

IDEA–Reauthorized Statute  
**DISCIPLINE**

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.<sup>1</sup> This document addresses only the changes to the provisions of IDEA regarding discipline that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

**IDEA 2004:**

**1. Adds new authority for school personnel.**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. [615(k)(1)(A)]

**2. Establishes a new standard for manifestation determinations.**

Except for children with disabilities who have been suspended for not more than 10 days, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local education agency (LEA), the parent, and relevant members of the individualized education program (IEP) team (as determined by the parent and LEA) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was:

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

[615(k)(1)(E)(i)]

**3. Adds a new provision when there is a determination that a behavior was a manifestation of the disability.**

If the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team shall:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for such child, provided that the LEA had not conducted such assessment prior to

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: [www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html).

such determination before the behavior that resulted in a change in placement described in Section 616(k)(1)(C) or (G);

- In the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- Except as provided in Section 616(k)(1)(G), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavior intervention plan.

[615(k)(1)(F)]

#### **4. Establishes a new standard for special circumstances.**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child ... has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA. [615(k)(1)(G)]

#### **5. Adds a definition for "serious bodily injury."**

The term "serious bodily injury" is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean 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 mental faculty. [615(k)(7)(D)]

#### **6. Establishes the authority of the hearing officer.**

In making the determination under Section 615(k)(3)(B)(i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may: (1) return a child with a disability to the placement from which the child was removed; or (2) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. [615(k)(3)(B)(ii)]

#### **7. Adds timelines for an expedited hearing regarding appeals under Section 615(k)(3).**

When an appeal under Section 615(k)(3) has been requested, the SEA or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested, and shall result in a determination within 10 school days after the hearing. [615(k)(4)(B)]

#### **8. Revises the standard for a basis of knowledge for children not yet eligible for special education and related services.**

An LEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

- The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

- The parent of the child has requested an evaluation of the child pursuant to Section 614(a)(1)(B); or
- The teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

[615(k)(5)(B)]

**9. Establishes an exception to the “basis of knowledge” standard.**

An LEA shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to Section 614 or has refused services under Part B or the child has been evaluated and it was determined that the child was not a child with a disability under Part B. [615(k)(5)(C)]