

AR 5144.2 SUSPENSION AND EXPULSION (STUDENTS WITH DISABILITIES)

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.

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

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.

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.

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.

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. 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.

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: carries or possesses a weapon to school or at school, on school premises, or to or at a school function; or

1. 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
2. has inflicted serious bodily injury upon another person while at school, or on school premises, or at a school function.

Disciplinary Appeals

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.

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