

# When Behavior is a Concern . . .

## A Guide for Parents of School Age Children

A project of South Dakota Parent Connection and Disability Rights South Dakota





# Introduction

## Addressing challenging behaviors . . .

Over the past few years, both South Dakota Parent Connection and Disability Rights South Dakota have become increasingly involved in conversations with parents around topics related to their child(ren)'s behavior. This guide lists frequent questions parents ask. It also includes information for parents so they can participate as shared decision makers as they advocate for appropriate responses to concerns about behavior at school and in working with the school team in developing appropriate supports and services for their child.



## Topics covered include:

Questions to consider if you have concerns for your child's behaviors:

- What to do if your child is having trouble with behaviors at school
- How children with behavioral challenges qualify for supports and services
- What the process entails for evaluating behaviors
- The difference between a medical diagnosis and an eligibility determination under Individuals with Disabilities Education Act (IDEA)
- How evaluation information is used to determine supports and services
- How an Individualized Education Plan (IEP) or 504 Plan can help a child with behaviors
- What schools mean when they talk about Tiered Levels of Support or Instruction
- What the term Functional Behavior Assessment (FBA) means
- When an FBA may be warranted
- Behavior Intervention Plans (BIP)
- What to do when your school district calls to come get your child from school because of behavior
- Information on suspension and expulsion due to behavior
- Manifestation Determination
- Questions to ask if behavior persists
- What to do if you disagree with the IEP, BIP, placement, or discipline
- Contacts for help and support

## Question: What do I do if I have concerns for my child's behavior?

### Consider the following:

- Has anything changed at home?
- Is the behavior new? How long and how often have you noticed this behavior?
- When does the behavior occur? What happens prior to the behavior occurring?
- Where does the behavior occur? Is there a common place/time of day?
- Has school or daycare expressed or discussed concerns with your child's behavior?
- What types of strategies have you or they used to help your child with this behavior?
- What has worked? What has not worked?



### Consider doing the following:

- Discuss any changes in your child's behavior with your child's primary doctor.
- If the behaviors only happen at home, discuss your concerns with your child's school, classroom teacher, counselor, or doctor to get ideas on how to work with the behavior at home.
- Try to create a consistent plan that everyone can follow.
- Document your concerns.
- If the behavior is also occurring at school or daycare, contact your school's Special Education Director and ask to meet to discuss your concerns.

*Schools are required to conduct 'child find' activities, which means they need to assist in identifying children who are at risk for struggles with learning, including if behavior may impact a child's participation in learning environments such as at school or a childcare setting. Talk with your school district about evaluating your child's development in the areas of social and emotional skills to determine if he/she would qualify for some level of support through the school system.*

## Question: What do I do if my child is having trouble with behavior at school?

### Consider the following:

- What behaviors are occurring at school?
- How have you been informed of the behavior? Is there documentation of how often or how long the behavior has been occurring?
- Has the school requested a meeting to discuss their concerns?

A meeting with the school will be essential to begin the process of putting a plan in place to meet your child's needs and work on resolving behavior concerns. Know that you can also request a meeting to address the concerns.

- Has anything changed in the classroom? Are there problems with friends?
- Has a consistent positive intervention plan been tried at home and school?
- How is your child's behavior interfering with learning?

### Additional Information:

Your school may say that they will take the concerns regarding your child's behavior to a Student Assistance or Teacher Assistance Team (SAT/TAT) first before proceeding with the concern. This is often considered a pre-referral process. The purpose of the SAT/TAT is for a group of teachers in the school to recommend strategies that your child's classroom teacher may not have tried yet.

Another strategy is Response to Intervention (RTI). This is a researched and proven intervention process used by teachers to help students who are struggling by providing different intervention options.

## Question: How do children with behaviors qualify for supports and services?

- When your child's behavior is interfering with their ability to participate in a learning environment, your school district can and should do an evaluation to determine whether or not he/she has a disability and would be eligible for supports and services through either an IEP or a 504 Plan.
- If your school district does not initiate an evaluation, you may do so. Put all your requests in writing.
- A BIP will likely be written to provide positive interventions and supports as part of your child's plan. Parents are part of the team and should be given the opportunity to have input into the development of a BIP (see pages 4-5 and 11-12).

### Additional Information:

Small school districts may be a part of an Educational Cooperative. Some members of the evaluation team, such as the School Psychologist, may be an employee of the Cooperative and serve your school district.

## Behavior Support/Intervention Plan

ID # \_\_\_\_\_

Student \_\_\_\_\_

School: \_\_\_\_\_

DOB: \_\_\_\_\_ Grade: \_\_\_\_\_

☐ Initial Plan      Date \_\_\_\_\_

☐ Revised Plan      Date \_\_\_\_\_

**1. Problem Behaviors (define & describe why they are important to change)**

**2. Previous Interventions:**

**3. Baseline Data (frequency, duration, intensity, behavior graphs, etc.):**

**4. Hypothesis (What is the function of the behavior?):**

**5. Identified antecedents (triggers) to the behavior:**

**6. Antecedent Modifications & staff responsible (changes needed to the environment):**

**7. Functionally Equivalent Replacement Behaviors (what student should do instead of the problem behavior):**

**8. List teaching Strategies/Necessary Curriculum/Materials, etc. needed to teach FERB & staff responsible (List successive teaching steps for student to learn replacement behavior/s):**

**9. Positive reinforcement strategies for displaying appropriate behavior & staff responsible:**

**10. Reactive Strategies & staff responsible (What to do when the problem behaviors occur, including the Crisis Management Plan):**

1. Prompt student to switch to replacement behavior:
2. Describe how staff should handle the problem behavior if it occurs again:
3. Positive Discussion with student after behavior ends:
4. Any necessary further classroom or school consequences:

**11. Collection (Methods and frequency of monitoring the progress of the plan):**

**12. Team Communication & Staff Responsible (system of communicating with team, expected frequency, content, etc.):**

**The student will follow the standard District Discipline Policy.** ☐ Yes ☐ No  
(If no complete the next statement.)

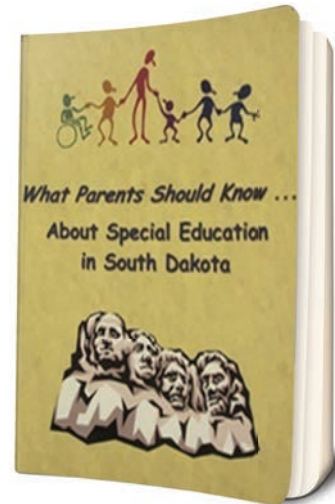
**The following adaptations will be made to the standard District Discipline Policy:**

Name	Position
_____	_____ ( )Agree ( )Disagree
_____	_____ ( )Agree ( )Disagree
_____	_____ ( )Agree ( )Disagree
_____	_____ ( )Agree ( )Disagree
_____	_____ ( )Agree ( )Disagree



## Question: What does an evaluation at school look like?

- Schools need to obtain your written permission to evaluate your child.
- The guide, *What Parents Should Know ... About Special Education in South Dakota*, includes detailed information about the evaluation process, including your rights as a parent and school responsibilities. It is available at [www.sdparent.org](http://www.sdparent.org) and [www.drdsdlaw.org](http://www.drdsdlaw.org).
- A typical initial evaluation includes the following:
  - Assessment of Ability by a School Psychologist
  - Assessment of Academic Achievement by an Educator, typically a Special Educator
  - Behavior Checklists for parents and teachers to complete regarding performance at home and in the classroom
  - Classroom observations conducted by an administrator such as a Principal, Counselor, or the Psychologist
  - A FBA led by the School Psychologist or someone from the district's behavior team if there is one (See Pages 7, 11, and 12)
  - Any other evaluations necessary to address identified concerns (for example: autism, speech and language, physical or occupational therapy, social-emotional, etc.)



