

# Chapter 4

## Behavior and Discipline

### Does the IDEA require my school to address my child's behavior needs?

Yes. The IDEA requires that a school address all the disability-related needs of a child who is eligible for special education services, whether those needs are academic, developmental or functional, if they impact her educational performance.

Those disability-related needs might include behavior issues.

The first place your child's school must address any of her behavior needs is in the evaluation and eligibility process.





*Serena has a medical diagnosis of Bipolar Disorder and Attention Deficit/Hyperactivity Disorder.*

*She's getting into trouble at school. She does not get along with her peers, is disrespectful to teachers, and cannot stay on task. She has had many discipline write-ups and suspensions, including a recent five-day suspension. However, she continues to make passing grades and to be promoted.*

*Special education assessments indicate she's performing well both cognitively (IQ) and academically (achievement). However, behavior assessments done on Serena (including one that*

*she completed herself) indicate clinically significant behaviors and that her behaviors are adversely affecting her social functioning in school.*

*The IEP Team could find Serena eligible based on these behavioral deficits since they are impacting her educational performance (defined under Alabama law as academic, social/emotional, and/or communication skills). This is true even though she's making passing grades. State and federal law require schools to provide FAPE to a child with a disability even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

As noted in Chapter 1, when your child's school evaluates her for eligibility for special education services, it must assess her in all areas related to a suspected disability, including, if appropriate, her social and emotional status. If your child's educational performance is impacted by behavior issues, she may be eligible for special education services on the basis of those behavior needs alone.



In writing your child's IEP, her IEP Team must include measurable annual goals that address any behavior needs identified during the evaluation process that are affecting her educational performance. In fact, the IDEA specifically states that if your child's behavior affects her learning or the learning of others, your child's IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

Your child may require related services to help with her behavior needs. As noted in Chapter 2, related services are developmental, corrective, and other support services that your child needs so that she can benefit from the special education she's receiving. The related services that might help your child's behavior include things like:

- counseling services
- parent counseling and training
- psychological services
- school-based social work services

### What are Functional Behavioral Assessments (FBAs) and how are they used to help with behavior problems?

Your child's IEP Team conducts a functional behavioral assessment (FBA) to figure out why your child is having problem behaviors.

An FBA identifies any biological, emotional, social, or environmental factors that contribute or lead to the problem behaviors. An FBA is done to gather information to develop (or revise) a behavior improvement plan (BIP).

An FBA is important because it requires the IEP Team to move beyond the child's behavior to the underlying purpose(s) for her behavior - its function or what the child gets out of doing the problem behavior. Knowing the function of an inappropriate behavior helps the IEP Team develop a plan for teaching the child a new, replacement behavior. Two children may display the same behavior, but that behavior may serve different functions for each of them. The resulting BIP that's written for each child will have to account for the different functions that the behavior serves.

### How are FBAs done?

The IDEA does not specifically mandate a certain process to be used for conducting an FBA. However, clinical practice describes an FBA as requiring these basic components.

- **Define the problem. What is the problem behavior the IEP Team is trying to eliminate?**

When doing an FBA, the Team should be specific about identifying the problem behaviors. Rather than saying: "Tommy is stubborn" the Team could describe Tommy's behavior in this way: "Tommy lays on the floor and refuses to move when it's time to go to math class."

Behaviors are measurable actions and should be defined in terms of frequency, duration, and intensity - How often? How long? How much?

- **Collect data and information related to the problem behavior. What are the antecedents and consequences related to the behavior?**

The Team needs to identify the antecedents and consequences related to the behavior.

The behavior's antecedents are those things that occur before the behavior. For example, the Team should consider the following:

- When does the behavior happen? When does it not?
- Where does the behavior happen?
- Who is present and who is not when the behavior occurs?
- What is happening in the environment immediately before the behavior occurs?



