

# SmartStart: In-School Suspensions

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This SmartStart is updated with references to the IDEA 2004 statute, the 2006 IDEA Part B regulations, and the 2008 amendments to the Part B regulations.

## Overview

In-school suspension (ISS) occurs when the district suspends a student during the course of the school day without the student leaving the school campus. It is a popular and often effective alternative to the out-of-school exclusion. It can even be included as a behavioral intervention in a student's IEP. Typically, ISS involves the student going to another room in the school building to serve this disciplinary sanction for all or part of a school day. However, many legal and individualized considerations arise when using this disciplinary technique.

## Key Points

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

### EDUCATION DEPARTMENT POLICY TOWARD ISS

- It has been the Education Department's "long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 CFR 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in 34 CFR 300.536." 71 Fed. Reg. 46715 (2006).
- "The determination as to whether an in-school suspension or bus suspension counts as a day of suspension under 34 CFR 300.530 depends on the unique circumstances of each case." 71 Fed. Reg. 46715 (2006).

### NECESSARY PROCEDURAL SAFEGUARDS -- IDEA

- Under 20 USC 1415(k)(1)(B), school personnel "may remove a child with a disability who violates a code of student conduct from [his] current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities)."
- Schools may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. 20 USC 1415(k)(1)(A).
- 20 USC 1415(k)(1)(C) explicitly requires the continuation of services to all students with disabilities removed from school for more than 10 school days, referencing the FAPE provision of 20 USC 1412(a)(1). However, the provisions of 20 USC 1415(k)(1)(B) allowing removal for not more than 10 school days do not incorporate the FAPE requirement.
- An in-school suspension lasting less than 10 days therefore does not trigger the procedural safeguards of the IDEA. *See, e.g., OSEP Memorandum 97-7, 26 IDELR 981 (OSEP 1997).*
- Schools need not provide services to a child with a disability during periods of removal from a current placement for 10 days or less if services are not provided to a child without disabilities who has been similarly removed. 34 CFR 300.121(d)(1); *Letter to Miller, 30 IDELR 817 (OSEP 1997).*
- An ISS that lasts more than 10 school days also does not trigger the IDEA due process requirements, assuming the ISS placement meets three factors. As set out by the ED in comments accompanying the publication of the 2006 final regulations, a day of ISS placement is not considered the same as a day of removal if:
  1. The student is afforded the opportunity to continue to appropriately progress in the general curriculum.
  2. The district continues to provide the services specified in the student's IEP.
  3. The student continues to participate with nondisabled students to the same extent as he does in his current placement.

71 Fed. Reg. 46,715 (2006). If the student assigned to ISS does not receive educational services during that period, then the sanction is the equivalent of an exclusion from school. *Big Beaver Falls Area Sch. Dist. v. Jackson, 19 IDELR 1019 (Pa. Commw. Ct. 1993).*

### BUS TRANSPORTATION AND ISS

- Whether a bus suspension would count as a day of suspension depends on whether the bus transportation is a part of the child's IEP. If the bus transportation was a part of the child's IEP, a bus suspension would be treated as a suspension under 34 CFR 300.530 unless the public agency provides the bus service in some other way, because that

transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is *not* a part of the child's IEP, a bus suspension is not a suspension under 34 CFR 300.530. 71 Fed. Reg. 46,715 (2006).

## PROCEDURAL DUE PROCESS

- An ISS generally involves the removal of a student from his regular classroom, placing him in an isolated classroom where he performs assigned classwork under supervision and has access to his regular teachers, if needed. Under the scenario described, the student has not been deprived of educational services. See, e.g., *Wise v. Pea Ridge Sch. Dist.*, 107 LRP 64097, 855 F.2d 560 (8th Cir. 1988) (student who received educational services in an amply sized and well-equipped ISS room did not suffer any deprivation of his constitutional rights).
- Nonetheless, there seems little reason to deny rudimentary due process to any student assigned to ISS. See, e.g., *Orange v. County of Grundy*, 106 LRP 62415, 950 F. Supp. 1365 (E.D. Tenn. 1996) (district conceded that students were entitled to notice and hearing under *Goss* standards prior to imposition of ISS of 10 school days or less).