The Department of Education, Special Education Programs has an Eligibility Guide on the State's website.







## Functional Behavioral Assessment Observation Form

**Student:**

**Date:**

**Class/Teacher:**

**Observer:**

**Instructional Activity:**

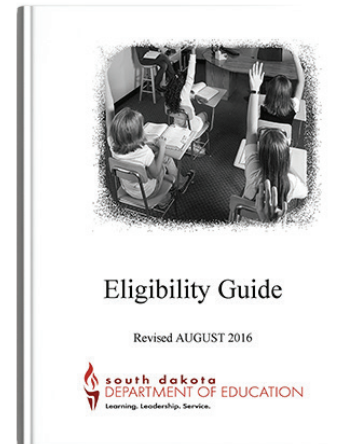
**Other Relevant Information:**

Time (Time/Day of Occurrence)	Antecedent (What happens right <u>before</u> the behavior)	Behavior (The actual behavior-hitting, yelling, etc.)	Consequences (What happens immediately <u>after</u> the behavior occurs.)

The guide describes the evaluation procedures schools follow and the specific eligibility requirements for each disability category under IDEA for which a student may qualify for special education services and supports.

Go to <https://doe.sd.gov/sped/documents/16-Eligib.pdf> for more information about eligibility criteria.

**Question: What is the difference between a medical diagnosis and a school determining my student has a disability?**



Typically, when we hear the word “diagnosis” we think that a doctor has made a medical diagnosis of some kind. A medical diagnosis may meet the criteria for a disability for the purpose of medical treatment. The diagnosis is often made by a single practitioner or specialist.

School districts, however, are required to use a multifaceted team to conduct a comprehensive educational evaluation. The team will consist of a selection of school professionals such as a school psychologist, educator, or speech therapist, who are trained to administer and interpret the required assessments.

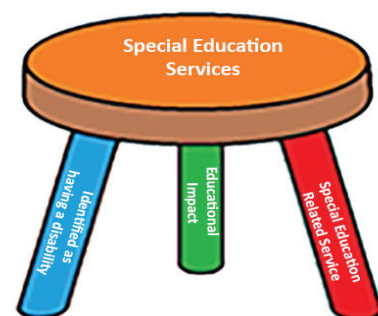
The multifaceted or educational team, including parents, will make an “eligibility determination” based upon qualifying criteria found in IDEA. Educational teams may take into consideration medical information provided by the parent, but are not required to act upon recommendations found in them.

Parents have the right to bring information from outside evaluations, therapists, and providers to the meeting. The IEP Team must “consider” this information. It may or may not be used to develop the child’s IEP. Parents may ask that this information be added to the student’s records.

**Question: How does the evaluation help determine if my child qualifies for behavior supports and services?**

The evaluation team, including you as parents, looks at all the information gathered to answer 3 questions:

- Does my child have a diagnosed disability?
- Does the diagnosed disability adversely affect my child’s educational performance?
- Does my child require “specially designed instruction” to receive a Free and Appropriate Public Education (FAPE)?



If “yes” was answered for previous questions, then your child would qualify for supports and services through an IEP.

If your child is identified as having a disability, but it does not appear to require special education, he/she may qualify for accommodations under a Section 504 Plan.

### Question: How will an IEP or 504 Plan help my child with behaviors?

Education teams can better assist students with academic achievement and functional performance that helps them be more successful at school by understanding the strengths and needs, including social and emotional needs/skills, focusing on specific skill areas, and identifying strategies to support students’ behavior.

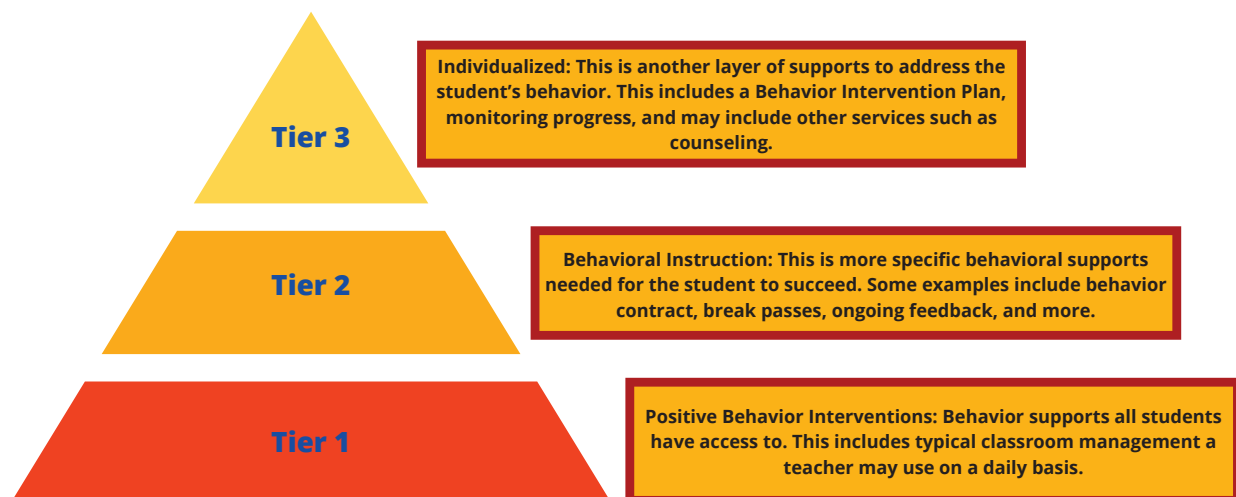
#### Additional Information:

Functional performance refers to how the student is doing in the day-to-day activities in the classroom, on the playground, in the hallways, cafeteria, etc. throughout the day. It looks at skills such as working independently, asking for help, getting organized, etc. that all play a role in the student’s success as a learner.

### Question: What if my child’s team talks about tier supports? What does that mean?

In the past several years, schools have looked at ways in which students are supported in the classroom environment. As such, instruction and behavioral supports have been categorized into Tiered Levels. Parents may hear instruction and/or various school programs called Tier 1, Tier 2, or Tier 3 programs.

When describing supports around behavior concerns, the following is a generalized description of how Tiered Levels of Support may be defined by your child’s school district:



## Question: Where will my child receive appropriate supports and services?

The Least Restrictive Environment should always be the priority. The IEP Team must ensure that, to the maximum extent appropriate, students with disabilities are educated with non-disabled peers, including participation in extracurricular services and activities.