*George is a 12 year old who becomes over-stimulated when others invade his personal space. He will hit peers and others who get too close to him which results in them moving away from him.*

*Martha is a 10 year old who loves to be the center of attention. When her teacher leaves her to work independently, she will hit anyone nearby which brings the teacher back to her side to reprimand her. She will stop hitting when the teacher is near her. As soon as the teacher leaves her, she starts hitting again.*

*For George, hitting gets people to move away from him. For Martha, hitting brings her the attention she's seeking. A well-conducted FBA will help identify the reasons why each child hits and then suggest responses targeted to each function.*



A BIP helps teachers and other school personnel deal with your child's inappropriate behaviors. It provides your child with the opportunity and motivation to learn and apply new, appropriate behaviors.

The FBA should identify the consequence of the behavior- those things that follow the behavior and influence it.

Consider the example of George and Martha (see page 45). The consequence of George's hitting is that peers move away from him and he gets the decrease in stimulation that he is seeking. On the other hand, the consequence of Martha's hitting is that she gets more attention from her teacher - even if it might be in the form of a reprimand from her.

To collect this information, the Team should use a variety of tools. The Team may interview you, your child, school staff or outside service providers (ex. mental health workers) who work with your child. The Team may arrange for observations of your child in a variety of environments and settings. It may ask you, relevant staff members or other persons who are familiar with your child to complete behavior rating scales for her. Depending on the age of your child, she might complete a self-report on a behavior rating scale.

Sometimes data need to be collected and observations conducted for the FBA by a behavior specialist - a person who has training and expertise in working with children who have behavior challenges. The school may have to contract with a behavior specialist when there is not one employed by the system.

- **Analyze the information and develop a hypothesis about the function of the problem behavior.**

Your child's IEP Team should analyze the information to determine what can be learned about the target behavior and the context in which it occurs. The Team should look for specific patterns associated with the target behavior. Your child's IEP Team should develop a hypothesis regarding the behavior. The hypothesis should look like this:

- *When this behavior occurs . . .* Describe context, antecedent, consequence.
- *The individual does . . .* Describe the behavior.
- *To get or avoid . . .* Describe the function.

Remember these terms:

- Antecedent - what happens before the behavior
- Target Behavior - the problem or inappropriate behavior
- Consequence - what happens after the behavior
- Function - what the child gets out of the inappropriate behavior

- **Develop, implement, and monitor the BIP**

A BIP helps teachers and other school personnel deal with your child's inappropriate behaviors. It provides your child with the opportunity and motivation to learn and apply new, appropriate behaviors.

During the implementation process of the BIP, it's common for school personnel (and parents) to become discouraged if the child's behaviors do not improve immediately. It's important for the Team to:

- Start simply - prioritize the behaviors that need to be worked on first.
- Don't expect too much too soon - in some cases, you're working to undo years of learned behavior.
- Be patient - the behavior may get worse before it gets better!
- Be consistent - all school staff should implement the plan consistently across different school environments. The Team should work with you to incorporate relevant parts of the BIP at home. It is important that the behavior modification is happening both at school and at home.
- Build on your child's strengths, not her deficits.
- Review and revise the plan as necessary.

The BIP should identify:

- The target behavior that has been identified to be reduced or eliminated
- The replacement behavior that will be taught your child in place of the target behavior
- When and how your child will be taught the replacement behavior, including practice of the replacement behavior
- A description of what will be done (consequence) when your child uses the replacement behavior
- The person(s) who will be responsible for the implementation of the BIP.

To be meaningful, your child's IEP Team should review the BIP at least annually. However, the Team should also review it when your child has reached her behavioral goals and new goals need to be developed or when the BIP is not working. The BIP must be reviewed by the IEP Team when certain disciplinary actions have been taken.

### **For how long can my child be suspended if she violates her school's code of conduct?**

If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement - sending her to an appropriate alternative educational setting, another setting, or suspending her for not more than 10 consecutive school days - to the extent such removals are applied to children without disabilities.

Let's refer to a removal that does not exceed 10 consecutive school days as a short term removal.

