

SUSPENSION AND EXPULSION OF SPECIAL EDUCATION STUDENTS

Definitions

- *Change of Placement (long-term removals)* occurs when either
 1. The removal is for more than 10 consecutive school days; or
 2. The student has been subjected to a series of removals that constitute a pattern:
 - a. Because the series of removals total more than 10 school days in a school year;
 - b. Because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
 - c. Because of additional factors such as the length of each removal, the total amount of time the student has been removed and the proximity of the removals to one another.
 3. The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement and this determination is subject to review through due process and judicial proceedings.
- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- *Functional behavioral assessment*: Functional behavioral assessment is generally considered to be a problem-solving process for addressing student's inappropriate behavior.
- *Interim alternative educational setting*: A different setting that must allow a student covered by IDEA to continue to receive educational services that will enable him/her to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP
- *Illegal drug* means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- *Manifestation determination*: A process that occurs prior to a change of placement. During this process, the students' parents and IEP team reviews all relevant information including:
 1. Test results and any independent educational evaluations
 2. Information provided by the parents
 3. Observations of the child and
 4. The child's IEP and placement

After the review of information, the team then determines if:

1. The conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
 2. The conduct in question was the direct result of the school's failure to implement the IEP.
- *Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.*
 - *Short-term removal: Any appropriate interim alternative educational placement, placement another setting, or suspension that does not result in a change of placement (see definition above).*
 - *Weapon has the meaning given the term "dangerous weapon" under paragraph 2 of the first subsection (g) of section 930 of title 18, United States Code.*

Suspension

- ~~1. Students with disabilities may be suspended for a period not to exceed ten consecutive school days for any conduct that would warrant suspension for a student who does not have a disability.~~
- ~~2. The designated building administrator will review the student's educational record to ascertain if the Individual Education Plan (IEP) addresses the behavior in question. If the IEP does address the behavior, the procedure specified in the IEP should be followed.~~
- ~~3. If the IEP does not address the behavior, the suspension may be effected immediately upon the decision of the designated building administrator.~~
- ~~4. Administration must make and document efforts to contact and notify the parent prior to the suspension. In any suspension of a student with a disability, the student's parent or representative shall be given oral or written notice of the charges, an explanation of the evidence supporting the charges, and an informal opportunity to respond to and rebut the charges.~~
- ~~5. A student with disabilities may be suspended for additional periods of up to ten consecutive school days for separate acts of misconduct as long as such removals do not constitute a change of placement.~~
- ~~6. Educational services must be provided in cases of removals (suspensions) in excess of ten days in a school year. The services are to be provided to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his/her IEP. The Director of Student Services in consultation with the student's special education teacher shall make the service determination.~~
- ~~7. If a child with a disability who has a behavioral intervention plan, has been removed from the child's current educational placement for more than 10~~

~~school days in a school year, and is subjected to another removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.~~

Change of Placement

~~For any disciplinary change in a special education student's placement, the IEP team must:~~

- ~~1. If the District did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal, the District shall convene an IEP meeting to develop an assessment plan. As soon as practicable after developing the plan and completing the assessments required by the plan, the District shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.~~
- ~~2. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.~~
- ~~3. If one or more of the IEP team members believe that modifications are needed to the behavioral intervention plan, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.~~

Short Term Removals (No Change of Placement)

School personnel may remove a child with a disability who violates a student conduct policy from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536). Suspension procedures under district regulations must be followed, and if the student is incapable of understanding any part of the suspension procedures, his/her parent should be present during the suspension due-process procedure contained in district regulations.

After determining if the student should be suspended, the principal or the Superintendent, in consultation with at least one of the student's teachers, determines how best to address the student's needs during short-term removals.¹ Providing alternative educational services for the first 10 days of short-term removals is only required if the District provides these services to regular education students.

¹ Law does not require parents be involved in making the determination of the extent to which services are needed for a student removed from school on a short-term basis. However, there is nothing in federal regulations that would prohibit the principal or Superintendent, if they choose to do so, from including parents in the consultation.

