



# Discipline Manual

# AMA ESD Discipline Manual

## Part One

- Introduction
- School Disciplinary Policy and Students with IEPs

## Part Two

- PBIS
- Seclusion & Restraint
- Functional Behavior Analysis (FBA)
- Behavior Intervention Plan (BIP)
- Alternatives to Suspension
- Suspension and Expulsions
- Counting Days of Removal
- Change of Placement (CIP)
- Manifestation Determination Review
- IAES
- Homebased
- Citation page

## Introduction

The following guidance is intended to supplement and augment the discipline policy in the student handbook as defined by school board policy. The purpose of this manual is to provide district procedures to assist in avoiding common non-compliance pitfalls by:

- Identifying roles and responsibilities
- Calling attention to some key definitions
- Providing a tools which will guide administrators through specific steps to assist in following critical MDE procedures.

It is the intent that these procedures will provide each school administrator support in understanding and implementing these procedures while addressing the following key requirements:

- Tracking days of removal
- Being proactive
- Providing appropriate IAES after 10 days

- Determining a pattern of removals
- Recognizing change of placement responsibilities
- Providing Procedural Safeguard requirements
- Conducting MD's within 10 school days of change of placement
- Utilizing appropriate forms and documentation

There are additional discipline special circumstances identified with the MDE procedures such as:

- Weapons/Drugs/Serious Bodily Injury
- Students not yet identified eligible for special education services (referral pending or occurring during disciplinary process)

***What Everyone Needs to Know About....***  
**School Disciplinary Policy and Students with IEPs**

*National and State statistics continue to indicate that students with IEPs (and especially minority students with IEPs) are suspended and expelled more frequently than their peers who do not receive special education and related services.*

*Removing a student from school impacts academic risk factors by contributing to low attendance, educational disengagement and lost instructional time - major factors in low academic achievement, dropout and poor post school outcomes.*

*During the 2010-2011 school year, Michigan's 226,680 students with IEPs lost 251,410 instructional days to suspension and expulsion (2010-2011 school year - Annual Special Ed Child Count data).*

**General Considerations**

Each student enrolled in a Michigan public school must follow the local district's student code of conduct. All students are afforded due process rights prior to disciplinary removal being imposed for alleged violations. Students with an IEP are afforded additional due process rights in all public school districts and public school academies (charter schools) to assure:

- They are not being punished for actions caused by their disability or the school's failure to implement their IEP,
- They are not being subjected to discrimination on the basis of disability, and

- That disciplinary interruptions of FAPE do not exceed 10 school days of suspension.

### **What IDEA & MARSE Say**

The Individuals with Disabilities Education Act (IDEA) and Michigan Administrative Rules for Special Education (MARSE) are the foundation of special education accountability requirements in Michigan.

A student with an IEP can be disciplined as a student without disabilities for the first 10 days of suspension unless the IEP or a behavior plan modifies the district's code of conduct.

Once a student with an IEP accumulates more than 10 days of disciplinary removal at any point during the school year, the school must determine if additional disciplinary removals will result in a change in the student's educational placement (i.e. 11 or more consecutive days of removal or a series of removals that constitute a pattern).

If a change of placement will occur as the result of the disciplinary removal, the school must conduct a Manifestation Determination Review (MDR) within 10 school days of that decision. Depending on the relationship between the nature of the student's disability, the quality of the IEP implementation and the behavior in question, this review can result in the continuation of the pending disciplinary action, an immediate return to school, or the convening of an IEPT to revise the student's education placement and services.

During the first 10 days of disciplinary removal, there are no special obligations to the student. Beginning with the 11th cumulative day of suspension and for successive suspensions during that school year, the school district or the public school academy in which the student was enrolled at the time of the disciplinary removal, must provide the student with free appropriate public education (FAPE) for any school days the student is out, regardless of the seriousness of the offense.

#### Related regulation, rule and guidance

Individuals with Disabilities Education Act (IDEA 2004), Michigan Administrative Rules for Special Education (MARSE), MI School Code, OSE Discipline Guidance

Note: While the content of this page reflects general aspects of the law on discipline of students with disabilities as of the date of its creation, it is not intended to constitute or serve as legal advice for any particular student scenario.

Districts should consult legal counsel for advice with regard to specific situations.

Michigan Administrative Rules for Special Education (MARSE)

[http://www.michigan.gov/documents/mde/MARSE\\_Supplemented\\_with\\_IDEA\\_Regs\\_379598\\_7.pdf](http://www.michigan.gov/documents/mde/MARSE_Supplemented_with_IDEA_Regs_379598_7.pdf)

IDEA Regulations

<http://idea.ed.gov/explore/view/p/.root.regs>,

## **Student Not Yet Eligible**

### **Prior knowledge exists if, prior to incident:**

- Parent expressed concerns in writing to school administrative staff or the student's teacher that the child is in need of special education and related services.
- Parent requested an evaluation, or an evaluation is otherwise in process.
- Teacher or other personnel have expressed specific concern about a pattern of behavior demonstrated by the child directly to the Director of Special Ed or supervisory personnel.
- Exception – (300.534(c) A public agency would not be deemed to have knowledge under paragraph (b) of this section if--
  - (1) The parent of the child--
    - (i) Has not allowed a special education evaluation of the child, or
    - (ii) Has refused special education services; or
  - (2) The child has been evaluated and determined to not be a child with a disability under IDEA

### **Special Education Protections:**

Afford the student the same protections as students with a disability until the question of eligibility is resolved.

- Have parent sign consent for evaluation, if not already signed.
- Provide parent copy of Special Education Procedural Safeguards

Allow the student to return to the previous placement until the evaluation is completed, or provide educational services (FAPE) to enable the student to continue to participate in the general education curriculum, although in another setting, on the 11th day if evaluation is not completed within 10 days.

### **Expedited Evaluation Definition**

#### **300.534 / d**

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.530, the evaluation must be conducted in an expedited manner.

### **R 340.1721b Timelines.**

Rule 21b.

- 1) Within 10 school days of receipt of a written request for any evaluation, the public agency shall provide the parent with written notice consistent with 34 CFR § 300.503 and shall request written parental consent to evaluate. The time from receipt of parental consent for an evaluation to the notice of an offer of a free appropriate public education or the determination of ineligibility shall not be more than 30 school days. This timeline begins upon receipt of the signed parental consent by the public agency requesting the consent. This timeline may be extended if agreed to by the parent and public agency. Any extension to this time line shall be both of the following:
  - a) In writing.
  - b) Measured in school days.
- 2) The parent has 10 school days after receipt of the notice of an initial offer of a free appropriate public education to provide the public agency with written parental consent to provide initial special education programs and services.
- 3) Within 7 school days from the date of the individualized education program team meeting, the public agency shall provide the parent with the notice of an offer of a free appropriate public education or determination of ineligibility. The public agency shall document mode and date of delivery. The notice shall identify where the programs and services are to be provided and when the individualized education program begins.

