



# Manifestation Determinations

# Last school year in MN Schools..

31,975 students suspended

57,433 total suspensions

113,121 missed school days

2017-18 DIRS Da

Dismissals from school are associated with **negative student outcomes** such as lower academic performance, higher rates of dropout, failure to graduate on time, decreased academic engagement, and future disciplinary exclusion.

*Achilles, McLaughlin, Croninger, 2007; Arcia, 2006; Christle, Jolivette, & Nelson, 2005; Costenbader & Markson, 1998; Lee, Cornell, Gregory, & Fan, 2011; Raffaele-Mendez, 2003; Rodney et al., 1999; Skiba & Peterson, 1999*

# Free Appropriate Public Education (FAPE)

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.

*34 C.F.R. § 300*

The **Pupil Fair Dismissal Act (PFDA)** provides due process and equal protection of the law to any Minnesota public school student, including charter school students, involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.

The **PFDA**, Minnesota Statutes §§ 121A.40 – 121A.56, may be found at: <https://www.revisor.mn.gov/>.

The **2004 Amendments to the Individuals with Disabilities Education Act (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.

The **2006 regulations implementing IDEA**, 34 C.F.R. Part 300, may be found at: [https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/titled34/34cfr300\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/titled34/34cfr300_main_02.tpl)

# Districtwide School Discipline Policy

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.

*Minn. Stat. § 121A.61, subd. 1*

school board shall adopt written policies that:

- establish uniform criteria for dismissal;
- emphasize preventing dismissals through early detection; and
- recognize the continuing responsibility of the school for the education of the student during the dismissal period.

*Minn. Stat. § 121A.51, subd. 1*

# Today's Focus: Manifestation Determinations

Who? Students with disabilities.

When? There is a change in placement.

# Change in Placement (IDEA)

Change of placement occurs if –

the removal is for more than 10 consecutive school days; or

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.

*34 C.F.R. § 300*

# Manifestation Determination

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

whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

whether the conduct in question was the direct result of the LEA's failure to implement the IEP.

*34 C.F.R. § 300.511*

# Manifestation Determination

If the determination is made that the student's conduct was a result of the district failing to implement the student's IEP, the district must take steps to remedy those deficiencies.

34 C.F.R. § 300.530(e)(1)

# Determination that behavior was *NOT* a manifestation

Behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

For:

A child with a disability who is removed from his/her current placement must—

Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

34 C.F.R. § 300.530(c) a

# Determination that behavior *WAS* a manifestation

LEA, the parent, and relevant members of the IEP Team make the determination that the behavior was a manifestation of the child's disability, the IEP Team must-

her-

- (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

cept in *special circumstances*, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the implementation of the behavioral intervention plan.

34 C.F.R. § 300

# Special Circumstances

School personnel may remove a student with a disability to an interim alternative educational 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 –

- 1) Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the district;
- 2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function under the jurisdiction of the district; 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 the district.

*34 C.F.R. § 300.530(c)*

# Special Circumstances

ent who is removed from his or her current placement due to special circumstances

(i) 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

(ii) receive, as appropriate, an **FBA**, and **behavioral intervention services and modifications**, that are designed to address the behavior violation so that it does not

The student's **IEP team** determines the interim alternative educational setting and appropriate services based on the circumstances of the individual case.

*34 C.F.R. §§ 300.530(a), (d), (g);*

# Unique Circumstances

## ***Unique Circumstances:***

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability.

Unique circumstances may include a student's disability history, ability to understand consequences, expressions of remorse, and supports provided prior to the violation of a school code of student conduct.

4 C.F.R. § 300.530(a) and U.S. Department of Education, *Questions and Answers on Discipline Procedures* 9-1 (June 2009)

# FORM ACTIVITY

Questions about School Discipline Law?

Call:

651-582-8689

[mde.compliance-assistance@state.mn.us](mailto:mde.compliance-assistance@state.mn.us)

Thank you!