

Behavior and Inclusion

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1 Background

Because of the difficulties involved with good special education, schools sometimes look for reasons to remove students on IEPs (Individualized Education Program) from the General Education Classroom (GEC). Sometimes, the student's behavior is cited as one such reason. This resource attempts to explain when a student's behavior is relevant to their placement and when it is, how so.

As with other of *22 Advocacy's* resources, you'll want to become familiar with your own state's special education manual, as details may vary depending on state laws and department of education regulations. The rest of this resource will focus on Idaho. While the general approach of many states is largely dictated by federal law (e.g., IDEA), the details will not always be the same.

Also note that while this resource often refers to the 'parent' of the student with disabilities, depending on the situation of the student in question this role might instead be played by a legal guardian or even the student themselves if an adult. This simplification is simply made for ease of expression and is not intended to prioritize any of the possible roles.

2 General Considerations

One of the goals of general education interventions is to support positive behaviors in the general education environment (*Idaho Special Education Manual*, xxiv and 27). To this end, annual goals can be written to address problematic behaviors (*Idaho Special Education Manual*, 87). In some cases, schools may attempt to use these behaviors to remove the student from the GEC. It is important to know early on that behavioral problems by themselves are not sufficient to remove the student from the GEC:

If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interven-

tions, supports and other strategies to address that behavior (*Idaho Special Education Manual*, 96).

Below in Section 4 of this resource, particular situations where behaviors might result in the removal of the student from the GEC (or even the school) are considered.

It should be noted that behavior is part of the definition of a number of disability categories, such as intellectual disability (*Idaho Special Education Manual*, 50), emotional disturbance (*Idaho Special Education Manual*, 54), and traumatic brain injury (*Idaho Special Education Manual*, 67). In light of these definitions, it's important to remember that the mere diagnosis of a relevant disability is *not by itself grounds for removal from the GEC*.

Aspects of the state's approach to special education are specifically designed to help improved a child's behavior such that they no longer get in the way of the student's accessing an appropriate education, regardless of whether one of the above disability categories is involved. For instance, an intervention plan (or I-Plan) is designed to "improve a student's academic performance or behavior through general education interventions" (*Idaho Special Education Manual*, xxvii). Additionally, the school is supposed to provide, as needed, Positive Behavioral Intervention and Supports (PBIS):

Positive reinforcement, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks (*Idaho Special Education Manual*, xxxii).

Additionally, the school may need to provide Psychosocial Rehabilitation (PSR) to qualifying students:

These services assist the student in gaining and utilizing skills necessary to participate in school, such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills. This service is to prevent placement of the student into a more restrictive educational situation (*Idaho Special Education Manual*, xxxiii).

Parents can request that the school provide behavioral intervention in the form of PBIS or PSR so that the student's ability to access their legally required Free Appropriate Public Education (FAPE) is not interfered with.

3 Functional Behavioral Assessments and Behavioral Intervention Plans

When a student engages in problematic behaviors, the school must attempt to address behavioral problems in the GEC prior to removal from the GEC (see Chapter 3, Section C). In order to determine how best to address such behaviors, the school may undertake a Functional Behavioral Assessment (FBA), which is “a systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior” (*Idaho Special Education Manual*, xxiii).

Once an FBA has been performed, the IEP team should come together to write a Behavioral Intervention Plan (BIP). This is a plan

comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary (*Idaho Special Education Manual*, xvii).

If a school attempts to use the student’s behavior as the reason for removal from the GEC, the parent should request that the school perform an FBA and write up a BIP outlining the steps that the IEP team as a whole will take to allow the student to remain in the GEC as much as possible. Why? Because “removal of a student with a disability from the general education environment may occur *only* when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily” (*Idaho Special Education Manual*, 98-99). Before the student can be removed from the GEC, they must prove that they have taken adequate steps to provide the needed supplementary aids and services and that they have proven to be unsuccessful. Furthermore, the behaviors in question must be addressed in the student’s IEP and relevant strategies for addressing the behaviors must be implemented (*Idaho Special Education Manual*, 191). Removal is only justified when these strategies are found wanting.

4 Behavior and Discipline

As mentioned above, as a general principle behavioral problems are not sufficient by themselves to warrant removal of the student from the GEC. However, there are procedures spelled out in Chapter 12 of the *Idaho Special Education Manual* that can result in a child with disabilities being removed from the GEC (though not for more than 10 days) or even the school, via either suspension or expulsion. (Many of the issues discussed in Chapter 12 are also discussed in the IDEA Part B Procedural Safeguards Notice.)

When problematic behaviors arise that may be due to the student's disability, the IEP team has the obligation to conduct a Manifestation Determinant, which is defined as follows:

A determination by the parent and relevant members of the IEP team of whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's [that is, local school district's] failure to implement the IEP. (*Idaho Special Education Manual*, xxviii).

If the behavior in question is determined to not be a manifestation of their disability, then the student is subject to the same disciplinary procedures that are applicable to students without disabilities.

If the behavior in question is determined to be a manifestation of their disability, the an FBA (discussed above) *must* be performed and a BIP, or review and modify the existing BIP. The school must also return the student to their previous educational environment unless the parent and district agree with a change of placement as part of the BIP. (If the student does any of the following behaviors, even if those behaviors are related to their disability, the student can be removed from the school for more than 10 days: carrying a weapon to school or school function; possession, use, or selling of controlled substances; infliction of serious bodily harm on another at school or a school function.)

If the parent does not agree with the outcome of the Manifestation Determination, the parent can request an expedited hearing; for details see Chapter 12, Sections 5 and 6. Until the expedited hearing can be held, the student will not be removed from their present placement.

Furthermore, before a student with disabilities can be suspended or expelled by the school principal or district superintendent, the parent and student have the right to request an informal hearing at which the reasons for the suspension can be challenged (*Idaho Special Education Manual*, 192). If the parent does not agree with the school or district's judgment, the parent can request an expedited due process hearing and judicial proceedings.

Finally, even if after all the above steps are exhausted and the student is suspended for more than 10 days or expelled, the school still has the legal obligation to continue to provide a Free and Appropriate Public Education (FAPE); such details are discussed in section 3 of chapter 12.