- 4) Unless a parent has filed an appeal under R 340.1724f, the superintendent or designee shall initiate a proposed special education individualized education program as soon as possible and not more than 15 school days after the parent's receipt of written notification under R 340.1721b(3), or not more than 15 school days after receipt of written parental consent under R 340.1721b(2). The parties may agree to a later initiation date if the later date is clearly identified in the individualized education program. An initiation date later than 15 school days shall not be used to deny or delay programs or services because they are unavailable and shall not be used for purposes of administrative convenience.
- 5) For students with an individualized education program in effect at a previous public agency who transfer public agencies within the same school year, the new public agency shall immediately provide a free appropriate public education. A decision regarding implementation of an individualized education program in accordance with 34 CFR § 300.323 shall be made within 30 school days of enrollment

## **Positive Behavior Interventions and Supports (PBIS)**

### **Purpose:**

Positive Behavior Interventions & Supports (PBIS) is a proactive framework for creating and sustaining safe and effective schools. The focus of PBIS is to prevent problem behavior, develop pro-social skills, and use data-based problem solving for addressing existing behavior concerns. School-wide PBIS will help schools educate all students with the use of research-based school-wide, classroom, and individualized tools and interventions (MDE Guide, p. vii). When implemented with fidelity, PBIS decreases disruptive behaviors and increases time in the classroom, which results in improved student outcomes.

Schools that have fully implemented PBIS site the following reasons for adopting the structure:

- To decrease levels of disruptiveness, rates of office discipline referrals (ODR), and suspensions.
- To improve school climate and safety.
- To increase instructional time.
- To increase administrative time for purposes other than discipline.
- To enhance the overall operation and performance of the school.
- To more effectively partner with students, parents and the community.

**Overview:**

School-wide PBIS is comprehensive support with in a tiered structure that can be used by any school to assist in design their own system of behavioral supports for all students. It also provides informed decision making, based upon multiple points of data for triangulated data analysis. This data analysis guides the process of assessing student needs and providing additional levels of behavioral support to students in need. (MDE Guide, p. 2)

School-wide PBIS provides a positive focus to encouraging desirable student behaviors, which would result in decreasing undesirable behaviors and increasing time in the classroom for improved student outcomes. School-wide PBIS has multiple components that are required as part of a full implementation of PBIS, including the following:

1. Identify & defining 3-5 positively stated behavioral expectations
2. Explicitly teach behavioral expectations in each setting
3. Monitor student behavior
4. Encourage and acknowledge appropriate behavior (immediate & latent acknowledgement)
5. Correct behaviors through a universal continuum of consequences
6. Use data for decision-making

**PBIS in IEPs:**

Providing appropriate behavioral supports helps to ensure that children with disabilities are best able to access and benefit from instruction. Failure to consider and provide behavior supports through the IEP process can result in a student not receiving FAPE or a meaningful educational benefit. The US Department of Education Office of Special Education and Rehabilitative Services has provided clarification and guidance on addressing the need for behavioral supports throughout the IEP (Swenson & Ryder, 2016, pg. 2).

**IDEA Procedural Requirements Regarding Evaluations, Eligibility, IEPs, and Behavioral Supports**

IDEA requires IEP teams to consider the use of PBIS and other strategies to address behavior for any child with a disability, whose behavior impedes his or her learning or that of others (*20 U.S.C. 1414 (d)(3)(B)(i)*). This requirement applies to all IEP teams, regardless of the child's disability, and to the development, review, and revision of IEPs (*34 CFR 300.324 (a)(2)*). Classroom disruptions, misbehavior, and code of conduct violations may be indicators that the child's IEP needs to include appropriate behavioral



support. If the child already has behavioral classes or the setting to be determined as the least restrictive environment (LRE). Such supports may include: supports, upon repeated incidents of misbehavior or disruption, the IEP team should meet to consider whether the child's behavioral supports should be changed (Swenson & Ryder, 2016, pg 4).

#### IDEA's IEP Content Requirements Related to Behavioral Supports

Research supports that school-wide (Tier 1), small group (Tier 2), and individual (Tier 3) behavioral supports that use proactive and preventative approaches and address the motivation of the behavior while reinforcing positive behaviors are associated with improved student outcomes (Swenson & Ryder, 2016, pg.5). When a student with an IEP has behavioral concerns, including those that result in disciplinary measures, the IEP team must consider and, when determined necessary for ensuring FAPE, include or revise behavioral supports in the IEP of a child with a disability exhibiting behavior that impedes his or her learning or that of others (34 CFR 300.320(a)(4) & 300.3249a)(2)(i)).

As part of development, review, and revision of the IEP, the team should determine the need for behavior supports in the following areas: a) special education and related services b) supplementary aids and services, and c) program modifications or supports for school personnel. IEP behavior supports should be supported by evidence. IDEA requires that a) special education and related services and b) supplementary aids and services be based on peer-reviewed research (34 CFR 300.320(a)(4)).

#### Special Education & Related Services

Behavior supports may be necessary to ensure the child's IEP is allowing the child to make progress towards IEP goals, have access to general education curriculum, and participate in extracurricular and nonacademic activities (Swenson & Ryder, 2016, pg. 6). Intervention and supports could assist a child with a disability and may include the following:

- Instruction & reinforcement of school expectations
- Violence prevention programs
- Anger management groups
- Counseling for mental health issues
- Life skills training
- Social skills instruction

#### Supplementary Aids & Services

Public agencies must comply with the requirement to make available a continuum of alternative placements (which includes the provision of supplementary aids and services [e.g. behavioral supports]) throughout the continuum. Under 34 CFR 300.42, supplementary aids and services are defined to include aids, services, and other

supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings (Swenson & Ryder, 2016, pg. 7). Such supplementary aids and services could include behavioral supports necessary to enable a child with a disability to be educated in regular

- Meeting with a behavioral coach
- Social skills instruction
- Meeting with a counselor

School personnel may need training, coaching, and tools to appropriately address the behavioral needs of a particular child.