Schools look at the total number of minutes a student receives special education, including any related services, to determine which placement option is appropriate. The following chart shows the Continuum of Alternative Placements the IEP Team will consider.

Continuum of Alternative Placements
<b>General Classroom</b> with Modifications: Students spend 80-100% of their school day in the regular school environment. Less than 21% of their time may be spent receiving special education and/or related services outside the regular classroom.
<b>Resource Room:</b> Students who were in the regular classroom no more than 79% of the day and not less than 40% of the day. This may include children whose special education/related services are provided in the resource room setting or who are placed in the resource room setting with part-time instruction in the regular education classroom.
<b>Self-Contained Classroom:</b> These are students who receive special education and related services outside the regular education setting for more than 60% of the school day.
<b>Separate Day School:</b> Students placed in a separate day school receive their special education and related services, at public school expense, for greater than 50% of the school day in a public or private separate school. The program may be part of the school district or paid for by the school district but at another location. The student does not live at the facility where the day program is provided.
<b>Residential Facility:</b> Children in a residential facility receive greater than 50% of their special education and related services in a public or private residential facility. Students live at the facility.

## Question: What is a Functional Behavior Assessment (FBA)?

This is a process used to discover the function or purpose of your child's behavior. Your child will be observed by members of the IEP Team and data will be taken to understand as much about the behavior as possible. The assessments will look at the circumstances when the behavior occurs, who is involved, how frequently or long the behavior occurs, and what happens immediately after the behavior that might in some way reinforce it. As a member of the team, parents will be asked to provide similar information about what behaviors they see at home. This might occur in the form of an interview with someone from the school team or checklists the parents fill out.

The key factor in conducting an FBA is to figure out what your child is trying to communicate through the behavior and what supports and/or strategies can be developed in order to assist your child so that his/her learning is not affected by the behavior. The goal of an FBA is to help identify and prevent any negative behaviors the school might see. This information will be used to develop a positive behavior intervention plan. As part of an FBA, you may hear your school talk about the ABCs of behavior.

In analyzing behavior, it is important to understand what happened right before the behavior occurred [**Antecedent**], what behavior your child engaged in [**Behavior**], and what happened right after the behavior occurred [**Consequence**].



## When does my child need an FBA?

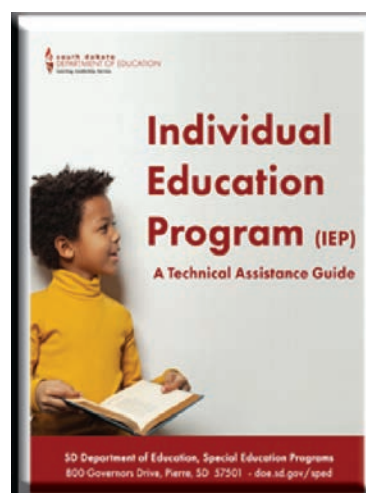
If an FBA will help determine what an appropriate education looks like for your child, then one is necessary. Another reason to request an FBA is to connect your child's behavior to his/her IEP. The FBA could reveal a lack of skills that can be improved through direct instruction. It could also reveal the need for positive reinforcement or behavior intervention. The FBA can help guide the development of behavior goals and coping strategies.

Sometimes an FBA is required by law. The school may complete one when your child is consistently removed from school for challenging behaviors. It can also be done if your child is sent to an interim alternative educational setting due to a suspension. This can guide changes to the IEP, BIP, and give the team valuable insight (See Pages 4, 5, and 7).

## Here are some questions that an FBA can answer:

- Is behavior impeding the child's own learning or the learning of others?
- When, where, and with whom does the negative behavior most often occur?
- Does anything specific happen before or after? Are specific people routinely involved?
- What could be the goal of this behavior?
- Are there skills that need to be taught or included in the IEP?

Starting on pages 83-87 of the Dept. of Education, Special Education Programs', *IEP Technical Assistance Guide*, you may find helpful information on what it means for a student's behavior to impede learning, environmental changes that might help support your student in the classroom, and types of reinforcers that might be included in a BIP that is written following an FBA.



<http://www.doe.sd.gov/sped/documents/IEP-TA-20.pdf>

## Question: What is a Behavior Intervention Plan (BIP)?

A BIP is a detailed, written procedure to reduce/eliminate problem behaviors. It should include your child's problem behavior (which has been determined by completing an FBA), behavior goals, methods of teaching the desired replacement behaviors, accommodations to assist your child in displaying the replacement behaviors, and positive reinforcements for displaying the desired replacement behaviors (See pages 4 - 5).

## What should a BIP include?

The BIP provides solutions, rewards positive behavior, and allows everyone who works with your child to have a consistent plan.

- It will have sections that list the problem, why it is happening, and solutions/consequences. This is where the FBA, discussed above, will be essential. It will guide the behavior plan.
- A child doesn't have to be on a 504 Plan or an IEP to have a BIP in place. However, it is common to have one or the other. These plans must be adjusted regularly to support the child and maximize the effectiveness of the plan.

## What questions to ask?

- Does your school district have a detailed discipline plan?
- How will I be notified about the plan?
- Is this plan relevant to my child? If not, what is the process of meeting to address my child's needs?
- Once a BIP is written, will there be documentation of the use of the plan and how well it works?
- How will all staff working with my child be trained about the plan?
- Who can help me implement this plan at home?

A sample of a completed BIP can be found on the Department of Education, Special Education Programs' website at <https://doe.sd.gov/sped/pbis.aspx>.

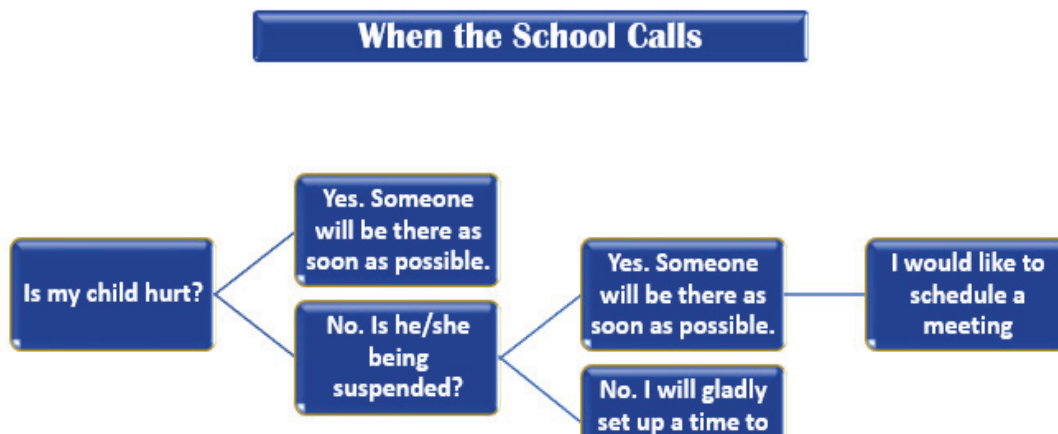
## Question: What if the school calls me to come get my child from school because of his/her behavior?