## FEDERAL CONSTITUTIONAL LIMITATIONS IN ISS PROGRAMS

- The Constitution limits how a district designs and implements its ISS program. According to one federal District Court, students are still entitled to reasonable facilities and conditions even when they are isolated from their classmates in the course of serving an ISS. See *Orange v. County of Grundy*, 106 LRP 62415, 950 F. Supp. 1365 (E.D. Tenn. 1996) (recognizing that placing young children in isolation for an entire school day without access to lunch or a toilet facility "shocks the conscience" and that even when isolation is an appropriate form of punishment of convicted criminals, it violates the Eighth Amendment to deny them basic necessities of life, such as food or access to toilet facilities).
- Certain in-school disciplinary techniques may give rise to a violation of substantive due process claims under the Constitution. For example, a district's disciplinary actions, when considering the particular student, may be so demeaning that they violate the student's due process rights. See, e.g., *Gerks v. Deathe*, 20 IDELR 869 (W.D. Okla. 1993).
- While there is no maximum length a time-out can last, professional standards dictate that the duration should be reasonable in light of such factors as the student's age, emotional status, and the reason for initiating the time-out. See, e.g., *New Mexico Pub. Educ. Dept.*, 105 LRP 44663 (SEA NM 02/25/05).

## CONTINUATION OF SERVICES

- If the student assigned to ISS does not receive educational services, then the sanction is the equivalent of an exclusion from school. See, e.g., *Big Beaver Falls Area Sch. Dist. v. Jackson*, 19 IDELR 1019 (Pa. Commw. Ct. 1993). Excessive time-outs may unacceptably reduce the amount of time the student spends in his educational program. See, e.g., *Marion County (FL) Sch. Dist.*, 20 IDELR 634 (OCR 1993).
- The district in *China Spring Independent School District*, 110 LRP 36343 (SEA TX 04/30/10), prevailed because it had provided a student who had ADHD, a mood disorder, and ODD with appropriate assignments and accommodations during ISS.
- OCR determined that an Ohio district violated Section 504 of the Rehabilitation Act when it failed to provide supplemental services to a student with ADHD when he was serving in-school suspensions. The student missed two supplemental support periods. The district entered a resolution agreement in which it agreed to provide staff with a copy of the IEPs and Section 504 plans of students with disabilities serving in ISS and that they are notified of services that those students must receive while in ISS. *Westerville (OH) City Sch. Dist.*, 112 LRP 37564 (OCR 05/18/12).

## FORMS AND TECHNIQUES

- Different techniques used in ISS may include the use of study carrels, time-out, detention, or the restriction of privileges. See [SmartStart: Time-Out](#).
- In *Norwalk (VA) City Public Schools*, 46 IDELR 21 (OCR 2005), OCR found a district violated Section 504 by failing to implement the plan of a student with ADHD during his in-school suspension. OCR found the ISS teacher was unaware the student had a 504 plan and as a result did not implement any accommodations. The agency also discovered the strategies the ISS teacher did use exacerbated the student's inability to complete his work and compounded his behavioral difficulties.

## IEPS AND BEHAVIORAL INTERVENTION PLANS

- Districts should specify the in-school disciplinary treatment administered to a student with a disability in the student's IEP, assuming the student has a behavioral intervention plan (BIP). See [SmartStart: Behavioral Intervention Plans](#). Not every student with a disability who engages in misconduct needs a BIP. When an IEP team determines that a student does not need such a plan to make educational progress, then in-school disciplinary measures need not be included in the student's IEP and can be used as warranted, as long as their use is not inconsistent with a student's IEP. (*North Kansas City (MO) #74 Sch. Dist.*, 16 IDELR 758 (OCR 1990).
- ISS can appropriately be available in the continuum of available behavioral interventions in a student's IEP. See, e.g., *Northside Indep. Sch. Dist.*, 105 LRP 20152 (SEA TX 04/11/05); and *Fennville Pub. Schs.*, 44 IDELR 290 (SEA MI 2005) (evidence offered at a due process hearing showed a Michigan district treated a middle schooler with an undisclosed

disability similarly to students without disabilities, attempted to keep him in school, and continued to provide the services identified in his IEP during his removals. Therefore, the district did not change the student's placement. The student's disruptive, defiant, and sometimes violent behavior resulted in detentions, meetings with the principal, and in-school suspensions).