#### Circumstances that May Indicate Potential Denials of FAPE or of Placement in the LRE

It is the IEP team's role to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum (Swenson & Ryder, 2016, pg. 8). Failure to implement these requirements or provide needed behavioral supports to a child with a disability could result in the child not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE/denial of placement in the least restrictive environment (ie an unduly restrictive placement).

Circumstances that may indicate a failure may include:

- The IEP team did not consider the inclusion of positive behavioral interventions & supports in response to behavior that impeded the child's learning or that of others
- There are no behavioral supports in the child's IEP
- The behavioral supports in the IEP are inappropriate for the child (ie frequency, scope, or duration are insufficient to prevent behaviors, etc)
- The behavioral supports are appropriate but are not implemented or are not being implemented properly (ie teachers are not trained, implementation is not consistent, etc)

Circumstances that may indicate that the child's IEP is not reasonably calculated to provide a meaningful educational benefit may include:

- The child is displaying a pattern of behavior that impedes his/her learning or that of others and is not receiving any behavioral supports
- The child experiences a series of disciplinary removals from the current placement of 10 days or fewer for separate incidents that impede learning of the

child or others, and need for behavioral supports are not considered or addressed by the IEP team, or

- The child experiences a lack of expected progress toward annual goals that is related to his/her disciplinary removals or the lack of behavioral supports, and the child's IEP is neither reviewed or revised.

Circumstances that may indicate that a child's placement in the LRE may not be appropriate may include:

- A continuum of placements that provides behavioral supports is not made available (eg. in a general education setting) and as a result, the IEP inappropriately calls for the child to be placed in special classes, separate schooling, or other restrictive placement outside of the regular educational environment (eg home instruction, home tutoring program, or online learning program)(Swenson & Ryder, 2016, pg. 10).

#### Authority of School Personnel under CFR 300.5.30

IDEA and its implementing regulations recognize that school officials need some reasonable degree of flexibility when disciplining children with disabilities who violate a code of student conduct and also that school safety is paramount. There is some concern related to SEAs and LEAs possibly erroneously interpreting IDEA to provide school personnel with the broad authority to implement short-term removals without restrictions and without consideration of behavior within the IEP. Characterization of the 10-day period as "free days" may discourage school personnel from considering whether behavioral supports are needed to address or improve patterns of behavior. IEP teams have an obligation to develop appropriate IEPs based on the individual needs of the student (Swenson & Ryder, 2016, pg. 12).

Teachers must also be fully informed about their specific responsibilities related to implementation of the child's IEP, including accommodations, modifications, and supports for the child as aligned with the IEP (34 CFR 300.323 (d)). Further, IDEA requires States and LEAs to ensure that all personnel necessary to carry out the purpose of Part B of IDEA are appropriately and adequately prepared and trained (34 CFR 300.156 and 300.207).

This responsibility would include appropriately training teachers and other school personnel to provide required behavioral supports to children with disabilities. Therefore, a failure to provide appropriate behavioral supports (because they are not offered or because teachers and other staff are not adequately trained to implement such supports) results in the child not receiving a meaningful educational benefit and may constitute a denial of FAPE (Swenson & Ryder, 2016, pg. 12).

### Use of Exclusionary Disciplinary Measures

Schools should take care when implementing exclusionary disciplinary measures that significantly interfere with the child's instruction and participation in other school activities. Some schools have staff properly trained in the use and documentation of such measures (study carrels, time outs, restriction of privileges, etc). In other schools, staff may lack the training in the appropriate use of these measures. Consequently, the improper use of these measures could rise to the level of disciplinary removal. Such exclusionary disciplinary measures could include:

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

In general, the use of exclusionary disciplinary measures to be disciplinary removals from the current placement as long as children with IEPs are afforded the opportunity to continue to be involved in and make progress in general education curriculum , receive instruction as specified in their IEP, and participate with nondisabled children to the extent they would have in their current placement. It is likely that the exclusionary disciplinary measures listed above, if implemented repeatedly, would constitute a disciplinary removal from the current placement ( ).

## Restraint<sup>1</sup>

### **Corporal Punishment**

Per the revised school code, "a person employed by or engaged as a volunteer or contractor by a local or intermediate school board or public school academy **shall not** inflict or cause to be inflicted corporal punishment ("hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline") upon any pupil under any circumstance (MCL 380.1312(3))."

### **Limited Use of Physical Force**

-For self-defense or defense of another

-To prevent student from self-harm

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<sup>1</sup> Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint MDE, December 2006. <https://drive.google.com/file/d/0B-fDTrBdkEWbd2w5REpNV1o0czA/view?usp=sharing>

- To quell disturbance threatening physical injury
- To obtain weapon/dangerous object within student's control
- To protect property (Note: MDE FAQs state that seclusion and restraint cannot be used to protect property)

A person who exercises necessary reasonable physical force upon a pupil, or upon another person of school age in a school-related setting, as described in subsection (4) is not liable in a civil action for damages arising from the use of that physical force and it is presumed not to have violated subsection (3) by the use of physical force (MCL 380.1312(5)).

### **Restraint & Seclusion Law**

New legislation was passed into law March 29th, 2017, adding section 1307 through 1307h to the revised school code. This addition applies to all students. Schools will be required to comply by the beginning of the 2017-18 school year. It requires districts/ISDs to develop uniform policies and procedures, requires training of staff and key personnel, and a system of data collection and reporting to MDE.

A person who fails to comply with any of the state policy requirements is considered to have failed to comply with and is in violation of the Act (Section 1307a of RSC).

### **Prohibitions**

State Policy shall prohibit in all public schools even in emergency:

- Corporal punishment, as defined above,
  - Deprivation of basic needs,
  - Child abuse,
  - Seclusion, *other than emergency seclusion*,
  - Application of a noxious substance or stimulus,
  - Mechanical restraint,
  - Chemical restraint,
  - Restraint that negatively impacts breathing,
  - Prone restraint,
  - Physical restraint, *other than emergency physical restraints*,
  - Any other type of restraint
- (Section 1307b of RSC)

**Emergency restraint** must only be used in an emergency and if it is essential for the safety of the student or others. It may not be used instead of appropriate, less restrictive

interventions. It shall be

-safe,

-appropriate,

-proportionate, and

-sensitive to:

- the severity of the behavior,

-the chronological and developmental age,

-physical size,

-gender,

-physical, medical, and psychological conditions,

-personal history (physical or sexual abuse or trauma)

It is required that key personnel immediately or as soon as possible.

### **Limitation in Use**

Restraint shall not be used for:

- The convenience of staff;
- As a substitute for an educational program;
- As a form of discipline/punishment;
- As a substitute for less restrictive alternatives;
- As a substitute for adequate staffing; or
- As a substitute for staff training in positive behavior supports and crisis prevention and intervention.