- Ask if they are suspending him/her. If they are, require the school to document it as a suspension.
- Ask for documentation/notice of the suspension.
- You will need to go get your child from school. Be sure to make arrangements to meet with the school as soon as possible to discuss the incident/concern.
- If they are not suspending your child, ask if he/she is sick or injured.

When the answer to either of those questions is NO, your child should stay in school with support but you should make arrangements to meet with the school team to discuss the incident/concern and come up with a plan that does not involve you coming to school to get your child.

- Keep your own documentation of the calls and behavior. Include your child's view of what happened.





### Question: What if my child is expelled/suspended?

School districts cannot suspend or expel a child without providing some type of procedure to determine whether misconduct occurred. However, the type of procedure required changes based on many factors, such as:

- If it is a suspension or expulsion;
- The length of a suspension;
- If the suspension is in-school or out-of-school;
- Whether the student has a disability.

Court cases, statutes, and administrative rules lay out the proper procedures that a school district must follow in South Dakota prior to suspending or expelling a child. If you are unsure whether the school district is following the proper procedure to suspend or expel your child, contact South Dakota Parent Connection or Disability Rights South Dakota for assistance.

### What if my child is not on an IEP and is getting suspended or expelled?

If your child is not receiving special education services from the school, ask for an initial evaluation in writing. Your child's behaviors might stem from an unknown disability. You may also ask whether a Section 504 plan would be appropriate (see <https://doe.sd.gov/sped/section504.aspx>).



### Some Questions to Ask:

- Why is the school suspending or expelling your child?
- How long is the school suspending or expelling your child? Is it a short-term suspension? Long-term suspension? Expulsion?
- Did they talk to your child before suspending or expelling your child? Was your child given an opportunity to tell his/her side of the story before being suspended?
- Who gave the suspension or expulsion? Teacher? Principal? Superintendent? School Board?
- Does the school have any documentation about your child's behavior?
- Can the school send you any disciplinary forms or write-ups for your child's behavior?
- Did the school inform you or your child about the suspension?
  - Did they inform you by writing?
  - Did they inform you by talking to you?

If they informed you by talking to you, ask for them to provide a written document about the suspension.

- Did the school inform you or your child of the reasons that your child was going to be suspended or expelled?
  - Did they inform you by writing?
  - Did they inform you by talking to you?

If they informed you by talking to you, ask for them to provide a written document about the suspension.

- For a long-term suspension, students have the right to appeal the suspension to the school board. Once the student informs the school board of his or her appeal, the long-term suspension will be paused until the school board makes a final decision.
- However, the student can be immediately removed from school if the student poses a continuing danger to people or property, or if the student poses an ongoing threat of disrupting the academic process. Notice and Hearing will follow the suspension as soon as practicable. SDCL § 13-32-



**Question: What questions should I ask if behavior persists, but the school says my child does not qualify for supports?**

- Social adjustment/wellbeing IS a part of a student's growth progress towards successful participation in the school setting.
- If behaviors persist that result in continued parent/school engagement around the behavior, parents can ask for additional evaluations and a plan should be written.
- This can/may involve an independent evaluation if the district does not have the expertise to continue to work with the parent and child to understand, plan, manage the behavior, and assist the child towards better behavioral outcomes.



**Question: What if I disagree with the school on what should go on the IEP/BIP, my child's placement, or how my child is being disciplined?**

- Parent rights are described through the procedural safeguards afforded to them under IDEA.
- Schools must provide parents a copy of parental rights at least annually. Parents may also ask for a copy at any time (see <https://doe.sd.gov/sped/documents/parentalrights/Eng.pdf>).
- The processes for what happens next are described found in Sections XIII and XIV of the the *What Parents Should Know ... About Special Education in South Dakota* resource.
- Be sure to ask your school for the disciplinary policy.



## Question: What are the guidelines and procedures for discipline under IDEA?

### Ten Days

Unfortunately, references to “ten days” come up in several places under IDEA in the area of school discipline, each referring to a different “ten day” rule. Because it can become confusing for both parents and professionals, it is important to understand the “ten day” references and how they apply.

### What is a “Day” or “School Day”?

Before discussing the references to “ten days,” it is important to first understand what constitutes a “day”. In the school setting, most references to “days” mean “school days”. A “school day” is any day when a school is regularly in session. If one looks at a school calendar, there will be several days noted where school is not in session, such as holidays, breaks, or in-service days. Days when school is not in session are not included as “school days”.

#### Additional Information:

In South Dakota, no students may be suspended for any length of time unless: (1) the student is given oral or written notice of the charges against him or her; (2) the student is given an oral or written explanation of the facts that form the reason for the suspension; and (3) the student is given an opportunity to present his or her version of the incident. SDCL § 13-32-4.2.

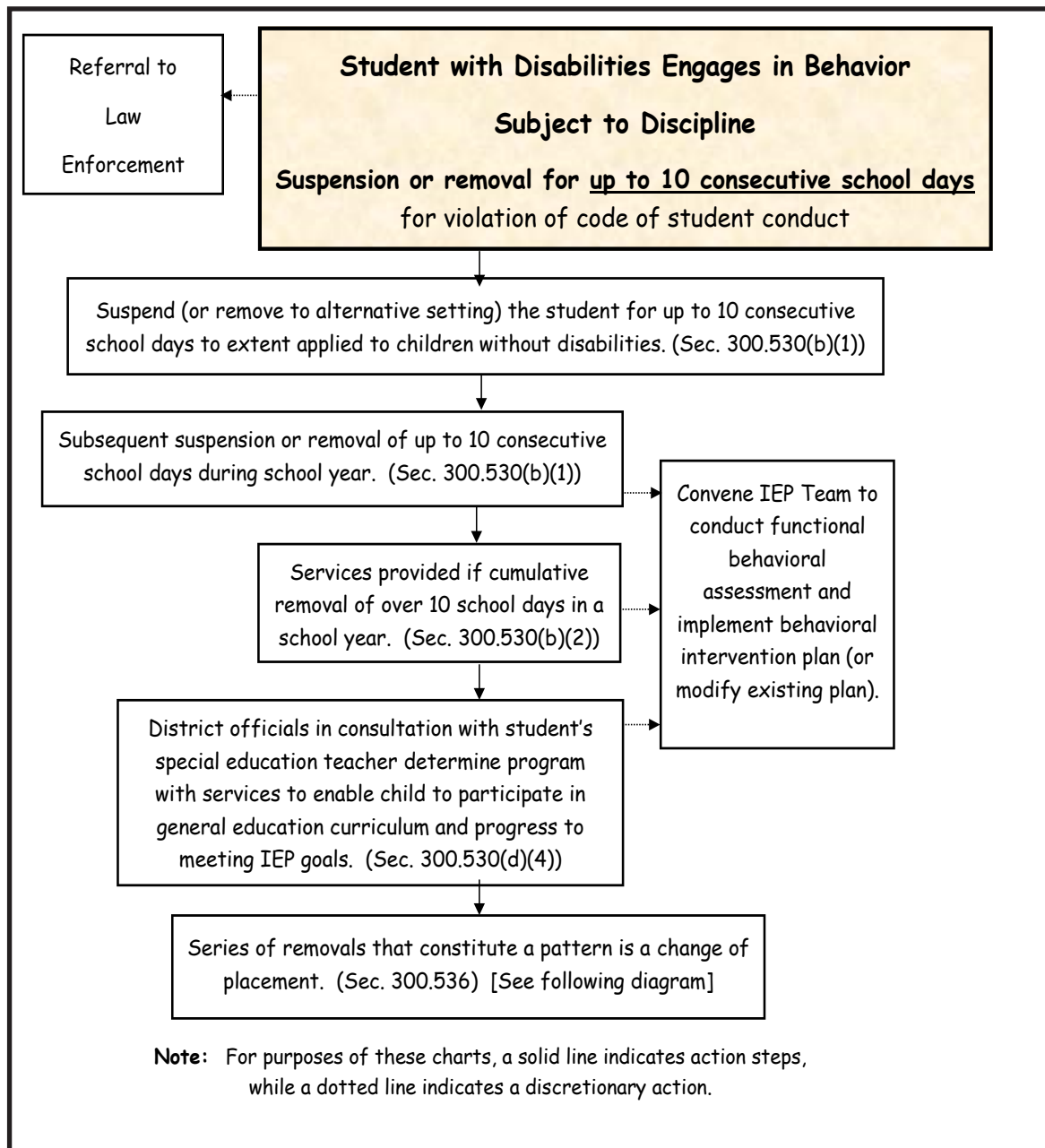
A frequently asked question is how much of a school day must a child be removed from school for disciplinary reasons for it to count as a day of suspension? The State of South Dakota’s Department of Education, Special Education Programs has looked at this question and determined, based on special education law, that if a student with a disability is removed (sent home or to an alternative site) for disciplinary reasons for any amount of time during a school day, that day counts as a school day of removal (not as a half-day, quarter-day, or any other measure of a partial day). In-school suspensions (ISS) do not count as a day of removal/suspension so long as the student is allowed to do schoolwork in the ISS setting.



