

Section 504 Disciplinary Procedures, Processes, and Regulations



Discipline and Section 504

Students served under Section 504 and the ADA are treated similar to students served under IDEA with regard to discipline. First, these students can definitely be disciplined. Rules and standards can be applied to these students just as they are applied to nondisabled students. The important thing to consider is that these students have an equal opportunity to be successful with classroom rules and behavioral regulations. In order to ensure this with some students, a behavior intervention plan may be necessary to have in place.

Before taking certain actions with students served under Section 504 and the ADA, school personnel must follow specific steps. The following summarizes some of the considerations when dealing with students protected by these two laws:

1. Disciplinary procedures for students under 504 and the ADA are similar to those under IDEA.
2. Under IDEA, 504, and the ADA, all students are entitled to oral or written notice of charges and the opportunity to tell their side before suspensions of 10 days or less, and a formal hearing before a suspension of more than 10 days.
3. Expulsion or suspensions of 10 or more days are considered a *change of placement* and require procedural requirements of IDEA or 504/ADA.
4. A *manifest determination* must be made before suspending or expelling a student under IDEA or 504/ADA for more than 10 days; a manifestation determination is not required for a suspension of less than 10 days (unless this results in a cumulative suspension of more than 10 days).
5. Suspensions of less than 10 days are permissible but cannot set a pattern (school officials should review appropriateness of the placement if cumulative time is more than 10 days)
6. If a *manifest determination* shows no relationship between the behavior and disability, then the student may be disciplined as any other student.

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7. If a *manifest determination* shows that there is a relationship between the behavior and disability, then the student may NOT be expelled or suspended; the school should consider the appropriateness of the current program and consider appropriate changes.
8. Special Education students who are expelled must continue to receive a FAPE; 504 students do not have to be provided with F APE during expulsion or suspension for behavior not related to the disability.
9. Students currently engaged in drug or alcohol abuse are not protected under Section 504.

Source: Smith, T.E.C., (2004). Section 504, the ADA, and public schools: A handbook for educators. Fayetteville, AR. (tecsmith@uark.edu). Reprinted with permission.

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Standard Questions and Answers: Section 504 and Discipline

Disciplining a 504 Disabled Student

- Does a school need to conduct a manifestation meeting when considering the expulsion or long term suspension of a student with a Section 504 plan?
- Who makes the manifestation determination for a student on a 504 plan and what information is included in this process?
- How does a school proceed with drug and alcohol offenses that involve students who are on a Section 504 plan?
- Is a manifestation meeting necessary if a 504 student is cited for “exchange”?

Does a school need to conduct a manifestation meeting when considering the expulsion or long term suspension of a student with a Section 504 plan?

Yes. Similar to suspension or expulsion of a student having a disability under IDEA (special education) it is necessary to conduct a manifestation determination meeting for a Section 504 disabled student when:

The suspension or expulsion will be for more than 10 consecutive school days. Like IDEA, a suspension/expulsion of more than 10 consecutive days constitutes a significant change in placement and requires schools to determine if the cause of the misconduct is the disability identified in the student’s 504 plan.

A series of suspensions that total more than 10 days may also trigger the manifestation determination requirement of Section 504. If cumulative suspensions/expulsions for a student on a 504 plan total more than 10 days, it must be determined if a significant placement change has occurred. This is done on a case-by-case basis. If a group of short suspensions creates a pattern of exclusion then this constitutes a change in placement and school personnel must conduct a manifestation determination meeting before further suspensions or expulsions occur. The Office of Civil Rights has identified some of the key factors in determining patterns of exclusion. These include length of each suspension, the proximity of the suspension to one another, nature of the misconduct, and the total amount of time the student is excluded from school.

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Who makes the manifestation determination for a student on a 504 plan and what information is included in this process?

Those involved in a manifestation determination meeting need to be knowledgeable about the student and the meaning of the data being reviewed. When possible, it is a plus to convene those individuals who designed the student's 504 plan. When this is not possible teachers, parents, health professionals, counselors, etc. can serve on the team that makes a manifestation determination provided they have knowledge of the student and the data being reviewed. Those responsible for school disciplinary procedures, such as the school principal or school board officials cannot make the determination. However, it is appropriate for the administrator responsible for school discipline to present pertinent student information to the team making the manifestation determination.

The Office of Civil Rights indicates that those making the manifestation determination must have available information that competent professionals would require when making such a decision. Examples might include attendance and academic records, psychological evaluation data, behavior plans, discipline records, staff observations, anecdotal records, etc. It is important that the information considered is recent enough to afford an understanding of the student's current behavior.

Those making the manifestation determination must decide whether the current educational placement is correct. Two questions are to be answered in determining plan appropriateness.

- 1) Are the accommodations in the student's 504 plan appropriate as they relate to the current misconduct?
- 2) Were the accommodations in place at the time of the alleged infraction?

If the majority/consensus is that the plan is not appropriate as it relates to the current misconduct or that it was not substantially complied with, then the suspension/expulsion proceeding cease and a review and update of the current plan is to occur.

If the plan is determined to be both appropriate and in place, the team will next consider if the misconduct is the result of the student's disability. This is done by considering the following questions:

Does the student's disability impact his or her ability to control the behavior?

Does the disability impair the student's ability to understand the impact and consequences of the behavior? If it is determined that the misconduct is not caused by the disability, then the System can impose whatever long-term suspension or expulsion it would impose under the same circumstances if a non-disabled student were the offender. However, if it is determined that the misconduct is caused by the disability the student may not be further removed from his or her program.

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How does a school proceed with drug and alcohol offenses that involve students who are on a Section 504 plan?

A student currently engaged in the illegal use of drugs or alcohol is not protected under Section 504 when the disciplinary actions of the school staff are based on that student's current use of illegal drugs or alcohol. Schools may take disciplinary action against a student with a 504 disability that is currently engaged in the use of alcohol or illegal drugs to the same extent that it takes disciplinary action against persons not having disabilities. Additionally, the procedural protections normally in place when a 504 student has a discipline related placement change do not apply when the misconduct involves the current use of illegal drugs or alcohol.

Drug possession is another matter. When the misconduct of a 504-disabled student centers on possession of illegal drugs and not use of illegal drugs then a manifestation determination must occur. If it is determined that the drug possession is not a manifestation of the disability then the student can be disciplined to the same extent as if a non-disabled student was the offender.

Is a manifestation meeting necessary if a 504 student is cited for "exchange"?

The meaning of "exchange" is:

1. "Passing" or "transferring" of drugs or alcohol to another person or receiving of drugs or alcohol from another person for any purpose, even if the students are not using the drugs or alcohol. (Does not have to be exchanged for value or use).
2. It may also mean the "purchase" of drugs or alcohol from another student.

Since exchange includes a number of possible scenarios, it is important to examine the specific circumstances that place the 504 student's violation within the category of exchange. If those circumstances include the use of drugs then Section 504 protection, including due process protection, does not apply. However, if the student's role in an exchange violation does not involve drug use then a manifestation determination is necessary.

Source: United States Department of Education Office of Civil Rights (OCR)