

OSPI Special Education Technical Assistance Paper No. 2 (TAP #2): Discipline Procedures for Students Eligible to Receive Special Education Services

Note: [All TAPs are posted on the OSPI website.](#)

Purpose

The purpose of this technical assistance paper (TAP) is to review special education discipline procedures for students who are eligible for special education services and for those students who are deemed to be eligible for special education services. The regulations that address discipline procedures for eligible students are contained in the Washington Administrative Code (WAC) [392-172A-05140](#) – [05175](#). These state regulations are based on the federal regulations contained in 34 CFR Part 300. Both the federal and state rules implement the Individuals with Disabilities Education Act of 2004 (IDEA), Part B. Definitions of relevant terms are provided within the topical sections.

This TAP is organized as follows:

- I. [Overview](#)
- II. [Providing Educational Services During Removals](#)
- III. [Removals Under Special Circumstances: Drugs, Weapons, or Serious Bodily Injury](#)
- IV. [Manifestation Determinations](#)
- V. [Disagreements about a Manifestation Determination, Disciplinary Placement of Services During Removals and Due Process Hearings](#)
- VI. [Protections for Students Not Yet Eligible for Special Education Services](#)

VII. [Conclusion](#)

[Appendix A: Resources](#)

[Appendix B: Special Education Discipline Flowchart](#)

I. Overview

Suspensions and Expulsion Rules for All Students

Washington State's discipline regulations establishing the minimum procedural and substantive due process rights for all students subject to discipline are located under WAC Chapter [392-400](#). School districts must follow these regulations for all students. When school districts impose disciplinary removals of students who are eligible for special education services, or are deemed eligible, districts must also follow special education discipline procedural protections. This obligation means that there can be two processes involved for students eligible for special education services: 1) general education discipline rules and procedures to address whether the student actually engaged in a behavioral violation, including any decisions about the length and type of removal; and 2) special education discipline rules and procedures to make decisions about whether a student will be removed from their current placement, and if so, the services that will be provided to the student.

Schools may not suspend or expel any student unless the school district has first attempted or considered other forms of discipline to support the student in meeting



behavioral expectations (except for emergency expulsions). When there is a suspension or expulsion under general education discipline rules, school districts must provide students with the protections offered under those rules, including the school district's procedures for appeals applicable to the type or length of suspension or expulsion. The general education discipline regulations prohibit districts from using long-term suspension or expulsion except for certain severe behavioral violations. The general education discipline regulations also place limitations on the number of short-term suspension or in-school suspension days a student may during any given semester or trimester or academic term. (See, [WAC 392-400-435](#)).

The state discipline regulations define classroom exclusions, suspensions, in-school suspensions, expulsions, and emergency expulsions under WAC 392-400-025 for all students. A **classroom exclusion** is the exclusion of a student from a classroom or instructional or activity area in response to a behavioral violation for all or any portion of the balance of a school day. A **suspension** is a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions. An **in-school suspension** is a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school for up to ten consecutive school days. An **expulsion** is a denial of admission to the student's current school placement in response to a behavioral violation. An

emergency expulsion is the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption to the educational process.

Student Behavior

School districts must have procedures and strategies in place to address student behavior before it leads to a classroom exclusion, suspension, or expulsion, which should include a system of supports for both students and teachers. School districts must consider the behavioral needs of students eligible for special education services when developing their individualized education program (IEP). In the case of a student whose behavior impedes their learning or that of others, the school district must consider the use of positive behavioral interventions and supports to address the behavior ([WAC 392-172A-03110](#)). Other ways to address behavior, when appropriate for the student, include:

- Developing behavioral IEP goals when the student requires specially designed instruction;
- Providing related services necessary to achieve those behavioral IEP goals;
- Providing classroom accommodations, modifications and/or supplementary aids and supports;
- Providing support to the student's teachers and service providers;
- Conducting a reevaluation that includes a functional behavioral assessment (FBA);



- Developing a behavioral intervention plan (BIP) as defined under [WAC 392-172A-01031](#).