The area of school discipline is very complex. Separate state and federal law procedures apply to students with disabilities. To assist with understanding the flow of events should a student be subjected to discipline, the diagrams on the following pages have been replicated from *What Parents Should Know ... About Special Education in South Dakota*. The diagrams cover short-term disciplinary removals, long-term disciplinary removals, special circumstances, and the appeals process. If you have questions about your child’s rights in this area, you are strongly encouraged to contact either South Dakota Parent Connection or Disability Rights South Dakota for more information.

## Short-Term Removal/Suspension

A principal or superintendent may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension (sent home), for up to 10 consecutive school days. A child with a disability may have additional removals of up to 10 consecutive school days for separate incidents during a school year (unless a series of removals constitute a “change of placement” as discussed in the second diagram). 34 C.F.R. § 300.530(b). The diagram below, from *What Parents Should Know ... About Special Education in South Dakota*, shows the possible outcomes from a short-term removal/suspension.



## Services after 10 School Days

Regardless of the number of short-term suspensions and the total number of days per suspension, once a child with a disability is removed for a total of 10 school days in a school year, beginning on the 11th day of removal, the school district must provide services to the child in another setting. School personnel, in consultation with at least one of the child's teachers, must determine the extent to which services are needed to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting your child's IEP goals. 34 C.F.R. § 300.530(d)(4).

## Disciplinary Change of Placement

Another potentially confusing aspect of IDEA's discipline regulations is the definition of "change of placement." One form of a change of placement is long-term suspension (removal for more than 10 consecutive school days). However, another form of "change of placement" occurs in a situation where a child has been subjected to a series of removals that constitute a pattern because -

- (i) the series of removals total more than 10 school days in a school year;*
- (ii) the behavior is substantially similar to the behavior in previous incidents that resulted in the series of removals; and*
- (iii) of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

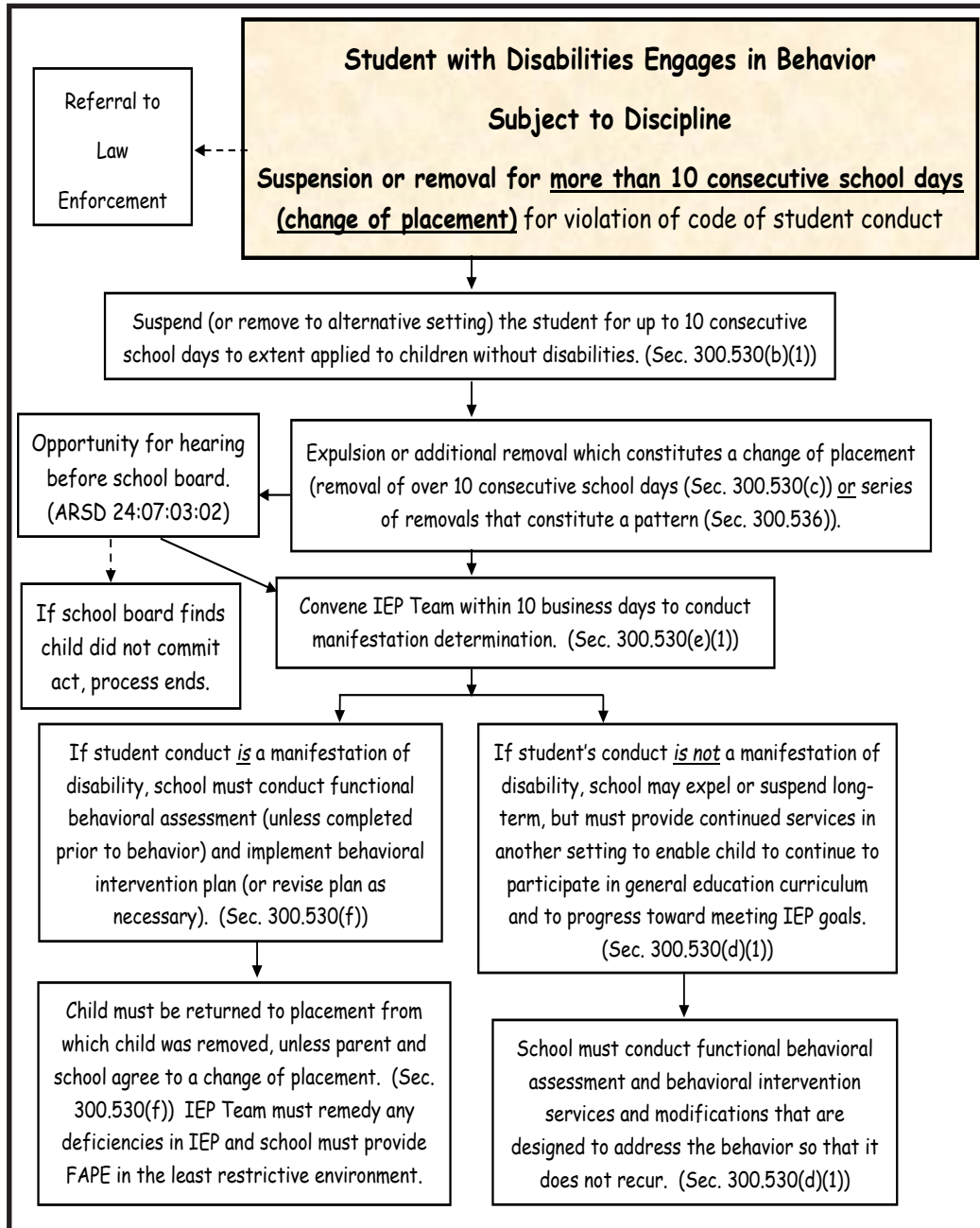
The school district may determine on a case-by-case basis that a pattern of removals constitutes a change of placement. 34 C.F.R. § 300.536.

