

# **DISCIPLINE OF STUDENTS WITH DISABILITIES**

## **4.1 General Overview**

The purpose of this section of the handbook is to provide guidance about the legal requirements of the Individuals with Disabilities Education Act (IDEA) and Indiana's Special Education Rules (Article 7) for addressing the misconduct of students with disabilities. This section will also attempt to correct the myth that students with disabilities are exempt from discipline under current law. Students in special education are expected to follow the rules and regulations of the public school. As school safety takes on increasing importance for all educators, it should be noted that guaranteeing the rights of students with disabilities can be compatible with the goal of school safety. Clearly, school safety begins with the commitment of every student to take full responsibility for his or her own safety and the safety of others both in and out of school. For any student who misbehaves, a school should decide what action is most likely to correct the misconduct. For a student in special education, this decision may need to take into account the student's disability.

### **4.1.1 Proactive Approaches**

#### ***4.1.1.1 School Wide Positive Behavior Interventions and Supports (PBIS)***

A major advance in school-wide discipline is the emphasis on school-wide systems of support that include proactive strategies for defining, teaching, and supporting appropriate student behaviors to create positive school environments. Instead of using a patchwork of individual behavioral management plans, a continuum of positive behavior support for all students within a school is implemented in areas including the classroom and settings other than the classroom (such as hallways, restrooms). Positive behavior support is an application of a behaviorally-based systems approach to enhance the capacity of schools, families, and communities to design effective environments that improve the link between research-validated practices and the environments in which teaching and learning occurs. Attention is focused on creating and sustaining primary (school-wide), secondary (classroom), and tertiary (individual) systems of support that improve lifestyle results (personal, health, social, family, work, recreation) for all children and youth by making problem behavior less effective, efficient, and relevant, and desired behavior more functional.

#### ***4.1.1.2 Early Intervention***

When signs of misconduct, by a student in special education, first appear, school officials and parents should work cooperatively to address the concerns before drastic measures are considered. This may mean that a case conference be convened to review the individualized education program (IEP) and identify any need for behavioral goals and objectives, modifications, and/or a behavioral plan. This would include a check of whether modifications or already existing behavior plan is being implemented as designed. The case conference committee might also consider the need for counseling by a teacher, a building counselor or other adult.

#### ***4.1.1.3 Effective Classroom Management***

Implementation of effective classroom management practices may successfully address misconduct that is typical, age appropriate and developmentally appropriate, given the student's age and functioning level. Areas of classroom management to be examined might include, but should not be limited to the following:

- Physical Environment
- Establishment of rules and routines
- Teaching style
- Scheduling for Instruction
- Structured expectations
- Positive and negative consequences are in place
- Transition between activities
- Type of student involvement in learning
- Ecological Alternatives

Ecological interventions to working with students with inappropriate behavior include modifying the context, activity and or interaction in which the inappropriate behavior typically occurs. For example, the educators would carefully examine the following, and determine what, if any, changes need to be made to help the student be successful:

##### **Context:**

- Physical setting
- Topics to be discussed/covered
- Nature of student involvement in the setting
- Roles of the people involved

##### **Activity Structure:**

- Content of the curriculum
- Expected outcomes
- Types of learning activities and materials being used
- Level of student participation

##### **Interaction Patterns:**

- Methods for supporting student success and failures
- Questioning techniques
- Interactions between students
- Interactions between staff and students

#### ***4.1.1.4 Positive Programming Alternatives***

Positive programming alternatives include the teaching of desired, appropriate behaviors. This approach requires the case conference committee to review and revise the IEP to include behavioral goals/objectives. This alternative is proactive, positive and preventative. It is assumed that appropriate behaviors will be taught through direct instruction. Some examples include: social skills instruction, the teaching of rules and routines, role playing, teaching and application of problem-solving and conflict resolution skills, etc.

## 4.1.2 Direct Interventions

### 4.1.2.1 Issues to Consider in Determining Potential Interventions

#### 4.1.2.1.1 Level of Restrictiveness

When direct intervention is necessary to address inappropriate behaviors, the general rule is to implement the lowest level (least restrictive) of intervention required to redirect the student to the appropriate and desired behavior. Following is a list of potential interventions from the least intrusive (least restrictive) to the most intrusive (most restrictive). The list is not exhaustive, and many “naturally effective” teachers use low level interventions so successfully that they rarely need to implement more restrictive measures.

#### Non-Restrictive Techniques

(non-verbal interventions)

gestures  
body positioning  
proximity control  
facial cues  
Air prompts  
modeling  
planned ignoring

(verbal interventions)

verbal prompting  
verbal feedback/reprimand/redirection  
calling/notifying parent

(planned interventions)

allowing student to escape task  
differential reinforcement  
direct instruction of desired behavior  
peer modeling  
positive reinforcement - group or individual  
response-cost  
shaping  
self-management; self-monitoring  
token economy  
positive practice

#### Restrictive Interventions

physical redirection  
time-out  
Detention  
Exclusion from activities  
in school suspension  
out of school suspension\*  
Restraint

These can be specifically added to the I.E.P. as part of a behavioral plan.

#### 4.1.2.1.2 Speed and Degree of Effects

When considering types of intervention, it is important to determine how long and to what degree the intervention will impact true behavior change. The severity of the inappropriate behavior as well as environmental factors and the individualized needs of the student must be carefully examined.

#### 4.1.2.1.3 Durability

In designing intervention, it is also important to determine if the intervention is likely to withstand the intervention period given: unexpected circumstances, motivation level of the student, schedules, data gathering, ability of personnel to implement consistently, etc.

#### 4.1.2.1.4 Generalization

In designing plans to change behavior, the ultimate goal is to elicit appropriate behavior alternatives that can be applied by the student to other situations. Appropriate behavior alternatives may need to be taught in several settings and situations in order to assist students in generalizing the new behaviors.

