

QUESTIONS AND ANSWERS FOR CAREER AND TECHNOLOGY EDUCATION PERSONNEL

OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION

1. What is a disciplinary removal?

The term “disciplinary removal” refers to every out-of-school suspension and any other disciplinary consequence that can change the educational placement of a student with a disability by preventing implementation of the student’s IEP

or Section 504 Plan, as written. Disciplinary removals can include placement in an in-school setting or suspension from school transportation.

Disciplinary Removal



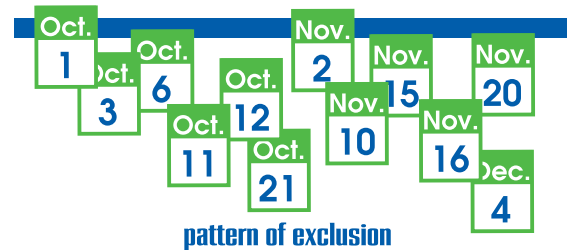
2. When does a disciplinary removal constitute a change of placement? Why does it matter whether the disciplinary removal constitutes a change of placement?

A disciplinary removal constitutes a change of placement (1) when the disciplinary removal exceeds 10 consecutive school days or (2) when a series of short-term disciplinary removals constitute a pattern of exclusion. School personnel determine whether a pattern exists by considering the following factors:

- (1) the series of removals total more than 10 school days in a school year;
- (2) the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
- (3) 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.

It is important to know whether or not a disciplinary removal or a series of disciplinary removals constitute a change of placement because a change of placement is legally

Disciplinary Removal = Change of Placement



permissible only through the team process. The student’s team must act before the local school district or technology center can change the student’s placement.

ACRONYM KEY

- BIP—Behavior Intervention Plan
- IEP—Individualized Education Program
- FBA—Functional Behavioral Assessment

3. How does a technology center implement a short-term disciplinary removal of a student with a disability?

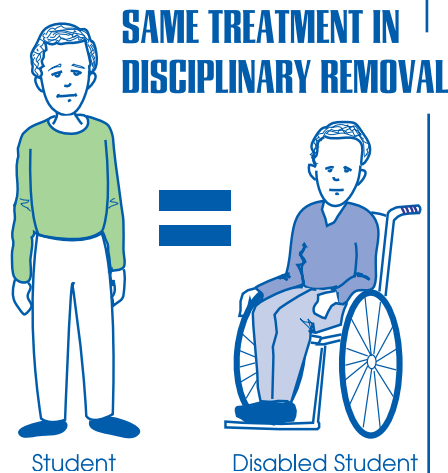
A technology center determines appropriate discipline for all students according to its Code of Student Conduct. (If the IEP or Section 504 team included specific disciplinary consequences in a student's IEP or Section 504 Plan, then the campus administrator or designee must consult that document.)

A technology center may implement a disciplinary removal of a student with a disability from his or her current educational placement for up to 10 school days in a school year for any violation of its policies, rules, or regulations, to the same extent it would for any other student.

The campus administrator or designee handles the initial disciplinary process the same way he or she would handle it for a nondisabled student. In other words, a student with a disability gets the same "due process" that a nondisabled student gets.

When a series of short-term disciplinary removals constitute a pattern of exclusion, as discussed above, the technology center must follow the process described in Questions 6, 7, and 8 for a long-term disciplinary removal. This is because a pattern of exclusion constitutes a change of placement, for which extra procedural safeguards are necessary.

A technology center may be required to deal with repetitive behavior problems of one student. If there is no behavior intervention plan (BIP) in the student's IEP, career and technology education personnel should ask the local school district to convene an IEP team meeting to discuss the need for a functional behavior assessment (FBA) and a BIP. In addition, the technology center may, in appropriate situations, handle behavioral problems by imposing short-term disciplinary removals on the student.



4. What happens when a student with a BIP continues to have behavioral problems after the technology center has removed the student from his or her current educational placement for 10 days during that school year?

The technology center may impose a subsequent disciplinary removal of 10 school days or less. If this constitutes a change of placement, then the student's team must meet to review the disciplinary removal as described in Question 7. If the subsequent removal does not constitute a change of placement, then the student's team members should review the student's BIP and its implementation to determine if one or both should be modified. If one or more of the team members think that modifications are needed, the team must meet. If a career and technology education representative thinks that modifications may be necessary, he or she should request that the local school district convene an IEP team meeting to discuss the BIP and its implementation.

5. Must the technology center provide educational services during a short-term disciplinary removal?

The technology center must provide a student with a disability the same level of services it provides other students when the disabled student is removed for disciplinary reasons from his or her current placement for 10 school days or less over the school year.

During any subsequent removal of 10 consecutive school days or less that does not constitute a change of placement, the technology center, in conjunction with the local school district, must provide the student with the necessary services to appropriately progress in the general education curriculum and appropriately advance toward achieving his or her

IEP goals. Technology center personnel, in consultation with the child's special education teacher, will decide the extent to which services are necessary in the student's career and technology education program.