If your child misbehaves other times during the same school year, she may be subjected to additional short term removals.

If your child is subjected to a series of short term removals in a school year and those removals constitute a pattern of removals, then the IDEA says your child has been subjected to a disciplinary **change of placement**. See below for more information on what happens when there has been a change of placement.



### **The Use of Punishment as a Consequence CAUTION!**

- It's the least effective way to change a behavior.
- It does not teach appropriate behaviors.
- It can result in aggressive actions.
- It should only be considered as a last resort !



### **Can my child be suspended for more than 10 consecutive school days at a time?**

Yes. If your child violates a provision of her school's code of conduct, school personnel may remove her from her current educational placement - sending her to an appropriate alternative educational setting, another setting or suspending or expelling her - for more than 10 consecutive school days, to the extent such removals are applied to children without disabilities. Let's refer to a removal that is more than 10 consecutive school days as a long term removal. A long term removal is a disciplinary change of placement.

### **Does my child have a right to continued schooling when she's suspended?**

After your child has been removed from her current placement for 10 school days (cumulative or consecutive) in the same school year, the IDEA requires your school to continue to provide your child with educational services that enable her to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting her IEP goals.

Who determines the setting for such services depends on the nature of the disciplinary removal. This matter is discussed more fully below.

In addition to educating your child after 10 school days of removal, her school must also provide an FBA and BIP designed to address your child's behavior so it does not recur.

### **What is a disciplinary change of placement?**

A disciplinary change of placement occurs under two circumstances:

- Your child is removed from her current educational placement for more than 10 consecutive school days (a long term removal), or
- Your child is subjected to a series of short term removals that make a pattern of removals. A series of short term removals becomes a pattern when:
  - the series of removals total more than 10 school days in a school year and,
  - your child's behavior is substantially similar to her behavior in previous incidents that resulted in removal and,
  - factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

A school administrator and your child's special education teacher decide, on a case-by-case basis, whether your child's short term removals have created a pattern. The decision about whether a pattern has been created can be contested through due process and judicial proceedings.

### **Why is it important to know when a change of placement has occurred?**

A manifestation determination must be completed when a disciplinary change of placement has occurred.

In addition, on the date on which the school decides to make a disciplinary removal that constitutes a change of placement for your child, it must notify you of that decision, and provide you with a copy of the IDEA's procedural safeguards notice.

### What is a manifestation determination?

The manifestation determination (MD) dictates the disciplinary response your child's school can take to violations of the school code of conduct.

#### Learn how manifestation determinations work and be an active, informed participant in the process!

In a MD, you, school personnel, and relevant members of your child's IEP Team must meet within 10 school days of any decision to remove your child from her current educational placement when that removal creates a disciplinary change of placement.

You and the school identify the relevant members of your child's IEP Team who should make up the MD team.

MDs are done by reviewing all relevant information in your child's file, including the IEP, teacher observations and information provided by you.

In doing a MD, two questions have to be answered. If the answer to **either** of the questions is "yes" then the MD team must find that your child's misconduct was a manifestation of her disability.

- **Question One: Was your child's conduct the direct result of the school's failure to implement her IEP?**

Answer: If yes, then the MD team must find that her behavior is a manifestation of her disability.

- **Question Two: Was your child's conduct caused by or did it have a direct and substantial relationship to her disability?**

Answer: If yes, then the MD team must find that your child's conduct was a manifestation of her disability.

### What happens if the MD team determines that my child's misconduct was a manifestation of her disability?

If the MD team finds that your child's misconduct was a manifestation of her disability, her IEP Team must:

- Conduct an FBA if one has not been completed (note: as part of its obligation to provide FAPE, the Team should consider whether a previously completed FBA is adequate).
- Implement a BIP (or review and revise a previously completed one) to address the behavior.
- Return your child to the placement from which she was removed, unless you and the school agree to a change of placement as part of the modification of the BIP.

