIFIED

### **Application**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in the IDEA if the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.<sup>243</sup>

**A district must be deemed to have knowledge** that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred: 1) the parent of the student expressed concern in writing to supervisory or administrative personnel of the district, or a teacher of the student, that the student is in need of special education and related services; 2) the parent of the student requested an evaluation of the student; or 3) the teacher of the student, or other personnel of the district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.<sup>244</sup>

**A district would not be deemed to have knowledge** that a student is a student with a disability if 1) the parent of the student has not allowed an evaluation of the student; or 2) the parent of the student has refused services; or 3) the student has been evaluated and determined to not be a student with a disability.<sup>245</sup>

**If a district does not have knowledge** that a student is a student with a disability prior to taking disciplinary erasure against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors.<sup>246</sup>

**If a request is made for an evaluation** of a student during the time period in which the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner.<sup>247</sup> Until the evaluation is completed, the student remains in the educational placement determined by the school authorities, which can include suspension or expulsion without educational services.<sup>248</sup> If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district must provide special education and related services.<sup>249</sup>

In general, once the student is properly referred for an evaluation, the district would be deemed to have knowledge that the student is a student with a disability for purposes of the IDEA's disciplinary provisions.<sup>250</sup>

---

<sup>243</sup> 34 C.F.R. § 300.534.

<sup>244</sup> 34 C.F.R. § 300.534(b).

<sup>245</sup> 34 C.F.R. § 300.534(c).

<sup>246</sup> 34 C.F.R. § 300.534(d)(1).

<sup>247</sup> 34 C.F.R. § 300.534(d)(2)(i).

<sup>248</sup> 34 C.F.R. § 300.534(d)(2)(ii).

<sup>249</sup> 34 C.F.R. § 300.534(d)(2)(iii).

<sup>250</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 18-19 (June 2009), available at <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

### ***Revocation of consent***

Parents are permitted to unilaterally withdraw their student from receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their student. When a parent revokes consent for special education and related services, the parent has refused services; therefore, the school is not deemed to have knowledge that the student is a student with a disability and the student will be subject to the same disciplinary procedures and timelines applicable to general education students and not entitled to IDEA's discipline protections. It is expected that parents will take into account the possible consequences under the discipline procedures before revoking consent for the provision of special education and related services.<sup>251</sup>

## **SECTION 504 DISCIPLINARY PROCEDURES**

### ***Eligibility***

Eligible students may also be entitled to protections under Section 504 of the Rehabilitation Act of 1973.<sup>252</sup> Section 504 prohibits districts from discriminating against students who have a physical or mental impairment that substantially limits a major life activity, whether or not the student is currently served under a 504 plan.<sup>253</sup> This includes protections related to the disciplinary suspension and expulsion of Section 504 students from school.

### ***Evaluation required prior to significant change in placement***

The federal regulations implementing Section 504 provide that a student must be evaluated prior to any significant change in placement.<sup>254</sup> If a proposed removal of a Section 504 student is permanent, for an indefinite period, or for more than 10 consecutive school days, the removal constitutes a "significant change in placement."<sup>255</sup> A series of suspensions that are each 10 days or fewer in duration may create a pattern of removals that constitutes a significant change in placement. The determination of whether the series of suspensions creates a pattern of removals that constitutes a significant change in placement is made on a case-by-case basis, taking into consideration the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.<sup>256</sup>

Before implementing a removal that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the child<sup>257</sup> The first step of the reevaluation is to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the misconduct is caused

---

<sup>251</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 6 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>252</sup> 29 U.S.C. § 794.

<sup>253</sup> 34 C.F.R. § 104.4.

<sup>254</sup> 34 C.F.R. § 104.35(a).

<sup>255</sup> *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138, 109 LRP 24381 (Complaint No. 07-08-1210) (O.C.R. Jan. 8, 2009).

<sup>256</sup> *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138, 109 LRP 24381 (Complaint No. 07-08-1210) (O.C.R. Jan. 8, 2009).