Emergency restraint must not be used any longer than necessary for student to regain control

-No longer than 10 minutes for all students

-If longer than 10 minutes: Additional supports may be required (eg. substitute personnel, nurse, or additional key personnel)

-Documentation explaining extension of time (Section 1307c or RSC)

## **Seclusion**

**Emergency seclusion** may not be used any longer than necessary for student to regain control.

For elementary students, the duration should not exceed 15 minutes.

For secondary students, the duration should not exceed 20 minutes.

-If longer than timelines listed above, additional supports will be required (eg. staff changes/substitute personnel, nurse, or additional key personnel)

-Documentation explaining extension of timeline.

A room or area used for seclusion:

- Must not be locked;
- Must not prevent the student from exiting the area should staff become incapacitated or leave that area; and
- Must provide for adequate space, lighting, ventilation, viewing, and the safety of the student.

Limitations in Use

Seclusion shall not be used:

- For the convenience of staff;
- As a substitute for an educational program;
- As a form of discipline/punishment;
- As a substitute for the less restrictive alternatives;
- As a substitute for adequate staffing; or
- As a substitute for staff training in positive behavior supports and crisis prevention and intervention

Seclusion is inappropriate for students who are severely self-injurious or suicidal.

Definition of Timeout

Timeout is a behavior intervention in which a student, for a limited and specified time, is placed in an environment where access to positive reinforcement is unavailable.

Timeout should not be confused with seclusion because in a timeout setting a student's movement is not physically restricted.

Timeout lies within a continuum of procedures that help students self-regulate and control their behavior. The timeout continuum is:

- Planned ignoring;
- Withdrawal of materials;
- Contingent observation; and
- Exclusionary timeout

### **Implementation of Restraint & Seclusion**

While engaged in emergency restraint and emergency seclusion, school staff must:

- Monitoring student for signs of physical distress and seek medical assistance as needed,
- Document observations,

- To the extent practicable, ensure the emergency physical restraint does not interfere with the student's primary mode of communication,
- To the extent practicable, ensure school personnel can communicate with the pupil, using the pupil's primary mode of communication (Section 1307c of RSC).

### **Documentation & Debriefing**

State policy is currently being written to include the following:

- Guidance on collecting and reporting data pursuant to state guidelines on incidences of restraint and seclusion,
- Collection of data is encouraged to use existing data system.
- Data collection by race, age, gender, disability status, medical condition, identity of personnel and school program,
- Must be analyzed by the school in regards to PBIS in the context of attendance, suspensions, expulsions, and dropout data, in the context of reduction and elimination of restraint and seclusion
- Reported electronically to and on a schedule to be determined by MDE. (Section 1307f of RSC)

### **Training staff**

- Public school shall implement a comprehensive training framework that includes awareness training of all staff (those who have contact with students, including subs) and comprehensive training of key personnel
- Must identify sufficient key personnel that are generally available in an emergency situation

### **Key Personnel Training**

Key personnel shall be trained in all of the following:

- Proactive practices to ensure dignity,
- De-escalation techniques,
- Techniques to identify behaviors that may trigger emergency,
- Safety considerations, including risk of injury to pupil or staff,
- Instruction in the use of emergency restraint and seclusion,
- Identification of environmental factors that may trigger emergencies,
- State policy,
- Description and identification of dangerous behaviors,
- Methods to evaluate risk of harm,
- Types of seclusion and restraint,



- Risk of use in context or physical or mental health conditions,
- Effects of seclusion and restraint on all pupils,
- Monitoring for signs of distress in all pupils and pupils with health or physical conditions,
- Obtaining emergency assistance,
- CPR,
- First Aid  
(Section 1307g of RSC)

Key personnel should also be trained in the following:

- Conflict resolution,
- Mediation,
- Social skills training,
- Positive behavior interventions and supports (PBIS)

(1307g of RSC)

State policy must include:

- A requirement that each incident of seclusion or restraint be documented in writing and reported in writing or orally, immediately, to parent/guardian and school administration,
- Documented in a written report (for each use, including multiple uses throughout the day) which must be given to the parent the sooner of one school day or 7 calendar days.
- Debriefing with parent/guardian and student using MDE guidelines and forms.

## FBA & BIP

A Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) are a collective process to determine the motivation of disruptive behavior and to identify the supports needed to best address the behavioral concerns of a student. Per best practice, an FBA should occur when a pattern of behavior develops that impedes a student's learning or that of others. Schools are also encouraged to complete a FBA & BIP when a pupil demonstrates a pattern of behavior that is substantially likely to result in restraint or seclusion.

To conduct an FBA, written parental consent must be given. For a student with a disability, consent would be given via the REED process. Within the REED, the IEP team would determine and define school personnel responsible for interviews, observations, behavioral data collection, and other tasks associated with the FBA

process. Once tasks outlined in the REED are completed, the IEP team will reconvene to review data and complete FBA form. Upon completion of the FBA, possible outcomes may include:

- Section 504 Plan
- Accommodation Plan
- Behavior Intervention Plan
- No further action needed (IEP team determined behavior was an isolated incident)

### [Functional Behavior Assessment](#)

A Behavior Intervention Plan (BIP) is used to outline appropriate behavioral supports for a student who displays need in this area. The IEP team uses the completed FBA to complete the BIP form, which includes identifying the problem statement (ie the motivation/cause of the behavior), as well as baseline data and a goal as it pertains to the target behavior. The BIP form is segmented into sections: Antecedents, Behavior, and Consequences. Within each section, the IEP team will consider how the supports will align instruction, curriculum, and the environment. It is the responsibility of the IEP team to identify proactive strategies in the Antecedent category that will lessen the likelihood of the behavior occurring. In the Behavior category, the IEP team outlines the steps taken to teach an appropriate replacement behavior. This category will also determine how to reteach the appropriate behavior across settings. In the consequence category, the IEP team will clarify the positive strategies that will occur after the replacement behavior occurs that will increase the likelihood of the replacement behavior occurring in the future. The BIP may also include a protocol for refusal and a safety plan. The BIP outlines who is responsible for each action item listed, as well as data collection as it pertains to goal items. The BIP should be shared with all staff who work directly with the student for consistent use.

### [Behavior Intervention Plan](#)

#### Required Uses of a Functional Behavior Assessment and Behavior Intervention Plan

Consistent with 34 CFR § 300.530(f), of the federal regulations implementing the IDEA, functional behavior assessments and behavioral intervention plans are required when the district, the parent, and the relevant members of the student's Individualized Education Program (IEP) team determine that a student's misconduct that violated the code of student conduct was a manifestation of his or her disability under 34 CFR § 300.530(e).