6. Can a technology center implement a long-term disciplinary removal of a student with a disability?

Yes. A technology center can implement a disciplinary removal of a student with a disability from his or her current educational placement for more than 10 consecutive school days in any school year in the same manner it disciplines nondisabled students for behavior that is not a manifestation of the student's disability. A technology center can also remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability; if the child —

- (1) carries or possesses a weapon at school, on school premises, or to or at a school function;
- (2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school, on school premises, or at a school function; or
- (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The technology center must notify the student's parent of the disciplinary action and of all applicable procedural safeguards under state and federal law and technology center policy no later than the date on which the technology center imposes the disciplinary action.

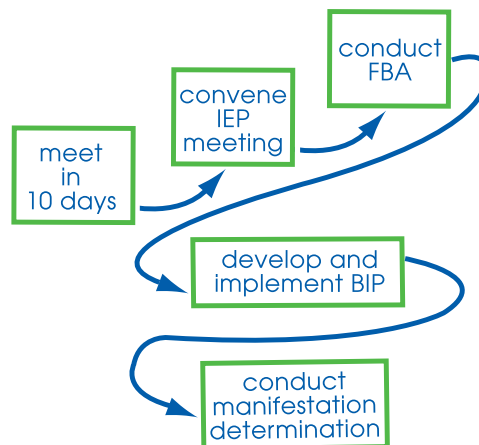


7. How does a technology center implement a long-term disciplinary removal?

The student's team must meet no more than 10 school days after the technology center imposes (1) a disciplinary removal of more than 10 consecutive school days or (2) the last short-term disciplinary removal in a series of short-term disciplinary removals that constitute a pattern of exclusion over the school year. This is necessary because such disciplinary removals constitute a change of placement for the student. When the technology center imposes such a disciplinary removal, it should ask the local school district to convene an IEP team meeting. If the local school district fails or refuses to do so, the technology center should convene the meeting in compliance with the requirements of Section 504.

At the meeting, the team will develop an FBA plan for the student if the local school district had not conducted an FBA and developed a BIP before the behavior that resulted in the removal. As soon as possible after developing the assessment plan and completing the assessments, the local school district should convene another IEP team meeting to develop and implement the appropriate behavioral interventions. If the student already has a BIP, the team will meet to review and modify the BIP and its implementation, as necessary, to address the behavior.

In addition, no later than 10 school days after the technology center imposed the disciplinary removal, the team members must meet to conduct a manifestation determination. In the manifestation determination, the team reviews the relationship between the student's disability and the behavior subject to disciplinary action.



Two separate meetings are unnecessary. The team may develop the student's FBA plan or review the student's BIP and conduct the manifestation determination at the same meeting.

8. What educational services must a technology center provide during a long-term disciplinary removal?

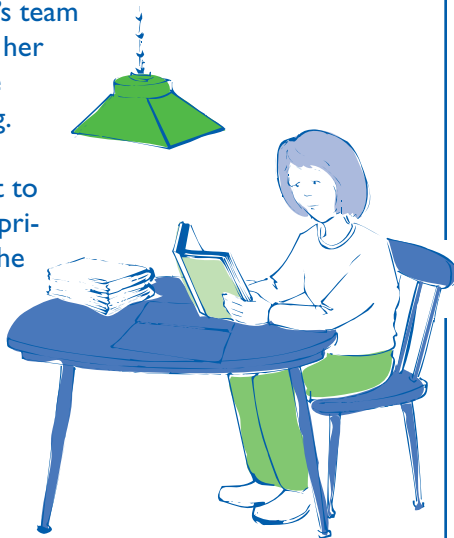
For an offense involving a controlled substance, an illegal drug, a weapon, or the infliction of serious bodily injury, the student's team will identify his or her interim alternative educational setting.

That setting must enable the student to continue to appropriately progress in the general education curriculum and receive the services and modifications, including those identified in the student's current IEP, that will enable

the student to achieve his or her IEP goals. The alternative educational setting must also include services and modifications designed to address the behavior that led to the placement change so that the behavior does not recur.

For behavior that is not a manifestation of the student's disability, the technology center, in conjunction with the local school district, must provide services to the extent necessary to enable the student to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals in the student's IEP. The team will decide the extent to which services are necessary.

Certain services ordinarily provided to the student by the local school district or technology center may be difficult or even impossible to provide outside the regular educational setting. In that case, the team must decide how the entities involved might offer services to the student in an effort to accomplish these objectives.



9. How does the team make a manifestation determination?

The team members will meet to consider all relevant information related to the behavior subject to disciplinary action, including (1) information supplied by the student's parents, (2) teacher observations of the student, and (3) the student's IEP and placement.