#### 4.1.2.1.5 Side Effects

The team/individual designing the intervention must always consider the possibility of potential side effects. In many cases, it is not uncommon for other inappropriate behaviors to surface when a plan is put into place for a more severe problematic behavior. Another common occurrence is for the inappropriate behavior to become more frequent during the initial stages of implementation of the plan.

#### 4.1.2.1.6 Social Acceptability

All interventions designed to modify student behavior should include the use of strategies that are age and grade appropriate. Whenever possible, the naturally occurring schedules reinforcers and consequences should be incorporated. These considerations insure the preservation of student dignity during intervention.

#### 4.1.2.1.7 Implementers

Any behavior management plan should clearly identify who will implement the plan. All staff working with the student should implement the plan for consistency. If it is part of the I.E.P., it **must** be implemented by all staff unless the I.E.P. indicates otherwise. It is best practice to have all potential implementers be involved in the design of the intervention. Parents and family members should be included as potential implementers. It is wise to identify one individual to coordinate the plan.

#### 4.1.2.1.8 Ease of Data Collection

Data collection is imperative to implementation of any behavior plan. However, it is critical to keep the data collection simple and easy to compile. Time consuming data collection strategies are often the reason why well-designed interventions fail during implementation.

### ***4.1.2.2 Behavior Management Principles***

Behavior management can be defined as the process by which the teacher implements various techniques to encourage positive, appropriate classroom environment. There are four essential principles of behavior management: consistency, structure, objectivity and ethics.

#### 4.1.2.2.1 Consistency

Consistency is the ability to apply the same reinforcers (positive and negative) each time a given behavior occurs. Consistency requires time, effort, and a great deal of patience. Being consistent has its rewards for the teacher and the students. It eliminates the guess work in decision making. Consistency provides a starting point for a secure and successful environment.

#### 4.1.2.2.2 Structure

Structure of a classroom includes the teaching of rules and routines so that students know exactly what is expected of them in a given situation. Demonstrating to students exactly how to follow a classroom rule such as “Be ready to work when the bell rings” is just as important as the academic lesson that will be taught. Likewise, when a behavior management plan is implemented, the student will need to fully understand the structure of the plan and what the desired behaviors should look like.

#### 4.1.2.2.3 Objectivity

Objectivity is the teacher’s ability to perceive self and others in a fair and accurate manner. If a teacher can objectively look at herself and others, fair and ethical application will most likely occur. Tools to assist teachers in being objective include: charting behavior/behavior changes; behavior logs that include objective statements and data instead of assumptions or perceptions; use of a secondary observer to mirror feedback; and/or videotaping the classroom interactions.

#### 4.1.2.2.4 Ethics

Ethical application is the act of preserving the dignity of individuals by implementing techniques that are fair and humane. Adults must keep in mind that all students, regardless of their behavior, are human beings who deserve to be treated with respect.

### **4.1.3 Functional Behavior Assessment and Behavior Intervention Plan**

Addressing inappropriate and reoccurring behaviors in a student's IEP is not just for students identified as having an emotional disability. As members of case conference committees, we are responsible for planning an individualized program for the "whole" child. Potentially, any student with an IEP could have behavioral goals and objectives in his or her plan. When a student requires a behavior management plan that is unique to him/her, the plan must be designed as a part of a case conference committee discussion and included as a part of the IEP. The behavior plan should correspond to the behavioral goals and objectives in the IEP and result from a functional behavior assessment (FBA).

If the school removes the student for less than ten (10) school days, but contemplates further discipline, or it seems likely that more removals will follow, the school should convene a case conference. At the case conference, the committee will determine the need for a functional behavior assessment (FBA) and determine the team members' responsibilities in gathering data/information for the FBA. After the FBA has been conducted, appropriate behavioral intervention plan will be developed to address the behavior that is causing the student to be removed from school.

#### **4.1.3.1 Functional Behavior Assessment**

##### ***Definition:***

Functional Behavioral Assessment is a process that uses data to identify patterns in the student's behavior and the purpose or function of the behavior for the student. A functional behavior assessment may require written parental consent if it is conducted as a part of an educational evaluation as defined in Article 7, for any eligibility area requiring the collection of this type of data. Written parental consent is not required when a functional behavior assessment reviews existing data regarding a student's performance, programming and services. In this case, the parent should be notified in writing that this data will be gathered and that it may lead to the development or revision of a behavior intervention plan, which would require a case conference committee meeting.

##### ***Uses:***

1. Enables staff to clarify a problem behavior.
2. Enables staff to determine the effect of various setting variables (antecedents and consequences).
3. Enables staff to construct effective interventions that take into consideration relevant setting factors and the effects they have on behavior.

##### ***Process:***

The process of conducting a functional behavior assessment is as follows:

1. Notify the parent of your intent to conduct an FBA. If it is conducted as a part of a formal evaluation or re-evaluation, the parent consent is considered to be adequate notification.
2. Identify and define the target behavior(s).

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3. Identify the events and circumstances that are regularly associated with the occurrence and non-occurrence of the challenging behavior.
4. Determine the potential function(s) of the behavior.
5. Examine the information collected and develop hypothesis statements that describe the relationship between the behavior and the events and circumstances in the environment.

#### ***4.1.3.2 Behavioral Intervention Plans***

##### ***Definition:***

Behavioral Intervention Plan is a plan agreed upon by the case conference committee and incorporated into a student's IEP that describes the following:

1. The pattern of behavior that impedes the student's learning or the learning of others.
2. The purpose or function of the behavior as identified in a functional behavioral assessment.
3. The positive interventions and supports and other strategies to:
  - A. Address the behavior; and
  - B. Maximize consistency of implementation across people and settings in which the student is involved.
4. If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student. The behavioral intervention plan seeks to maximize consistency of implementation across people and settings in which the student is involved.