<sup>257</sup> 34 C.F.R. § 104.35.

by the student's disability. That determination should be made by a group of persons, including the parent, who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group determines that the conduct is not a manifestation of the student's disability, the student may be removed from school in the same manner as similarly situated students without disabilities are removed.<sup>258</sup>

If the group determines that the student's misconduct is a manifestation of the student's disability, the group must continue the evaluation and determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary.<sup>259</sup> The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the 11th day of the suspension or removal.<sup>260</sup> A procedure consistent with the IDEA is one means of meeting a district's manifestation determination obligations under Section 504.<sup>261</sup>

### ***Section 504 and the PFDA***

Section 504 students do not meet the definition of "student with a disability" under the PFDA.<sup>262</sup> As such, the provisions of Minn. Stat. §121A.43 do not apply to Section 504 students, but Section 504 students are entitled to all of the procedural protections provided by the PFDA to nondisabled students, including [alternative educational services](#) as provided for in Minn. Stat. §121A.46.

### ***Section 504 procedural safeguards***

Section 504 requires districts to establish and implement a system of procedural safeguards with respect to the identification, evaluation, or educational placement of Section 504 students. This system must include parental notice, an opportunity for parents to examine relevant records, an impartial hearing, and a review procedure.<sup>263</sup>

## **SUSPENSION PROCEDURES**

### ***Definition***

Suspension means an action by the school administration, under rules promulgated by the school board, prohibiting a student from attending school for a period of no more than ten school days, except where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.<sup>264</sup> Suspension does not apply to dismissal from school for one day or less

---

<sup>258</sup> *Twinsburg (OH) City Sch. Dist.*, 58 IDELR 231, 112 LRP 7415 (Complaint No. 15-11-1124) (O.C.R. Nov. 28, 2011). *See also Newton Cnty. (GA) Sch. Dist.*, 116 LRP 1171 (Complaint No. 04-15-1402) (O.C.R. Sept. 3, 2015).

<sup>259</sup> 34 C.F.R. § 104.35.

<sup>260</sup> *Twinsburg (OH) City Sch. Dist.*, 58 IDELR 231, 112 LRP 7415 (Complaint No. 15-11-1124) (O.C.R. Nov. 28, 2011).

<sup>261</sup> *Vallejo City (CA) Unified Sch. Dist.*, 116 LRP 21989 (Complaint No. 09-15-1421) (O.C.R. Dec. 22, 2015).

<sup>262</sup> Minn. Stat. §§ 121A.41, subd. 7(b), 125A.02.

<sup>263</sup> 34 C.F.R. § 104.36.

<sup>264</sup> Minn. Stat. § 121A.41, subd. 10.

(general education students) except as provided in federal law for a student with a disability (special education student).<sup>265</sup>

**Note:** For students with a disability, a partial or one day or more suspension counts when determining whether a change of the student’s placement has occurred because the student has been subjected to a series of removals that constitutes a pattern. Check to see if there has been a series of removals that constitutes a pattern ([disciplinary change of placement](#)), as additional procedures apply.<sup>266</sup>

### ***Grounds for dismissal - suspension***

A student may be suspended on any of the following grounds:

- 1) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
- 2) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
- 3) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school.<sup>267</sup>

### ***Informal administrative conference***

The school administration shall not suspend a student from school without an informal administrative conference with the student.<sup>268</sup>

The informal administrative conference shall take place before the suspension, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension.<sup>269</sup>

At the informal administrative conference, a school administrator shall notify the student of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the student may present the student’s version of the facts.<sup>270</sup>

### ***Written notice of suspension***

A written notice of suspension containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the PFDA, shall be personally served upon the

---

<sup>265</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.43(b), 121A.47, subd. 14(b); 34 C.F.R. § 300.530.

<sup>266</sup> 34 C.F.R. §§ 300.530, 300.536; Minn. Stat. §§ 121A.41, subd. 10, 121A.43(b), 121A.47, subd. 14(b).