The team may determine that the student's behavior is not a manifestation of his or her disability if the team determines that:

- (1) the conduct in question was not caused by, nor did it have a direct and substantial relationship to, the child's disability; and
- (2) the conduct in question was not a direct result of failure to implement the IEP.

If one or both of these standards are not met, then the team must consider the behavior a manifestation of the student's disability. If the behavior is a manifestation of the student's disability, then the local school district or technology center cannot impose discipline that constitutes a change of placement.

If the team identifies deficiencies in the student's IEP or placement or in implementation of the IEP through the manifestation determination process, the technology center and/or local school district must take immediate steps to remedy the deficiencies. This might affect the technology center if, for example, career and technology personnel were not implementing the parts of the

student's IEP that governed his or her career and technology education program. In that case, the technology center would be required to immediately begin implementing the relevant parts of the student's IEP.

If the team determines that the student's behavior is not a manifestation of his or her disability, the

Manifestation Determination

1. Evaluation and diagnostic results
2. Observations of the student
3. Student's IEP and placement

technology center can apply the disciplinary procedures applicable to all students in the same manner they would be applied to nondisabled students, subject to the requirement that the student continue to receive an appropriate public education.

10. If the local school district initiates a disciplinary removal that constitutes a change of placement, what role does the technology center play in the process?

If the local school district initiates a disciplinary removal of a student and schedules an IEP team meeting to discuss the removal, technology center personnel should participate in the meeting. If the technology center reciprocates a disciplinary removal of the student for the same behavior, it may have responsibilities to provide educational services to the student during the term of the disciplinary removal, as discussed in Question 8.

The debate continues on the legality of reciprocal out-of-school suspensions. Is there a legal impediment to a technology center “honoring” an out-of-school suspension imposed by a local school district for an offense that involved only the local school district? This issue has not been resolved by the courts. However, a student subject to a reciprocal out-of-school suspension imposed by a technology center under those circumstances could challenge the out-of-school suspension as a violation of his or her

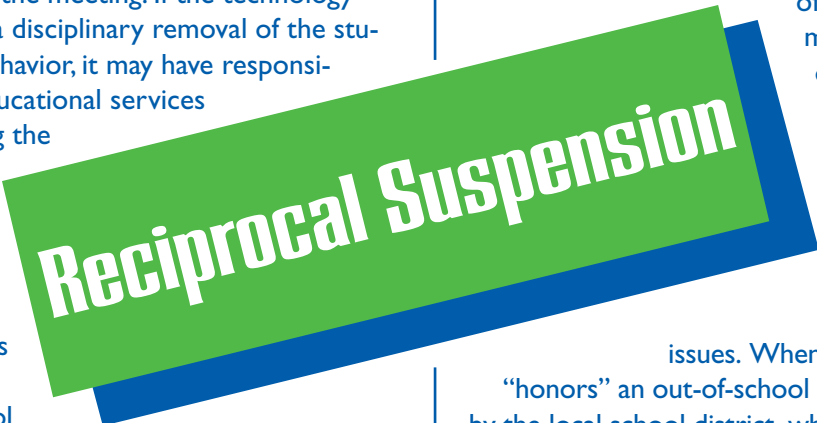
procedural due process rights under the following scenario. Some technology centers do not provide students procedural due process according to technology center policies and procedures before excluding the students from career and technology education programs for offenses involving their local school districts. Those technology centers take the position that they have the right to “honor” the local school district’s out-of-school suspension and that the responsibility for providing procedural due process rests solely with the local school district. The student may successfully argue that the procedural due process provided by the local school district does not cover the technology center, a separate entity, and that the technology center must provide procedural due process according to its own policies and procedures before it can “honor” an out-of-school suspension imposed by the local school district. The better practice is for the technology center to evaluate the misconduct under its own policies and procedures for any out-

of-school suspension it may seek to “honor” or impose.

In special education matters, reciprocal out-of-school suspensions present even more complicated

issues. When a technology center

“honors” an out-of-school suspension imposed by the local school district, whether or not the technology center provides the student procedural due process, it might be responsible for providing educational services to the student during the term of the out-of-school suspension. We suggest that each technology center examine its policy and procedures concerning reciprocal out-of-school suspensions to address these issues.



Definitions from the Oklahoma Department of Education Policies and Procedures Manual for Special Education

As defined at 18 U.S.C. 1365(h)(3), the term “serious bodily injury” means bodily injury that involves:

- A 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.

Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code, as follows, “the term 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, except that the term does not include a pocket knife with a blade of less than 2 and 1/2 inches in length.”

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). *Illegal drug* means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under that Act, or under any other provision of federal law. This federal legal definition does not include alcohol.



For more information, please contact:

career^{tech}

Oklahoma Department of Career and Technology Education
1500 West Seventh Avenue • Stillwater, OK 74074-4364 • 405-743-5138