

## **Safe Schools**

### ***Discipline of Students with Disabilities***

*[Note: Most school districts have adopted policies regulating discipline of students with disabilities in conformity with the requirements of IDEA. A school may choose to follow the previously adopted policy, making reference to that policy, rather than including this section in the Safe Schools policy.]*

#### **Discipline Procedures for Students with a Disability—**

Federal and state laws restrict disciplining a student for conduct which is a manifestation of a disability. Therefore, where a student who has been identified as eligible for special education services engages in conduct which is a violation of school rules or is conduct subject to discipline under this general policy, additional procedures may apply. If the student has not previously been identified as eligible for special education, but asserts that he or she should receive the procedural protections, application of the procedural protections will depend on the criteria set forth below.

#### **Identified Students with a Disability**

##### **Change of Placement for Disciplinary Reasons—**

For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if:

1. The removal is for more than ten (10) consecutive school days.
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten (10) school days in a school year, and because of a such as the length of each removal, the total amount of time each student is removed, and the proximity of the removals to one another.

##### **Removals—**

1. Ten (10) School Days or Less
  - a. Short-term suspension
    - i. To the extent removal would be applied to students without disabilities, a principal may remove a student with a disability who violates the code of student conduct found in section FHA from his or her current placement to an appropriate interim alternative educational setting,

another setting, or suspension, for not more than ten (10) school days without implicating any of the additional IDEA safeguards.

*State Office Special Education Rules  
34 C.F.R. 300.520 (2006)  
20 U.S.C. § 1415(k)(1)(B) (2004)*

## 2. Change in Placement: Removals for More than Ten(10) School Days

### a. Long-term suspension or expulsion.

- i. Any suspension of a student with a disability for more than ten (10) days constitutes a change in placement, as does a change in the student's educational program (classroom assignment) for disciplinary reasons. Prior to a change in placement, parents of the student must be notified of the proposed change and provided the procedural safeguards notice described in the state's Special Education Rules, and the student's IEP team and other qualified personnel must conduct a manifestation determination review of the relationship between the student's disability and the behavior subject to the disciplinary action. The manifestation determination review must take place immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take action was made.

*34 C.F.R. 300.523 (2006)*

### **Manifestation Determination—**

Within ten (10) days of any decision to change the placement of the student with a disability because of a violation of the code of student conduct, the school, the parent or guardian, and relevant members of the IEP Team (as determined by the parent/guardian and school) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided to the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. If the conduct in question was the direct result of the school's failure to implement the IEP.

If the school, the parent or guardian, and relevant members of the IEP Team determine that either section one (1) or (2) above is applicable to the student, the conduct shall be determined to be a manifestation of the student's disability.

1. If the IEP Team determines that the student's disruptive behavior is a manifestation of the disability or the result of inappropriate placement, the student may not be disciplined for the conduct. If the student's behavior indicates an inappropriate placement, the IEP Team shall review the placement and recommend alternatives. If the IEP Team determines that the behavior was a manifestation of the disability, it shall either rewrite the IEP to address the student's behavioral and educational needs or, when appropriate, consider the extension of an emergency removal.
2. If the IEP Team determines that the conduct is not a manifestation of the disability or a result of inappropriate placement, then the student may be disciplined under the same standards as are applied to non-disabled students. Provided, however, that if the student is suspended for more than 10 days in a given school year, the District still must provide services to the disabled student to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP. The IEP Team shall determine the instructional and related services to be provided during the time of suspension. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression.
3. If the student's parent or guardian disagrees with the IEP Team's manifestation determination, or regarding decisions for the student's placement, the parents may request a due process hearing pursuant to the policies governing students with disabilities.

34 C.F.R. § 300.121(d)(2006)

34 C.F.R. § 300.523 (2006)

34 C.F.R. § 300.524 (2006)

## **Students Not Identified as Eligible for Special Education—**

If a student who has not been previously identified as eligible for special education services, or the student's parents, assert that the student is entitled to the special discipline procedures applicable to students with disabilities, then those procedures shall apply to the student if any of the following conditions are satisfied, subject to paragraph 5 below:

1. The student's parent or guardian has previously expressed in writing to the District that the student needs special education services.
2. The student's previous behavior or performance demonstrates the need for special education services.
3. The student's parent or guardian has previously requested that the student be evaluated for eligibility for special education services.

4. The student's teacher or other school personnel have previously expressed concern about the student's behavior or performance to the special education director of the school.
5. If, prior to the conduct for which discipline is contemplated, the District, either in response to information from any of the sources listed in paragraphs 1-4 above, either (a) evaluated the student and determined that the student was not a child with a disability or (b) determined that an evaluation was not necessary, and provided notice to the parent or guardian of the determination, then the special discipline procedures for students with disabilities shall not apply to the student, and the student shall be disciplined in accordance with the procedures for non-disabled students.

If, during the period of time in which a student is subject to disciplinary sanctions, the student's parent or guardian requests that the student be evaluated for eligibility for special education services, an evaluation shall be conducted on an expedited basis. Until the evaluation is complete, the student's educational placement shall remain the same (if the child has been suspended or expelled, for example, the suspension or expulsion shall remain in effect).

*34 C.F.R. § 300.527 (2006)*

## **Removal of Disabled Students for Weapon or Risk of Immediate Harm**

### **Removal for Bringing Weapon to School—**

If a disabled student brings a weapon to school and that action was a manifestation of the student's disability, then that student must be placed in an interim alternative educational setting for a period to be determined but not to exceed 45 days.

1. The appropriate interim alternative educational setting shall be determined by the IEP Team.
2. If the student's parent or guardian requests a due process hearing, the student shall remain in the alternative educational setting during the pendency of any due process proceedings unless the parents and the special educational coordinator agree otherwise.
3. The IEP Team must convene prior to the end of the period of removal to the alternative educational setting to determine the least restrictive environment in which the student may be placed when the period of removal is concluded.

*34 C.F.R. § 300.520(a)(2), (d)(3) (2006)*

*18 U.S.C. § 930(g)(2) (2006)*

### **Removal for Immediate Risk of Harm—**

The educational placement of a student with a disability may be changed to an appropriate interim alternative placement for a period of time up to 45 days following an expedited due process hearing by a due process hearing officer if the hearing officer:

1. Determines that the District has shown by substantial evidence that maintaining the student's current placement is substantially likely to result in injury to the student or to others;
2. Considers the appropriateness of the student's current placement;
3. Considers whether the District has made reasonable efforts to minimize the risk of harm in the student's current placement, including by use of supplementary aids and services;
4. Determines that the proposed interim alternative educational placement is proposed by school personnel who have consulted with the student's special education teacher; and
5. Determines that the placement is selected to enable the student to progress in the general curriculum and to progress toward the goals in the IEP, and includes services and modifications designed to prevent recurrence of the behavior prompting the change in placement.

For purposes of this interim alternative placement hearing, "substantial evidence" means "beyond a preponderance of evidence."

*34 C.F.R. § 300.521 (2006)*