##### ***When to use Behavior Intervention Plans:***

- Each student receiving special education services whom exhibits chronic; reoccurring inappropriate behaviors should have a written behavior intervention plan.
- It is advisable for a case conference to reconvene to consider the appropriateness of the student's program and the possible need for a behavioral plan whenever the combination of in and out of school suspensions nears ten (10) days.
- Within ten (10) school days from the date of any decision to remove a student to an interim alternative placement, a case conference should be convened to determine whether or not there is a causal relationship, to review the behavioral plan, or to develop a behavioral intervention plan if one has not already been developed.

##### ***Developing an Effective Behavioral Intervention Plan:***

The plan should include the following components:

1. A functional analysis of the target behavior of concern.
2. A description of previous interventions attempted.
3. A detailed description of the intervention(s) to develop or strengthen alternative, more appropriate behaviors.
4. A detailed description of any restrictive intervention procedures to be used.
5. A list of measurable behavior changes expected and method(s) of evaluation.
6. A schedule of review of intervention effectiveness.
7. A list of provisions for coordinating with the home/family



### Steps to Developing a Behavior Management Plan

- I. Conduct a Functional Behavior Assessment (FBA)
  - A. Collect information
  - B. Identify and define the inappropriate (target) behavior
  - C. Identify the events/circumstances associated with the problem behavior
- II. Develop Hypothesis Statement About the Behavior
  - A. Events/circumstances associated with the problem behavior
  - B. Function/purpose of the problem behavior for the student
- III. Develop an Intervention (based on the hypothesis statements)
  - A. Teach alternative behavior
  - B. Modify events/circumstances associated with the problem behavior
  - C. Choice of intervention should be based on the individualized needs of the student
- IV. Identify the Expected Behavior Change
- V. Identify a Review Schedule and Timeline for Implementation
- VI. Methods for Data Collection and Evaluating Effectiveness of Interventions
- VII. Develop Provisions for Home/Family Intervention

#### ***4.1.3.3 Level of Services and Service Delivery Model***

As in all case conferences, level of services and service delivery should be discussed following agreement on the goals, objectives and plan for implementation. Altering the student's level of special education services and supports or the way in which those services are delivered in response to concern over inappropriate behavior would be another intervention. Additional supports and services might include counseling, social skills training, behavior training, or parent training. Each case conference committee is limited in possibilities only by their creativity. Case conference committees are encouraged to maximize the use of available school resources by expanding the roles of staff who might already be involved in the student's education.

#### ***4.1.3.4 Time-Out Guidelines/Procedure***

A team of representatives from all school districts in the cooperative worked together to research the topic of time-out, in order to provide guidance to principals, classroom teachers and special education staff.

Time-out is a strategy used in many classrooms for helping children learn and practice self-control. When used consistently and calmly and in a non-punitive way, this strategy can be highly effective in maintaining clear limits for behavior. The time-out strategy preserves the integrity of the individual student and the smooth functioning of the group/classroom. Used in a non-punitive way, time-outs allow children to make mistakes with the goal of internalizing controls for themselves. Most importantly, it contributes to creating an environment that is safe and orderly, one that is conducive to learning.

#### 4.1.3.4.1 Use of Time Out

These guidelines are provided as a basic structure for school staff to consider as they attempt to use time-out as an option to support behavior change in a student. Time-out is only one option along a continuum of interventions supporting behavior change. Time-out may be implemented on several alternative levels, ranging from the student taking time-out at his or her desk (contingent observation time-out) to removing the student to a separate area. Time-out is a relatively aversive and intrusive behavior reduction procedure, because it involves the removal of reinforcement and it interrupts the pupil's instructional program. However, its use may be required when the student's behavior impedes his or her learning or that of others.

The following list is directed towards establishing a set of classroom structures and procedures for using time-out in the classroom:

1. A set of classroom rules should be clearly posted, and frequently reviewed.
2. The teacher should be able to articulate clear expectations for positive behavior and compliance with the rules. Students should be taught how to comply and practice with the rules until all students can state the rules and demonstrate what compliance with each rule looks like (e.g., respect others).
3. The teacher should have identified strategies for systematically and frequently rewarding students for knowing and following the rules (e.g., praise, class rewards, etc.).
4. The teacher should identify a hierarchy of planned consequences for misbehavior. All students should demonstrate understanding of the consequences, with time-out as one of several alternatives for addressing misbehavior.
5. A range of time-out locations, suited to the classroom, the pupils, and your personal classroom management plan, should be identified.
6. The staff must use the board adopted policy and special education co-op guidelines in the implementation of time out.
7. A functional behavioral assessment and behavioral intervention plan should be developed for students who need time-outs on an ongoing basis.
8. Written procedures for applying time-out may include:
  - A warning signal, if appropriate.
  - What you say to pupils when giving them a time-out.
  - Decision rules regarding which level of time-out to impose, and when to go from one level to another.
  - Due process procedures for obtaining administrative and parental consent to use seclusion time-out, if applicable
  - Specification of the duration of each time-out, how duration is monitored, and decision rules for varying the duration of time-out.

- Specification of desired student behavior in time-out.
- Procedures for releasing pupils from time-out.
- A data collection sheet for recording and documenting instances of time-out.
- Alternative interventions when it is concluded that time-out is not effective.
- Procedures for teaching students to take time-outs appropriately.

