

DISCIPLINING STUDENTS WITH DISABILITIES (IDEA)

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All procedures set forth in the “Student Suspension” policy and the “Student Expulsion” policy will be followed when it is necessary to discipline students with disabilities as defined by the Individuals with Disabilities Education Act (IDEA). The following additional procedures will also be adhered to when disciplining students with disabilities.

SUSPENSION

School personnel may order a suspension of a student with disabilities for not more than ten (10) school days to the extent suspension would apply to students without disabilities. A student may also be placed in an appropriate interim alternative educational setting or in another setting for not more than ten (10) school days.

The IEP Team may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five (45) days if:

1. The student carries a weapon to school or to a school function. “Weapon” for the purposes of this policy is defined as any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. This term does not include a pocketknife with a blade of less than two and one-half (2 ½) inches in length.
2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

School personnel may request a change in placement to an appropriate interim alternative educational setting from a hearing officer for not more than forty-five days if it is determined by personnel that a student with disabilities is substantially likely to cause injury to himself or herself, or others in the current educational placement.

Removing a child with disabilities from the child’s current education placement for not more than 10 school days does not constitute a change of placement under the Part B regulation. A series of removals from a child’s current education placement in a school year, each of which is less than 10 school days but cumulate to more than 10 school days in a school year, may constitute a change in placement if, in any given case, factors such as the length of each removal, the total amount of time that the child is removed, and the proximity of the removals to one another lead to the conclusion that the child has been excluded from the current placement to such an extent that there has been a change of placement.

If the child with a disability is removed from the child’s current education placement for 10 school days or fewer in a given school year, and no further removal or disciplinary action is contemplated, the following activities need not be conducted.

If a student with a disability is suspended for ten (10) school days or more, the following will occur within ten (10) days after taking the disciplinary action:

1. If school personnel have not conducted a functional behavioral assessment and implemented a behavioral intervention plan for the student prior to the behavior that resulted in the interim alternative educational setting, an IEP Team meeting will be convened to develop an assessment plan to address the behavior; or
2. If the student has a behavioral intervention plan, the IEP Team will review the plan and modify it, as necessary to address the behavior;
3. The IEP Team shall conduct a manifest determination.

When a child is removed from the regular placement for 10 school days or fewer and no further removal or disciplinary action is contemplated, the building principals or EES teacher should review as soon as possible the circumstances surrounding the behavior that led to the child’s removal and consider whether the child was being provided services in accordance with the IEP, and whether the behavior could be addressed through minor

classroom or program adjustments or whether the child's IEP team should be reconvened to address possible changes in the IEP

MANIFEST DETERMINATION

Prior to submitting an expulsion recommendation to the board, the IEP Team must make a "manifest determination." A manifest determination must be made within ten (10) school days after the date on which a decision was made to recommend a change in placement (i.e., expulsion). A manifest determination involves a review of the relationship between the student's disability and the behavior subject to the disciplinary action. The IEP Team may determine that a student's behavior was not a manifestation of the student's disability only if the Team:

1. First considers, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - a. Evaluation and diagnostic results, including such results or other relevant information supplied by the parents or guardians of the student;
 - b. Observations of the student; and
 - c. The student's IEP and placement.
2. After considering the relevant information, the IEP Team must then determine that:
 - a. In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
 - b. The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and
 - c. The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

STAY PUT

If the parent/guardian of the student files a due process hearing request under the provisions of the IDEA, the student must "stay put" in the current placement. An exception to the stay put requirement occurs when a student has been placed in a forty-five-day (45-day) interim alternative educational setting for a weapon violation or by a hearing officer. The student remains in the forty-five-day (45-day) interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the forty-five (45) days, whichever occurs first, unless the parent/guardian and this district agree otherwise.

DUE PROCESS HEARING

If the parent/guardian and this district do not agree to a temporary placement, the student will remain in his or her placement prior to the interim alternative educational setting until the issues presented at the due process hearing are decided. This district will always have the discretion to petition a court for an injunction if it is determined that the student is too dangerous to return to the school setting and that the issue cannot be resolved by requesting an expedited due process hearing.

EXPULSION

If a student on an Individualized Education Program (IEP) is expelled from school after a proper manifest determination has found that the student's behavior was not a manifestation of the student's disability, educational services must continue to be provided to that student at an alternative setting.

If a student in this district has not been determined eligible for special education and related services, and the student has engaged in behavior that violated any policy of this district the student may assert any of the protections set forth

in this policy if the district has knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. "Knowledge" is defined as:

1. The parent/guardian of the student has expressed concern in writing (unless the parent is illiterate or has a disability and cannot set forth the concern in writing) that the student is in need of special education and related services;
2. The behavior or performance of the student demonstrates the need for such services;
3. The parent/guardian of the student has requested an evaluation of the student; or
4. The teacher of the student, or other school district staff, has expressed concern about the behavior or performance of the student to the director of special education or other educational staff.

If the district has no knowledge, as defined above, and a request is made for an evaluation of a student during the time period the student is subjected to disciplinary actions for (1) bringing a weapon to school, or (2) for knowingly possessing or using illegal drugs, or (3) for selling or soliciting the sale of a controlled substance while at school or a school function, an evaluation will be conducted in an expedited manner.

Pending the results of an evaluation, the student will remain expelled. If the student is determined to have a disability, a manifest determination will be conducted to determine if the behavior resulting in the expulsion was a manifestation of the student's disability. If an IEP Team determines that the behavior was a manifestation of the student's disability, the expulsion by this board will be set aside, and the student will be placed in an appropriate educational setting, as determined by his or her IEP Team.

LEGAL REFERENCE:

IDEA Amendments of 1997

20 USC Charter 33, Section 1415(k)

Honig v. Doe, 484 U.S. 686, 108 S.Ct. 592 (1988)

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