There are no clear guidelines on how a school district is to weigh or measure these factors, other than the minimum number of non-consecutive days of suspension in a school year must be greater than 10. When a school district determines that a series of suspensions constitutes a "change of placement," the IEP Team must conduct a manifestation determination and provide services as required depending on the outcome. See Section on Manifestation Determination as described on page 20.



## Long Term Removal/Disciplinary Change of Placement

Only a superintendent or school board may suspend a student for more than 10 consecutive school days and only a school board may expel a student. When a long-term suspension (or expulsion) is imposed, children with disabilities have additional procedural rights. Parents must be notified and provided a notice of procedural safeguards. The diagram below from *What Parents Should Know ... About Special Education in South Dakota*, shows the possible outcomes from a long-term suspension/expulsion.





## Manifestation Determination

As a parent you may hear the term *manifestation determination* when dealing with behavioral concerns at school. It is important to understand the purpose of a manifestation determination and the potential outcomes for your child.

The purpose of a manifestation determination is to ensure a child with a disability is not removed from school for a lengthy period because of behaviors resulting from the disability. Within 10 school days of a decision to change the placement of a child with a disability because of a violation of a code of student conduct (e.g., long-term suspension or expulsion), the child's IEP Team must meet to 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 —

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or*
  - (ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.*
- 34 C.F.R. § 300.530(e).

If the IEP Team finds either of these criteria to be met, then the behavior was a manifestation of the disability. When the behavior in question is found to be a manifestation of the child's disability, the school must conduct an FBA, unless one had occurred prior to the behavior in question, and implement a BIP or review and revise (if needed) an existing BIP. Perhaps most importantly, unless the behavior constituted "special circumstances," the child must be immediately returned to the placement from which the student was removed. In other words, the long-term suspension is cancelled by the IEP Team. 34 C.F.R. § 300.530(f).



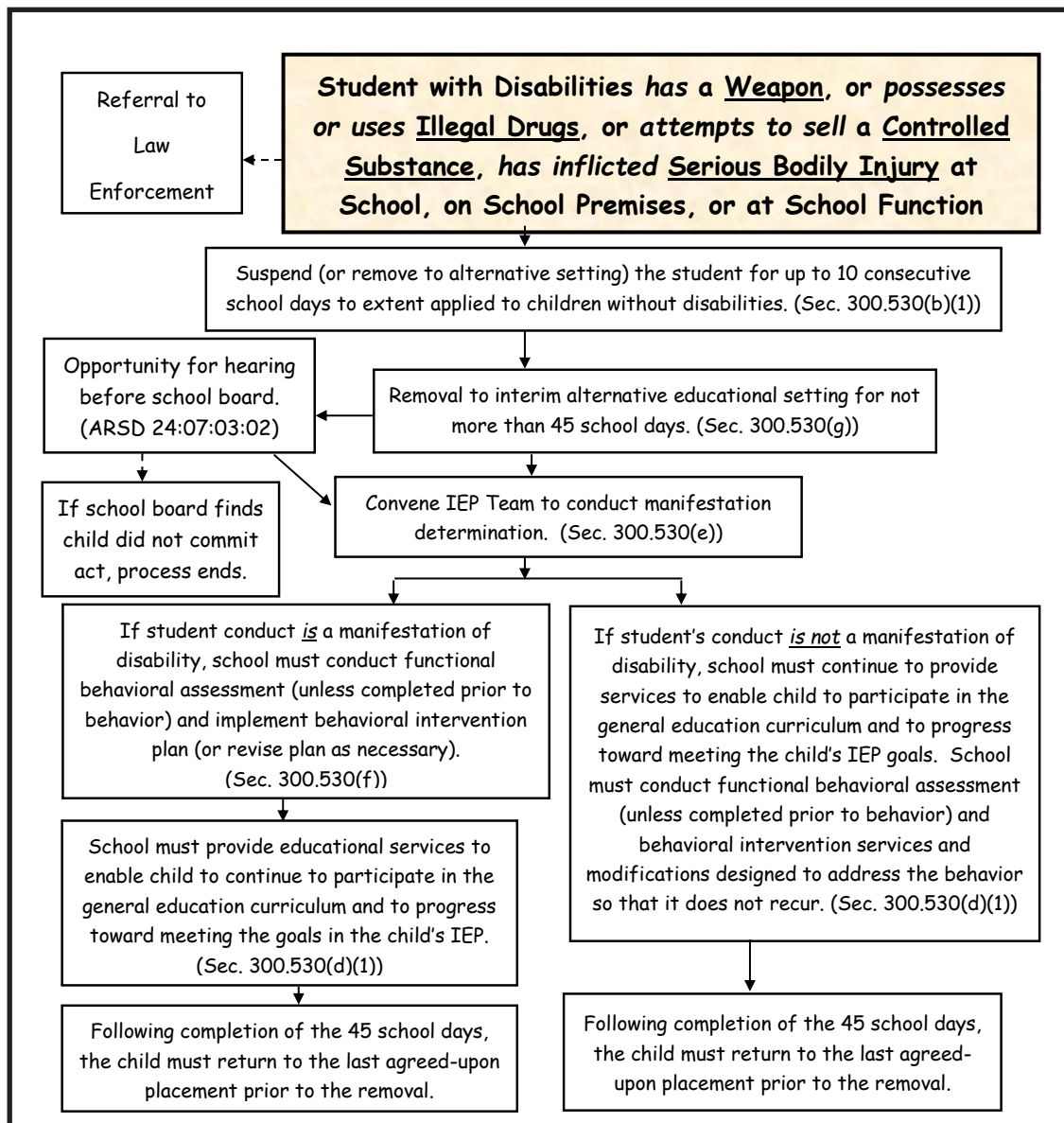
If the IEP Team determines the behavior was NOT a manifestation of the child's disability, the child may be suspended/expelled in the same manner and duration as for children without disabilities (34 C.F.R. § 300.530(c)), except that during the long-term suspension/expulsion, the child must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the child's IEP goals and receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d)(1). When children with disabilities face a long-term suspension or expulsion, it is vital to ensure the services provided at an alternative location meet these requirements.

The manifestation determination meeting is a very important step in the discipline process. Parents need to come prepared to discuss whether their child's conduct was related to their child's disability. Parents who have questions or concerns about long term removal/disciplinary change of placement or the manifestation determination process are encouraged to contact South Dakota Parent Connection or Disability Rights South Dakota for assistance.