#### 4.1.3.4.2 Timeout Process

1. A warning signal indicating that time-out is imminent if the pupil doesn't alter his/her behavior.
2. A brief verbalized explanation of why the student is being given a time-out if the student did not alter behavior after warning signal was given.
3. Provide instruction to the student in taking time-out.
4. The location in which time-out is taken
  - Classroom Time-Out - Requires the student to remain in a position to observe the group without participating or receiving reinforcement for a specified period.
  - Time-out away from Classroom Activity- Denies access to reinforcement by removing a student from an ongoing activity.
  - Seclusion - Isolated time-out or the confinement of a student outside the presence of other students or staff in a time-out room or other enclosure. (Neola of Indiana 2010)
5. The duration of time-out should be:
  - Brief (generally 1 minute per year of age). Time-outs of longer duration may be effective if the student hasn't been exposed to long time-outs first.
  - Time out lasting longer than 15 minutes should employ a staff member who is certified in either Crisis Prevention and Intervention or Therapeutic Crisis Intervention.
  - A nonverbal signal indicating the beginning and end of time-out may be used if students have been taught to respond to it (i.e., egg timer, bell, etc.)
6. Requirements for release from time-out:
  - Completion of the specified duration of the time-out.
  - Appropriate behavior during time-out.
  - End of the 15 minute duration of time-out (implement alternate intervention if time-out has not been effective at this point).

#### 4.1.3.4.3 Building Reminders

1. Identify the predictable antecedents and consequences of undesired behavior.
2. Specify in advance the behaviors that will result in time-out.
3. Use less intrusive behavior reduction procedures first.
4. Less intrusive procedures should have been documented as ineffective before time-out is used.
5. Develop a written statement of how time-out is to be implemented.
6. If seclusion time-out is used, the following requirements should be met:
  - An enclosure used for seclusion of a student shall have the same ceiling height, lighting, ventilation, and temperature as the surrounding room or rooms.

- The room or enclosure shall be large enough to accommodate the student being isolated and any other person necessary to accompany that student.
- The room or enclosure shall not be locked or use any device that requires a key or other device or special knowledge such as a combination lock to exit from the enclosure or room.
- The requirements, and the student placed in seclusion shall be included in any evacuation or safety plan or drill for the facility.
- The enclosure or room shall not be named, labeled, or referred to by a staff member so as to label or stigmatize a student placed in the enclosure or room.
- Students in seclusion shall be continuously supervised for the duration of the seclusion. This requires the supervisor to maintain visual contact and hear the student at all times. (Neola of Indiana, 2010)

7. A student shall not be in isolation for more than 30 minutes after the student stops the specific behavior for which seclusion was imposed or any other behavior for which seclusion would be an appropriate response.

8. Keep written records approved by the district of each occasion when time-out/seclusion is used. (Neola of Indiana, 2010)

9. Always differentially reinforce desired student behavior in the time-out.

10. Evaluate procedures if timeout duration approaches 15 minutes.

11. Evaluate the effectiveness of the procedures if time-out is not having the desired impact on student behavior. Collect and chart data on the frequency of the target behavior. If indicated per the data (use of time-out/seclusion on multiple occasions), conduct a functional behavioral assessment to identify the function of the target (undesired) behavior.

#### 4.1.3.4.4 Reminders for Effective Implementation

1. Time-out is sometimes overused due to lack of appropriate, proactive, instructional program.

2. The time-in environment may not be sufficiently reinforcing to support desired behavior.

- Should give four times as much positive reinforcement as reductive consequences.
- Should have a systematic behavior intervention plan for teaching and reinforcing a replacement behavior that serves the same function as the undesired behavior.

3. Time-out is applied inappropriately when:

- Time-out is the only, or nearly the only, behavior reduction procedure used.
- Time-out is applied too late such as when the student is out of control.
- Teacher escalates student behavior by attending to the student (e.g., lecturing) when the student is in time-out.

4. The effectiveness of time-out should be evaluated

- Use the record keeping system to monitor the use and results of the time-outs. Adjust your approach accordingly.

#### ***4.1.3.5 Therapeutic Holds/Physical Restraint***

##### **4.1.3.5.1 General Overview**

###### **When Should Therapeutic Holds Be Used?**

Physical or mechanical restraint may be used on a student if an emergency requires the use of the restraint. As used here, “emergency” means circumstances in which a staff member reasonably believes that application of a restraint on the student is necessary in response to a physical risk of harm to the student or others. Application of physical or mechanical restraint to a student with a disability shall take into consideration the IEP and any BIP established for the student. A mechanical restraint shall only be used as necessary to contain the behavior of the student until the student is no longer an immediate threat of causing physical injury to himself/herself or others or causing severe property damage. Certain medical conditions may preclude the use of physical restraint. A student shall not be subjected to physical or mechanical restraint except as authorized by school policy. Restraint of any kind should not be used in any instance in which the sole justification is to punish the student for a violation of a directive from a staff member, violation of a student conduct rule, the student’s use of vulgar or profane language, a verbal threat, or a display or disrespect for another person. A verbal threat should not be considered as sufficient justification for the use of physical or mechanical restraint unless the student has access to the means of acting on the threat. The use of force in the application of a restraint shall not exceed the force that is reasonably necessary in the circumstances justifying the use of the restraint. (Neola of Indiana, 2010)

###### **What is a Mechanical Restraint?**

Mechanical restraint means the use of devices including, without limitation, mittens, straps, belts, or restraint chairs to limit a student’s movement or hold a student immobile. (Neola of Indiana 2010)

###### **When to use Mechanical Restraint**

The use of mechanical restraint by school personnel requires a doctor’s standing order. A mechanical restraint may be used on a student if the student’s treating physician has authorized the use of mechanical restraint before the restraint is applied or not later than thirty (30) minutes after the mechanical restraint is first applied. A mechanical restraint shall be applied and supervised by a staff member who is trained and competent to apply and supervise the specific mechanical restraint utilized. While a student is subject to mechanical restraint, a staff member shall continuously monitor the student and the impact of the mechanical restraint on the student.

