

Change of Placement for Drugs, Weapons, or Dangerous Behavior Interim Alternative Education Setting

Are my child's rights different for drugs if he/she is accused of a drug or weapons offense as opposed to some other violation of school rules? YES! The protections afforded to children receiving special education and related services who are disciplined for non-drugs and weapons offenses do not apply when the school plans to discipline a child for "serious bodily injury", drugs and weapons offenses. The school does not have to go through the manifestation determination review it would normally undergo before changing the child's placement for some other violation of school rules.

Can the school change my child's placement if the school accuses him/her of a drug or weapons offense? YES! The school administration may remove a child with a disability from his educational placement for not more than 45 days - no manifestation determination required.

What types of drug or weapons offenses are we talking about?

1. Carrying a weapon to school or to a school function, or
2. Knowingly possessing or using illegal drugs or selling or soliciting the sale of a controllable substance while at school or a school function.

***It does **not** include, for example, a child's threat "I have a knife in my pack and I'm going to hurt you", if the child has no knife in his/her pack. While this is most likely a violation of some other school rule, it is not a drug or weapons offense under IDEA.

"Controlled substance" means those substances identified in schedules I, II, III, IV or V in section 202 of the Controlled Substances Act, such as marijuana and heroin. "Illegal drug" means a controlled substance, but does not include a substance legally possessed or used under the supervision of a licensed health care professional.

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Exactly how long can the school remove my child from his/her placement? The school may remove the child from his educational placement for up to 45 days, but the removal must be for the **same amount of time** that a child without a disability would be removed for the same conduct.

Can the school just send my child home with no educational services? NO! The school must place the child in an interim alternative educational setting and address the behaviors that got the child there.

What is an interim alternative educational setting? The interim alternative educational setting (“IAES”) is a placement that allows the child to continue to progress in the general curriculum and to continue to receive those services and modifications that will enable the child to meet the goals set out in his IEP. The IEP team determines the interim alternative educational setting. If the IEP team and parent do not agree on the IAES, then the parent may ask for a hearing. The child stays in the IAES until the hearing officer makes a decision. The school cannot place the child in an IAES for reasons other than a drug or weapons offense. However, a hearing officer can place a child in an IAES, after a hearing, if the hearing officer determines that maintaining the child in his currently placement is substantially likely to result in injury to the child or others.

For additional information call:

Disability Rights New Mexico (DRNM) (Formerly P&A)
(505) 256-3100 or (800) 432-4682

Families-Advocacy, Support, and Access Project (Families-ASAP)
(505) 292-7414 or (888) 292-7415

Parents Reaching Out (PRO)
(505) 247-0192 or (800) 524-5176

New Mexico Family Network (Formerly PBDC)
(505) 265-0432 or (800) 273-7232

Educating Parents of Indian Children with Special Needs (EPICS)
(505) 767-6630 or (888) 499-2070