



Guidance

Responding to and Counting Disciplinary Removals

**Michigan Department of Education Office of Special Education
May 28, 2020**

This document provides guidance on counting disciplinary removals for students who are protected under the *Individuals with Disabilities Education Act* (IDEA).

Implications of Disciplinary Removals

Discipline decisions have consequences. Michigan data show students who receive one out-of-school suspension incident (based on suspensions of 1-3 days each) in ninth grade are a quarter less likely to graduate high school, a third less likely to enter college, and more than twice as likely to drop out of high school.

Students with disabilities who receive four or more out-of-school suspensions in the ninth grade are less than half as likely to graduate from high school and enroll in college. These same students are four times as likely to drop out of high school.

IEP Considerations for Behavioral Needs

In the case of a student whose behavior impedes the student's learning or the learning of others, the individualized education program (IEP) team must consider and when necessary, provide a free appropriate public education (FAPE), document in the IEP the use of positive behavioral interventions and supports, and other strategies, to address the behavior (FAPE). 34 CFR § 300.324(a)(b)(2)

Incidents of misbehavior and classroom disruptions, as well as violations of a code of student conduct, may indicate the student requires behavioral supports in order to access and make progress in the general education classroom and curriculum. When the student has behavioral supports, upon repeated incidents of misbehavior or classroom disruption, the IEP team should consider whether the student requires additional or

different behavior supports, and whether data demonstrate the current behavior supports may need to be changed.

Example

A high school student has seven class periods a day and is consistently removed 70 times from the same class. The student was removed 70 times before a consideration of whether a change in placement has occurred. Although school personnel may be correct in calculating the days of removal for the purpose of determining a change of placement and the need for a manifestation determination review (MDR), the district may have failed in their obligation of responding to the behavioral needs of the student.

When a student with a disability experiences behavioral challenges resulting in suspensions or other exclusionary disciplinary measures, appropriate behavioral supports may be necessary to ensure the student receives FAPE. A failure to implement procedural requirements or provide needed behavioral supports to a student with a disability may result in the student not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE and/or a denial of placement in the least restrictive environment.

The following examples are indications of either a procedural or substantive failure in the development, review, or revision of the IEP:

- The IEP Team did not consider the inclusion of positive behavioral interventions and supports in response to behavior impeding the student’s learning or the learning of others.
- There were no behavioral supports in the student’s IEP, even when the IEP Team determined they were necessary.
- There were behavioral supports in the IEP, however, the student continued to exhibit the same or substantially similar behaviors which resulted in removals; or
- The behavioral supports in the student’s IEP were not being implemented or not being implemented with fidelity.

As stated in the Dear Colleague Letter disseminated on August 1, 2016 by the Office of Special Education and Rehabilitative Services through the United States Department of Education, “Removals from the current placement generally do not address the needs of

a student with a disability for positive behavioral interventions and supports. Accordingly, it is important to remind IEP Teams while 34 CFR §§300.530 explicitly permits school personnel to implement short-term disciplinary removals from the current placement, such removals may indicate a need to review and revise the student’s IEP to address his or her behavioral needs. In addition, exclusionary disciplinary measures which do not constitute a removal from the current placement may also indicate the need to review and revise the student’s IEP.”

“The failure to consider and provide for needed behavioral supports through the IEP process is likely to result in a student not receiving a meaningful educational benefit or FAPE. In addition, a failure to make behavioral supports available throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and constitute a denial of placement in the least restrictive environment.”

[United States Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague Letter, August 1, 2016](#)

What is a Disciplinary Removal?

Any instance in which a student with a disability is removed from his/her educational placement for disciplinary purposes, including in-school suspension, out-of-school suspension, expulsion, removal by school personnel to an interim alternative educational setting for drug or weapon offenses or serious bodily injury, and removal by hearing officer for likely injury to the student or others is a removal.

A disciplinary removal occurs when a student is excluded from his or her current placement, as written in the individualized education program (IEP), due to a violation of the student code of conduct and the student is not afforded the opportunity to:

- Continue to be involved in and make progress in the general education curriculum.
- Receive the instruction and services specified in the IEP; and
- Participate with nondisabled students to the extent the student would have in his or her current placement.