Discipline Related Special Education Protections

Students who receive, or may be eligible to receive, special education services:

- May be removed in the same way as students without disabilities if the disciplinary removal does not constitute a change of placement under [WAC 392-172A-05155](#);
- May not continue to be disciplined for behavioral violations that result in a change of placement if the behavior was caused by, or had a direct and substantial relationship to the student's disability or, if the school district failed to implement the student's IEP; and
- Must continue to receive educational services that allow the student to continue to participate in the general education curriculum and progress toward meeting their annual IEP goals.

School districts must also document the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided at any meeting related to student discipline for students who receive, or may be eligible to receive, special education services. (See, [RCW 28A.155.230](#)).

II. Providing Educational Services During Removals

Definition of a change of placement

A disciplinary removal is defined as a change of placement under [WAC 392-172A-](#)

[05155](#) if the disciplinary removal meets one of the following conditions:

1. The removal is for more than 10 consecutive school days; or
2. The school district determines that the removal demonstrates a pattern because:
 - a. There are a series of removals totaling more than 10 school days in the same school year;
 - b. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - c. Of consideration given to other factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

School district personnel determine whether a series of removals demonstrate a pattern on a case-by-case basis. District personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student eligible for special education services.

Shortened school days in response to behavioral violations

School districts must carefully monitor how decisions to shorten a school day for students who receive, or may be eligible to receive, special education services are made. A decision to shorten a student's school day in response to a behavioral violation would constitute a suspension under general state discipline regulations ([WAC 392-400-025](#))



and could trigger special education discipline procedural protections. District authorities should not use a shortened school day as an automatic response to students with challenging behaviors at school or use a shortened day as a form of punishment or as a substitute for a BIP. An IEP team should consider developing an IEP that includes a BIP describing the use of positive behavioral interventions, supports, and strategies reasonably calculated to address the student's behavioral needs and enable the student to participate in the full school day. (Note that even in the absence of a stated behavioral violation from district personnel, unilaterally shortening or reducing a student's school day could be considered a change of placement that results in a denial of free appropriate public education (FAPE)).

When the student has been removed 10 or fewer days

School district authorities may remove students from their current educational placement for up to 10 school days in a school year for violations of a code of student conduct. A student eligible for special education services must continue to receive educational services consistent with WAC 392-400-610 so as to enable the student to continue to participate in the general education curriculum. District personnel must also consider the extent to which the student's regular educational services include special education services and to make the opportunity to receive appropriate services available accordingly. Educational services may be provided in an interim alternative educational setting (IAES).

When the student has been removed more than 10 school days

A. When a removal is not a change of placement

If the school district believes that a series of removals exceeding 10 school days is not a change of placement, district personnel in consultation with one or more of the student's teachers, determine the extent to which educational services are needed consistent with WAC 392-400-610 during the removal for the student to continue to participate in the general education curriculum and to continue to progress toward meeting their IEP goals. Educational services may be provided in an IAES.

Note: An **IAES** is a temporary placement used when a student is removed from their current placement due to a violation of a code of student conduct. An IAES should allow a student to receive educational services in a manner that is comparable, equitable, and appropriate relative to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include, but are not limited to, alternative schools, one-on-one tutoring, and online learning. (See, [WAC 392-400-610](#)).

B. When a removal is a change of placement

The school district must:

1. Inform the parents that the student is being removed from school and the reason for the removal (on the same day the decision is made to remove the student from school); and



2. Provide the parents with a copy of the Notice of Procedural Safeguards, which includes information about:
 - a. The rights of students who receive special education services;
 - b. The rights of their parents;
 - c. Procedures a school district must follow when a student who receives special education services is disciplined; and
 - d. How a parent can challenge discipline related decisions made by their school district; and
3. Hold a manifestation determination meeting within 10 school days of a decision that the removal is a change of placement; and
4. Continue to provide educational services to the student, consistent with [WAC 392-400-610](#), that enable the student to receive FAPE, 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. The student's IEP team determines appropriate educational services and such services may be provided in an IAES.

