

AR 5144.2 SUSPENSION AND EXPULSION (STUDENTS WITH DISABILITIES)

Note: The Individuals with Disabilities Education Act ("IDEA"), as amended in 2004, sets forth specific requirements for the discipline of students with disabilities. In 2006, federal regulations were amended to provide additional guidance to schools in implementing disciplinary sanctions.

A student receiving special education services is expected to follow the same behavior and conduct rules applicable to all students and is subject to discipline as set forth in those rules. The procedural safeguards established by district policies and regulations shall be observed in considering the suspension of special education students. In addition, students receiving special education may have additional rights relating to discipline and continuing services as set forth in the Individuals with Disabilities Education Act ("IDEA").

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student with a disability who violates behavior and conduct rules.

A student who has not been identified as a student with disabilities pursuant to the IDEA and who has violated the district's disciplinary procedures may assert the procedural safeguards under this administrative regulation only if the district had a basis of knowledge that the student had a disability before the behavior occurred.

Note: The district shall be deemed to have knowledge that the student has a disability if one of the following conditions exists: (20 USC 1415)(k)(5); (34 C.F.R. 300.534).

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 or related services.

2. The parent/guardian has requested an evaluation of the student for special education.

3. The teacher of the student or other district personnel have expressed specific concerns about a pattern of behavior by the student directly to the district's Director of Special Education or to other supervisory personnel.

A district is not deemed to "have knowledge" as specified in items #1-3 above if the parent/guardian has not allowed an evaluation or has refused special education services; or, as a result of receiving such information, the district conducted an evaluation and determined that the student was not a student with a disability.

If it is determined that the district did not have knowledge that the student is a student with a disability, then the student shall be disciplined in accordance with procedures established for students without disabilities.

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(cf. 5144.1 - Suspension and Expulsion)

(cf. 6164.4 – Child Find)

Removal for Up to 10 Days

District personnel may suspend a special education student for up to ten school days per year without providing educational services. The days need not be consecutive. Removals for up to ten school days may be out of school suspensions, or, alternatively, an interim alternative educational setting or another setting. Parents must be immediately notified of the discipline decision.

Removal for More Than 10 Days or Placement in an Interim Alternative Educational Setting

Note: In 2006, the federal regulations were changed so that removal in a single school year in excess of 10 days does not automatically constitute a change in placement requiring the provision of educational services and a manifestation determination. Specifically, a student with disabilities may be removed for up to 10 consecutive school days, and there may be additional removals of up to 10 consecutive school days for separate incidents, so long as the removals do not constitute a change in placement. 34 C.F.R. 300.530. A change in placement occurs if: 1) the removal is for more than 10 consecutive school days; or 2) a series of removals constitutes a pattern because they total more than 10 school days in a year; the child's behavior is substantially similar to that in previous incidents; and additional factors such as length of each removal, total time of removal from school, and proximity of removals to one another. The District is responsible for determining whether a pattern of removals constitutes a change in placement. That determination is subject to review through due process or court proceedings. 34 C.F.R. § 300.536.

Students whose suspension constitutes a change in placement must continue to receive a free and appropriate public education. This means that beginning with the change in placement for disciplinary purposes, educational services must continue to be provided and procedural protections are triggered.

A change in placement occurs if:

- 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 because:
 - a) the series of removals total more than 10 school days in a school year;
 - b) the student's behavior is substantially similar to the behavior in previous incidents that resulted in removal; and
 - c) such additional factors support a pattern 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.

The District shall determine whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process or judicial proceedings.

Note: Districts may not impose repeated short-term suspension as a means of avoiding the normal change in placement procedures governing long-term removals. Such treatment could result in a finding that the district has changed the placement of a student with a disability without complying with the necessary formalities and safeguards.

The parents shall be immediately notified of the discipline decision and provided a notice of procedural safeguards on the day the change in placement decision is made.

Manifestation Determination

When a change in placement is contemplated for disciplinary purposes, the District must conduct a manifestation determination.

A. Timeframe for Making Determination

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of student conduct rules, a manifestation determination shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action.

