You may have heard about something called the “ten day” rule and been told that it limits the number of days that a child with disabilities can be suspended from school. While there is some truth to that, the whole truth is far more complicated. Here are nine things that are important to know about the so-called “ten day” rule and the laws governing the suspension of students who are eligible for Individualized Education Program (IEP) services under the Individuals with Disabilities Education Act (IDEA).

There really is no such rule. As long as school districts are not discriminating on the basis of disability, they have the right to suspend students entitled to IDEA services for more than ten days during a school year. There is no rule that provides absolute protection against long-term suspension for behaviors that violate school disciplinary policies, but the IDEA does provide some important procedural safeguards for students with disabilities.

There are procedural steps the school must take if a suspension is for more than ten consecutive days. If a school district suspends a student with an IEP for more than ten consecutive days, it must treat the suspension as a change of placement. Before a change of placement is made, certain procedural steps have to be followed: 1) Prior notice must be given to the parents, and 2) there must be a manifestation conference (sometimes called a manifestation determination) held to determine if the conduct that the student is being suspended for was a manifestation of the child’s disability.

If the eleventh day of suspension is not consecutive, there is a question – not a rule. If an IDEA-entitled student is suspended for less than ten days, but more than once during the school year, so that the total number of days of suspension exceeds ten, there may or may not be a change of placement that would trigger parental notice and a manifestation conference. So is the suspension a change of placement? The answer to that question depends on whether or not the series of suspensions “constitute a pattern” based on “factors such as the length of each removal, the total amount of time the child is removed, and the proximity (in time) of the removals to one another.” This is a subjective determination and parents and schools may not agree on how the factors apply. Then what?

If the eleventh day of suspension is not consecutive, parents need a better answer. If you don’t see eye to eye with the school on whether or not the suspension is a change of placement, you have several options. One is to request a due process hearing and present the facts to an Administrative Law Judge to make a ruling. The biggest drawback to pursuing a hearing is that the process takes time and the ruling happens after the student has been out of school. This creates a “Catch-22” for the school district, because they will not know if the eleventh day of suspension has triggered the need for parental notice and a manifestation conference until after a judge has decided the question. It also creates a “Catch-22” for parents because if the school district takes the position there is no change in placement and proceeds without notice, parents are not afforded the protection of the manifestation determination. Meanwhile, the student is out of school.

A better answer is to focus on the needs of the student in one of the following ways:

Request a new evaluation. You do not have to wait three years for a re-evaluation of your child. You can request a new evaluation any time there is a good reason to do so. If your child is being repeatedly suspended from school, there is a good reason to request a new evaluation. The evaluation questions should include: 1) is the conduct that is getting my child suspended a manifestation of my child’s disability? In other words, can a clear link between some aspect of the child’s disability and the cause of the behavior be identified? And 2) is the current educational program (IEP) appropriate to my child’s behavioral needs? In other words, can the behavior be attributed to a need for...
services or supports that are not currently included in
the child’s IEP but should have been?

**Call for an IEP meeting.** If your child has been
suspended several times, request that the IEP team meet
to consider whether the educational program and
behavioral supports are appropriate. Whether or not the
suspensions constitute a change in placement, it is a
good idea to review the IEP and determine if it should be
revised to better support your child’s behavioral needs.

**If your child is suspended, insist on educational services
from and after the eleventh day.** While the IDEA
permits removal of the child from his or her usual
educational environment for more than ten days, it also
mandates the continuation of educational services.
According to the U.S. Office of Special Education
Programs, “For a child who has been removed from his or
her current placement for more than ten (10) school
days in a school year, the [school district] must provide
services to the extent necessary to enable the child to
appropriately progress in the general curriculum and
appropriately advance toward achieving the goals set out
in the child’s IEP.” Even if the child is not allowed to
return to his or her previous placement (classroom or
school), the school district must offer educational
services at home or in another alternative setting that
implement the child’s IEP. As a parent, you can work with
the IEP team to make that happen.

**Don’t wait, intervene early.** Take steps to address
behavioral issues as soon as you recognize them. You
don’t have to wait until the eleventh day of suspension
to request a new evaluation or call for an IEP meeting.
Keep focused on your child’s needs and how you can
continue to work with the school district to best meet
those needs. You have an opportunity to identify the
issues that are leading to suspensions or other
disciplinary actions and work with the other members of
the IEP team to address them as soon as you recognize
that they exist.

**Not all behavior is found to be linked to the student’s
disability.** You should also know that if a manifestation
conference results in a finding that the student’s
behavior was not a result (or manifestation) of his or her
disability, the student can be suspended for more than
ten days or even expelled. If a student is removed from
school (or the usual educational placement) for more
than ten days, the IDEA requires that the IEP team
complete a functional behavioral assessment and
implement a behavior plan. There are also special
provisions for IDEA-entitled students if the discipline
involves weapons or drugs. “A special education student
who brings a weapon to school or possesses, uses, sells
or solicits the sale of drugs at school or during a school
function can be removed for up to 45 days without
parental agreement.” A student who is removed under
these circumstances is entitled to an alternative
educational placement during the 45 days. The IDEA also
requires that the IEP team develops a behavior plan for a
student whose behavior interferes with his or her
learning or the learning of others.

Remember, the IDEA provides a variety of tools for
parents to utilize in advocating for their child. The
manifestation determination is one tool that provides
important protections when behavioral issues lead to
educational suspension. By the time the student has
been suspended, however, the stakes (and the stress
level for everyone) are pretty high. As soon as you
recognize an issue that might lead to disciplinary action,
you can use some of your other IDEA tools to problem-
solve with your IEP team, request new evaluation
information, or review and revise your child’s IEP to
provide more behavioral support. By acting early, you
may be able to solve the problem and avoid suspensions.

**Related Resources**

Look for the following information sheet on [www.ask
resource.org](http://www.askresource.org)

- Manifestation Determinations
And view information about Functional Behavior
Assessment from [www.pacer.org](http://www.pacer.org).

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**ASK Essential Questions**

- Does my child’s behavior plan address the
  behaviors resulting in suspension?
- Are the school staff trained on how to use my
  child’s behavior plan?
- Has the IEP team consulted with the Challenging
  Behavior Team?