III. Removals Under Special Circumstances: Drugs, Weapons, or Serious Bodily Injury

School district authorities may remove a student eligible for special education services to an IAES determined by the student's IEP team, regardless of whether the student's behavior was a manifestation of his or her disability, for up to 45 school days if the student:

1. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the authority of a school district;
2. Knowingly has or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

A **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 such term does not include a pocket knife with a blade of less than two and one-half inches in length (See, [18 U.S.C. 930\(g\)\(2\)](#)).

A **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 controlled 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 the Controlled Substances Act or under any other provision of federal law.

Serious bodily injury means a 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 faculty. (See, [18 U.S.C. 1365\(h\)\(3\)](#)).

When a student is removed to an IAES due to special circumstances, the student's IEP team must select an IAES and determine appropriate educational services so as to enable the student to receive FAPE, 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.

In addition, if a school district believes that maintaining the current placement of a student eligible for special education services is substantially likely to result in injury to the student or others, the school may request a due process hearing and ask that an administrative law judge (ALJ) remove a student to an IAES for not more than 45 school days.

IV. Manifestation Determinations

A **manifestation determination** is a decision made by the school district and relevant members of the student's IEP team at a meeting to decide whether or not a student's behavioral violation was caused by, or had a direct and substantial relationship to, the student's disability, or the conduct in question was the direct result of the school district's failure to implement the IEP. Parents and school districts select the relevant member of the IEP team. Manifestation determination meetings are required any time the student's removal is a change of placement.

Within 10 school days of a removal that is a change of placement, the school district and

relevant members of the IEP team must hold a meeting to make a decision about whether the student's behavior is a manifestation of their disability. The team reviews the student's behavior and all relevant information in the student's file including the IEP, any teacher observations, and input provided by the parents to make this decision. The student's behavior is a manifestation of the student's disability if the conduct was either:

- Caused by, or had a direct and substantial relationship to, the student's disability; or
- The direct result of the school district's failure to implement student's IEP.

When the behavioral violation is a manifestation of the student's disabilities

If the behavioral violation is a manifestation of the student's disability, the IEP team must conduct an FBA, unless the school district has not already done so, and implement a BIP. If a BIP is already in place, then the team must review and revise the existing BIP, as needed, to address the student's behavior. If the school district was not implementing the student's IEP (including an existing BIP) the school district must take immediate action to correct those deficiencies. If the student was removed from their previous placement prior to the manifestation determination, the school district must immediately return the student to their current placement unless the parent and school district agree to a different placement as part of the modification of the BIP.



An **FBA** is an organized collection of data related to a student's behavior. The assessment often includes information gathered through observation of the student in different settings and information provided by the parent and teachers or other providers. The assessment is conducted, and the results are documented, in order to understand the purpose of a student's challenging behaviors. An FBA can be used by IEP teams to plan and develop appropriate positive behavioral interventions and strategies that provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors.

A **BIP** includes observational and behavioral data from the FBA as the basis for a plan of action for managing a student's challenging behavior. An FBA, however, is not required prior to the development of a BIP. A BIP, at a minimum, must describe:

1. The pattern of behavior(s) that impedes the student's learning or the learning of others;
2. The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;
3. The positive behavioral interventions and supports to: (a) reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors; and (b) ensure that the consistency of the implementation of the positive behavioral interventions

- across all of the student's school-sponsored instruction or activities; and
4. The skills that will be taught and monitored by the school district as alternatives to the pattern of challenging behavior(s) identified.

When implementing a BIP, all staff working with the student inside and outside of the classroom must be aware of its content and their roles in implementation. It is important to monitor the quality of implementation over time to ensure that the BIP is implemented in a manner consistent with the way it was intended by the IEP team. The BIP must be implemented for a sufficient amount of time for the team to determine the plan's effectiveness. By monitoring the quality of implementation in this way, members of the IEP team are able to: 1) determine whether the plan works; 2) identify components in need of revision and; 3) ensure that any necessary changes are identified based on data and not a failure to adequately implement the BIP.

