

## **DISCIPLINE OF STUDENTS WITH DISABILITIES** ***(Students Eligible for Special Education Services)***

The following procedure is intended to give guidance to district personnel when disciplining students who are eligible for special education services under state and federal law and relevant regulations. This procedure is not intended to replace adequate training and the guidance of the special education director. The special education director or designee must be contacted when a student receiving special education services is suspended from school or school services. Current law will govern and may supersede this procedure.

### **Definitions**

*Short-Term Suspension* – Suspension for ten (10) school days or fewer of a student receiving special education services who violates a code of student conduct, but only to the extent that such an alternative is applied to students without disabilities. In-school suspension is not usually considered a “suspension” under this procedure unless the student is not receiving the necessary special education services while in that setting or unless it occurs so frequently that it constitutes a change in placement.

*Long-Term Suspension or Expulsion* – Suspensions in excess of ten (10) consecutive school days, or suspensions in excess of ten (10) school days cumulatively in a school year where a pattern of suspension is created. A long-term suspension or expulsion is a change of placement and may not be imposed if the manifestation determination team concludes the conduct subject to discipline is related to the disability.

*Pattern of Suspension* – Determination of whether a "pattern of suspension" is created is based on factors such as the length of each removal, total amount of time a student is removed and the proximity of the removals to one another. The type of conduct involved in each incident has no bearing on whether a pattern is created. The special education director or designee will determine whether the suspension will create a pattern.

*Manifestation Determination Team* – The manifestation determination team is composed of the parent/guardian, representatives of the school district and relevant members of the Individualized Education Program (IEP) team, as determined by the parent/guardian and the district. Although membership of the manifestation determination team may be similar or identical to an IEP team, the manifestation determination is not a function of the IEP team.

*Interim Alternative Educational Setting* – An alternative setting in which the student continues to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. As appropriate, it includes the student receiving a

functional behavioral assessment, behavioral intervention services and modifications that are designed to prevent unacceptable behavior from recurring.

### **Selection of Discipline Options**

The selection of the appropriate discipline option for a student with disabilities will be based on:

1. The nature of the behavior subject to discipline.
2. The number of days of suspension warranted by the misconduct.
3. The history of suspensions or other disciplinary actions imposed during the current school year.
4. Violent or dangerous characteristics of the student's behavior.
5. Other unique circumstances on a case-by-case basis.

School personnel may not impose disciplinary measures to a greater degree than those applied to students without disabilities for the same or a comparable offense.

### **Discipline Options and Procedures**

#### ***Suspension for Ten (10) School Days or Fewer (Consecutive or Cumulative in a School Year)***

1. The principal suspends the student for up to ten (10) school days in accordance with the discipline code.
2. The principal notifies the parents/guardians of the decision to suspend on the day the decision is made and will contact law enforcement if a crime has occurred.
3. No services or other special procedures are required.

#### ***Short-Term Suspension when Services May Need to Be Provided***

1. In accordance with the discipline code, the principal imposes a suspension for up to ten (10) school days that in combination with prior suspensions for the school year exceeds a total of ten (10) cumulative school days.
2. The principal notifies the parents/guardians of the decision to suspend on the day the decision is made and will contact law enforcement if a crime has occurred.

3. A determination is made as to whether a pattern of suspension will be created by the suspension. This determination is made by the director of special education or designee.
  - ▶ If it is determined that a pattern of suspension does exist, the suspension will constitute a change of placement, and the procedures under long-term suspension or expulsion must be followed, including providing a copy of the procedural safeguards and "The Parents' Bill of Rights" or a document that integrates the procedural safeguards and "The Parents' Bill of Rights."
  - ▶ If it is determined that a pattern of suspension does not exist, proceed to Step 4.
4. Services are required on the eleventh cumulative school day of removal in a school year and thereafter if necessary to enable the student to appropriately progress, as determined by school staff. The special education director or designee, in consultation with the student's teacher, will determine which, if any, services are needed.

### ***Long-Term Suspension/Expulsion***

1. The principal suspends the student for up to ten (10) school days and recommends a longer period of suspension to the superintendent in accordance with the discipline code. The principal notifies the parents/guardians of the decision to suspend on the day the decision is made and, in accordance with law, provides them with a copy of the procedural safeguards and a copy of "The Parents' Bill of Rights" or a document that integrates the procedural safeguards and "The Parents' Bill of Rights." The district will contact law enforcement if a crime has occurred.
2. If the superintendent concludes the misconduct warrants a long-term suspension, he or she will notify the director of special education or designee.
3. Within ten (10) school days of the suspension or as soon as practical when a pattern of suspension is created, the manifestation determination team shall review all relevant information in the student's file—including the student's IEP, any teacher observations and any relevant information provided by the parents/guardians—to determine if the conduct in question was:
  - ▶ Caused by or had a direct and substantial relationship to the student's disability.
  - ▶ The direct result of the local educational agency's failure to implement the IEP.

If the manifestation determination team determines that either of the two (2) situations above is applicable to the student, the conduct will be determined to be a manifestation of the disability.