Parents should be notified of short-term removals. The content of this notice does not have to follow the format of a change of placement notice (e.g., not required to provide procedural safeguards). In other words, notice of short-term removals need only state the charges against the student, the form and duration of the disciplinary action taken, and any services that will be provided/withheld during the disciplinary sentence.²

Change of Placement (Long-Term Removals)

Longer removals include expulsion and suspensions that would constitute a change in placement. If a longer removal is being considered, the District must have a meeting with parents and the IEP team to make a manifestation determination. This meeting must be held within 10 school days of any decision to change the placement of a student. The manifestation determination meeting would occur after the initial suspension/expulsion proceedings, which must be held in accordance with district policy. The purpose of these proceedings shall only be to determine if the student violated policy and to make a tentative disciplinary recommendation if a policy violation is substantiated. Any disciplinary sentence recommended at the suspension/expulsion hearing shall only go into effect if criterion "1" below is satisfied and notice of change of placement is issued to parents.

Manifestation Determination

~~In addition to the behavioral intervention meeting, the IEP team must make a manifestation determination for disciplinary changes in a special education student's educational placement using the following procedures:~~

- ~~1. Not later than the date on which the decision to take alternative placement action is made, the parents must be notified of the placement decision and provided the procedural safeguards notice described in 34 C.F.R. 300.504;~~
- ~~2. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action. The review must be conducted by the IEP team and other qualified personnel in a meeting.~~
- ~~3. In carrying out a review, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel:
 - ~~a. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including: evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child; observations of the child; and the child's IEP and placement.~~
 - ~~b. Then determine that in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided~~~~

² This notice is not required by law but is strongly recommended

~~consistent with the child's IEP and placement; 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 the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.~~

- ~~4. If the IEP team and other qualified personnel determine that any of the above standards were not met, the behavior must be considered a manifestation of the child's disability and the disciplinary change cannot be imposed.~~
- ~~5. The review described above may be conducted at the same IEP meeting that is convened to create/review the behavioral intervention plan.~~
- ~~6. If the District identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.~~

Expulsion

- ~~1. An expulsion may be effected for a student with a disability for any conduct which would warrant expulsion for a student without a disability.~~
- ~~2. Prior to expulsion, the IEP Team will meet to create/review the behavioral intervention plan and make a manifestation determination as described above.~~
- ~~3. If the IEP Team determines that the misbehavior is a manifestation of the disability, the student may not be expelled.~~
- ~~4. A student with a disability must continue to receive a free appropriate public education whether or not they are expelled. The District has an obligation to continue to provide educational services during the time of any expulsion of a special education student, with the manner in which the services are provided to be determined by the IEP Team.~~
- ~~5. A student with a disability for whom expulsion has been recommended is entitled to all the due process rights available to a student without a disability for whom expulsion has been recommended. In addition, the student with a disability is entitled to all the due process procedures available to a student with a disability under the Individuals with Disabilities Education Act and applicable state policies and procedures.~~

Interim Alternative Placement

~~A special education student who has carried a weapon to school or to a school function, knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency or has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of a State or local education agency may be removed from his or her current placement. Such a student may be placed in an appropriate interim alternative placement for the same amount of time that a child without a disability would be subject to discipline but for not more than 45 school days. A continuation of the removal for an additional 45 school days may be granted if returning the student to the original placement is substantially likely to result in~~

~~injury to the student or others. The IEP Team determines the location of the interim alternative education setting.~~

Manifestation Determination Criteria

1. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability nor a result of the school's failure to implement the IEP, the District:
 - a. May apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.
 - b. Must provide services that enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP.
 - c. As appropriate, must conduct a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications that are designed to address the behavior violation so that it does not reoccur.