According to the [United States Department of Education, Office of Special Education and Rehabilitative Services, Dear Colleague Letter, August 1, 2016](#), disciplinary removals may include:

- A pattern of office referrals, extended time excluded from instruction (e.g., time out), or extended restrictions in privileges;
- Repeatedly sending students out of school on “administrative leave” or a “day off,” requesting parents to pick the student up from school early due to behaviors, or other methods of sending the student home from school;
- Repeatedly sending students out of school with a condition for return, such as a risk assessment or psychological evaluation; or
- Regularly requiring students to leave the school early and miss instructional time (e.g., via shortened school days).

Do In-School Suspensions Count as Removals?

In-school suspensions are not counted as disciplinary removals when students:

1. Are provided the opportunity to continue to be involved in and make progress in the general education curriculum.
2. Receive instruction and services specified in the IEP.
3. Participate with nondisabled students; and
4. Have instruction provided by a certified teacher.

When any of these conditions are not met, the in-school suspension must be counted as a disciplinary removal.

Non-certified personnel can only be used to supervise in-school suspension under the meaningful direction and supervision of a certified classroom teacher.

“Meaningful direction” according to the MDE document titled, [Utilization of Non-Certified Personnel](#), means the teacher is responsible for:

- Planning and coordinating all lessons;
- Presenting the initial lesson;

- Identifying the type of complementing, supplementing, or reinforcing instruction to be provided; and
- Specifying the type of methods, materials, and techniques to be used by non-certified staff.

Do Removals as Part of a Behavior Intervention Plan (BIP) Count as Disciplinary Removals?

Yes. The district must count all removals, including removals allowable as part of a behavior intervention plan, when considering whether a pattern of removals constitutes a change of placement. When a removal from school is written into a BIP, even when the BIP is part of the IEP, the removal may result in a change of placement.

A behavior intervention plan (BIP) is a set of positive behavioral interventions and supports, along with other strategies, designed to assist a student whose behavior impedes his or her own learning or the learning of others. 34 CFR §300.324

How are Partial Days of Disciplinary Removal Counted?

“School day” has the same meaning for all students in school, including students with and without disabilities. 34 CFR § 300.11(c)(1)(2)

Counting partial days of disciplinary removal must be consistent with the district’s attendance procedure. For example, when attendance is counted in half days, disciplinary removals should also be counted in half days. Alternatively, when attendance is counted for each period, disciplinary removals should also be counted for each period. A full day would be the accumulation of the total number of periods of disciplinary removal.

Imposing in-school discipline in small increments, and for less than what is considered an absence, may not constitute a disciplinary removal; however, the overall impact must be considered when it limits the student’s access to a free appropriate public education (FAPE).

How Are Disciplinary Removals for Transfer Students Counted?

For a student transferring during the school year from another building or district (within the state or out of state), all removals for the school year must be considered when determining a pattern of removals, including removals from the previous building or district. 34 CFR § 300.536(a)(2)(i).

Reporting Removals

The Michigan Student Data System (MSDS) definitions for days counted are for data reporting purposes only and do not define days counted for determining change of placement. The following table describes the primary differences in counting days when determining a change of placement or pattern of removals versus the MSDS data reporting. For further information on MSDS reporting requirements, please refer to the [MSDS Manual](#).

Definitions under MSDS

In-School Suspension: when a student is temporarily removed from his/her regular classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means a school staff member is physically in the same location as students under its supervision.

Note: There maybe circumstances when an in-school suspension is reported into MSDS, but not counted in the pattern of removals.

Out-of-School Suspensions: when a student is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g. home, behavior center).

Situation	Determining Change of Placement	MSDS Reporting
Partial Day (including removals as part of the behavior plan)	Count removals consistent with attendance procedures	Report suspensions of ½ day or longer
Transfer student	Count all known removals occurring in one school year	Report suspensions of ½ day or longer which occur in currently enrolled district

Situation	Determining Change of Placement	MSDS Reporting
District requires parent removal of student from school	Count as removal when district contacts the parent regarding behavior and requires parent to pick the student up from school early or keep the student home from school.	Report suspensions of ½ day or longer when district contacts the parent regarding behavior requiring parents to pick the student up from school early or keep the student home.
In-school suspensions	Count as removal when any of the following criteria are not met: <ul style="list-style-type: none"> • Students are provided the opportunity to continue to be involved in and make progress in the general education curriculum. • Receive instruction and services specified in the IEP. • Participate with nondisabled students; and • Have instruction provided by a certified teacher. 	Report all in-school suspensions of ½ day or longer