If the student's misconduct has been found to have a direct and substantial relationship to the disability, the IEP team must conduct a functional behavior assessment, unless one has already been conducted. 34 CFR § 300.530(f)(i) The IEP team must write a behavioral intervention plan for the student whose misconduct has been found to have a direct and substantial relationship to the disability, unless one already exists. If a behavioral intervention plan already exists, then the IEP team must review the plan and modify it, as necessary, to address the behavior. 34 CFR §§ 300.530(f)(i) through 300.530(f)(ii).

An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.

#### Inclusion of a Behavior Intervention Plan in an IEP

For a student with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a student with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the student. [MDE Memo 2015](#)

## Suspension and Expulsion

The sections of the Revised School Code that address this issue are contained in the Michigan Compiled Laws under MCL 380.11a, 380.1309, 380.1310, 380.1311, 380.1311a, 380.1312, 388.1606 and 388.1707.

## Alternatives to Suspension

Updated definitions of suspension and expulsion are as follows:

Suspend: 'to exclude a pupil from school for disciplinary reason for a period fewer than 60 days of school'

Expel: 'to exclude a pupil from school for disciplinary reasons for a period of 60 or more school days' (MCL 380.1210d(5))

## **MANDATORY 7 FACTORS**

Before suspending or expelling a student, schools shall consider:

1. Student's age
2. Disciplinary history
3. Disability
4. Seriousness of behavior
5. Whether behavior posed safety risk
6. Restorative practices
7. Whether lesser intervention would address behavior

Except for firearm possession, consideration of the seven factors is mandatory before suspending or expelling a student (under section 1310, 1311(1), 1311(2), or 1311a). The method used for consideration/documentation of the factors is at the sole discretion of the board of a school district or intermediate school district or a board of directors of a public school academy or its designee (MCL 380.1310d(4)).

For suspension over 10 days or an expulsion, there is a rebuttable presumption that a suspension is not justified unless the school can demonstrate that is considered each of the factors. For suspension of 10 or fewer days, there is no rebuttable presumption, but the school shall consider each of the seven factors as listed above (MCL 380.1310d(2)).

## **Restorative Practices**

Restorative practices emphasize repairing the harm to the victim and the school community caused by a student's misconduct. Under House Bills 5618 to 5621 the Revised School Code would require schools to operate under the rebuttable presumption that suspension or expulsion is not justified, with certain exceptions, and to consider other factors and option before suspending or expelling a student. The bills would require that restorative practices are one of the other factors considered before suspension or expulsion.

School shall consider using restorative practices as an alternative or in addition to suspension or expulsion under this act. Restorative practices should be "first consideration" for class disruption, property damage, theft, interpersonal conflicts, bullying & cyberbullying, and harassment (MCL 380.1310c(2)).

SSAA 167a "encourages" schools to implement a plan to reduce expulsions and suspensions that exceed 10 days. Effective October 1st, 2016, districts not implementing such a plan "will be subject to forfeiture of a portion of its total state school aid".

## **SUSPENSIONS AND EXPULSIONS IN GENERAL**

The Revised School Code provides each school board with the authority to establish a local discipline policy. Each local school board has the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance and management of the schools in the district. Districts shall develop and implement a code of student conduct and enforce its provisions with regard to a pupil's misconduct in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises. Students guilty of gross misdemeanor or persistent disobedience may be suspended or expelled. A local or intermediate school district or a public school academy must develop and implement a code of student conduct and enforce the provisions of that code regarding misconduct [MCL 380.11a, 380.1311, 380.1312].

### **DUE PROCESS**

Fairness dictates that students be given notice of the types of conduct which are prohibited and the potential consequences of the misconduct. A school's rules and procedures for suspending or expelling a student should be outlined in the handbook adopted by the local board of education.

#### *Suspension—10 Days or Less*

For a suspension of 10 days or less, a student is entitled to minimal due process protections, including oral or written notice of the accusation(s), what disciplinary measures are being proposed, and an opportunity to respond. For suspension of 10 or fewer days, there is no rebuttable presumption, but the school shall consider each of the seven factors as listed above (MCL 380.1310d(2)). If feasible, the notice and hearing should precede the student's removal from school. If the student's presence poses a danger to persons or property or threatens to disrupt the academic process, prior notice and hearing may not be feasible. In this case, a hearing should follow the student's removal from school as soon as possible.

#### *Suspension – More Than 10 Days and Expulsions*

A more formal due process procedure is required when serious disciplinary measures are alleged against a student. For suspension over 10 days or an expulsion, there is a rebuttable presumption that a suspension is not justified unless the school can demonstrate that it considered each of the factors. The student shall be given reasonable time to prepare for the hearing. The person conducting the disciplinary hearing must be impartial. The board of education, a school administrator or disciplinary

panel may conduct the hearing as long as they are truly impartial.

### Students with Disabilities

Students with disabilities are afforded specific due process protection in cases of suspension or expulsion under state and federal law. For further information, contact your local or intermediate special education director or the Office of Special Education and Early Intervention Services at (517) 373-0923 or toll-free at (888) 320-8384.

## **TYPES OF SUSPENSIONS AND EXPULSIONS**

Michigan Law requires a school district to permanently expel a student who possesses a dangerous weapon, commits arson or criminal sexual conduct. Subsequent laws were enacted that allow a one-day snap suspension by a teacher for a student who creates a safety threat; requires school districts to suspend or expel a student for up to 180 school days who commits a physical assault against another student; requires that a student be suspended or expelled for a verbal assault or a bomb threat; and requires a student who commits a physical assault against a school employee or volunteer to be permanently expelled. The following information describes the law.

### **Weapons, Arson or Criminal Sexual Conduct Expulsion**

If a student possesses a dangerous weapon, commits arson in a school building or on school grounds, or criminal sexual conduct in a school building or on school grounds, the school board or designee shall expel the pupil from the school district permanently, subject to possible reinstatement under subsection (5). [MCL 380.1311].

School need not expel if pupil establishes in clear and convincing manner one of the following:

- Not possessed as a weapon, or for delivery for use as a weapon
- Not knowingly possessed
- Pupil did not know it was a weapon
- weapon possess at suggestion, request, permission of school or police

### **Teacher “Snap” Suspension**

A teacher may suspend a student from the classroom for up to one day if the student creates a safety threat as defined by local policy. The policy shall be adopted as part of the school district’s code of student conduct and specify the types of behavior for which a student may be suspended. If a student is retained in the school he or she must be under appropriate supervision. A parent-teacher conference shall follow the suspension as soon as possible and may include a school counselor, school psychologist, or school

social worker. A student may return that school day to the classroom, subject or activity for which he or she was suspended, with the concurrence of the teacher and the school principal [MCL 380.1309].