*Didi has been suspended four times so far this year:*

- Incident one - 3 day suspension
- Incident two- 2 day suspension
- Incident three - 1 day suspension
- Incident four- 4 day suspension

*She has been suspended for a total of 10 cumulative school days.*

*If Didi receives another disciplinary removal, she will be entitled to continued educational services because she will have gone over 10 days of removal.*

*If these short term removals and any subsequent short term removals are not a change of placement, then school personnel, in consultation with at least one of Didi's teachers, will determine the extent to which she needs services to enable her to participate in the general education curriculum and to progress toward meeting her IEP goals. They will also determine the setting in which Didi will receive such services.*

*If a change of placement is created, then a manifestation determination will have to be conducted.*



In addition, the school must immediately fix any deficiencies in how it implemented your child's IEP if the MD team determined that the school had failed to correctly implement it.

**What happens if the MD team determines that my child's misconduct was not a manifestation of her disability?**

If the MD team determines that your child's misconduct was not a manifestation of her disability, school personnel may discipline her just as they would a child without a disability for the same misconduct.

During the disciplinary action, your child must continue to receive educational services that enable her to participate in the general education curriculum and to progress toward meeting her IEP goals. Your child's IEP Team determines in what setting she will be placed.

The IEP Team must also provide your child with an FBA and BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

Your child's IEP Team determines the educational setting for her services when:

- there has been a change of placement because your child's removal is for more than 10 consecutive school days (a long term removal)
- there has been a change of placement because of a pattern of short term removals
- the misconduct involves weapons, drugs or serious bodily injury

**What are the special exceptions involving weapons, drugs and serious bodily injury?**

School personnel may remove your child to another setting for not more than 45 school days if, on school premises or at a function under the jurisdiction of the school, she

- carries or possesses a weapon to or at school
- knowingly possesses, uses, sells or solicits illegal drugs
- has inflicted serious bodily injury upon another person

School personnel have this authority whether or not the violations are found to be a manifestation of your child's disability.

Your child's IEP Team determines the appropriate educational setting for violations involving weapons, drugs and serious bodily injury. This setting must enable your child to participate in the general education curriculum and progress toward meeting her IEP goals.

Besides continuing to provide educational services in the event of misconduct involving weapons, drugs and serious bodily injury, the IEP Team must provide your child with an FBA or BIP (or review/revise previously completed ones) designed to address the behavior so that it does not recur.

**Federal law defines the following terms:**

A weapon is 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, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

An illegal drug is a controlled substance (as defined under the Controlled Substances Act (CSA)), but an illegal drug does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority under the CSA or any other provision of Federal Law.

Serious bodily injury is bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**Who determines the setting to which my child gets sent for short term removals that are not a disciplinary change in placement?**

School personnel, in consultation with at least one of your child's teachers, determine the setting in which your child will be placed.

This setting must enable your child to participate in the general education curriculum and to progress toward meeting her IEP goals. School personnel, in consultation with at least one of your child's teachers, determine the setting in which your child will be placed.

**My child is not yet eligible for special education. Is she entitled to protection under any of the IDEA's disciplinary provisions?**

Yes, under limited circumstances.

A child who is not eligible for special education and who has violated her school's code of conduct may assert the protections provided for in the IDEA if the school had knowledge that she was a child with a disability before the violation that led to the disciplinary action occurred.

A school is said to have knowledge that your child is a child with a disability if, before the violation occurred:

- you expressed concern in writing to school administrative personnel or to your child's teacher that the child is in need of special education and related services
- you requested an evaluation, verbally or in writing
- your child's teacher or other school personnel expressed specific concerns about a pattern of troubling behavior by your child to the school's special education director or other supervisory school personnel.

The school would not be said to have knowledge of your child's status as a child with a disability if:





A resolution meeting between the school and the parents must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the resolution meeting or they agree to use the mediation process

- you did not allow your child to be evaluated
- you refused special education services for your child
- she had been evaluated and determined not to be eligible for services

### **What happens if I disagree with any decision regarding my child's disciplinary removal or the MD decision?**

You have the right to appeal any such decision by requesting a due process hearing.