<sup>267</sup> Minn. Stat. § 121A.45, subd. 2.

<sup>268</sup> Minn. Stat. § 121A.46, subd. 1.

<sup>269</sup> Minn. Stat. § 121A.46, subd. 1.

<sup>270</sup> Minn. Stat. § 121A.46, subd. 2.

student at or before the time the suspension is to take effect, and upon the student's parent or guardian by mail within 48 hours of the administrative conference.<sup>271</sup>

The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following the suspension.<sup>272</sup> In the event a student is suspended without an informal administrative conference on the grounds that the student will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the student and the student's parent or guardian within 48 hours of the suspension.<sup>273</sup> Service by mail is complete upon mailing.<sup>274</sup>

**Note for students with disabilities:** The district's determination that a short-term removal does not constitute a change of placement of a student with a disability is not a proposal or refusal to initiate a change of placement. Therefore the district is not required to provide prior written notice to the parent for a removal of 10 consecutive school days or less.<sup>275</sup>

On the date on which the decision is made to make a suspension that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the district must notify the parents of that decision, and provide the parents with [prior written notice](#) and a copy of the procedural safeguards, including information about mediation, due process, and pendency.<sup>276</sup>

### ***Alternative educational services***

No school shall dismiss any student without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the student will create an immediate and substantial danger to self or to surrounding persons or property.<sup>277</sup>

The district will need to determine whether the number of days the student has been removed from his or her current placement is more than 10 school days in the same school year, in which case additional procedures apply.<sup>278</sup>

A student with a disability shall be provided alternative educational services to the extent a suspension exceeds five consecutive school days.<sup>279</sup>

---

<sup>271</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>272</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>273</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>274</sup> Minn. Stat. § 121A.46, subd. 3.

<sup>275</sup> U.S. Department of Education, Questions and Answers on Discipline Procedures 7 (June 2009), *available at* <https://sites.ed.gov/idea/idea-files/guidance-discipline-procedures/> (last accessed Nov. 28, 2018).

<sup>276</sup> 34 C.F.R. § 300.530(h); 71 Fed. Reg. 46720-21 (Aug. 2006).

<sup>277</sup> Minn. Stat. § 121A.45, subd. 1. *See also In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), *review denied*, (Aug. 7, 2018) (finding a district's responsibility to offer alternative educational services generally starts as soon as the district moves toward dismissal proceedings).

<sup>278</sup> *See* 34 C.F.R. § 300.530; Minn. Stat. §§ 121A.43(a), 121A.45, subd. 3.

<sup>279</sup> Minn. Stat. § 121A.43(c).

Alternative educational services must also be provided to students who have been suspended pending expulsion or exclusion, to the extent that suspension exceeds five days.<sup>280</sup>

See also [definition of alternative educational services](#).

### **Readmission plan**

Each suspension action may include a readmission plan.<sup>281</sup> The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension.<sup>282</sup> The readmission plan must not obligate a parent to provide a sympathomimetic medication<sup>283</sup> for the student as a condition of readmission.<sup>284</sup> A readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student or to consent to a psychiatric evaluation, screening or examination of the student as a ground, by itself, to prohibit the student from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect or medical or educational neglect.<sup>285</sup>

### **Mental health screening**

If a student's total days of removal from school exceeds ten cumulative school days in a school year, the district shall make reasonable attempts to convene a meeting with the student and the student's parent or guardian before subsequently removing the student from school and, with the permission of the parent or guardian, arrange for a mental health screening for the student.<sup>286</sup> The district is not required to pay for the mental health screening.<sup>287</sup>

**Note:** The purpose of this meeting is to attempt to determine the student's need for assessment or other services or whether the parent or guardian should have the student assessed or diagnosed to determine whether the student needs treatment for a mental health disorder.<sup>288</sup> This requirement applies to students with and without disabilities.

---

<sup>280</sup> Minn. Stat. § 121A.46, subd. 4.