If a mechanical restraint is used that has been approved by a physician the student shall be examined by the physician as soon as practicable following the use of the restraint. A student who has been mechanically restrained must be given the opportunity to move and exercise the body parts that are restrained at least ten (10) minutes every sixty (60) minutes of restraint unless ordered otherwise by the physician who authorized or approved the mechanical restraint. If a mechanical

restraint is used pursuant to this provision, a staff member shall loosen or discontinue the restraint every fifteen (15) minutes to determine if the restraint is still necessary and its implementation is not endangering the student's health. A mechanical restraint shall be stopped immediately if a staff member determines that the student will stop or control his/her inappropriate behavior without the use of the restraint, the restraint restricts the student's respiration or blood flow, or the degree of the student's resistance to the mechanical restraint is likely to result in serious bodily injury to the student. (Neola of Indiana, 2010)

#### Who Should Use Therapeutic Holds?

The use of appropriate physical, mechanical, chemical restraints and seclusion interventions should be implemented only by staff members who have been properly trained and are current on their certification on their district training schedule. The school corporations within the North Central Indiana Special Education Cooperative endorse the training as provided by the Crisis Prevention and Intervention (CPI) Institute and/or the Therapeutic Crisis Intervention (TCI) approach.

#### Who should be Trained in Therapeutic Holds?

It is suggested that any of the following individuals responsible for working with a high risk student be trained: special education teacher, administrator, counselor, targeted assistant or classroom teacher and others as identified by administration.

Parent volunteers, community members, and other school visitors are not to be involved with therapeutic holds. Unless fully trained, substitute teachers should not be involved in physical restraint of a student. Provisions in the substitute folder should make the substitute teacher aware of the procedure for notifying the building administrator and/or crisis team, if appropriate.

Building principals are the final decision-makers regarding who will be trained in their school building.

#### When Should Chemical Restraints be used?

Chemical restraints (PRN medications), shall be administered to students only when they have been prescribed by a physician for the purpose of responding to acute or episodic aggressive or destructive behavior by the student and when alternative intervention techniques have failed.

#### 4.1.3.5.2 During Therapeutic Hold Procedure/Mechanical Restraints

- Contact administrator in building
- Coverage for Crisis team
- After 15 minutes of restraint the most highly qualified person available will need to monitor vital signs
- Disengage as soon as the child is able to safely control their own behavior as determined by the lead staff member overseeing the therapeutic hold

- Students whose primary mode of communication is sign language shall be permitted to have his/her hands free of restraint for brief periods, unless such freedom is likely to result in harm to self or others.

#### 4.1.3.5.3 Following a Therapeutic Hold/Restraint

- Debrief with the student as soon as possible, following the hold
- Document the incident in writing before the end of the school day
- Any individual (adult or student) involved in the incident who needs medical/counseling assistance will be assessed by the school nurse/counselor
- Make contact (face to face or phone call) with the parent
- Written communication on the day of the restraint to parent if repeated attempts to reach parent have failed
- Team meeting/Postvention should occur within 1 week of incident
- Postvention is outlined in the CPI Instruction Manual received by all trained team members. In general this is the group processing that occurs after a hold. It reviews the use of de-escalation and hold techniques. This postvention should be led by the team leader of the incident.

#### 4.1.3.5.4 Complete Documentation

- Team leader compiles all the information into a final report
- Check all boxes that apply using the form provided
- Report a brief factual description of the events
- Include names of the adult witnesses
- Submit the document into the building administrator when completed
- Building administrator reviews and sends copies to district designee (i.e., Warsaw Community Schools has identified the Asst. Director of Special Services as the designee) to keep in the confidential file, and to the student's cumulative file, teacher of record, and parent (Neola 2010)
- If a representative of another agency is involved, they will complete their documentation as well as the documentation required by the school corporation (i.e., Bowen Center therapists)

#### 4.1.3.5.4.1 Responsibilities of the School Corporation Designee

- The principal should issue a report in writing to the superintendent and to Superintendent's Designee within 24 hours to be reviewed and determine if school personnel are in violation of these policy guidelines.
- The designee reviews incident reports and communicates a possible violation to the principal and superintendent after reviewing the documentation and completing an investigation.
- The superintendent or his/her designee will take corrective action as necessary to address the circumstances that led to the violation (Neola of Indiana, 2010)

#### 4.1.3.5.4.2 Disciplinary Action for Violation of this Policy and Procedure

In addition to any penalty prescribed by law, the Superintendent is directed to see that an employee of the corporation who intentionally, knowingly or recklessly

violates this policy is subject to correction or disciplinary action as necessary to prevent a reoccurrence of the violation. An employee engages intentionally if it is his/her conscious objective to do so. An employee engages knowingly if he/she is aware of a high probability of a violation occurring, and an employee engages recklessly if he/she engages in conduct that is in violation of this policy in a plain, conscious, and unjustifiable disregard of harm that might result to a student and the disregard involves a substantial deviation from acceptable standards of conduct established by the policy.

Discipline of a staff member for violation of the policy shall take into account the degree to which the violation risked serious bodily injury to a student and the staff member's history of compliance with this policy and other policies of the Board of School Trustees. (Neola of Indiana, 2010)

#### 4.1.3.5.4.3 Retaliation for Fully Implementing or Reporting Violations

No employee shall be permitted to retaliate against a person for reporting or objecting to actions in violation of school policy or providing information regarding a violation of this policy/procedure. (Neola of Indiana, 2010)

#### 4.1.3.5.5 Dangerous Situations or Inability to Use a Therapeutic Hold/Restraint

Should a situation occur that is deemed too dangerous, or a therapeutic hold can not be safely maintained, a judgment to call the police will have to be made by the school administrator. Once law enforcement is at the school, the administrator will follow their lead to de-escalate the situation. An informative call to the superintendent's office is recommended when the authorities are contacted for this type of intervention.



## **4.2 Removals from the Educational Environment**

### **4.2.1 Definition of Removals**

Building administrators, who may need to recommend the removal of a student with a disability from school for disciplinary reasons, should follow the same procedures as established by the Indiana Student Conduct Code (IC 20-33-8-7) for students in general education, noting the following exceptions.