- Noting that placing a student in ISS for a day for using profanity was consistent with the terms of a student's BIP, the Nevada ED determined that the disciplinary action complied with the IDEA. *Lyon County Sch. Dist.*, 115 LRP 3779 (SEA NV 11/07/14).

## NECESSARY PROCEDURAL SAFEGUARDS -- SECTION 504

- As under the IDEA, the Section 504 standard for determining if a long-term ISS constitutes a significant change in placement (and triggers the procedural safeguards) is whether the nature and quality of the services provided to students with disabilities in the ISS program are comparable in nature and quality to the services the students otherwise receive. *Greenville County (SC) Sch. Dist.*, 17 IDELR 1120 (OCR 1991); *Chester County (TN) Sch. Dist.*, 17 IDELR 301 (OCR 1990).
- If the district is merely providing custodial care during the ISS, then it will be a significant change in placement for purposes of Section 504, to the same extent as an out-of-school suspension (or series of suspensions) of the same length. See, e.g., *Chester County (TN) Sch. Dist.*, 17 IDELR 301 (OCR 1990) (finding no violation of Section 504 in connection with the imposition of in-school suspensions for more than 10 days upon students with disabilities where they were assigned to a classroom with a qualified special education teacher and received academic coursework and assignments in accordance with their IEPs).

## DISCRIMINATORY DISCIPLINARY POLICIES -- SECTION 504

- A district's disciplinary policies may be discriminatory under 34 CFR 104.33 when a district imposes sanctions under a uniform disciplinary policy for misconduct that is related to a student's disability. Discrimination may also occur when the student with a disability is penalized in a different (typically harsher) manner than a nondisabled student would be penalized for the same offense. *Hopewell (VA) Pub. Schs.*, 21 IDELR 189 (OCR 1994).
- Although a middle schooler with disabilities received a harsher sanction than her nondisabled classmate when the two acted out in class, OCR found insufficient evidence of disability discrimination. OCR found that the student's history of disciplinary referrals, coupled with the relative severity of her classroom misconduct, justified her one-day placement in ISS. *Lawrence County (AL) Sch. Dist.*, 52 IDELR 201 (OCR 2009).

## Links

- [SmartStart: Long-Term Suspensions -- Special Considerations \(Section 504\)](#)
- [SmartStart: Long-Term Suspensions -- Special Considerations \(IDEA\)](#)
- [SmartStart: Miscellaneous Disciplinary Techniques](#)
- [SmartStart: Transportation -- Suspensions From the School Bus](#)
- [SmartStart: Due Process Requirements for Short-Term Suspensions \(General Student Population\)](#)
- [In-school Suspensions: What IDEA and/or Section 504 protections are available for in-school suspensions?](#)

## Additional Resources

Additional resources on this topic are available for purchase from LRP Publications:

- [Short-term Suspensions and Patterns of Disciplinary Removal: Making Sense of IDEA and Section 504 Rules](#) by John W. Norlin, Esq.
- [Suspending and Expelling Students With Disabilities: The Legal Dos and Don'ts](#) presented by Jose Martin, Esq.
- [Discipline Dilemmas: Your Guide to Avoiding the Top IDEA and Section 504 Mistakes](#) by Donald Y. Yu, Esq. and Andrew Tatgenhorst, Esq.
- [Students Behaving Badly: Top 10 Compliance Strategies for Disciplining Students With Disabilities](#) presented by Melinda Jacobs, Esq.
- [What Do I Do When ...@ The Answer Book on Discipline -- Fourth Edition](#) by John W. Norlin, Esq.

Please share your experience and expertise. Forward any suggested additions or changes to this or other Smart Starts to [SmartStarteditor@lrp.com](mailto:SmartStarteditor@lrp.com).

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