



Behavior

*This brief highlights the provisions of the **Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)**¹ related to discipline and positive behavioral supports. A list of informative websites, developed by PEATC and our collaborators, follows for those interested in further research and information.*

IDEA 2004 addresses student discipline and behavior in its provisions about the individualized education program (IEP) and procedural safeguards.

Content of the IEP [Section 614(d)(1)(A)]

The individualized education program (IEP) is a written statement of the child's present levels of academic achievement and functional performance, including how the disability affects his/her involvement and progress in the general education curriculum, and for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

The IEP also includes a statement of measurable annual goals designed to enable the child to be involved in and progress in the general curriculum, and to meet each of the child's other educational needs, and a description of how and when the child's progress towards meeting the annual goals will be provided. The IEP includes a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals; to be involved in and progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and to be educated with and participate with other children with and without disabilities. If the child will not participate with nondisabled children in the regular class and extracurricular and nonacademic activities, the IEP must include an explanation of the extent of this nonparticipation.

The IEP must also include a statement of any individual accommodations necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. If the IEP determines the child is to take an alternate assessment, the IEP must specify why the regular assessment is not appropriate and why the particular alternate assessment is selected. The IEP must include the projected date for beginning the services and modifications, and their expected frequency, location and duration. Finally, for youth turning 16 years of age or older, the IEP must include postsecondary goals and necessary transition goals.

Development of the IEP [Section 614(d)(3)]

When developing the IEP, the IEP team shall consider:

- the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child;
- *in the case of a child whose behavior impedes his/her learning or that of others, strategies, including positive behavioral interventions and supports, to address that child's behavior;*
- in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the IEP;
- the communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;

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- whether the child requires assistive technology devices and services.

IDEA 2004 included several important changes in the procedural safeguard section that related to discipline and behavior.

**Procedural Safeguards:
Maintenance of Current Educational Placement [Section 615(j)]**

- The so-called “Stay Put” provisions generally are retained. That is, during the pendency (undecided period) between of any administrative proceeding, unless the State or local school division and parents agree otherwise, or unless the child has engaged in behavior subject to an up-to-45 day placement in an interim alternative educational setting, the child shall remain in the then-current educational placement.

Placement in Alternative Educational Settings [Section 615(k)(1)(A-D)]

- School personnel can remove a child with a disability who violates a code of student conduct to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 consecutive school days, to extent those are used for children without disabilities.
- The new law allows school personnel to “consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.”
- A child with a disability who is removed from current placement (regardless of manifestation determination; see below) shall continue to receive educational services to enable the child to participate in general education curriculum and to progress towards meeting his/her IEP goals. In addition, the child is to receive, as appropriate, a functional behavior assessment, behavioral intervention services and modifications designed to address the behavior violation, so that it doesn’t recur.
- In the case that the behavior is determined not to be a manifestation of the child’s disability, and school personnel want to change the child’s placement for more than 10 school days, the discipline procedures may be like and for same amount of time as for students without disabilities, except that the child with a disability still receives a free appropriate public education under IDEA. This may be provided in an interim alternative educational setting. The IEP team makes the determination of the interim alternative educational setting (614 (k)(2)).
- No later than the date the decision is made, the school district must notify the child’s parents of the decision to take disciplinary action and of the procedural safeguards.

**Special Circumstances to Place a Child
in an Interim Alternative Educational Setting [Section 615(k)(1)(G)]**

- School personnel can remove a child with a disability to interim alternative education setting for not more than 45 school days , regardless of manifestation determination in cases where the child:
 - carries or possesses a weapon to or at school, on school premises or at a school function;
 - knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substance at school, on school premises or at a school function; or
 - inflicts serious bodily injury upon another person while at school, on school premises or at a school function.
- The IEP team makes the determination of the interim alternative educational setting (614 (k)(2)).

Manifestation Determination [Section 615(k)(1)(E & F)]

IDEA 2004 changed the criteria for determining if the behavior is related to the child’s disability (called the “manifestation determination”).



- The need to conduct a manifestation determination applies only when considering a change in placement of more than 10 school days.
- The manifestation needs to be done within 10 school days of the decision to change placement because of a violation of a code of student conduct.

The process for conducting the manifestation determination includes the following steps:

- Local school district representatives, parents and relevant members of IEP team (determined by parent and school district) review all relevant information in file (including IEP, teacher observations, & relevant information provided by parents) to determine:
 - if the conduct was caused by or had a direct or substantial relationship to the child's disability, or
 - if the conduct was direct result of the school district's failure to implement IEP.
- If the local school district, the parent, and relevant members of the IEP Team determine that the behavior is a manifestation:
 - IEP team shall conduct a functional behavior assessment and implement a behavioral intervention plan (BIP), if an assessment hadn't been done previously.
 - If a BIP had been developed previously, the team reviews and modifies it to address the behavior.
- The child with a disability is returned to his/her placement unless the parent and school district agree to change of placement as part of the modification of BIP.