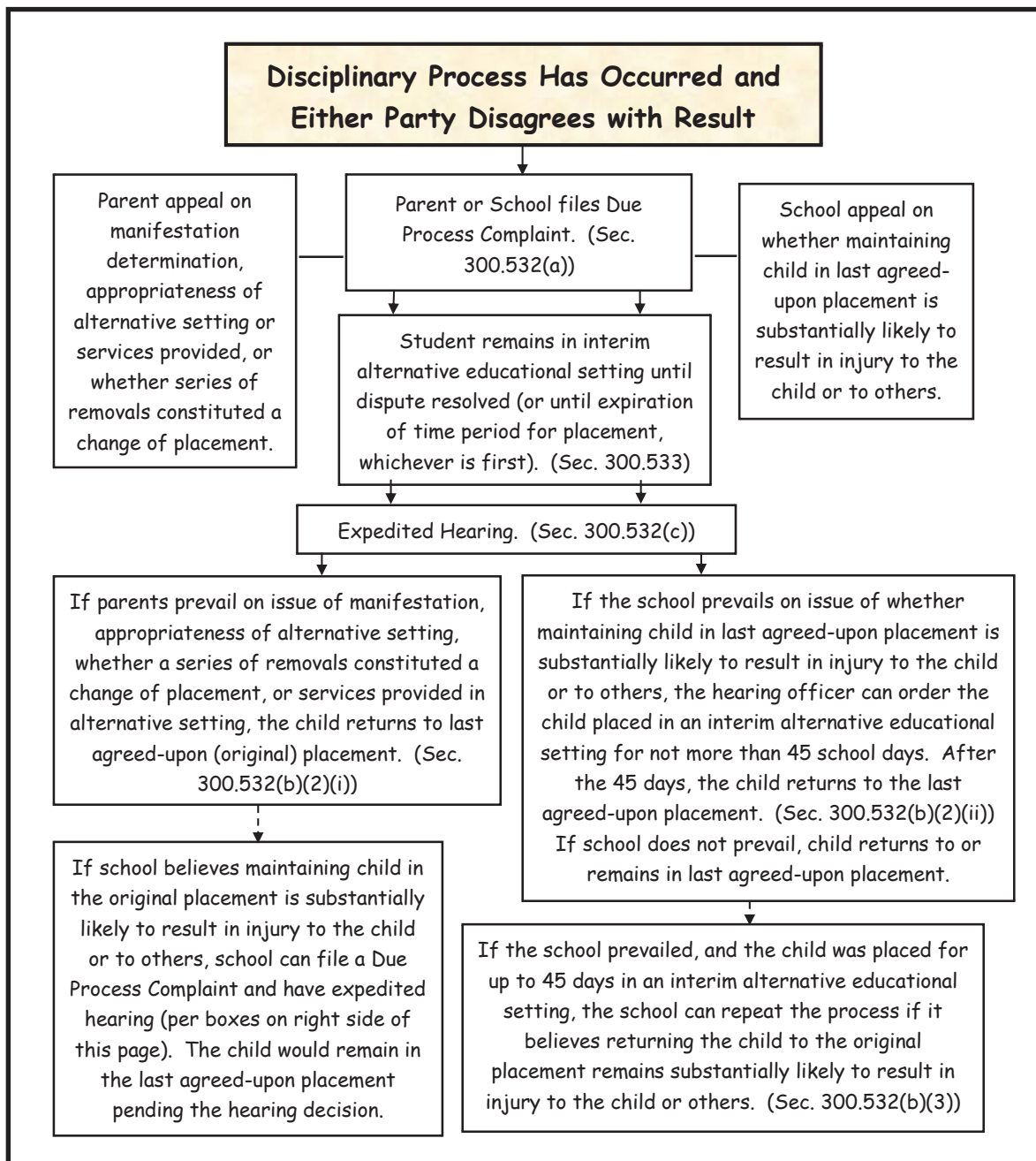
## Special Circumstances

The process for long-term suspensions described in the previous diagram is altered to an extent in certain circumstances. When “special circumstances” are found to exist, schools may remove a child with a disability to an interim alternative educational setting for up to 45 school days, even if the behavior is found to be a manifestation of the child’s disability. “Special circumstances” include the following if found to occur at school, on school premises, or at a school function under the jurisdiction of the state or local school district: If the child (1) Carries a weapon or possesses a weapon; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or (3) Has inflicted serious bodily injury upon another person. 34 C.F.R. § 300.530(g). See the following diagram from *What Parents Should Know ... About Special Education in South Dakota*, regarding special circumstances and student discipline.



## Appeals

Under IDEA, parents who disagree with decisions regarding disciplinary placements, manifestation determinations, or the appropriateness of an interim alternative educational placement may appeal by requesting a due process hearing. When behavior is found to be a manifestation of the child's disability, but the school believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the school district may also request a due process hearing. 34 C.F.R. § 300.332(a). The following diagram from *What Parents Should Know ... About Special Education in South Dakota*, further highlights the disciplinary process should you and your child's school disagree.



### **Question: What should I know about school discipline if my child is on a Section 504 Plan?**

While the Section 504 procedural safeguards do not mention child discipline, the Office for Civil Rights, under Section 504, borrows from IDEA on how to proceed. Most of the discussion above applies equally to students solely on 504 plans. Section 504 has adopted IDEA's requirements for long-term suspensions, manifestation determinations, and change of placement, as well as the right to request a hearing.

However, unlike IDEA, when behaviors are found not to be a manifestation of the child's disability, there is no requirement that such students continue to be educated in another setting during a long-term suspension/expulsion.



### **Question: When I pick my child up early due to behaviors, why should that be counted as a suspension?**

Make sure the school is counting the removal as a day of suspension. If the school district states it is “doing your child a favor” by not counting such removals as absences/suspensions, that may sound appealing on its face. However, given the requirement of providing services to children with disabilities after the 10th day of suspension in a school year, not counting such removals as suspensions delays triggering this requirement. It is doing your child no favor.

If the school is providing appropriate services to meet the child's needs, the school should not need to contact the parent to pick up the child early. If this is a frequent occurrence, request a meeting, as the level of services or staffing, the BIP, or placement may not be appropriate (See pages 4, 5, 13 and 16).

#### **Additional Information:**

Studies show suspension may have a negative effect on children. Research indicates that suspensions do not deter misbehavior. They are consistently associated with lower academic performance as children fall behind, become disengaged from school, and are at risk for dropping out.

### **Question: What if I am told my child needs a Risk/Threat Assessment?**

When a child with a disability is subject to a short or long-term removal, parents may be told the child cannot return to school until parents have a risk/threat assessment completed. When this occurs, there are several things parents must understand:

- A school district's desire for such an assessment does not stop/pause relevant timelines. A short-term suspension cannot be extended past 10 consecutive school days while waiting for an assessment. With a proposed long-term suspension, the desire for an assessment does not stop/pause the timelines for a manifestation determination.
- If the parent requests a hearing before the school board, the desire for a threat/risk assessment does not stop/pause that process. The child cannot be held out of school more than 10 consecutive school days while waiting for a threat assessment to be completed prior to a school board hearing unless it is determined the student poses a continuing danger to people or property, or poses an ongoing threat of disrupting the academic process.
- The school district must still provide services in an alternative location once a child has exceeded 10 days of suspension (consecutive or non-consecutive) in a school year.
- Furthermore, a threat assessment is an evaluation. If the school district wants the child evaluated, the district should schedule/provide/pay for the evaluation.



