

Discipline / Behavioral Incident Tracking Sheet (please include dates and other specific information related to each activity/incident)

--- For each specific individual behavioral incident ---				--- Related to this overall school year ---			
Date	Brief Description of Incident	Outcome *	**Number of days child was removed (include ½ days)	**Total days of removal during this school year	**Has a functional behavioral assessment (FBA) been requested?	**Has a FBA been conducted	**Does the IEP include a Positive Behavioral Intervention plan?

* **Outcomes may include:** warning to child; parent asked to pick up child from school early [note time of day child was picked up]; removed from class to principal's/other administrator's office; removal to "time-out" or seclusion room; after-school detention; Saturday detention; in-school suspension; out-of-school suspension; "easement day"; restraint of child; expulsion; other. Also, please note if the child was removed from his/her general or special education classroom, did he/she continue to receive all special education and related services in the alternative environment (including interaction with typical peers if that are included in the child's IEP)?

****Notes:**

- A parent or other IEP team member may request reevaluations, including a FBA whenever the child's academic, social/emotional or behavioral needs indicate one is necessary to provide the IEP team with information to develop or revise the child's IEP
- If a child has been removed for more than 10 days in a school year, he/she is entitled to receive special education services in his/her interim alternative educational setting (may be the child's home or alternative setting) during any days of removal beyond 10 days in a school year.
- If one has not yet been conducted, a FBA and PBI plan should be developed by the IEP Team.
- If a child has been removed for 10 days at one time, or for a pattern of short-term removals totaling 10 or more days in a school year, the IEP team must conduct a manifestation determination meeting.

NOTE: See PIC's "Steps in the NH Special Education Process" brochure for more information about the special education process, including discipline requirements (excerpts on next page) at: <https://picnh.org/wp-content/uploads/2025/03/Steps-2025.pdf>

Discipline (Suspension/Expulsion) Requirements

Excerpt from Steps in the NH Special Education Process, a Parent Information Center brochure, revised 3/2025

When a child with a disability acts out in school, it is important to determine whether or not the child's behavior is a manifestation of their disability. A behavior is considered to be a manifestation if it:

- ♦ Was caused by the child's disability,
- ♦ Had a direct and substantial relationship to the child's disability, or
- ♦ Was the direct result of the school district failing to implement the IEP.

If it is not clear whether the child's behaviors are a manifestation of the child's disability, or if the IEP Team is trying to figure out how to respond to a child's behaviors, the IEP team may find it helpful to conduct a functional behavioral assessment (FBA). The FBA will provide the IEP Team with the information they need to revise the IEP or placement, including developing positive behavior interventions and other strategies and supports in the IEP.

If parents have concerns about their child's behavior, they may find it helpful to:

- ♦ Obtain a copy of the school's discipline policies and consider if those policies need to be modified to accommodate the child's disability-related needs, or if their child needs additional supports to comply with the policies;
- ♦ Collect information (data) to understand the impact of the child's behaviors on their participation in the general education curriculum and classes, on their progress towards achieving the annual goals in the child's IEP, and on their ability to be in school. Parents can use PIC's Discipline and Behavioral Incident Tracking Sheet (on the PIC website under sample letters and forms <https://picnh.org/sample-letters/>) to keep track of their child's behavioral incidents, outcomes, and number of days the child has been suspended;
- ♦ Request that an FBA be conducted; and/or
- ♦ Request a meeting of the IEP team meeting to discuss the child's behavioral needs, and to determine what types of services, supports, or modifications the child needs.

When a child with a disability violates a code of student conduct, and is subject to suspension, school personnel may consider, on a case-by-case basis, any unique circumstances of the situation and decide not to remove the child.

For children with disabilities who are suspended for 10 days or less in a school year — A child with a disability may be suspended, without services, for no more than 10 days (cumulative) in a school year for behaviors that are not a manifestation of the child's disabilities. If the behavior is a manifestation, the behavior would be addressed through a review of the IEP and/or placement, instead of by suspending (removing) the child. If the school district provides services to children without disabilities who are suspended, they must also provide them to children with disabilities.