When the behavioral violation is NOT a manifestation of the student's disabilities

If the behavioral violation is not a manifestation of the student's disability, school district authorities may use the same discipline procedures, in the same manner and for the same period of time, as they would for a student who does not receive special education services. The school district, however, must provide educational services to the student in an IAES. The student's IEP team must select an IAES and determine appropriate educational services so as to enable the student to receive FAPE,



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. In addition, if the team determines that it is appropriate, the school district should conduct an FBA and use the results to develop a BIP for the student.

V. Disagreements about a Manifestation Determination, Disciplinary Placement or Services During Removals

Parents may request a due process hearing if they disagree with any decisions made related to the disciplinary action being taken, including the placement and services provided to the student during removals, decisions about whether the removal is a change of placement, and disagreements with the manifestation determination. Schools may also request due process hearings when they believe maintaining or returning a student to their current placement is substantially likely to result in injury to the student or others. When a parent or school district requests a due process hearing on disciplinary matters, the hearing is expedited. A hearing may be requested using the Due Process Hearing Request form provided by OSPI. On the form, there is a check box for parties to indicate that the hearing involves discipline.

Expedited timelines for discipline related due process hearings

When a parent requests a due process hearing, the school district must hold a resolution meeting within 7 calendar days of its receipt of the parent's request, unless the

parent and school district agree in writing to waive the resolution meeting or use mediation. A resolution meeting provides parents and school districts an opportunity to meet and try to resolve the issues identified in the parent's due process hearing request. The hearing may proceed if the matter is not resolved to the parent's and school district's satisfaction within 15 calendar days of the school district's receipt of the due process hearing request. The due process hearing must occur within 20 school days of the date the hearing is requested. An ALJ must issue a hearing decision within 10 school days after the hearing. More detailed information on timelines for due process hearings, including expedited hearing requests, are available on the OSPI website: [Due Process Hearing Procedures and Timelines](#).

Student placement during discipline related due process hearings

When a student is in an IAES, the student remains in that setting pending the ALJ's decision, or until the expiration of the time period for the disciplinary removal, whichever occurs first. The parent and school district, however, may agree to a different placement at any time during the process. An ALJ can order that a student be returned to their current placement if the ALJ finds the school violated discipline procedures, such as a determination that the student's behavior was not a manifestation of the student's disability and/or a determination that the student's IEP was not implemented. The ALJ may also order a student to an IAES if the ALJ finds that maintaining or returning a student to their current placement is substantially likely



to result in injury to the student or others. The school district may also request additional hearings and the process may be repeated if the district believes returning the student to their current placement is substantially likely to result in injury to the student or others.

VI. Protections for Students Not Yet Eligible for Special Education Services

Parents may challenge disciplinary actions on behalf of students who are not yet determined eligible for special education services if they believe the school district should have known the student would be eligible for special education services. A school district must be deemed to have knowledge that a student is eligible for special education services if, before the behavior that brought about the disciplinary action occurred:

- The parent expressed concern in writing to supervisory or administrative personnel of the school district, or to one of the student's teachers that the student needed special education and related services;
- The parent requested an evaluation related to eligibility for special education and related services; or
- The student's teacher, or other school district personnel, expressed directly to the school district's director of special education, or to other supervisory personnel within the school district, specific concerns about a student's demonstrated pattern of behavior.

A school district will not be deemed to have knowledge of eligibility for special education services if the parent did not provide consent for an evaluation of the student or has refused to provide consent for special education services or has revoked consent for special education services. The school district will also not be deemed to have knowledge if the district has already evaluated the student and determined that the student was not eligible for special education services and the school district notified the parent of the evaluation results. If a school district is not deemed to have knowledge that the student is eligible and a parent requests an evaluation during the disciplinary removal, the school must consider the referral and evaluate the student in an expedited manner. The student remains in the placement chosen by school district authorities pending completion of the evaluation.