4. If the manifestation determination team determines that the behavior is a manifestation of the disability, the IEP team shall:
  - ▶ Conduct a functional behavioral assessment and implement a behavioral intervention plan if one has not been developed already.
  - ▶ Review the behavioral intervention plan, if one has been developed, and modify it to address the behavior, if necessary.
  - ▶ Return the student to the prior educational placement, unless the parent/guardian and the district agree to a change of placement as part of the modification of the behavioral intervention plan, or follow the procedure for a 45-day removal if applicable.
5. If the manifestation determination team concludes that the behavior is not a manifestation of the disability, the relevant disciplinary procedures may be applied to the student in the same manner and for the same length of time applicable to students without disabilities.
  - ▶ If the superintendent or designee decides to assign a long-term suspension or expulsion, he or she will notify the parents/guardians of the decision and the right to appeal to the Board.
  - ▶ The IEP team will determine how the student will continue to receive educational services so that the student can participate in the general education curriculum and progress toward meeting IEP goals.
  - ▶ As appropriate, the student may receive a functional behavioral assessment, behavioral intervention services and modifications designed to address the behavior violation.

### **Automatic Removal for 45 School Days**

School personnel may remove a student to an interim alternative educational setting for up to 45 school days, regardless of whether the behavior is a manifestation of the student's disability, for the following acts if committed on school grounds or at a school function:

1. Carrying or possessing a weapon as defined in 18 U.S.C. § 930.

2. Knowingly using, possessing, selling or soliciting a sale of certain illegal drugs identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act.
3. Inflicting serious bodily injury upon another person.

This 45-day removal is not considered a "suspension" in accordance with law. The following procedures are used to implement a 45-day removal:

1. The principal contacts law enforcement, the superintendent and the special education director or designee immediately.
2. The principal suspends the student for ten (10) school days in accordance with the discipline code. The principal will notify the parents/guardians of the decision on the day the decision is made and, in accordance with law, provide them with a copy of the procedural safeguards and a copy of "The Parents' Bill of Rights" or a document that integrates the procedural safeguards and "The Parents' Bill of Rights." The principal will also notify the parents/guardians that the student will be removed to an interim alternative educational setting for 45 school days.
3. The IEP team will conduct an IEP meeting to determine how the student will receive a free appropriate education while in the interim alternative educational setting, and the manifestation determination team will conduct a manifestation determination.
4. If the manifestation determination team determines that the behavior is a manifestation of the disability, the IEP team shall:
  - ▶ Conduct a functional behavioral assessment and implement a behavioral intervention plan if one has not already been developed.
  - ▶ Review the behavioral intervention plan, if one has been developed, and modify it to address the behavior, if necessary.
  - ▶ Return the student to the prior educational placement after the initial 45-day removal unless the parent/guardian and the district agree to a change of placement as part of the modification of the behavioral intervention plan.
5. If the manifestation determination team determines that the behavior is not a manifestation of the disability, the student will be suspended for the same length of time applicable to other students after the 45-day removal ends.

- ▶ As appropriate, the student may receive a functional behavioral assessment, behavioral intervention services and modifications designed to address the behavior violation.

### **Expedited Hearing by Hearing Officer**

A parent/guardian who disagrees with any decision regarding placement or the manifestation determination will be provided an expedited hearing in accordance with law. The student will remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the disciplinary action, whichever occurs first, unless the parent/guardian and the district agree otherwise.

If the district believes that the current placement of a special education student is substantially likely to result in injury to the student or others, the district may request an expedited hearing through the Department of Elementary and Secondary Education (DESE), Division of Special Education.

### **Court Injunction**

The district, through legal counsel, may seek a court injunction ordering the removal of or a change of placement for a dangerous or violent student.

### **Students Not Yet Identified**

A student who has not been determined to be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) may assert any of the protections afforded to special education students if the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

If the district did not have such knowledge prior to taking disciplinary measures against the student, the student may be disciplined in the same manner as students without disabilities who engage in comparable behaviors. However, if a request is made for an evaluation during the time period in which the student is subject to disciplinary measures, an expedited evaluation will be conducted.

If the student is determined to be eligible for special education and related services, the district will provide those services. Pending the results of the evaluation, the student will remain in the educational placement determined by school authorities.

The district will be considered to have knowledge that a student is a student with a disability if, prior to the behavior subject to disciplinary action, any one (1) of the following conditions exists:

1. The parent/guardian has expressed concern in writing to supervisory or administrative personnel or the student's teacher that the student is in need of special education and related services.
2. The parent/guardian has requested an initial evaluation of the student.
3. The student's teacher or other district personnel have expressed specific concerns directly to the special education director or to other district supervisory personnel in accordance with the agency's established Child Find or special education referral systems about a pattern of behavior demonstrated by the student.

The district is considered not to have knowledge that a student has a disability requiring special education services if any of the following apply:

1. The parent/guardian of the student has not allowed an evaluation.
2. The parent/guardian of the student has refused services.
3. The student has been evaluated and it was determined that the student was not a student with a disability pursuant to the IDEA.

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***Note: The reader is encouraged to review policies and/or forms for related information in this administrative area.***

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Cole County R-I School District, Russellville, Missouri