### **Verbal Assault and Bomb Threats**

A student in grade 6 or above who commits:

-verbal assault, as defined by school board policy, against an employee or volunteer of a school district

-or makes a bomb threat or similar threat directed at a school building, other school property, or a school-related event

The board shall suspend or expel for a period of time as determined in the discretion of the school board or its designee. The school board policy should include the types of behavior for which a student who commits verbal assault, or makes a bomb threat or similar threat, would be suspended or expelled. The term “verbal assault” would need to be defined by the school district’s local policy [MCL 380.1311a]. The United States District Court ruled that the verbal assault law unlawfully prohibits students’ speech that is protected by the First Amendment [Smith v Mount Pleasant Public Schools, E Dist Mich, 2003].

### **Physical Assault - Student to Student**

A student in grade 6 or above who commits physical assault against another student shall be suspended or expelled for up to 180 school days by the school board or its designee if the physical assault is reported to the school board, superintendent, or principal. The term physical assault is defined as “intentionally causing or attempting to cause physical harm to another through force or violence” [MCL 380.1310].

### **Physical Assault - Student to Employee or Volunteer**

A student in grade 6 or above who commits a physical assault against an employee or a volunteer or contractor of a district, at school or on school grounds, shall be expelled permanently, subject to possible reinstatement provided for in the law. The term physical assault is defined as “intentionally causing or attempting to cause physical harm to another through force or violence” [MCL 380.1311a].

If a student is permanently expelled pursuant to section 380.1311a, the expelling school district enter that fact on the student’s permanent record. Within 3 days of permanently expelling a student an official of the school district must refer the student to the appropriate county department of social services or county community mental health agency. Notification of this referral must be given by the school district official to the

expelled student if he or she is at least 18 years of age or is an emancipated minor, or to the student's parent or legal guardian.

### **Zero Tolerance**

"The board may not absolve itself of its obligation, legal and moral, to determine whether students, intentionally committed the acts for which their expulsions are sought by hiding behind a Zero Tolerance Policy that purports to make the student's knowledge a non-issue" (229F.3d567, 581).

### ***Petitioning for Reinstatement***

Although the law calls for the "permanent" expulsion of a student who commits a physical assault against an employee or a volunteer of a district, at school or on school grounds, subsection (5) provides a process for petitioning for reinstatement to school. It is the responsibility of the petitioning person (a parent, legal guardian, or the expelled student if he or she is at least 18 years of age or is an emancipated minor), to prepare and submit the petition for reinstatement. The school board is not required to assist in the preparation of the petition. If a petition form is requested by a person wishing to be reinstated, the school board must make the petition form available.

A parent, legal guardian, or the student (if he or she is at least 18 years of age or an emancipated minor) may initiate a petition any time after 150 school days following the date of expulsion. A student may be reinstated 180 school days following the date of expulsion. The local school board may include conditions in a petition for reinstatement. If the expelling school board denies a petition for reinstatement, the petitioner may petition another school board for reinstatement. The following timelines and procedures apply to reinstatement.

### ***Committee Review and Recommendation***

Within 10 school days after receiving a petition for reinstatement, the school board must appoint a committee comprised of two school board members, one school administrator, one teacher, and one parent of a student in the school district to review the petition and any supporting information submitted by the petitioner. During this time, the superintendent may prepare and submit information concerning the circumstances of the expulsion and any factors weighing in favor of or against reinstatement.

Not later than 10 school days after being appointed, the committee must review the petition and supporting information together with information provided by the



school district and submit a recommendation to the school board. The committee may recommend unconditional reinstatement, conditional reinstatement, or against reinstatement. The recommendation must be accompanied by an explanation of the reasons for the recommendation. If the recommendation is for conditional reinstatement, it must include any recommended conditions.

The committee's recommendation must be based on all of the following factors:

- 1) The extent to which reinstatement of the student would create a risk of harm to pupils or school personnel.
- 2) The extent to which reinstatement would create a risk of school district or individual liability for the school board or school district personnel.
- 3) The age and maturity of the individual.
- 4) The student's school record before the incident that caused the expulsion.
- 5) The student's attitude concerning the incident that caused the expulsion.
- 6) The student's behavior since the expulsion and the prospects for remediation.
- 7) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by, and that can be expected from, that person if the student is reinstated, including, but not limited to, receptiveness toward possible conditions placed on the reinstatement.

#### School Board Decision

After receiving the committee's recommendation, the school board must make a decision no later than the next regularly-scheduled board meeting. The school board must decide either to reinstate the student, conditionally reinstate the student, or deny reinstatement.

Before conditionally reinstating the student, a school board may require a student and the parent or legal guardian to agree in writing to specific conditions. The conditions may include, but are not limited to, the following:

- 1) Agreement to a behavior contract which may involve the student, parent or legal guardian, and an outside agency;
- 2) Participation in, or completion of, an anger management program or other appropriate counseling;
- 3) Periodic progress reviews; and
- 4) Specified immediate consequences for failure to abide by a condition.

The law provides that the decision of the school board is final.

## Counting Days of Removal

A removal from instruction without the opportunity to progress in the general education curriculum and toward meeting the goals in the student's IEP must be considered a suspension consistent with the IDEA and with reporting in MSDS. A behavior intervention plan cannot include removals that are not counted consistent with state and federal law. An accurate count of suspensions affords a student the right to an MDR.

1. A partial day counts as a full day of removal **for Special Education Tracking Only**. For MSDS - Only half and full days count.
2. If the district imposes restrictions or conditions on a student's return to school, each day the student doesn't return due to the conditions not being met is counted as a day of removal.
3. In-school suspension ([ISS](#)) does not count as a day of removal if **all** of the following are met:
  - a. Student is offered the opportunity to continue to participate in the general curriculum.
  - b. Student continues to receive services specified in the IEP.
  - c. Student continues to participate with nondisabled peers.
  - d. Personnel staffing the setting are certified or meet [State Board policy](#) on utilization of non certified personnel in elementary and secondary schools.
4. Bus Suspension:  
Not considered a removal if:
  - a. Bus transportation is not yet part of the IEP, or
  - b. Bus transportation is part of the IEP, but school provides alternative transportation services

### [Suspension Tracking Form](#)

Series of Removals that Constitute a Pattern: (Must have all three below)

1. The series of removals totals more than 10 school days in a year
2. The child's behavior (nature) is substantially similar to behavior in previous incidents that resulted in a series of removals and
3. Due to factors such as length of each removal and total amount of time the child has been removed and the proximity of the removals to one another.