VII. Conclusion

School district authorities must review and follow state rules as well as their district policies and procedures addressing discipline for all students. School district personnel must also be knowledgeable about special education disciplinary rules and procedural protections. Remember that both the rules for general education and special education apply when imposing disciplinary removals. School district administrators should work closely with special education personnel in schools to track behavior and disciplinary removals in order to ensure that students eligible for special education services are afforded the protections available to them under IDEA.



Parents are also encouraged to track any disciplinary actions or challenging behaviors that are occurring at school, and to communicate with school personnel about possible positive behavioral interventions and supports. When a suspension or other removal occurs, parents need to carefully read any notices provided to them so they are aware of both: 1) the processes at the school district level for raising disagreements about the appropriateness of the discipline itself, and the proposed length of removal; and, 2) the protections under IDEA addressing placement, decisions about whether the conduct is a manifestation of the student's disability, and any decisions about educational services when a student is placed in an IAES.

This TAP provides guidance about discipline requirements contained in IDEA, Part B and state regulations. It should not be interpreted to provide legal advice and it does not replace careful review of the rules and implementation of school district disciplinary policies and procedures.

Chris Reykdal
State Superintendent of Public Instruction

Glenna Gallo
Assistant Superintendent of Special
Education

To request this material in an alternative format, or ask questions regarding this TAP or about special education services, please contact:

OSPI Special Education
PO Box 47200
Olympia, WA 98504-7200
Phone: (360) 725-6075
TTY: (360) 664-3631
Fax: (360) 586-0247
Email: speced@k12.wa.us

OSPI provides equal access to all programs and services without discrimination based on sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability. Any questions and complaints of alleged discrimination should be directed to:

Title IX/Section 504 Coordinator
Equity and Civil Rights Director
P.O. Box 47200
Olympia, WA 98504-7200
Phone: (360) 725-6162
TTY: (360) 664-3631
Email: equity@k12.wa.us



Appendix A: Resources

[OSPI Special Education Homepage](#)

- [Dispute Resolution web page](#)
- [Guidance or Families web page](#)
- [All Technical Assistance Papers](#)

[Rules for the Provision of Special Education in the State of Washington \(Chapter 392-172A WAC\)](#)

[Discipline Rules for All Students \(Chapter 392-400 WAC\)](#)

[IDEA Part B](#)

- [Discipline/Behavioral Supports](#)

[Controlled Substances Definition](#)

[Dangerous Weapon Definition](#)

[Serious Bodily Injury Definition](#)



Except where otherwise noted, this work by the [Office of Superintendent of Public Instruction](#) is licensed under a [Creative Commons Attribution License](#).