Appeal to Hearing Officer [Section 615(k)(3-4)]

- Two parties can appeal any decision regarding placement- 1) the parent of a child with a disability who disagrees with a decision regarding placement or manifestation determination and 2) the local school district, if it believes maintaining current placement is substantially likely to result in injury to that child with a disability or others.
- A hearing officer can- 1) return the child to the placement from which she/he was removed or 2) order a change in placement to appropriate interim alternative educational setting for 45 days or less, if the hearing officer determines the child is likely to injure him/herself or others.
- During appeals, the child with a disability remains in the interim alternative educational setting until the hearing officer decides or expiration of disciplinary time period, whichever comes first, unless parent and agency agree otherwise.
- The state or local school district shall arrange for an expedited hearing to occur within 20 school days of the date of request for the hearing. A determination is to be provided within 10 school days after the hearing.

IDEA 2004 continues to have protections for children not yet determined eligible for special ed, if the school had knowledge that it was a child with a disability before behavior occurred (the basis for knowledge is specified Section 615 (k)(5)(D)).

Parental Rights to Revoke Special Education Services [Sec. 300.9(c)(3) and 300.300(b)(4)]

A parent may consent to some, but not all, of the proposed IEP without terminating special education. If parents do not want their child to receive any special education services, they have the right to revoke their consent to special education.

- Parents must put in writing their decision to revoke their consent of special education services including recommended evaluations, related services, and Individualized Education Program.
- Parents need not disclose their reason for revoking consent and request a rescinding of service delivery.
- A student released from special education services will be considered a general education student and will not be afforded protections under the procedural safeguards provisions as set forth in IDEA.
- Revocation of consent for special education services does not interfere with a students' rights to protections under other federal disability policies.
- Schools must provide prior written notice to parents prior to ending special education services.
- Parents may at a later time re-address the need for special education services.



Websites on Behavior & Discipline

US Department of Education Q&A on Discipline Procedures--

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>

US Department of Education Additional Resources on Discipline

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C6%2C>

Technical Assistance Center of Positive Behavioral Interventions & Supports _Research on the results of PBIS on behavior and academic achievement – easy-to-use tools for families, schools, administrators and community.

<http://www.pbis.org> (Spanish) <http://www.pbis.org/spanish/main-es.htm>

Consortium for Appropriate Dispute Resolution in Special Education

Information/resources/communication tools for parents, professionals, and students to build consensus and prevent disputes. <http://www.directionservice.org/cadre/> (Spanish) **http://www.directionservice.org/cadre/index_espanol.cfm**

Center for Effective Collaboration and Practice Includes information on behavior plans, collaboration, and behavioral assessment. **<http://www.air.org/cecp>**

Bullying

PACER National Center for Bullying Prevention **<http://www.pacer.org/bullying/index.asp>**

Stop Bullying Now – Public Awareness Campaign **<http://www.stopbullyingnow.hrsa.gov/index.asp>**

Virginia Websites

An Overview of Functional Behavioral Assessment and Behavioral Intervention Plans in Virginia

http://www.pen.k12.va.us/VDOE/Instruction/Sped/overview_fba.pdf The information contained in this booklet was compiled from a series of discussions on emerging effective practices for dealing with student behavior problems. Participants included parents, school administrators, psychologists, regular and special classroom teachers, university researchers and teacher educators, mental health and other community agency personnel convened by the Virginia Department of Education.

Conducting Functional Behavioral Assessment and Developing Positive Behavioral Intervention Plans and Supports: Promoting Positive Academic and Behavioral Outcomes for All Students

<http://www.doe.virginia.gov/VDOE/Instruction/Sped/fba-monogram.pdf> A collaborative guide produced by the Virginia Department of Education and The Center for Effective Collaboration and Practice, American Institute for Research

Technical Assistance Resource Document on Discipline **http://www.rcps.org/SpecialPlace/PDF/sped_discipline.pdf**

Detailed guidance developed by the Virginia Department of Education for parents and administrators.

PEATC is Virginia's parent involvement resource center committed to helping families, schools and communities build positive futures for Virginia's children. Our mission is to build positive futures for Virginia's children by working collaboratively with families, schools and communities in order to improve opportunities for excellence in education and success in school and community life. Our special focus is children with disabilities. Hablamos Español.