<sup>281</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.47, subd. 14(b).

<sup>282</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>283</sup> Minnesota does not have a definition of sympathomimetic medications. In general, the term refers to stimulants for the treatment of attention deficit/hyperactivity disorder (ADHD), such as Ritalin and Adderall.

<sup>284</sup> Minn. Stat. §§ 121A.41, subd. 10, 121A.47, subd. 14(b).

<sup>285</sup> Minn. Stat. § 121A.47, subd. 14(b).

<sup>286</sup> Minn. Stat. § 121A.45, subd. 3. See *In re B.L.*, No. A17-1174, 2018 WL 2090615, at \*4 (Minn. Ct. App. May 7, 2018), *review denied*, (Aug. 7, 2018) (finding the PFDA recognizes that a student who engages in behavior that prompts expulsion may also require restorative or behavioral services, but such services are complementary to, not part of, alternative educational services) (*citing* Minn. Stat. § 121A.45, subd. 3 (recognizing that severe student misconduct that warrants repeated or prolonged removals from school may necessitate mental health intervention)).

<sup>287</sup> Minn. Stat. § 121A.45, subd. 3.

<sup>288</sup> Minn. Stat. § 121A.45, subd.3. See also Minn. Stat. § 245.4874, subd. 1(a)(1), (4) (tasking county boards to create a system of affordable and locally available children's mental health services, consistent with the Minnesota Comprehensive Children's Mental Health Act, which include mental health screening and coordinating the delivery of children's mental

### ***Suspension of students with disabilities***

School personnel may remove a student 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 (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).<sup>289</sup>

After a student 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 district must provide services, determined by the student's IEP team, that 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.<sup>290</sup> The student must also receive as appropriate, an FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.<sup>291</sup>

A district is required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.<sup>292</sup>

For a student with a disability, check if there has been a series of removals that constitute a pattern ([disciplinary change of placement](#)).<sup>293</sup> If the removal is a change of placement, the district must follow the [manifestation determination procedures](#).

### ***Patterns of suspensions/removals for students without disabilities***

For a student who has not been identified as having a disability, checking for patterns in the student's disciplinary removals may help the district fulfill its responsibility to identify, locate, and evaluate the student if he or she is suspected to be a student with a disability.<sup>294</sup>

### ***Notice of right to be reinstated***

Whenever a student fails to return to school within ten school days of the termination of dismissal (suspension, expulsion, or exclusion), a school administrator shall inform the student and the student's parents by mail of the student's right to attend and to be reinstated in the public school.<sup>295</sup>

---

health services provided by social services, education, corrections, health, and vocational agencies to improve the availability of mental health services to children and the cost-effectiveness of their delivery).

<sup>289</sup> 34 C.F.R. § 300.530(b)(1), (d)(4); 71 Fed. Reg. 46714-15 (Aug. 2006).

<sup>290</sup> 34 C.F.R. § 300.530(d).

<sup>291</sup> 34 C.F.R. § 300.530(d)(1)(ii).

<sup>292</sup> 34 C.F.R. § 300.530(d)(3).

<sup>293</sup> See 34 C.F.R. §§ 300.530, 300.536.

<sup>294</sup> See 34 C.F.R. § 300.111; Minn. R. 3525.0750.

<sup>295</sup> Minn. Stat. § 121A.54.

### ***Suspensions (dismissals/removals) for one day or less – special considerations***

Since the definition of “suspension” in the PFDA does not apply to a dismissal from school for one school day or less, the suspension procedures outlined by the PFDA, including written notice and an informal administrative conference, are not required.<sup>296</sup>

However, for a student with a disability, a dismissal for one school day or less is a day or a partial day of suspension if the student with a disability does not receive regular or special education instruction during that dismissal period.<sup>297</sup>

For a student with a disability, a partial or one school day or more of suspension counts when determining whether a change of the student’s educational placement has occurred because the student has been subjected to a series of disciplinary removals that constitute a pattern.<sup>298</sup> If the series of removals constitute a [disciplinary change of placement](#), additional procedures apply.<sup>299</sup>