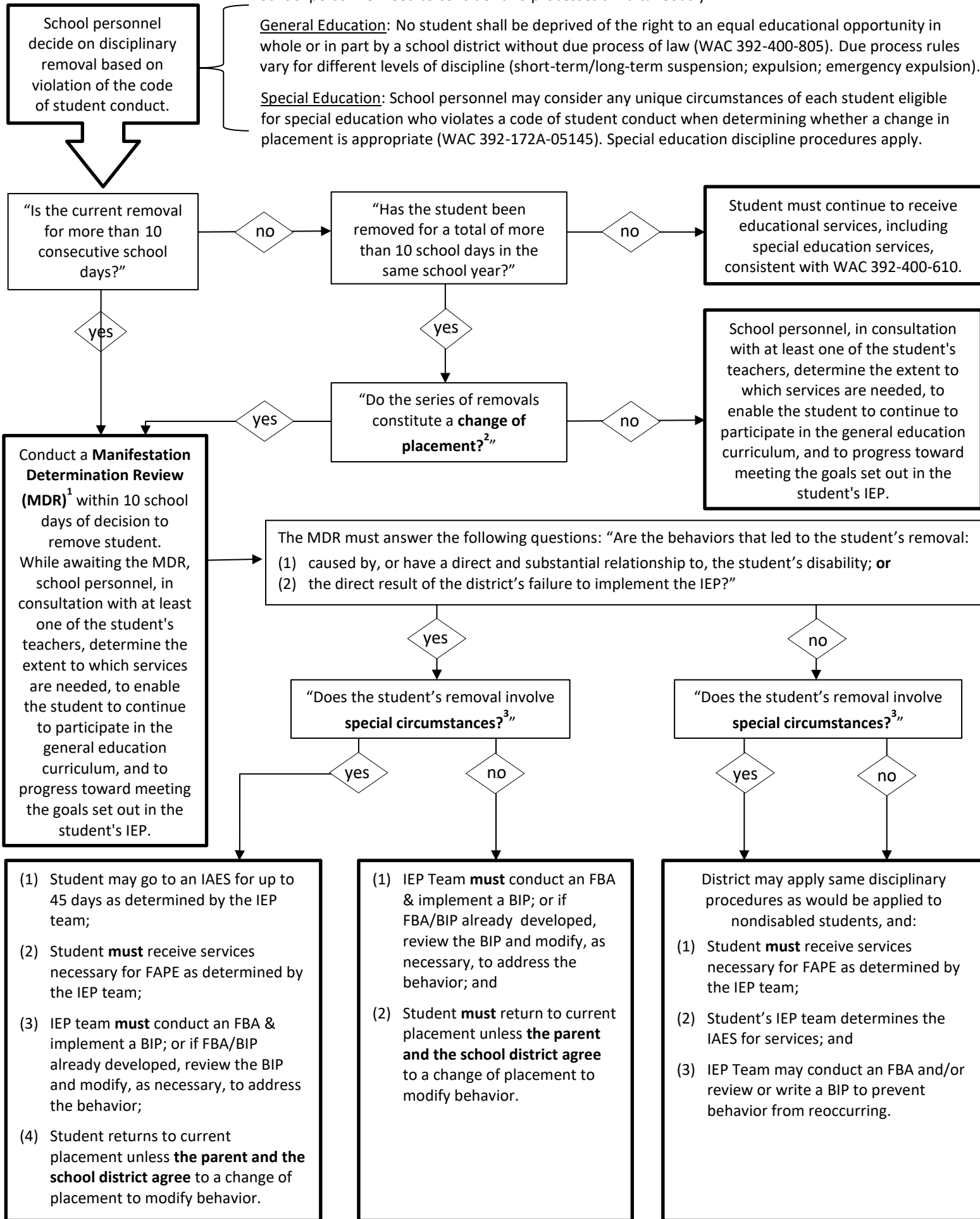
Flowchart of Discipline Procedures for Students Receiving Special Education Services*

START

School personnel need to consider two processes simultaneously:

General Education: No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law (WAC 392-400-805). Due process rules vary for different levels of discipline (short-term/long-term suspension; expulsion; emergency expulsion).

Special Education: School personnel may consider any unique circumstances of each student eligible for special education who violates a code of student conduct when determining whether a change in placement is appropriate (WAC 392-172A-05145). Special education discipline procedures apply.



¹Manifestation Determination Review (WAC 392-172A-05146): A meeting between the school district, the parent(s), and relevant members of the student's IEP team (as determined by the parent and the school district) to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- (2) If the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the school district, the parent(s), and relevant members of the student's IEP team determines that one of the two above conditions was met.

²Change of Placement (WAC 392-172A-05155): For disciplinary removals of a student eligible for special education, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The school district determines on a case-by-case basis that the student has been subjected to a series of removals that constitute a pattern because:
 - (a) the series of removals total more than ten school days in a school year;
 - (b) the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - (c) there are additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

³Special Circumstances (WAC 392-172A-05149): A school district may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days regardless of whether the behavior is determined to be a manifestation of the student's disability, if the student:

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

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

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 controlled 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.

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

* Updated as of August 2020. This document should be used as guidance and is not intended as legal advice. Additional information can be obtained by reading OSPI bulletins and related publications; guidance from the U.S. Department of Education; chapter 392-172A WAC; Part 300 of the federal regulations; and the Individuals with Disabilities Education Act (IDEA).