For a student with a disability who violates a code of student conduct, the school should consider any unique circumstances on a case-by-case basis before disciplining the student, if such discipline will result in a change of placement. Unique circumstances include:

- A student's disciplinary history.
- A student's ability to understand consequences.
- Supports provided to the student prior to violating a code of student conduct.
- Any other relevant considerations.

#### **4.2.1.1 What is a Removal?**

- A removal of a student with a disability from the school setting for any part of a school day constitutes a day of removal, unless it is a short term removal and specified in the IEP as a behavior management technique (i.e., time out).
- A suspension from school is considered a removal.
- If transportation is a part of the student's IEP, as a related service, suspension from the bus constitutes a removal, unless the school provides transportation in an alternative manner. Caution: If suspension from the bus results in the student's inability to access his or her education, then the bus suspension will be interpreted as a day of removal.
- Under IC 20-33-8-18, a principal may suspend a student for not more than ten (10) consecutive instructional days.
- If the student is suspended for more than ten (10) cumulative days in a school year, the school administrator should consult with the Director of Special Services to determine if a pattern of removals exists

#### **4.2.1.2 What is not considered to be a Removal?**

- A short term removal pursuant to the IEP is not a removal (e.g. time out).
- An in-school suspension is not a removal if the student has the opportunity to:
  - Progress appropriately in the general curriculum.
  - Receive special education services specified in the student's IEP.
  - Participates with non-disabled students to the extent the student would have in the student's current placement.\*

*\*NOTE: The comments to the federal regulations implementing IDEA 2004, state the following with respect to the word "participate" in the third bullet*

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*above: “We caution that we do not interpret “participate” to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities.” 71 FR 46716*

#### **4.2.2 Removal Procedures**

For students in special education, procedures governing suspension from school attendance and related services shall be consistent with the school code of conduct and Indiana disciplinary statute. The school does not have to provide services to a student who is eligible for special education during the first ten (10) days of removal, cumulative or consecutive, in a school year.

Removal procedures shall follow the policies and procedures prescribed for students without disabilities. **A copy of the written charges must be sent to the Director of Special Services.** This copy is maintained in the student’s official special education record.

It should also be noted that a principal may suspend a student for not more than ten (10) consecutive, instructional days. However, when an expulsion is pending, Indiana statute (IC 20-33-8-23) allows a superintendent or a superintendent’s designee to extend a suspension for more than ten (10) days if the student’s continued suspension will prevent or substantially reduce the risk of:

- Interference with an education function or school purposes; or
- A physical injury to the student, other students, school employees, or visitors to the school.

On the 11<sup>th</sup> cumulative day of removal, the school must be prepared to provide services to be delivered during the removal. The school administrator in consultation with the student’s teacher of record must determine the extent to which services are needed to enable the student to: continue to participate in the general education curriculum and progress toward meeting the goals stated in the student’s IEP.

When the number of removals exceeds 10 cumulative days, the school must determine whether or not the removals constitutes a disciplinary change of placement. As soon as possible after the tenth day of removal in a school year, if not sooner, it is recommended that the case conference committee convenes to consider:

- The causes of the removals;
- The appropriateness of the student’s current educational program;
- A functional analysis of behavior; and,
- The development of a behavior intervention plan.

#### **4.2.3 Disciplinary Change of Placement**

A disciplinary change of placement occurs if:

1. A removal is for more than 10 consecutive days, which may include:
  - A suspension pending a recommendation for expulsion that will extend

past 10 consecutive days, by a superintendent under IC 20-33-8-23.

- Removal to an interim alternative education setting (AIES) for 45 instructional days for weapons, drugs, or serious bodily injury.
2. A series of removals constitutes a pattern because:
    - The series of removals cumulate to more than 10 instructional days in a school year; and
    - The student's behavior is substantially similar to the student's behavior in previous incidents; and
    - Because of such additional factors such as the length of each removal, the cumulative amount of time the student has been removed, and the proximity of the removals to one another.

#### 4.2.4 Expulsion Procedures

A student with a disability may be expelled for violation of rules, standards, or policies adopted by the public agency. Expulsion is considered to be a **disciplinary change of placement**, resulting from a removal from school attendance or related services for more than ten (10) consecutive instructional days.

1. Should the Principal be contemplating a recommendation for expulsion for a student with disabilities, it is recommended that the principal consult with the student's Teacher of Record, and/or review the student's IEP. Once a decision to expel has been made, the Principal shall file written charges for expulsion with the superintendent. **A copy of the written charges must be sent to the Director of Special Services.** This copy is maintained in the student's official special education record.
2. On the date the school decides to proceed with a recommendation for expulsion, the parent must be notified. **A notice of parent rights, which delineates all the rights and procedural safeguards in connection with special education and an expulsion, must accompany the notice of intent to expel.** If the school is unable to notify the parent on the day the decision is made, the school must mail the parent notice of the decision and the notice of procedural safeguards.
3. Within ten (10) school days following the decision to seek expulsion, the school must convene the student's case conference to make a determination of whether a causal relationship exists between the student's disability and the behavior for which he/she is being expelled (see 4.3 Manifestation Determination).
4. The Director of Special Education, or the Director's designee, shall chair the manifestation determination (causal relationship) case conference committee.
  - a) The Building Administrator or Teacher of Record (if so delegated) should contact the Director of Special Services immediately to arrange for the conference.
  - b) The special education teacher of record shall coordinate the convening of the conference, including providing the parent with adequate notice. The notice must include an explanation of the purpose and procedures of the meeting and a complete notice of parent rights should accompany the conference notification.
5. Once the Manifestation Determination conference has been held, the district's expulsion examiner, appointed by the Superintendent, shall be notified of the conference decisions. The expulsion examiner will then notify the parent in writing of the charges against the student and the right of the student to a meeting according to the procedures prescribed in Indiana Code.

