

Discipline and Due Process

Charter School Training

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Indiana
DEPARTMENT OF
EDUCATION

Working Together for Student Success

Student Discipline

More than suspension and expulsion.

- Training that is expected to produce a specified character or pattern of behavior, especially that which is expected to produce moral or mental improvement.
- Controlled behavior resulting from such training.

The American Heritage Dictionary of the English Language



Supervision and Discipline

School corporation personnel:

- Stand *in loco parentis*;
- Have the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system;
- Have qualified immunity with respect to a disciplinary action taken to promote student conduct if the action is taken in good faith and is reasonable.

I.C. 20-33-8-8.



Suspension/Expulsion

I.C. 20-33-8 addresses student discipline:

- Adoption of disciplinary rules
- Grounds for suspension/expulsion
- Suspension procedures, meeting with student, notice to parent
- Expulsion procedures, notice to parent and student, opportunity for expulsion meeting
- Maximum term of suspension/expulsion



Suspension/Expulsion

- School must have written discipline rules which include a graduated system of discipline.
- Suspensions or removals under Article 7 must also comply with the requirements of I.C. 20-33-8.
- A removal for any part of a day constitutes a day of removal
- Short-term removal pursuant to the IEP is not a removal.



Suspension/Expulsion

An in-school suspension is not considered a removal if the student has the opportunity to :

- progress in the general curriculum;
- receive the special education services specified in the IEP; and
- participate with nondisabled students to the extent the student would have in the student's current placement.



Student Discipline Issues

- CCC should address behavior and discipline concerns long before the student's behavior leads to a disciplinary change of placement.
- Inappropriate behavior, interference with the education of the student or others, should lead to consideration of an FBA and BIP.



Student Discipline Issues

FBA

- Process that uses data to identify patterns in the student's behavior and the purpose or function of the behavior of the student.
- Parental consent is required.
- Part of the evaluation required for a student suspected of having an emotional disability.
- Integral in the development of a BIP.



Student Discipline Issues

FBA

- Required if the student may be suspended for more than 10 days in a school year, expelled, or if the behavior involved possession of weapons or drugs, or resulted in serious bodily injury.
- No requirement that student be facing disciplinary action before an FBA can be conducted. Parent or school can request FBA just as any other evaluation.



Student Discipline Issues

BIP:

A plan agreed upon by the CCC and incorporated into the IEP that describes:

- The pattern of behavior that impedes the student's learning or the learning of others.
- The purpose or function of the behavior as identified in a functional behavioral assessment.



Student Discipline Issues

BIP:

- The ***positive interventions and supports, and other strategies***, to address the behavior and maximize consistency of implementation across people and settings in which the student is involved.
- If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student. The behavioral intervention plan seeks to maximize consistency of implementation across people and settings in which the student is involved.



Student Discipline Issues

REMOVALS

- The school is not required to provide services to a student with a disability during any of the first ten (10) cumulative instructional days of removal in a school year for violating a code of student conduct if services are not provided to a nondisabled student who has been similarly removed.
- Removal for any part of a day constitutes a day of removal.
- A short-term removal of a student pursuant to the student's IEP is not a removal under 511 IAC 7-44.



Student Discipline Issues

REMOVALS

If a student is removed for more than ten (10) cumulative instructional days in a school year, the school must determine if a change of placement has occurred.

(511 IAC 7-44-1(h))



Student Discipline Issues

DISCIPLINARY CHANGE OF PLACEMENT

- The removal is for more than ten (10) consecutive instructional days.
- The student is subjected to a series of removals that constitute a pattern because:
 - The series of removals cumulate to more than ten (10) instructional days in a school year.
 - The student's behavior is substantially similar to the student's behavior in previous incidents.
 - Additional factors such as: length of each removal, cumulative amount of time removed, and proximity.

(511 IAC 7-44-2(a))



Student Discipline Issues

IF THE REMOVAL IS NOT A CHANGE OF PLACEMENT

When a student has been removed for more than 10 cumulative days, but the removals do not constitute a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the student to:

- Continue to participate in the general education curriculum, although in another setting.
- Progress toward meeting the goals in the IEP.

(511 IAC 7-44-3)



Student Discipline Issues

IF THE REMOVAL IS A CHANGE OF PLACEMENT

When a decision is made to make a removal that does constitute a change of placement, the school must notify the parent and provide the parent with the notice of procedural safeguards.

The notice must be provided on the date the school decides to make a removal that results in a change of placement.

(511 IAC 7-44-4)



Manifestation Determination

- Within 10 instructional days of any decision to change the placement of a student with a disability for violating the disciplinary rules of the school, the student's CCC must meet to determine whether the student's behavior is a manifestation of the student's disability.
- Disciplinary change of placement: Suspension that will result in suspension for more than 10 consecutive days; series of suspensions constituting a pattern; expulsion; or behavior involving possession of weapons or drugs or resulting in serious bodily injury.