A due process hearing officer will hear and make a determination regarding such a disagreement. The hearing officer may return your child to the placement from which she was removed if she determines that the removal was improper, or that your child's behavior was a manifestation of her disability.

You also have the right to file a state administrative complaint alleging a denial of a free appropriate public education or to request voluntary mediation to address the matter.

### **What if school personnel disagree with any decision made by the MD team or the IEP Team regarding my child's disciplinary removal or the MD decision?**

The school has a right to appeal any removal, placement or MD decision by requesting a due process hearing if it believes that maintaining your child's current placement is substantially likely to result in injury to the child or others.

A due process hearing officer will hear and make a determination regarding any such disagreement. The hearing officer may order your child's placement to be changed to another appropriate setting for not more than 45 school days if she determines that maintaining your child's current placement is substantially likely to result in injury to the child or to others.

Further hearings can be filed by the school if it continues to believe that returning your child to her original placement is substantially likely to result in injury to the child or to others.

### **How quickly are disciplinary due process hearings heard and decided?**

Disciplinary due process hearings are handled on an expedited basis.

An expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make her decision within 10 school days after the hearing.

A resolution meeting between the school and the parents must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the resolution meeting or they agree to use the mediation process.

Unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint, the due process hearing may proceed.

Expedited due process decisions may be appealed in state or federal court.

**Where is my child going to be educated pending the disciplinary due process hearing decision?**

Your child must remain in any alternative setting in which she has been placed pending the decision of the hearing officer or until the expiration of the time period specified in the disciplinary action, whichever occurs first, unless you and the school agree otherwise.

**Can school officials report my child's misconduct to law enforcement and judicial authorities?**

Yes, if your child's misconduct constitutes a crime. The IDEA does not prohibit school personnel from reporting crimes committed by students with disabilities to law enforcement and judicial authorities.

If school personnel report a crime committed by your child, it must ensure that her special education and disciplinary records are sent for consideration by the appropriate authorities to whom the crime was reported. Such records may only be sent to the extent allowed under Family Educational Rights and Privacy Act.

**The IDEA states that "school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of [the IDEA's discipline protections and procedures], is appropriate for a child with a disability who violates a code of student conduct." When would this provision be used? What are unique circumstances?**

The provision allows school personnel to bypass disciplinary removals that are typically required by a school's code of conduct.

It allows school personnel the flexibility to make case-by-case disciplinary decisions by allowing them to consider a child's unique and individual circumstances when determining whether a change of placement is appropriate. This provision does not allow school personnel to ignore the other disciplinary protections provided to students that are described above. This provision must be used consistent with those requirements, including the requirement that children with disabilities cannot be disciplined more harshly than children without disabilities for the same misconduct.

Guidance provided by the U.S. Department of Education says that what constitutes unique circumstances is best determined at the local level by school personnel who know your child and all the facts and circumstances regarding her behavior. Factors such as your child's disciplinary history, ability to understand consequences, expressions of remorse, and the supports provided to her prior to the violation of the school code of conduct could all be unique circumstances considered by school personnel.

**Are there rules which protect children from the use of seclusion and restraint in school?**

Alabama adopted regulations on the use of seclusion and restraint in its public schools in December 2011. While the regulations apply to all students,



If school personnel report a crime committed by your child, it must ensure that her special education and disciplinary records are sent for consideration by the appropriate authorities to whom the crime was reported.



Seclusion is prohibited in Alabama schools.

such practices have historically been used disproportionately on children with disabilities.

As a parent of a child with a disability, you should become aware of the state's new rules, your own school district's policies and procedures, your and your child's rights under these rules, and advocacy steps you can take to work with your child's school to ensure her behavior needs are met and she is safe.