### **Question: What should happen once my child returns to school following a suspension?**

The student should return to his or her regular program at the level of participation prior to suspension per the student's IEP unless changes were made by the IEP Team.

Upon returning to school, a student should not be subjected to seclusion as the result of having been suspended.

### Question: What should I know about Illegal Exclusion?

The procedural safeguards described in this booklet are to protect children from being improperly removed from school. Without procedural due process protections in place, school districts could remove children for any reason at all. Not only is a child's right to an education protected by the Due Process Clause of the United States Constitution, but South Dakota Administrative Rules also provide: *"The attendance policy of a school district may not exclude a pupil from a class or from school for more than ten days without providing due process procedures pursuant to this chapter."* ARSD 24:07:03:07.

Despite having these protections in place, parents must be mindful of school districts that attempt to trample on these rights by removing children without following the law – telling parents a child may no longer attend school, but failing to take any steps to suspend or expel the child and failing to provide the required procedural safeguards.

### Question: What should I know about Shortened School Days?

Sometimes schools will shorten a child's school day for non-disciplinary reasons such as the teacher having other commitments (appointments, coaching, bus driving), or issues with bus schedules (for example, special education students leaving early so the bus driver can get back when school lets out). Shortening a child's school day for these reasons has no educational basis. These decisions have to do with staffing levels and administrative convenience and are improperly denying the child his/her education.

### Question: Can a school report a child with a disability to law enforcement?

When a child with a disability's behavior is such that it may constitute criminal behavior, IDEA does not prohibit schools from reporting that behavior to law enforcement authorities. When a school reports a crime to law enforcement, it must ensure that a copy of the child's special education and disciplinary records are provided for law enforcement to take into consideration, so long as transmitting the records is consistent with the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 300.535.

### Question: Who can I contact for help or more information?

- South Dakota Parent Connection [www.sdparent.org](http://www.sdparent.org)
- Disability Rights South Dakota [www.drdsdlaw.org](http://www.drdsdlaw.org)
- South Dakota Department of Education, Special Education Programs [www.doe.sd.gov/sped](http://www.doe.sd.gov/sped)
- Office of Special Education and Rehabilitative Services (OSERS) [www2.ed.gov/about/offices/list/osers/](http://www2.ed.gov/about/offices/list/osers/)



# Notes



# Glossary of Terms

**Antecedent:** When analyzing behavior, the antecedent is what was happening right before the behavior occurred.

**Behavior:** When analyzing a student behavior, the term Behavior means the action the student performed such as hitting, kicking, etc.

**BIP:** A Behavior Intervention Plan (BIP) is a written plan to help children whose behavior is interfering with participation and learning in the regular classroom environment. The aim is to teach and reward appropriate behavior and prevent or stop inappropriate behaviors.

**Change of Placement:** A change of placement occurs if a student is removed from his/her education placement for more than 10 consecutive school days, or removes a student from his/her education placement on several occasions that add up to more than 10 school days that constitutes a pattern of exclusion from school.

**Consequence:** In a functional behavior assessment, the term consequence means what happened immediately following the behavior.

**Continuum of Placement Options:** The Continuum of Placement Options includes a spectrum of placements where an IEP can be implemented. It ranges from less restrictive such as in the general education setting with monitoring services to more restrictive such as homebound. Placement is made by the IEP team.

**Educational Cooperative:** Educational Cooperatives consist of a group of school districts joined together to form an educational service unit. The Cooperative functions to enhance educational services and opportunities for students in member districts.

**Expulsion:** The action of the school board that terminates a pupil's membership in school for not more than 12 consecutive months.

**FAPE:** Students with disabilities have a legal right to a Free Appropriate Public Education (FAPE) under IDEA and Section 504 of the Rehabilitation Act. Schools are required to provide FAPE in the least restrictive environment, at no cost to the child's parents.

**FBA:** A Functional Behavioral Assessment (FBA) is an approach to figuring out why a student behaves a certain way. It uses methods to understand what is behind behavior challenges and assist in determining supports to help students with behaviors that interfere with learning.

**IDEA:** The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities through special education and related services.



**IEP:** An Individualized Education Plan (IEP) is a document that describes the program of special education instruction, supports, and services students need to make progress and thrive in school. It is designed to meet the unique needs of a student identified as having a disability under IDEA.

**Long-Term Suspension:** The exclusion of a pupil by the superintendent or school board from a class or classes or from school for more than 10 but not more than 90 school days.

**LRE:** Least Restrictive Environment (LRE) is the requirement in federal law that students with disabilities receive their education, to the maximum extent appropriate, with non-disabled peers and that special education students are not removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily.

**Manifestation Determination:** A Manifestation Determination is a process, required by IDEA, which is conducted when considering the exclusion of a student with a disability that would result in a change of placement. It involves reviewing all relevant information to determine if there is a relationship between the child's disability and behavior.

**OCR:** The Office for Civil Rights (OCR) enforces federal civil rights laws that protect the rights of individuals from unlawful discrimination on the basis of race, color, national origin, disability, age, or sexual orientation.

**Parent:** A parent, guardian, or person in charge of a student.

**Policy:** A rule, regulation, or standard enacted by a school district board.

**Risk Assessment:** A school may request that a student be given a risk assessment to determine if the student's behavior is a risk to him/herself or others.

**RTI:** Response to Intervention (RTI) is a multi-tiered approach to the early identification of students with learning and behavior needs. It involves using an array of strategies for implementing and evaluating education intervention used in schools. It helps distinguish between students whose achievement challenges are due to instructional practices in the classroom and those for whom special education services may be warranted.

**SAT/TAT:** Student Assistance Teams (SAT) or Teacher Assistance Teams (TAT) as they are sometimes called, are a team made up of the student's parent, (\* Depending upon your school districts practices.) a school administrator, a current teacher, and other appropriate professionals whose job it is to help when there are concerns for a student's learning. It is a positive problem-solving process that generates ideas and strategies to help the student be more successful in the general education curriculum.

**Section 504:** Section 504 is a federal law designed to protect the rights of individuals with disabilities. It is part of the Rehabilitation Act and prohibits discrimination based upon disabilities. Students with disabilities who do not qualify for an IEP may receive accommodations under a Section 504 plan.

**Short-Term Suspension:** The exclusion of a student by a principal or superintendent from a class or from school for not more than 10 school days.

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For copies of this resource or for additional assistance contact:



Disability Rights South Dakota is the non-profit legal services agency dedicated to protecting and advocating for rights and inclusion of South Dakotans with disabilities.

**[www.drSDLaw.org](http://www.drSDLaw.org) | 1-800-658-4782**

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South Dakota Parent Connection provides resources for families of children with disabilities and special health care needs; individual assistance and workshops; connects families to programs at the state and national level; and helps parents and schools navigate the special education process, all at no cost to families.

**[www.sdparent.org](http://www.sdparent.org) | 1-800-640-4553**



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