B. How Determination is Made

In making a manifestation determination, the District, the parent, and relevant members of the student's IEP team (as determined by the District and the parent)

must 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 to determine:

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

C. Manifestation is Found

If the District, the parent, and relevant members of the IEP team determine that either of the conditions above is met, the conduct shall be determined to be a manifestation of the student's disability. If the team determines that the student's conduct is a manifestation, then the child's placement cannot be changed except via the IEP team process. If a manifestation is found, the IEP team must either:

1. conduct a functional behavioral assessment, unless the District had already conducted one prior to the behavior leading to the change in placement, and implement a behavioral intervention plan for the student; or
2. if a behavior intervention plan has already been developed, review the plan and modify it, as necessary, to address the behavior; and
3. except under special circumstances for drugs, weapons or serious bodily injury as set forth below, return the student to the placement from which the student was removed, unless the parent and the District agree to a change of placement as part of the behavior intervention plan.

D. No Manifestation is Found

If it is determined that the conduct is not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration as applied to students without disabilities, except that a free appropriate public education must continue to be provided. The educational services may be provided in an alternate setting.

Drugs, Weapons, or Serious Bodily Injury

For violations of school policies involving weapons, drugs, or serious bodily injury, school personnel may remove a student to an interim alternative educational setting for up to a maximum of 45 school days without regard to whether the behavior is a manifestation of the student's disability. The interim alternative educational setting shall be determined by the IEP team.

Removal under these special circumstances is available for infractions where a student:

1. carries or possesses a weapon to school or at school, on school premises, or to or at a school function; or
2. knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
3. has inflicted serious bodily injury upon another person while at school, or on school premises, or at a school function.

4. Note: The following definitions are applicable to special circumstance removals as set forth above:
5. Controlled Substance: The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812 (c)). This includes marijuana.
6. Although the passage of AS 17.38, effective February 2015, state law authorizes the use of marijuana under certain conditions, this law does not apply to anyone under the age of 21. In addition, as a recipient of federal funds, the district is obligated to maintain a drug-free workplace consistent with federal law, which prohibits the manufacture, sale, distribution, and possession of marijuana. For purposes of the district's policy and legal obligations, marijuana is prohibited.
7. Illegal Drug: The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
8. Weapon: The term "weapon" has the meaning given the term "dangerous weapon" under 18 USC section 930(g)(2) which means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
9. Serious bodily injury: The term "serious bodily injury" has the meaning given the term "serious bodily injury" under 18 USC 1365(h)(3) which means bodily injury involving -- (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
10. School Day: The term "school day" is defined as any day, including a partial day, that students are in attendance at school for instructional purposes. 34 CFR 300.309(c)(1).

Disciplinary Appeals

Note: If the manifestation determination or the interim setting is challenged by the parent, an expedited hearing must be held. The child is to stay in the interim alternative setting pending the decision of the hearing officer or until the expiration of

the time period provided for, unless the parent and district agree otherwise. If the district places the child in an interim setting and the district proposes a longer-term change in placement that is challenged by the parent, the child goes back to the current placement (the child's placement prior to the interim alternative educational setting). However, if school personnel feel it is dangerous for the child to remain in the current placement during the pendency of the due process proceedings, the district may request an expedited hearing.

In accordance with IDEA, the parent of a student with a disability who disagrees with any decision regarding a change in placement or a manifestation determination may request a due process hearing. Similarly, the District may request a hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the student or to others.

A hearing officer shall hear, and make a determination regarding, an appeal. The State of Alaska Department of Education and Early Development and the District shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

In making the determination on appeal, the hearing officer may order a change in placement of a student with a disability. In such situations, the hearing officer may:

1. return the student to the placement from which the student was removed; or
2. order a change in placement to an appropriate 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 the student or to others.

Placement during appeals:

When an appeal has been requested by either the parent or the District, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for deciding the hearing, whichever occurs first, unless the parent and the District agree otherwise.

Dangerousness:

A hearing officer may place a student in an appropriate interim alternative educational setting on the grounds of dangerousness if there is a substantial likelihood of injury to the student or others if the student remains in his current placement. Such placement may be ordered for up to 45 days at a time.

Note: The standard for determining dangerousness provides that a hearing officer may order placement in an interim alternative educational setting for not more than 45 days if the hearing officer:

(1) determines that the District has demonstrated 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 the use of supplementary aids and services;

(4) determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of the IDEA and its regulations.

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Craig City School District