**The student has been subjected to a series of removals that constitute a pattern if there are:**

1. A series of removals that total more than 10 school days in a year.
2. A recurrence of substantially similar behavior in a series of removals subject to discipline.
3. Such additional factors as:
  - a. Length of each removal.
  - b. Total time removed.
  - c. Proximity of removals to one another.

### **ALTERNATIVE EDUCATION**

A school district **may** provide an alternative education for a student who has been suspended or expelled. The Michigan Attorney General issued an opinion cited as 1985 OAG 6271 in which he stated that the board of education of a school district which, in accordance with due process requirements, suspends, for a lengthy period of time, or permanently expels, a non-handicapped student who is subject to the compulsory education requirements, **is not mandated to provide an alternative education program** for a student.

It is the responsibility of the parent or legal guardian to locate a suitable alternative education program and to enroll their child in a program during the expulsion. For further information regarding alternative education programs available in your area, contact your local or intermediate school district or <http://michigansafeschools.org>.

A student who has been suspended or expelled from his or her resident district for any reason may attend a nonresident alternative education program without the resident district's approval [MCL 388.1606(6)(h)]. In addition, a student who previously dropped out of school, is pregnant or is a parent, or has been referred to the program by the court may attend a nonresident alternative education program without the resident district's approval.

### **Alternative Placement - Student to Employee or Volunteer Physical Assault Expulsion**

Unless the school district operates or participates in an alternative education program appropriate for a student expelled pursuant to section 380.1311a(2) **and at the school district's discretion admits the student** to that program or a "strict discipline academy," the student is expelled from all Michigan public schools. A student cannot be enrolled unless a petition for reinstatement has been granted [MCL 380.1311a(2)].

A program operated for expelled students must ensure that a student is physically separated at all times during the school day from the general pupil population. If the student is not placed in an alternative education program or a “strict discipline academy,” the school district **may** provide or arrange for the intermediate school district to provide to the student appropriate instructional services at home. Home based services are designed to help students who are unable to attend school to keep up with their studies [MCL 388.1709].

If there is no available alternative education program through his or her resident district, an expelled student may enroll in an adult education program [MCL 388.1707(2)(b)(ii)]. The expelled student must be at least 16 years of age on September 1 of the school year. The reason of expulsion must be due to weapons, arson, criminal sexual assault or physical assault against an employee or a volunteer of the district.

The Michigan Compiled Laws are accessible on the Internet at:  
<http://michiganlegislature.org>

Source: MDE Recommends document  
[https://www.michigan.gov/documents/suspensions\\_118759\\_7.pdf](https://www.michigan.gov/documents/suspensions_118759_7.pdf)

## Change in Placement (CIP)

### Change in Placement Checklist

A change in placement occurs in one of three situations:

1. The removal is for more than 10 consecutive days; or
2. The student has been subjected to a series of removals that constitute a pattern
3. Unilateral imposition of an IAES (special circumstances - weapons, drugs, serious bodily harm) is always a CIP.

**The student has been subjected to a series of removals that constitute a pattern if there are:**

1. A series of removals that total more than 10 school days in a year.
2. A recurrence of substantially similar behavior in a series of removals subject to discipline.
3. Such additional factors as:
  - a. Length of each removal.
  - b. Total time removed.
  - c. Proximity of removals to one another.

### **Change in Placement**

- (a) For purposes of removals of a child with a disability from the child's current educational placement under Sec. Sec. 300.530 through 300.535, a change of placement occurs if--
- (1) The removal is for more than 10 consecutive school days; or
  - (2) The child has been subjected to a series of removals that constitute a pattern--
    - (i) Because the series of removals total more than 10 school days in a school year;
    - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

### **According to IDEA Sec. 300.530 "Authority of Personnel"**

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (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 under §300.536). (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, 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, except as provided in

paragraph (d) of this section.

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

(i) 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

(ii) 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.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child 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 child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, 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.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

**Whenever any student is subject to disciplinary removal, the parents must be notified and provided with a copy of the district disciplinary policy which should include the student's general education due process rights. Additionally, for students with IEPs consider providing a copy of the procedural safeguards. This notice is not the same as the required notice associated with a change in the student's educational placement.**

[MDE Procedural Safeguards Notice](#)

[AMA ESD Procedural Safeguards](#)

## Notice

Regulations: Part 300 / E / 300.503 / a

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

## Manifestation Determination Review (MDR)

Manifestation Determination per IDEA:

1. Within 10 school days of the decision to impose a change of placement (CIP)
2. Notify the parents of decision to impose CIP and provide procedural safeguards
3. If removal is not 10 consecutive days, not a pattern, and not special circumstances, then no MDR is necessary.

### *Things to consider:*

A. In order to consider if the behavior in question was due to the student's disability, the conduct has to be caused by or had direct and substantial relationship to the student's disability.

B. You no longer have to consider the appropriateness of the child's IEP and placement. However, you do have to consider whether the school district failed to implement the IEP.

4. If not a manifestation of the student's disability, the student is subject to the same discipline as non-disabled peers (Still must provide post-expulsion, modified FAPE).

a. Modified FAPE - Continue to receive services to enable to participate in and progress in general education curriculum and progress toward meeting IEP goals and receive an appropriate FBA and BIP to address the behavior so that it does not reoccur.

5. If a manifestation of the student's disability, the student **cannot** be disciplined AND the district is required to complete an FBA and BIP, if none exist. Also, **the student must be immediately returned to the placement from which he or she was removed**, unless IAES for special circumstances or parent and LEA agree to a CIP as part of the modification of the BIP.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (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 relevant information provided by the parents to determine--

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

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

### **MDR Checklist**

A MDR must be held whenever a district proposes a change of placement for disciplinary reasons.

- Conduct an MDR within 10 school days of any decision to change the student's placement.
- Regulations require that the MDR team must include a district representative, the parent, and relevant members of the IEP team. Districts cannot compel a parent to attend.
- It is not required that an MDR be held as part of an IEP team meeting.
- If an IEP is held as part of the MDR, the parent must be informed that the purpose of the IEP team meeting is to consider an alternative educational setting.