The U.S. Department of Education emphasized the following important points in its May 2012 Resource Document on seclusion and restraint:

- *Restraint and seclusion can have very serious consequences, including, most tragically, death.*
- *There is no evidence that using restraint or seclusion is effective in reducing the occurrence of problem behavior among children.*
- *Schools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports that applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.*

### Is seclusion allowed in Alabama schools?

**Seclusion is prohibited in Alabama schools.** Your child may not be placed in a room or closed area that is locked and that she is physically prevented from leaving. Unlocked, accompanied segregation is allowed. That is, your child may be placed in an unlocked room with a teacher properly trained in de-escalation techniques or restraint.

Time-out is allowed. Time-out is a behavioral intervention where your child is temporarily removed from the learning activity. Time-out must be in an unlocked area that is properly lighted, ventilated, and heated or cooled. The space must be free of dangerous objects. An adult must be in reasonable physical proximity to your child and must have sight of her during the time-out. The time-out must be limited to a reasonable amount of time, but should not exceed 45 minutes.

In-school suspension, detention, or a student requested break in a different room or area are allowed.

### Can a child be restrained in school?

Chemical restraints are medications used to control a student's movement or behavior.

**Chemical restraints are not allowed in Alabama schools.** Chemical restraints do not include medications prescribed by your child's doctor and used according to the prescription. Schools may not increase the dosage of your child's medication in order to control her behavior.

**Mechanical restraints are not allowed in Alabama schools.** Mechanical restraints are any device attached to your child or next to her that restrict her

movement. Adaptive or protective devices recommended by a clinician and when used as prescribed to promote normative body positioning, physical functioning or to prevent self-injurious behavior are not considered mechanical restraints. Seatbelts and other safety equipment used during the transportation of students are not considered mechanical restraints.

Physical restraint is any direct physical contact from an adult that prevents or significantly restricts your child's movement. **Physical restraints are not allowed in Alabama schools except in situations where your child is an immediate danger to herself or others and has not responded to de-escalation techniques.** In no case may a physical restraint be used that restricts the flow of air to your child's lungs. Physical restraint cannot be used as a form of punishment or discipline. Physical restraint must be stopped when your child is no longer a danger to herself or others or if she is in severe distress.

Physical restraint does not include providing limited physical contact to promote your child's safety or prevent self-injurious behavior; teach a skill; redirect attention; provide guidance to a location; provide comfort to your child; or as reasonably needed to prevent imminent destruction to school or another person's property.

#### What rights do I have in relation to the possible physical restraint of my child?

- You must be provided copies of your school's restraint policies via, at least, the school's code of conduct or student handbook.
- You have the right to request documentation that the teachers at your child's school are properly trained in restraint techniques, including prevention, de-escalation and positive behavioral intervention strategies.
- You must be notified in writing by the school within one school day if your child is restrained or secluded and receive a copy of the report used to document the incident.
- You must be invited to attend a debriefing session with relevant school staff if your child is restrained or secluded. The purpose of the debriefing session is to plan to prevent the reoccurrence of the use of restraint or seclusion. This meeting must occur no later than five school days of the incident unless you and the school agree otherwise.
- You must be notified immediately if your child is injured during a restraint or if your child is removed from school by law enforcement personnel or medical personnel.

#### How can I protect my child from the possible use of physical restraint?

- Ask your school for a copy of its restraint policies and its training documentation.
- Find out if and how your child's teachers are properly trained in restraint and, more importantly, in prevention, de-escalation and positive behavioral intervention strategies.
- Request an IEP meeting to proactively and vigorously plan how the school is going to address your child's behavior. If your child does not already have one in place, request that a behavior plan be developed. The use of restraint should not be included in your child's IEP or behavior plan. Restraint is NOT a planned intervention. Restraint is a response used in emergency situations when other planned interventions have failed. If you include restraint in your child's IEP, you are planning to fail.
- If your child is restrained, attend the debriefing session. Consider whether the school properly followed your child's IEP and/or behavior plan leading up to the restraint. Convene an IEP meeting to make necessary changes to your child's IEP.