

DISCIPLINING STUDENTS WITH DISABILITIES

Students with disabilities who violate the student code of conduct, engage in disruptive activities and/or actions dangerous to themselves or others will be disciplined in accordance with this policy.

I. Change in Placement

For the purpose of removing students with disabilities from their current educational placements, a change in placement occurs when:

- (1) the removal is for more than 10 consecutive school days; or
- (2) a series of removals for 10 days or less accumulate to more than 10 days in a school year and constitute a pattern because of:
 - (a) the length of each removal,
 - (b) the proximity of the removals, ~~and~~
 - (c) the total time the child is removed, ~~and~~
 - (d) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals.

If a disciplinary action will result in a change of placement for a student with a disability then that child's parents must be notified immediately, and in no case later than the date of the decision to take disciplinary action. The parents must also receive a copy of the procedural safeguards at the time they receive notice of the disciplinary action that will result in a change in placement.

II. Short-Term Suspension

A short-term suspension is a suspension of 10 consecutive days or less.

School authorities may remove any student with a disability from his or her current educational setting for up to 10 school days cumulative in a school year to the extent that such removal would be applied to children without a disability.

The IEP team shall meet either before, or not later than 10 business days after, imposing any discipline of more than 10 days cumulative in a school year or commencing discipline that constitutes a change in placement. At this meeting the IEP team must either:

- Review, and modify as necessary, the student's Behavioral Intervention Plan (BIP) if the student has had a Functional Behavioral Assessment (FBA) and a BIP is in place, or
- If the student does not have a FBA or BIP, then a FBA must be conducted and the IEP team must develop a BIP for the student.

For the first 10 days of removal in a school year the School Board is not required to provide services to the student with a disability if services are not provided to students without disabilities who have been similarly removed.

After the first 10 days of removal in a school year, the School Board shall provide services to the student during the removal to the extent necessary for the student, considering his or her ability, to:

- 1) progress in the core curriculum and
- 2) appropriately advance toward achieving the goals set out in the child's IEP.

The determination of needed services is made by the IEP team for discipline which constitutes a change in placement. For discipline which is not a change in placement, the decision is made by school personnel in consultation with the child's special education teacher.

III. Manifestation Determination

When a disciplinary action that results in a change of placement is being considered for a student with a disability, a manifestation determination review shall be conducted immediately, if possible, but in no case later than 10 school days after the date on which the decision to take disciplinary action is made. This review shall be conducted by the IEP Team and other qualified personnel.

The IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team:

- 1) considers all relevant information, including evaluation and diagnostic results (including relevant information supplied by the parents), observations of the child, and the child's IEP and placement; and
- 2) determines that in relationship to the behavior subject to disciplinary action:
 - (a) the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 - (b) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 - (c) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

The child's parent may request an appeal if they disagree with the determination that the behavior was not a manifestation of the child's disability. The child will remain in his or her current educational placement pending the appeal.

IV. Disciplinary Action for Behavior that is Determined Not to be a Manifestation

Once it is determined that the behavior was not a manifestation of the child's disability, the disciplinary procedures will be applied to the student with a disability in the same manner as applied to nondisabled students. Following a removal which constitutes a change in placement, the student must continue to receive the educational services necessary to appropriately progress in the core curriculum and appropriately advance toward achieving his or her IEP goals. In addition, the special education and disciplinary records of the child must be made available to the person who makes the final decision on the student's discipline and the parents have a right to request a hearing to appeal the manifestation determination made by the IEP team.

V. Disciplinary Action and/or Alternative Placement for Behavior that is Determined to be a Manifestation

A student with a disability whose behavior is determined to be a manifestation of his or her disability may not be disciplined. They may be removed to a more restrictive placement by following change in placement procedures.

VI. Interim Alternative Educational Settings for Weapons and Drugs

In addition to any disciplinary action provided for in the IEP or behavioral intervention plan, students with disabilities carrying or possessing a weapon to or at school, on school premises, or to or at a school function or who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or a school function may be placed in an appropriate interim alternative educational setting for the same amount of time that would be applied to a child without a disability, but not more than 45 days. The parents must receive notice of the intent to take this disciplinary action and copy of the procedural safeguards on the date the decision to take disciplinary action is made.

Any interim alternative educational setting shall be selected, by the IEP team, so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The interim alternative educational setting must also provide services and modifications necessary to address the behavior so it does not recur.

VII. Change of Placement by Hearing Officer

— A hearing officer may order a change in the placement for a child with a disability to an appropriate interim alternative educational setting for not more than 45 calendar days where the school division demonstrates by substantial evidence that maintaining the student's current placement is substantially likely to result in injury to the student or others and that the division has made reasonable efforts to minimize the risk of harm in the child's current placement. The selected placement must meet the requirements of an appropriate interim alternative education setting as explained in Section VI, but can be determined by school personnel in consultation with the student's special education

teacher. Additional 45-day removals to an appropriate interim educational setting may be authorized by the hearing officer as necessary.

VIII. Placement During Appeals

Students with disabilities are entitled to all the due process rights available to a non-disabled student. In addition, students with disabilities are entitled to all the due process procedures available under the Individuals with Disabilities Education Act, as amended. During the course of any appeals, the student with disabilities' placement shall be in accordance with the provisions of federal law unless the parent and the school division agree otherwise.

IX. Students Not Identified as Disabled

Students who have not been identified as disabled may be subjected to the same measures applied to children without disabilities if the school division did not have knowledge of the disability before the behavior that precipitated the disciplinary action occurred. A school division will be found to have knowledge of the child's disability if:

- (1) the parent had previously expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that the child was in need of special education and related services; or
- (2) the behavior or performance of the student demonstrates a need for services; or
- (3) the parent previously requested an evaluation of the child; or
- (4) the child's teacher or other school personnel had expressed concern about the child's behavior or performance of the child to the director of special education or to another person in accordance with the school's child find system.

A school division would not be found to have knowledge of a child's disability if:

- (1) it conducted an evaluation and determined that the child was not a child with a disability, or
- (2) it determined that an evaluation was not necessary
- (3) and notified the parent of this determination.

If a request for evaluation is made during the period such student is subject to disciplinary action, the evaluation shall be conducted in an expedited manner. Pending the evaluation the student shall remain in the placement determined by the school authorities. If the evaluation results in a determination that the student is a student with a disability then the student must be provided special education and related services in compliance with the procedures for suspended and expelled students with disabilities.

X. Disciplining Certain Students Who Violate Alcohol and Drug Policies

Students who are identified as disabled solely under Section 504 of the Rehabilitation Act and who are currently engaging in the illegal use of drugs or alcohol

may be disciplined for violating the division's alcohol and drug policies to the same extent as non-disabled students.

Adopted: December 11, 2003

Legal Refs.: Individuals with Disabilities Education Act, ~~as amended 1997~~, Americans with Disabilities Act, P.L. 101-335 (1990); Rehabilitation Act of 1973, ~~as amended~~, 29 U.S.C. ~~section~~ §706 (8) ~~©~~ (C)(iv); ~~Assistance to States for the Education of Children with Disabilities, 34 C.F.R. Part 300, March 12, 1999~~ 34 C.F.R. §300.530-300.536; 8 VAC 20-80-68.

Cross Ref.: JFC~~2~~ Student Code of Conduct
JGD/JGE~~2~~ Student Suspensions/ Expulsions