2. If the team concludes that the misconduct was a manifestation of the student's disability or a result of the school's failure to implement the IEP, the school must:
 - a. Conduct a FBA, unless the school had already conducted an FBA before the behavior occurred, and implement a behavior intervention plan; *or*
 - b. Review the behavior intervention plan, if a behavior intervention plan already has been developed, and modify it as necessary to address the behavior; *and*
 - c. Return the student to the placement from which s/he was removed unless the student's parent and the school agree to a change of placement as part of the modification of the behavior intervention plan, or the student's misbehavior was related to drugs, weapons or serious bodily injury.

Drugs, Weapons, and Serious Bodily Injury

School personnel may remove a student governed by IDEA to an interim alternative educational setting, after holding an expulsion hearing, for not more than 45 school days if:

1. The student carries a weapon to school or to a school function;
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; or
3. The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Referral to Law Enforcement /Transmission of Records

A school may report a crime committed by any child with a disability to appropriate authorities. In doing so, the school must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by appropriate authorities to whom the crime is reported, but must also obtain parental consent to send those records, consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

Notice for Change of Placements

Parents must be provided prior written notice before enacting a change of placement decision. This notice must include:

1. a description of the action proposed or refused by the school district;
2. an explanation of why the action is proposed or refused;
3. a description of any other options considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
5. a description of any other factors relevant to the action proposed or refused;
6. a notice that parents can invite individuals with knowledge or special expertise about their child to an IEP meeting;
7. a statement that parents of a child with a disability are protected by the procedural safeguards and a copy of these safeguards; and
8. a list of resources parents can use to contact help in understanding these procedural safeguards, and a description of how parents can file a complaint.

Prior written notice must be provided in parents' native language unless doing so is clearly not feasible. Your district's special education unit should have a sample notice and sample procedural safeguards to assist your district with notification requirements.

Protections for Children Not Yet Eligible for Special Education and Related Services

A student is entitled to the procedural safeguards under IDEA if the school had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred. A school is considered to have knowledge that a child is a child with a disability if:

1. the student's parent expressed concern in writing to supervisory or administrative personnel of the school, or a teacher, that the student is in need of special education and related services;
2. the student's parent requested an evaluation of his/her child; or
3. the teacher of the student or other school personnel expressed specific concerns directly to the director of special education of the agency or to other supervisory personnel of the school about a pattern of behavior demonstrated by the student.

Appeals

If a parent disagrees with any decision regarding the placement of his/her child as a result of a disciplinary action, the manifestation determination, or if the school believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, then the parent or the school district may appeal the decision by requesting a due process hearing.

The hearing officer may:

1. return the student to the placement from which s/he was removed; or
2. order a change in placement of the student to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing

officer believes that maintaining the current placement of the student is substantially likely to result in injury to him/her or others.

When an appeal has been made, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the timeline determined by the district's disciplinary procedures, whichever occurs first, unless the District and parent agree otherwise.

Expedited Due Process Hearing

Whenever a due process hearing is requested regarding a dispute over placement, then the parent and the school must have the opportunity to an expedited due process hearing. The expedited due process hearing timelines differ from the standard due process hearing timelines in that:

1. the hearing must occur within 20 school days of the date the due process complaint is received, and
2. the hearing officer must make a determination (final decision) within 10 school days after the conclusion of the hearing.

Resolution Session and Expedited Due Process Hearings

Unless parents and the school agree in writing to waive the resolution meeting or agree to use the mediation process to resolve the issues in dispute:

1. the resolution meeting must occur within 7 days of receiving the due process complaint notice; and
2. the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

Placement by a Hearing Officer

A hearing officer may order a change in placement of a student covered by IDEA to an interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to student child or other students.

Extensions of 45 school day removals by a hearing officer may be repeated, if necessary, when returning the student to the current placement would be substantially likely to result in injury to student or other students.

Civil Action

The decisions on expedited due process hearing are appealable through civil action within 90 days from the date of the decision of the hearing officer.

End of Dickinson Public Schools FFK-BR3.....Amended: 07/01/2017