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Discipline

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Berrien Regional Education Service Agency's

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Contact Information:

Berrien Regional Education
Service Agency
711 St. Joseph Ave.
Berrien Springs, MI
49103-1583
(269) 471-7725
www.berrienresa.org

Eric Hoppstock
Assistant Superintendent/
Chief Academic Officer
eric.hoppstock@berrienresa.org

Craig Blasko
Supervisor of Ancillary Services and
Programs
craig.blasko@berrienresa.org

Shari Lidgard-Pullins,
Supervisor of Ancillary Services and
Compliance
shari.lidgard@berrienresa.org

Tina Lawson
Principal, Blossomland Learning Center
tina.lawson@berrienresa.org

Sally Brueck
Asst. Principal,
Blossomland Learning Center
sally.brueck@berrienresa.org

Mike Marinello
Principal, Lighthouse Education Center
mike.marinello@berrienresa.org

Sandi Brueck
Asst. Principal,
Lighthouse Education Center
sandi.brueck@berrienresa.org

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Discipline

While there is no question that one of the most confusing aspects of special education law is student discipline, it must be understood that significant protections exist for students with disabilities.

The following addresses specific information about suspensions/expulsions as dictated by federal regulations, in addition to highlighting those things that one must be mindful of so as to avoid common pitfalls in disciplining students with disabilities.

Removals

A removal means the student is removed from instruction for disciplinary reasons without the opportunity to: 1) progress in the general education curriculum; 2) receive services specified on the IEP and 3) participate with other non-disabled students to the extent they would have in their current placement.

Things to be mindful of:

Typically one considers a formal suspension or expulsion as a "removal". While this is true, it's important to note that other removals could be construed as a removal. For example: Asking a parent to keep a student home for several days as a "cool down" period, moving the student's desk to the principal's office or another classroom all day every day can be considered a removal. If specialized transportation is part of the student's IEP, then a disciplinary removal from transportation would count as a suspension.

When a student moves into a district or within a district with documentation of prior discipline, those days of removal should be counted in the new school building's total days of removal. Keep careful track of the total number of days.

Change in Placement/Notice/Manifestation Determination Review (MDR)

A change in placement is defined (300.536) as.....

1. A removal that is for 10 or more consecutive days in one school year

-OR-

2. A removal that is for 10 or more cumulative days in one school year and the removals include a recurrence of substantially similar behavior and 1 or more of the following contribute to the pattern of behavior

-Length of removal

-Total time removed

-Proximity of removals to each other





Things to be mindful of:

If the student's current removal is determined to be a "change in placement" you must:

1. Provide Notice

On the date in which the decision is made to make a removal that constitutes a change in placement the district must notify the parents and provide a copy of the procedural safeguards. Written notification must include: 1) A description of the action proposed by the district ("x" number of days out of school); 2) An explanation as to why the district is proposing to take the action i.e. (fighting); 3) A description as to what was used as the basis for the action (violation of school code of conduct); 4) A statement that the student has protection under the procedural safeguards and sources for the parents to contact to obtain assistance (a written statement indicating the parent received a copy of the procedural safeguards/parent handbook.

2. Manifestation Determination Review (MDR) 300.530(e)

The district must hold an MDR within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the district, parent, and relevant members of the IEP team must review all relevant information (IEP, observations, information from the parents) to determine if the conduct in question: 1) Was caused by, or had a direct and substantial relationship to the student's disability; or 2) Was a direct result of the district's failure to implement the IEP.

If yes: 1) Initiate or Review/Revise a functional behavior assessment & behavior intervention plan to address the behavior violation so it doesn't reoccur; 2) Immediately return the student to the placement from which they were removed; 3) Correct any deficiencies in the implementation of the current IEP, if necessary.

If no: 1) Initiate, if appropriate, a functional behavior assessment & behavior intervention plan; 2) Continue with general discipline procedures; 3) Provide educational services – this occurs upon the 11th day removed from school during the course of that school year.

Free Appropriate Public Education (FAPE)

An offer of FAPE is to be provided to every student once they reach their 11th day of removal from school during the course of that school year.

Services must: Enable the student to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP

Things to be mindful of:

Tracking- Keep a written log indicating the district's offer of FAPE, whether the parent/student accepted the offer, and who provided the service.

Level of service - The district is not required to provide exactly the same services in exactly the same setting as they were prior to the imposition of discipline.

The right to receive continued educational services applies whether or not the student's disciplinary infraction was related to the student's disability.

Additional Resources

The following sites provide useful information with regard to discipline:

National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) www.pbis.org

The TA Center on Positive Behavioral Interventions and Supports has been established by the Office of Special Education Programs, US Department of Education to give schools capacity-building information and technical assistance for identifying, adapting, and sustaining effective school-wide disciplinary practices.

<http://miblisi.cenmi.org>

The Office of Special Education continues to collaborate with MiBLSi to reduce rates of suspension/expulsion in the state through positive behavioral interventions and supports.

<http://cims.cenmi.org/Results/PartBSPPComplianceIndicators/B4Suspension/Expulsion.aspx>

The Continuous Improvement and Monitoring System's (CIMS) electronic workbook provides districts with feedback and resources regarding their suspension and expulsion data to assist with improvement efforts.

<http://ici.umn.edu/products/impact/182/over5.html>

This article (Ten Alternatives to Suspension by Reece Peterson) speaks to the prerequisites needed to provide the context and skills for appropriate behavior.

