

(16.20) What are the rules governing the discipline of students identified as having a disability under Section 504?

If discipline of a student results in her removal from her educational placement and that removal constitutes a “significant change in placement”, Section 504 requires her school to conduct an evaluation before the disciplinary removal. [34 C.F.R. Sec. 104.35(a).] According to OCR, the exclusion of a student for more than 10 consecutive days, the exclusion for an indefinite period, and the permanent exclusion of a student (expulsion) can constitute significant changes of placement under Section 504. A series of suspensions — each of which is 10 or fewer days in duration, but that creates a “pattern of exclusions” — may also be a significant change in placement. [Office for Civil Rights, *Letter re: Akron City School Dist.*, 19 IDELR 542 (Nov. 18, 1992) (cited in *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1495 (9th Cir. 1994).]

Similar to the process under the IDEA, this evaluation under Section 504 is known as a Manifestation Determination Review (MDR). The purpose of the evaluation or MDR is two-fold:

1. Determine whether the misconduct underlying the disciplinary action was related to the student’s disability; and,
2. If so, determine whether the student’s current educational placement is appropriate. [34 C.F.R. Sec. 104.35(d).]

If the behavior or misconduct is found to be related to the student’s disability or if the student’s current placement is inappropriate, the school cannot expel the

student and should review and revise the student's 504 services to ensure that the district is providing FAPE to the student.

The determination of the relationship between the misconduct and disability may be made by the same group of persons who make initial placement decisions for Section 504 students. Recent psychological evaluation information related to the behavior should be made available to the group. The determination should not be made by those responsible for the district's regular disciplinary procedures, such as administrators, who lack expertise and personal knowledge about the student. These individuals, however, may participate as members of the placement decision group.

If it is determined that the misconduct is not caused by the student's disability, the student may be expelled from school in the same manner as students without disabilities. For a student eligible solely under Section 504, Section 504 and the ADA would permit all educational services to cease. This is one of the differences between the standards under Section 504 and those applied to students eligible for services under the IDEA.

Under the IDEA, a school district must continue to provide FAPE to a student who has been expelled from school. [*Discipline of Student with Disabilities in Elementary and Secondary Schools*, OCR, October 1996, available at: <http://corporate.findlaw.com/law-library/discipline-of-students-with-disabilities-in-elementary-and.html>.]

Another important distinction between Section 504 and IDEA discipline procedures is what could happen to a student eligible for Section 504 while

these important educational decisions at an MDR or administrative hearing are being made. Unlike the IDEA discipline procedures, the Section 504 procedures do not have a “stay put” provision. Therefore, even if you have requested a hearing to challenge the results of the MDR and the hearing is pending, a Section 504 student’s placement or services could be changed or he could be expelled from school. However, OCR has suggested that changing a student’s placement before the parent has challenged the decision “seems to undermine the rights given by due process”, and that a “fair due process system would encompass the school district waiting for the results of the process before making the change”. [*Letter to Zirkel*, 22 IDELR 667(1995).]

If the behavior is related to the current use of alcohol or illegal drugs, school districts may take disciplinary action against a student with a disability to the same extent that it takes disciplinary action against persons not having disabilities.