

Policy JKF- DISCIPLINE OF STUDENTS WITH DISABILITIES

I. Discipline of Students with Disabilities

- A. Except as provided in this policy and federal and state law, students with disabilities shall be subject to the School District's Conduct and Discipline Code and its policies and procedures governing the discipline of students. School personnel may remove a student with a disability who violates a code of student conduct 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.

II. Definitions

- A. Students with Disabilities. Students with disabilities shall include those students identified as such under the Individuals with Disabilities Education Improvement Act (IDEA '04) or Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), or through the School District's established process. A student may assert disability protections under IDEA '04 if it can be established that prior to engaging in the misconduct leading to the proposed discipline:
 1. A parent of the student has expressed concern in writing to supervisory or administrative personnel of the School District, or a teacher of the student, that the student is in need of special education services; or
 2. The parent of the student requested an evaluation of the student to determine eligibility for special education services; or
 3. A teacher of the student or other School District personnel has specifically expressed concern about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel (in accordance with the School District's established child find or special education referral system).

Exception: A student cannot assert any of the protections defined in this policy:

1. If a student has been evaluated and found not to have a disability, or if it has been determined that an evaluation was not necessary, and if the student's parent(s) has been given notice of the eligibility determination or determination not to evaluate.
 2. The parent has not allowed the student to be evaluated for special education.
 3. The student was determined eligible for special education, but the parent refused services.
- B. Suspension. For purposes of this policy, a suspension shall mean a single removal of no more than ten (10) consecutive school days. Suspensions include any removal from a student's usual education program for a part of a school day.

- C. In-School Suspension. For the purposes of this policy, an in-school suspension shall be documented as a disciplinary action, but shall not count toward the 10 cumulative day short term removal total as long as the student will have the opportunity to progress in the general education curriculum, continue to receive special education services and participate with nondisabled peers to the same extent as in the current placement.
- D. Expulsion: For the purposes of this policy, an expulsion shall mean a disciplinary proceeding held in accordance with state law to determine the appropriate consequence for the student's conduct, which may include removal from a student's usual educational program for more than 10 consecutive days, provided the student's conduct was not deemed to be a manifestation of his/her disability.
- E. Change of Placement: For purposes of this policy, a change of placement shall mean the removal of a student with a disability from the student's current educational placement 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. In determining if a pattern exists, the following factors are taken into consideration:
 - i. The series of removals total more than 10 school days in a school year;
 - ii. The student's behavior that resulted in the removals is substantially similar in each instance; and
 - iii. 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 District shall determine on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- F. Interim Alternative Educational Setting (IAES): A student may be removed to an IAES as determined by the IEP team for 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:
 - a) Carries or possesses a weapon at school, on school grounds or at a school function under the jurisdiction of the local or state education agency;
 - b) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school grounds or at a school function under the jurisdiction of the local or state education agency; or
 - c) Inflicts a serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the local or state education agency. Serious bodily injury is defined as an injury that results in substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impaired functioning of a bodily member, organ or mental faculty.

III. Suspensions

- A. Suspensions of a student with a disability may be conducted in the same manner and for the same reasons as for a student without a disability for a period not to exceed 10 consecutive days.

- B. A student may be suspended for more than one incident of misconduct in a school year if each removal does not exceed 10 school days and cumulatively it does not constitute a pattern. Building administrators in consultation with the student's special education case manager will determine if a change of placement occurs.
- C. Suspensions of students with disabilities exceeding 10 consecutive school days or removals for separate incidents of misconduct that result in a change of placement will necessitate a manifestation determination review. Additionally, the parents will be provided notice of the disciplinary action to take place and procedural safeguards.
- D. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, school personnel, in consultation with the student's special education case manager will determine the extent to which services are needed, so as to 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 student's IEP.

IV. Expulsions

- A. If an expulsion is being considered for a student with a disability:
 - 1. The parents shall be notified of the decision to take this action and of procedural safeguards accorded by law not later than the date on which this decision is made; and
 - 2. Immediately, if possible, but not later than ten (10) school days after the student is suspended, the IEP team and other qualified District personnel shall review the direct relationship between the student's disability and his or her conduct in a manifestation determination review.

V. Manifestation Determination Review

- A. At the Manifestation Determination Review, the principal/designee, the parent(s) and relevant members of the IEP team (as determined by the parent and District) shall review:
 - a) all relevant information in the student's file,
 - b) the student's IEP,
 - c) any teacher observations, and
 - d) any relevant information provided by the parent(s).

The team must determine whether:

- 1. The conduct in question was a direct result of the school's failure to provide the special education services, supplementary aids and services, behavior intervention strategies and/or placement required by the student's IEP; or
- 2. The conduct in question was caused by or has a direct and substantial relationship to the disability.

The conduct is not a manifestation of the student's disability if the IEP Team determines that the conditions in both 1 and 2 were not met. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school officials may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as the procedures would be applied to students without disabilities. However, the student will continue to receive educational services, so as to 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 student's IEP, as determined by the IEP Team.

The conduct is a manifestation of the student's disability if the IEP Team determines that a condition in either item 1 or 2 was met. If the IEP Team determines the condition described in item 1 of this section was met, the school must take immediate steps to remedy those deficiencies. If the behavior that gave rise to the violation of the school code is determined to be a manifestation of the student's disability, the school must return the student to his/her current educational setting unless:

- a. The parent/guardian and district agree to a change of placement; or
- b. The District obtains a change of placement as provided by law; or
- c. The student has been placed in an Interim Alternative Educational Setting, as described below.

The student shall receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. If a functional behavioral assessment was completed and a plan developed prior to the misconduct, it will be reviewed and modified, as appropriate, to address the behavior at issue.

VI. Interim Alternative Educational Setting

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, for violations described in Section I (F) of this policy. The IEP Team will determine the setting and services to be provided so as to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP.

VII. Students Identified as Disabled under Section 504

The following shall apply to students who do not qualify as a "student with a disability" for purposes of the IDEA '04, but who do qualify as a "student with a disability" for purposes of Section 504. If the 504 Team determines that the conduct is not a manifestation of the student's disability, school officials may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as the procedures would be applied to students without disabilities, including suspension and expulsion if applicable. Furthermore, educational programming will be provided to the extent that that educational programming

would be provided to students without disabilities and is not subject to approval of the Section 504 Team.

Adopted: June 16, 2000

REVISED: August 21, 2008

Legal refs: C.R.S. 22-33-106(1)(c)
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C.R.S 22-20-101 *et seq.* (*Exceptional Children's Education Act*)
20 U.S.C. 1401 *et seq.* (*Individuals with Disabilities Education Improvement Act of 2004*)

CROSS REFS.: JK Student Discipline
JK-R Student Conduct and Discipline Procedures