### ***Suspensions (dismissals/removals) for more than five consecutive school days – special considerations***

If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension.<sup>300</sup>

For a student with a disability, check if there has been a series of removals that constitute a pattern ([disciplinary change of placement](#)), as additional procedures apply.<sup>301</sup>

When a student with a disability has been suspended for more than five consecutive school days or ten cumulative school days in the same school year, and that suspension does not involve a recommendation for expulsion or exclusion or other change of placement under federal law, relevant members of the student’s IEP team, including at least one of the student’s teachers, shall meet and determine the extent to which the student needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the student’s IEP.<sup>302</sup> That meeting must occur as soon as possible, but no more than ten days after the sixth consecutive day of suspension or the tenth cumulative day of suspension has elapsed.<sup>303</sup>

A student with a disability shall be provided [alternative educational services](#) to the extent a suspension exceeds five consecutive school days.<sup>304</sup>

---

<sup>296</sup> Minn. Stat. § 121A.46.

<sup>297</sup> Minn. Stat. § 121A.43(b).

<sup>298</sup> 34 C.F.R. §§300.530, 300.536; Minn. Stat. §§ 121A.41, subd. 10, 121A.43(b), 121A.47, subd. 14(b).

<sup>299</sup> See 34 C.F.R. §§ 300.530, 300.536; Minn. Stat. §§ 121A.43(a), 121A.45, subd. 3.

<sup>300</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>301</sup> See 34 C.F.R. §§ 300.530, 300.536.

<sup>302</sup> Minn. Stat. § 121A.43(a).

<sup>303</sup> Minn. Stat. § 121A.43(a).

<sup>304</sup> Minn. Stat. § 121A.43(c).

Alternative educational services must also be provided to students who have been suspended pending expulsion or exclusion, to the extent that suspension exceeds five days.<sup>305</sup>

***Suspensions (dismissals/removals) for more than ten cumulative days – special considerations***

If a student’s total days of removal from school exceeds ten cumulative school days in a school year, the district must attempt to arrange for a mental health screening. (See also [mental health screening](#) under Suspension Procedures.)

After a student with a disability has been removed from his or her current educational placement for ten school days in the same school year, during any subsequent days of removal the district must provide services.<sup>306</sup> (See also [suspension of students with disabilities](#) under Suspension Procedures).

For a student with a disability, check if there has been a series of removals that constitute a pattern ([disciplinary change of placement](#)), as additional procedures apply.<sup>307</sup>

***Suspensions (dismissals/removals) for more than ten consecutive days – special considerations***

A suspension may be extended to a total of 15 school days only if the district is in the process of initiating an expulsion.<sup>308</sup> Alternative educational services must be provided to students who have been suspended pending expulsion or exclusion, to the extent that suspension exceeds five days.<sup>309</sup>

For a student with disability, a removal for more than ten consecutive days is considered a [disciplinary change of placement](#)<sup>310</sup> and the district must conduct a manifestation determination and follow the associated [manifestation determination procedures](#).<sup>311</sup>

---

<sup>305</sup> Minn. Stat. § 121A.46, subd. 4.

<sup>306</sup> 34 C.F.R. § 300.530(b).

<sup>307</sup> See 34 C.F.R. §§ 300.530, 300.536.