### **4.3    *Manifestation Determination (Causal Relationship) Case Conference***

#### **4.3.1    Definition**

The manifestation determination means an evaluative process conducted by the student's case conference committee to determine whether the student's conduct in question was:

1. Caused by or had a direct and substantial relationship to the student's disability;
- or
2. The direct result of the public agencies failure to implement the student's IEP.

The case conference committee convenes for the purpose of conducting a manifestation determination under one of two conditions: the school is considering action to expel the student for disciplinary reasons; or the building administrator and the special education teacher of record in consultation with the special education administrator believe that the student's history of suspensions which cumulates to ten days or more in a school year constitutes a pattern.

#### **4.3.2    Committee Membership**

The manifestation determination must be made by a group of persons knowledgeable about the student. That group would include:

- Director of Special Services or the Director's Designee;
- The special education Teacher of Record;
- The student's parent(s)/guardian(s);
- The student if deemed appropriate;
- Building Administrator; and
- A general educator who serves the student.

Other individuals who might be invited to attend may include:

- A member of the multidisciplinary team or some other person knowledgeable about the meaning of the evaluation data;
- More of the student's current teachers; or
- Other individuals at the invitation of the parent/guardian or the school.

#### **4.3.3    Process**

1. The Director of Special Services or the Director's designee shall chair the manifestation determination (causal relationship) case conference committee meeting.
2. The manifestation determination (causal relationship) case conference committee must consider at least the following items in making their determination:
  - a.) All relevant information in the student's file must be reviewed including current educational data and diagnostic results, the student's IEP, teacher observations, and any relevant information supplied by the parents of the student.
3. The above items are to be considered "in terms of the behavior subject to disciplinary action". Therefore, a disagreement about something in the current IEP which is UNRELATED to the misbehavior under consideration would not require the finding of a causal relationship.

4. With the above information in mind, the case conference committee must make two determinations related to causal relationship:
  - a) Whether the student's conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
  - b) The conduct in question was the direct result of the school's failure to implement the student's IEP.
5. A case conference determines there is a causal relationship when one or both of the above conditions have been met.
6. If the case conference committee determines that a causal relationship exists, the school must immediately proceed to remedy any deficiencies in the IEP, the placement, or implementation of the IEP and the expulsion cannot go forward.
7. If the student's conduct is a manifestation of his or her disability, then the case conference committee must conduct a functional behavior assessment (FBA), unless the public agency already conducted an FBA, and implement a behavior intervention plan (BIP). If a BIP was previously developed, the case conference committee must review and modify the BIP as necessary to address the conduct.
8. The student must return to the placement from which he or she was removed, unless the parent and the school agree to a change of placement as part of a modification of the BIP or if the student was removed to an interim alternative educational setting for 45 instructional days. (See Section 4.4 for more information regarding interim alternative educational settings)
9. If the case conference determines that there is no causal relationship between the student's disability and the behavior, the school may continue with its expulsion procedures. A copy of the student's special education records and disciplinary records must be forwarded to the expulsion examiner for consideration.
10. In the event of expulsion, the school must continue to provide appropriate services to students with disabilities. The student's case conference committee must determine appropriate services needed to enable the student to;
  - A. Continue to participate in the general education curriculum;
  - B. Progress toward meeting the goals in the student's IEP;
  - C. Receive, as appropriate an FBA and BIP services that are designed to address the behavior violation.

It is local practice to have the causal relationship case conference committee discuss and design alternative educational services for the student, in the event that a recommendation for expulsion is upheld. These alternative services will begin immediately upon receipt of parental consent. In the event that the parent does not give consent, the proposed services will begin on the 11<sup>th</sup> day after the parent has received written notice (the case conference summary and IEP) unless the parent challenges the school's proposed action.

11. A written report of the manifestation determination (causal relationship) case conference committee's findings must be given to the parent and the superintendent of schools. The case conference report summary should be accompanied by
  - a) a copy of parent rights;
  - b) notification of parent rights and procedures regarding the formal expulsion hearing (unless previously provided to the parent) if the case conference committee determined that no causal relationship exists between the student's behavior and the student's disability.

#### **4.4 Interim Alternative Educational Setting**

The principal or the principal's designee may remove a student with a disability to an interim alternative educational setting for not more than forty-five (45) instructional days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- carries a weapon to school or possesses a weapon;
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or
- has inflicted serious bodily injury upon another person;

while at school, on school premises, or at a school function under the jurisdiction of the department of education or a public school.

##### **4.4.1 Possession of Weapons or Illegal Drugs**

The Gun Free Schools Act requires school districts to expel for at least one year, any student who brings a gun to school, although the expulsion requirement can be modified on a case-by-case basis. Given the case-by-case clause, this federal legislation can be construed in accordance with the Individuals with Disabilities Education Act (IDEA). Therefore, the causal relationship case conference procedures previously described in this section apply. Regardless of the misconduct that leads to long-term removal or expulsion, the school district must continue to provide a free and appropriate public education to students eligible for special education.

The IDEA Amendments (1997 & 2004) allow for additional emergency provisions only in the case of students with disabilities who bring weapons or illegal drugs to school. These provisions are outlined below.

1. This amendment allows the placement of a student with a disability who brings a weapon or illegal drugs to school in an alternative educational setting for up to forty-five (45) *instructional days*. The alternative placement is determined by the student's IEP team, which includes the student's parent/guardian. Parental consent to the alternative placement is not needed to invoke the alternative placement in these cases. However, the parent may ask for a due process hearing to dispute the alternative placement.
2. A school may unilaterally order a student with a disability to be placed in an interim, alternative educational placement if the student carries a weapon to school or to a school function.
3. The term weapon has the same definition as "dangerous weapon" under 18 U.S.C. 930(G)(2):
  - a.) a weapon;
  - b.) a device;
  - c.) an instrument;
  - d.) a material; or
  - e.) a 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 2 ½ inches in length."

The term also includes “deadly weapon” and “firearm”.