## **Interim Alternative Educational Settings (IAES)**

1. When cumulatively the student has been removed for more than 10 school days
2. During a long term suspension or expulsion



3. Special circumstances where schools unilaterally impose a 45-day removal for dangerous weapon, controlled substance, or serious bodily injury

Things to consider:

A. Continue to provide FAPE, although in another setting

B. IAES is a CIP, therefore a MDR must be held within 10 days of the decision to impose an IAES

**According to IDEA Sec. 300.530 “Authority of Personnel”**

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (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 under §300.536).

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

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to paragraph (e) of this section, 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, except as provided in paragraph (d) of this section.

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

(i) 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

(ii) 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.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child 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 child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, 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.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

### **§300.531 Determination of setting**

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g). (Authority: 20 U.S.C. 1415(k)(2))

### **§300.532 Appeal**

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of

the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer. (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability;  
or

(ii) Order a change of placement of the child 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 child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

### **§300.533 Placement during appeals**

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A))

### **IAES Resources**

- IDEA Technical Assistance related to Discipline:  
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C6%2C>
- IDEA Q&A on Discipline:  
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>
- [AMA ESD IAES Form](#)
- [Directions for completing IAES Form](#)

### **Remains in IAES**

The duration of the IAES cannot exceed the number of days of removal that would have been assigned to students not eligible for special education. Student may remain in the IAES as determined by the IEP team for up to 45 school days.

### **Remainder of 45 school days [45 day Interim Alternative Educational Placement (IAES)]**

At the end of the 45 day IAES, the district follows general education discipline procedures, and follows the procedures for a change of placement, unless the behavior was found to be a manifestation of the student's disability, in which case the student returns to the placement prior to the removal to the IAES (see scenario for Special circumstances).

### **Special Circumstances exist if a student:**

- Carries a weapon or possesses a weapon.  
A dangerous weapon 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. Such a term does not include a pocket knife with a blade of less than two and one-half inches in length. 18 USC § 930(g)(2).
- Knowingly possesses/uses illegal drugs or sells/solicits the sale of a controlled substance.  
A drug refers to a controlled substance or other substance identified under section(c) of the Controlled Substances Act, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority.
- Inflicts serious bodily injury upon another person.  
Serious bodily injury is defined as injury that involves 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. 18 USC § 1365(h)(3)

## Home-Based<sup>2</sup>

A pupil who has been suspended or expelled from school as the result of a disciplinary action may be educated at the pupil's home or at a neutral site away from the general school population. This individualized program is considered home-based and means there is one pupil with the certificated teacher. Home-based instruction must be the result of disciplinary action, determined to be the best placement for instruction for the pupil, and authorized in writing by the district superintendent and the district alternative or disciplinary education supervisor. This is a change in placement for a special education pupil and must be accompanied by a new IEP. The IEP will determine what services will occur in the alternative educational setting.

### **A. Requirement for Counting in Membership:**

1. The pupil must meet pupil membership eligibility requirements pursuant to Section 6(4) or 6(6) of the State School Act (MCL 388.1606) and any other applicable statute.
2. The **pupil shall be registered, enrolled, and participating in the course(s)** pursuant to Section 6(4), Section 6(8), and Section 6a of the State School Aid Act (MCL 388.1606 and MCL 388.1606a).
3. The pupil must be enrolled on or before specified count day to be eligible for membership purposes.
4. The district provides **two, non-consecutive, one-hour periods of pupil instruction per week** to the pupil under the supervision of a certified teacher.
5. The district provides instructional materials, resources, and supplies that are comparable to those otherwise provided in the district's alternative education program.
6. Course content is comparable to that of the alternative education program.
7. Credit earned is awarded to the pupil and placed on the pupil's transcript.
8. The assigned certificated teacher provides individualized instruction (to one pupil) during the instructional period. Teaching more than one pupil at a time indicates that it is not an individualized program and the FTE must be pro-rated.

### **B. Expelled Under Local District Policy**

A pupil who has been expelled or placed on a long-term suspension, or for whom disciplinary action by the district removes the pupil from the classroom pursuant to local district policy, may receive home-based instruction. The district may provide appropriate instruction in the pupil's home, or at a neutral site, and may count the pupil on a pro rata basis.

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<sup>2</sup> Michigan Department of Education Pupil Accounting Manual

### **C. Expelled Under Mandatory Expulsion Laws**

A pupil who has been expelled pursuant to Revised School Code 380.1311(2) or 380.1311a (mandatory expulsion) may receive home-based instruction. Mandatory suspension or expulsion is required for bringing a dangerous weapon to school, committing an act of arson, committing a criminal sexual assault in a building or on the school district. Verbal assault or bomb threat could be a permanent expulsion if the pupil is permanently expelled as a result of school board defined verbal assault or due to bomb threats. Separation of such a pupil from the general population is necessary and education.

Protocol

#### Citation

1. Michigan Department of Education Pupil Accounting Manual  
[https://www.michigan.gov/documents/mde/\\_\\_\\_2016\\_PAM\\_532356\\_7.pdf](https://www.michigan.gov/documents/mde/___2016_PAM_532356_7.pdf)
2. Michigan Department of Education PBIS Implementation Guide, 2010  
[http://www.lcisd.k12.mi.us/UserFiles/Servers/Server\\_78652/File/specialed/PBIS/SchoolwidePBISMichigan.pdf](http://www.lcisd.k12.mi.us/UserFiles/Servers/Server_78652/File/specialed/PBIS/SchoolwidePBISMichigan.pdf)
3. Office of Special Education Programs (OSEP) Technical Assistance Center - PBIS  
<https://www.pbis.org/>
4. United States Department of Education Dear Colleague Letter, August 1st, 2016  
<https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>
5. The Michigan Compiled Laws are accessible on the Internet at:  
<http://michiganlegislature.org>
6. Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint MDE, December 2006.  
<https://drive.google.com/file/d/0B-fDTrBdkEWbd2w5REpNV1o0czA/view?usp=sharing>
7. Michigan Administrative Rules for Special Education (MARSE)
8. [http://www.michigan.gov/documents/mde/MARSE\\_Supplemented\\_with\\_IDEA\\_Regs\\_379598\\_7.pdf](http://www.michigan.gov/documents/mde/MARSE_Supplemented_with_IDEA_Regs_379598_7.pdf)
9. IDEA Regulations <http://idea.ed.gov/explore/view/p/.root.regs>,
10. [Policy](#) for the Emergency Use of Seclusion and Restraint, MDE March 14, 2017.
11. [Revised School Code 380.1307h \(effective 3/29/17\)](#)

Updated 5/30/17