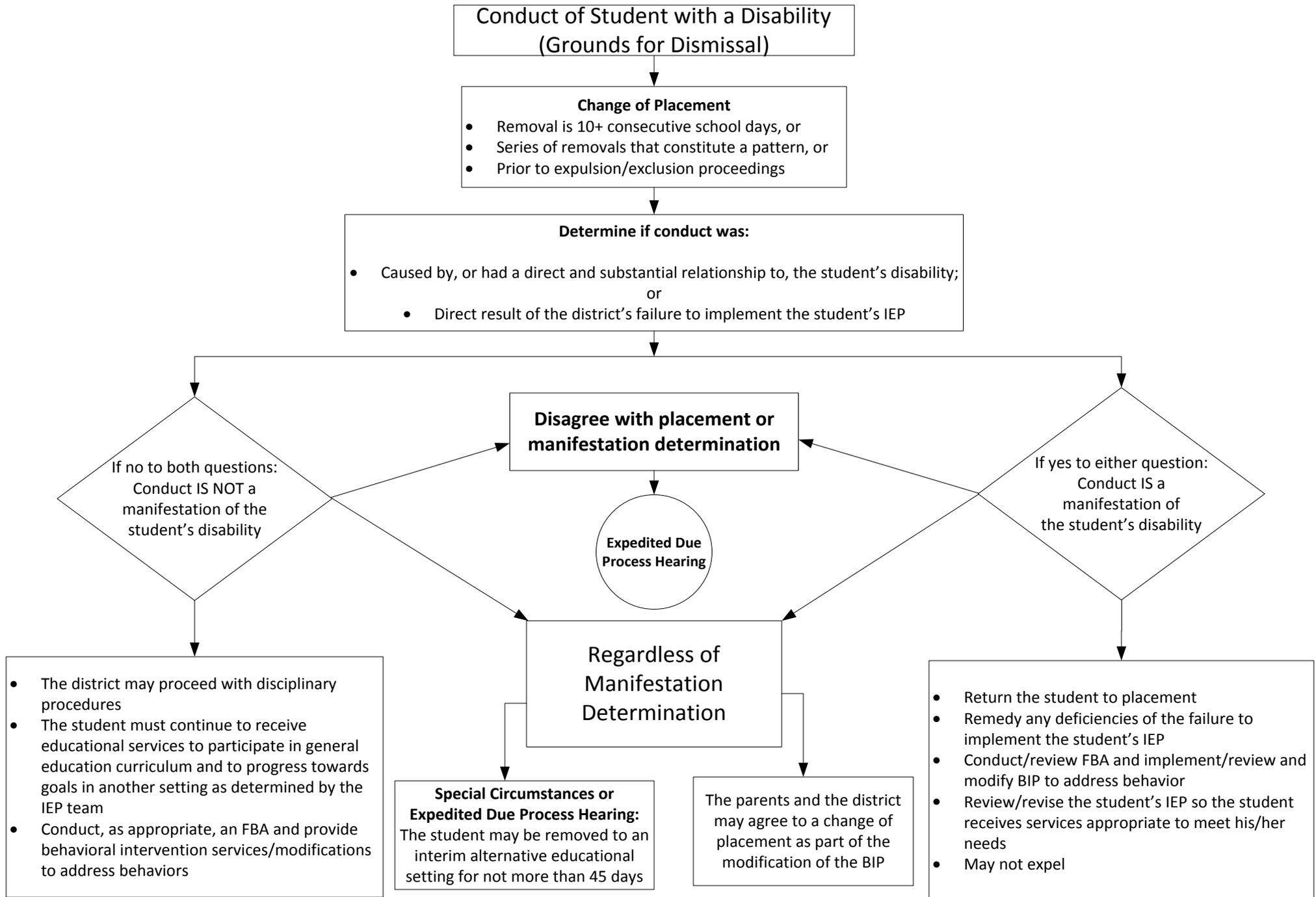
<sup>308</sup> Minn. Stat. § 121A.41, subd. 10.

<sup>309</sup> Minn. Stat. § 121A.46, subd. 4.