4. A school may unilaterally order a student with a disability to be placed in an interim, alternative educational placement if the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function.
  - Illegal drug is defined as a controlled substance but does not include a substance legally possessed or used under the supervision of a licensed health care professional.
  - A controlled substance means a drug or other substance identified under the Controlled Substance Act.

#### **4.4.2 Serious Bodily Injury**

A student with a disability may be placed in a forty-five (45) instructional day interim, alternative setting if the student inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the IDOE or the public school.

Serious bodily injury is defined as:

- 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

#### **4.4.3 Students Who Present a Substantial Likelihood of Injury to Self or Others**

A student with a disability who behaves in a manner that is likely to injure self or others may be placed in a forty-five (45) instructional day interim, alternative placement only after there has been a special education hearing to determine whether such placement is appropriate. Such a hearing would be conducted on an expedited basis and the hearing officer would order the placement of the student in an interim, alternative educational setting if he/she finds:

- a.) That the school has demonstrated by substantial evidence (defined in the regulations as “beyond a preponderance of the evidence” that keeping the student in the current placement would prove substantially likely to result in injury to the student or to others;
- b.) That the current placement is appropriate;
- c.) That the school has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aides and services; and
- d.) That the interim alternative educational placement meets the following requirements:
  - It has been designed by the student’s case conference committee;
  - It will enable the student to continue to participate in the general curriculum, although in another setting, and continue to receive the related services and modifications in the student’s IEP that are designed to enable him/her to meet the IEP goals; and

- It includes services and modifications designed to address the behavior, which caused the request for the interim alternative educational placement, or any other behavior that results in the student being removed from his educational placement. The services and modifications must be so designed as to prevent the behavior from recurring.

#### **4.4.4 The Process of Determining an Interim Alternative Educational Setting (IAES)**

1. On the date the decision is made to remove the student from school, the student's parent must be notified of the decision. Parents must also be notified of all procedural safeguards and of their right to challenge the removal.
2. The forty-five day alternative placements can be started regardless of whether bringing the weapon or illegal drugs to school, or inflicting serious bodily injury was a manifestation of the student's disability. It is not necessary to make the causal relationship determination until after the student is in the alternative placement. However, the causal relationship determination must take place no later than ten (10) school days from the date of the decision.
3. If the parents/guardians wish to challenge the interim alternative education placement, they may do so by requesting mediation, a due process hearing or both. In the event that the parents seek due process, the student remains in the alternative setting rather than "staying put" in the prior educational placement, unless the parents and the school can agree on another "alternative placement".
4. If the school proposes to change the student's placement after expiration of the alternative placement and the parent/guardian challenges the proposed change through a due process hearing, the student shall remain in the placement prior to the interim alternative placement.

#### **4.4.5 Referral To and Action by Law Enforcement**

1. Nothing in any of the previous sections should be interpreted to prohibit school officials from reporting a crime committed by a student with a disability. State law enforcement and judicial authorities shall exercise their responsibilities to apply federal and state laws to crimes committed by a student with a disability.
2. Any school official who reports a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are sent to the appropriate authorities for consideration.



#### **4.5 Due Process Procedures**

Following the manifestation determination (causal relationship) case conference, the parent(s)/guardian(s) may exercise one of the following options:

1. Request the appointment of an independent due process hearing officer to review the case conference report. If the parent requests a due process hearing under special education law, all of the timelines and procedures outlined therein must be followed. Should a due process hearing be requested by the parent, the request would stop any expulsion proceedings and the student placement would remain unchanged until administrative and judicial proceedings are completed, unless the parent and school agree otherwise.
2. Request an expulsion meeting within ten (10) calendar days. If this option is taken, all of the respective procedures and protocol must be followed in accordance with Indiana student conduct code.
3. Take no action regarding the case conference report or the expulsion hearing. In this case, the school's recommendation would proceed and alternative educational services would begin. **It is important to note that there may be no cessation of services during these proceedings.**

#### **4.6 Students Not Yet Eligible**

A student who has not yet been determined eligible for special education and related services under Article 7 and engaged in conduct that violated school rules may be entitled to the protections of the rule if the public school had knowledge that the student was a student with a disability before the behavioral incident occurred.

The school will be deemed to have such knowledge if any one of the following conditions exists:

1. The student's parent has expressed concern, verbally or in writing, to licensed school personnel, or a teacher of the student, that the student is in need of special education and related services; or
2. The student's parent has requested an evaluation; or
3. The child's teacher or other school personnel has expressed concern about the student's behavior or performance to supervisory personnel, such as the building principal or other administrator charged with the supervision of special education services.

If any of these conditions exist, the school is deemed to have knowledge that the student may be eligible for special education services. In that case, the school must halt the expulsion procedure while it evaluates the student on an expedited basis and hold a case conference to determine eligibility for special education services.

- If the student is found eligible for special education, the case conference would then consider whether the student's misbehavior for which expulsion was being considered, is causally related to the student's newly diagnosed disability. That process would follow the procedure laid out in earlier sections.
- If the student does not qualify for special education services, the school may continue with the expulsion process.
- If the parent asks for a hearing to challenge the case conference determination over eligibility, the expulsion would continue to be on hold while the Article 7 hearing is in progress.

The public school will not be deemed to "have knowledge" if the parent of the student has not allowed an evaluation of the student or if the parent has refused special education services under Article 7. If the school does not have knowledge that the student is a student with a disability, the student may be subject to the same disciplinary measures as those applied to students without disabilities.

In the case of a parent who does not contend that the school knew, or should have known, that the student was eligible, but merely requests an evaluation while an expulsion is in process, the school must respond by conducting an evaluation in an expedited manner. An "expedited evaluation" means that the public school must conduct the evaluation and convene the case conference within twenty (20) school days. While the evaluation is ongoing, the student "remains in the educational placement determined by school authorities".