After a child with a disability has been suspended for 10 cumulative days in a school year — If a child is suspended again after he/she has already been suspended for a total of 10 days in a school year, the child must be provided with services for any additional days of removal. Those services must be sufficient to enable the child to continue to participate and progress in the general education curriculum and to progress toward meeting the annual goals in his/ her IEP. They must consist of a minimum of 10 hours of instruction plus any related services in the child's IEP. If appropriate, a functional behavioral assessment must also be conducted (unless one was already done), and the results used to develop positive behavioral interventions and supports in the child's IEP.

Suspensions that are considered to be a change in placement — Suspensions for more than 10 days at one time, or a pattern of suspensions (for similar behaviors, numbers of days, etc.), totaling more than 10 days in a school year are considered to be a change in placement. In those instances, in addition to conducting a functional behavioral assessment and developing positive behavioral interventions and supports (behavioral intervention plan) the parents, a representative of the school district and other relevant members of the child's IEP Team must meet to determine if the behavior was a manifestation of the child's disability.

This requirement does not apply if the child's suspension is the result of the child bringing a gun, dangerous weapon or illegal drugs to school or to a school function, or inflicting serious bodily injury on another person. Parents must be given 5 days' notice of a manifestation determination meeting. If the behavior is found to be a manifestation of the child's disability, there would be no further punishment, but the IEP Team may decide to revise the IEP or placement to meet the child's needs and prevent a reoccurrence of the behavior. If the behavior is not a manifestation of the child's disability, the child may be suspended, but they would continue to receive services during any days of removal beyond 10 days of total removal in the school year. The parents must also be given a copy of the procedural safeguards notice at that time.

Situations when a child may be subjected to a long-term suspension or expulsion — Children with disabilities may be removed to an interim alternative educational setting (IAES) for up to **45 school days**, without regard to manifestation, for any the following behaviors that take place at school or at a school function:

- ♦ Possessing a gun or dangerous weapon,
- ♦ Knowingly possessing, using or selling illegal drugs, or
- ♦ Inflicting serious bodily injury to another person.

A hearing officer can also order a child's removal to an interim alternative educational setting for up to 45 school days if the hearing officer determines that the child would pose a significant danger to him/herself or others if the child remained in their current placement. A hearing officer may impose an extension beyond 45 days if the hearing officer determines that the child continues to pose a danger to the child or others. While the child is in the IAES, the IEP Team should determine if a change in the child's IEP or placement will be needed once the child's removal to the IAES is completed. Parents may access procedural safeguards, including an expedited due process hearing, at any time, including if the parents disagree with the manifestation determination or the removal to the IAES.

Children who have not yet been determined eligible for special education who violate a code of student conduct are only entitled to the protections in IDEA if the district had prior knowledge that the child is a child with a disability.

NH does not allow the use of aversives but instead emphasizes a positive and proactive approach to supporting a child's behavioral needs. Aversives are procedures that subject a child with a disability to physical or psychological harm or unsupervised confinement or that deprive the child of basic necessities such as nutrition, clothing, communication, or contact with parents, so as to endanger the child's physical, mental, or emotional health. This includes:

- *Procedures intended to cause physical pain;*
 - *Use of aversive mists, noxious odors or unpleasant tastes*
 - *Electrical stimulation;*
 - *Contingent food or drink programs; or*
 - *Restraint or seclusion in violation of RSA 126-U (NH's law limiting the use of restraint/seclusion in schools or facilities).*
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A Few Resources:

Guidance issued by the US Department of Education's Office of Special Education and Rehabilitative Services (OSERS) on July 22, 2022 addresses the issue of discipline and children with disabilities. This Guidance and related resources may be found at: <https://www.parentcenterhub.org/section504-avoiding-discriminatory-student-discipline>

These are the documents included in the Guidance issued by OSERS on July 22, 2022:

Supporting students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 *Note: IDEA has additional protections beyond those provided by Section 504 – BUT – all children who have an IEP are also covered by the protections in Section 504. The document comes with a 4-page fact sheet.*

Questions and Answers Addressing the Needs of Children with Disabilities & the IDEA's Discipline Provisions
Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders

Letter from Secretary Cardona (US Secretary of Education)

Video Summary – *[a 5-minute video summary that emphasizes the key points of these guidance documents]*