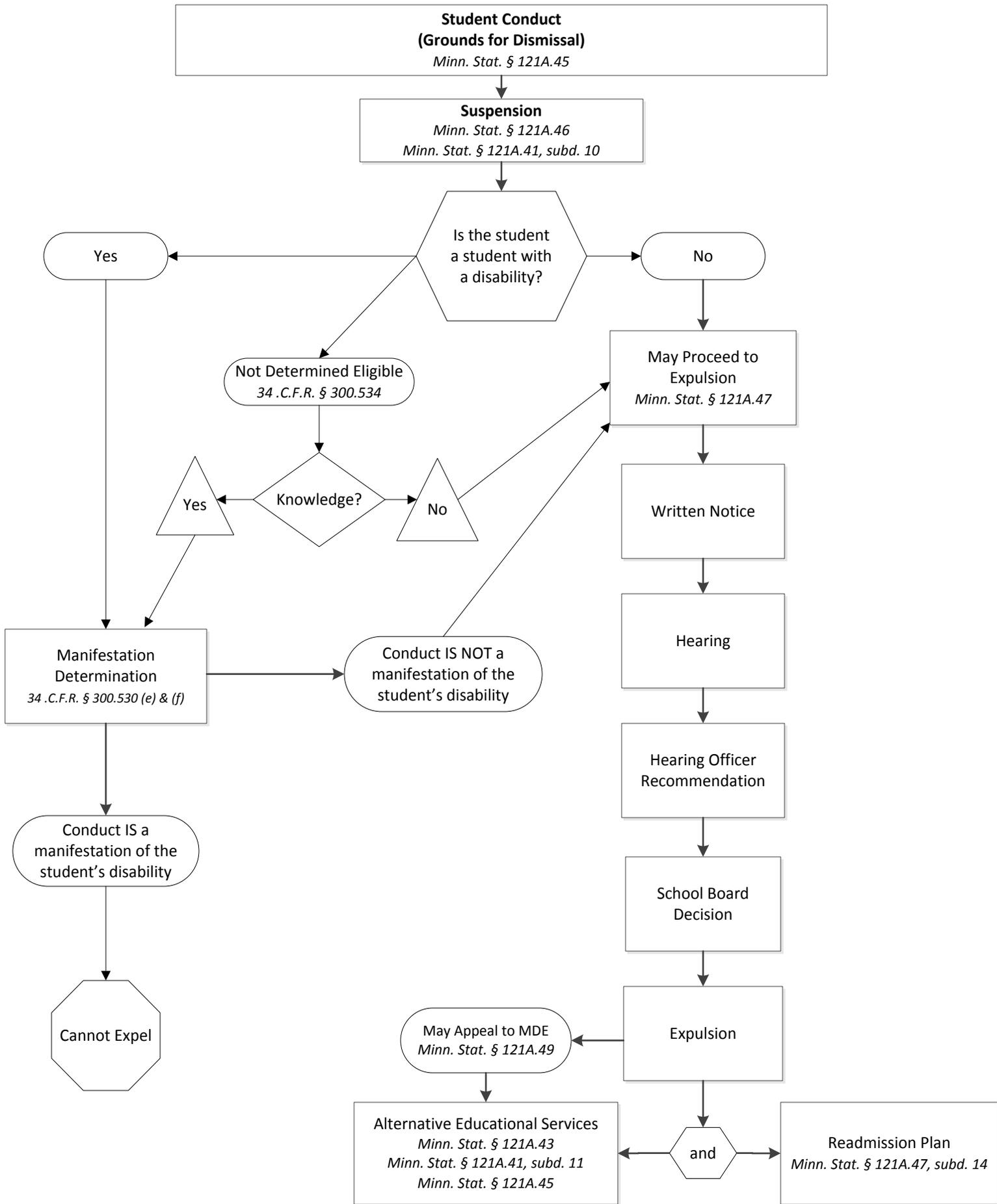
<sup>310</sup> See 34 C.F.R. § 300.536.

<sup>311</sup> See 34 C.F.R. § 300.530(e).

# Manifestation Determination



# Expulsion



# Discipline Questions to Keep in Mind!

Is  
dismissal/removal  
from school the  
right approach?

Are we following  
PFDA  
procedures?

Is this a student  
with a disability?  
Is an evaluation  
needed?

Has there been a  
disciplinary  
change of  
placement?

What services  
does the district  
need to provide?

What additional  
support might  
the student  
need?