Manifestation Determination

CCC must:

- Review all relevant information including the IEP, teacher observations, and information provided by the parent.
- Determine whether the behavior was caused by or had a direct and substantial relationship to the disability.
- Determine whether the behavior was a direct result of the school's failure to implement the IEP.



Manifestation Determination

- If the conduct was a direct result of the school's failure to implement the student's IEP, the school must take immediate steps to remedy the deficiencies.
- If the behavior was a manifestation of the disability, the student must be returned to the placement from which he was removed unless the student is placed in an IAES for conduct involving the possession of a weapon or drugs or for causing serious bodily injury.



Manifestation Determination

- If the behavior was a manifestation of the disability, the school must conduct an FBA and develop a BIP unless an FBA was conducted prior to the behavior.
- If a BIP had previously been developed, the CCC must review the BIP and modify it as necessary to address the behavior.



Manifestation Determination

If the conduct is not a manifestation of the student's disability, the CCC determines the appropriate educational services to:

- Enable the student to continue to participate in the general education curriculum;
- Progress toward meeting the goals in the IEP; and
- Receive an FBA and behavior intervention services that are designed to address the behavior violation so that it does not recur.



Manifestation Determination – Sec. 504

OCR considers the expulsion or suspension of a student for more than 10 consecutive days as a significant change in placement.

Prior to taking any action that constitutes a significant change in placement of a student with a disability, the school must first conduct an evaluation in accordance with 34 CFR 104.35.



Manifestation Determination – Sec. 504

The first step in the evaluation includes a determination by a group of persons knowledgeable about the student of whether the student's behavior is a manifestation of the student's disability.

If it is determined the misconduct is not caused by the student's disability, then the student may be excluded from school in the same manner as similarly-situated non-disabled children are excluded.



Interim Alternative Educational Setting

- Principal may place student in an IAES for up to 45 instructional days regardless of whether the behavior is a manifestation of the disability.
- Carries a weapon to school or possesses a weapon; uses illegal drugs or sells or solicits a controlled substance; or inflicts serious bodily injury upon another person.



Interim Alternative Educational Setting

- School must notify parent and provide NOPs.
- Manifestation Determination must be conducted.
- CCC determines IAES.
- IAES and services must enable the student to:
 - Continue to participate in general education curriculum,
 - Progress toward IEP goals, and
 - Receive an FBA and BIP designed to address the behavior violation so it does not recur.



Expedited Due Process Proceedings

A parent may request mediation or a due process hearing, or both, if:

- The parent disagrees with the school's decision concerning a disciplinary change of placement; or
- The parent disagrees with the determination of the CCC that the behavior was not a manifestation of the disability.



Expedited Due Process Proceedings

A school may request an expedited due process hearing if the school believes that:

- it is dangerous for the student to return to the current placement after the expiration of placement in an IAES.
- that maintaining the student in the current educational placement is substantially likely to result in injury to the student or others.



Expedited Due Process Proceedings

Similar procedures as a regular due process hearing but with a shortened schedule.

- Hearing within 20 instructional days.
- Decision within 10 instructional days of hearing.
- Resolution session within 7 calendar days.
- No extensions of time.
- Parties may waive expedited process.



Due Process Procedures

Complaints

Mediation

Due Process Hearings



COMPLAINT

A written, signed allegation of a procedural violation of federal or state statutes, regulations, rules, or constructions governing special education that is submitted to the division of special education for investigation in accordance with 511 IAC 7-45-1.

(511 IAC 7-32-16).



COMPLAINT

Procedures:

- Preliminary Letter
- 10 day resolution period for school – issue identification for CI
- Issue Letter – including request for documents from school – complainant can also submit documentation
- Investigation – may include onsite investigation
- Complaint Investigation Report
- Reconsideration
- Final Report (only if reconsideration is requested)



COMPLAINT

Violations – Corrective Action (CA)

If appropriate, remedies could include compensatory services or monetary reimbursement, and measures to ensure appropriate future provision of services for all children with disabilities.

(34 CFR §300.151(b)).

The Office of Special Education is responsible to ensure that the public agency implements the corrective action in a timely manner.

(34 CFR §300.152(b)(2); 511 IAC 7-45-1(o)).



COMPLAINT

A complaint may also be filed to enforce:

- An agreement reached to resolve a prior complaint.
- A mediation agreement.
- A due process hearing decision.



MEDIATION

Impartial and voluntary process that brings together parties that have a dispute concerning any matter involving the provision of a free appropriate public education to have confidential discussions with a qualified and impartial individual.

The goal of mediation is for the parties to resolve the dispute and to execute a legally binding written agreement reflecting that resolution.



MEDIATION

Parties: Parents and Public Schools

Participants: Not specified in the IDEA or Article 7. Because mediation is voluntary, either party has the right not to participate for any reason, including if the party objects to the person the other party wishes to bring to the mediation session.



MEDIATOR

A qualified and impartial individual who facilitates confidential discussions to achieve a resolution of the dispute that is mutually agreeable to the parties.



MEDIATION

Discussions During Mediation

- Must be confidential.
- May not be used as evidence in any subsequent due process hearings or civil proceedings of any federal or state court.
(34 CFR §300.506(b)(8)).



MEDIATION

Mediation Agreement

- In writing.
- Signed by the parent and a representative of the LEA who has the authority to bind the LEA.
- State that all discussions occurring during mediation:
 - Remain confidential, and
 - May not be used as evidence in any subsequent due process hearing or civil proceeding.
- Enforceable in state or federal court or through the complaint process.



DUE PROCESS HEARINGS

“Due process hearing” means a proceeding initiated by a student’s parent, a public agency, or the state educational agency and is conducted by an independent hearing officer when there is a dispute regarding any of the following:

- Identification or eligibility for services under Article 7.
- Appropriateness of the educational evaluation, proposed or current level of services or placement.
- Any other dispute affecting the provision of a free appropriate public education to the student.

(511 IAC 7-32-27; 34 CFR §300.507(a)).



DUE PROCESS HEARINGS

Request must:

- Be in writing and signed.
- Include student's name and address and name of school the student attends.
- Specify the reasons for the hearing request including a description of the problem and facts related to the problem.
- Proposed resolution.

(511 IAC 7-45-3(b); 34 CFR §300.508).



DUE PROCESS HEARINGS

Request must be served on the opposing party and a copy sent to the Superintendent of Public Instruction.

It is the responsibility of party requesting hearing to serve the other party.

If parent requests hearing, school must inform parent of availability of free or low cost legal and other relevant services available in the area.



DUE PROCESS HEARINGS

Procedural requirements:

- Sufficiency of the request.
- Timelines.
- Resolution meeting and resolution period.
- Conduct of hearing and timeline for decision.
- Transcript.
- Appeal and attorney fees.



DUE PROCESS HEARINGS

Rights of the Parties

- Be accompanied and advised by legal counsel or by individuals knowledgeable about special education.
- Be represented by an individual who is not an attorney.
- Present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Conduct discovery: AOPA, Trial Rules, and Art. 7.



DUE PROCESS HEARINGS

Rights of the Parties

- Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing.
- A separation of witnesses who are not parties to the dispute.
- Obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.



DUE PROCESS HEARINGS

Rights of the Parties

- Obtain written or, at the option of the parents, electronic findings of facts and decision.
- Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English.

(511 IAC 7-45-7(d); 34 CFR §300.512(a)).



DUE PROCESS HEARINGS

Additional Rights of the Parent

- Have the student who is the subject of the hearing attend.
- Have the hearing opened or closed to the public.
- Inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, including all tests and reports upon which the proposed action may be based.

(511 IAC 7-45-7(e); 34 CFR §300.512(c)).



ICHAMP

The screenshot shows the I-CHAMP website interface. At the top right, there are buttons for "Register" and "Sign In". The main header features the "I-CHAMP" logo with a blue ribbon graphic. Below the logo, the text reads "Indiana Complaint, Hearing, and Mediation Process" and "Office of Special Education". A navigation menu on the left includes "LOGIN WITH PROFILE", "CREATE PROFILE", and "CONTACT US". The central banner shows a group of diverse children holding a sign that says "SPECIAL EDUCATION Learning for Everyone". Below the banner, a welcome message states: "Welcome to the Indiana Complaint, Hearing, and Mediation Process. This new online system has been designed with enhanced self-service features to make it easier and faster for you to access the following Due Process procedures:". Three columns provide details for "Complaint", "Hearing", and "Mediation", each with a "LEARN MORE" and "GET STARTED" button.

Register Sign In

I-CHAMP

Indiana Complaint, Hearing, and Mediation Process
Office of Special Education

Welcome to I-CHAMP

LOGIN WITH PROFILE
CREATE PROFILE
CONTACT US

Special Education
Learning for Everyone

Welcome to the Indiana Complaint, Hearing, and Mediation Process. This new online system has been designed with enhanced self-service features to make it easier and faster for you to access the following Due Process procedures:

Complaint	Hearing	Mediation
A complaint is a written, signed allegation that a public school corporation or charter school has violated a requirement of the IDEA.	A due process hearing may be requested by a parent, school, or IDOE concerning the identification or eligibility of a student for special education services.	Mediation is a voluntary process in which the parent and public or charter school attempt, with the assistance of trained impartial mediator, to resolve a dispute.
LEARN MORE GET STARTED	LEARN MORE GET STARTED	LEARN MORE GET STARTED



QUESTIONS?

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