

## **PART II. GENERAL PROCEDURES**

### **W. PROCEDURES FOR DISCIPLINE FOR STUDENTS WITH DISABILITIES**

For students whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions, strategies, and supports to address that behavior must be considered in the development of the student's individual educational plan (IEP).

#### **1. Definitions:**

- a. Change of placement – For the purposes of removals of a student with a disability from the student's current educational placement as specified in the student's IEP, a change of placement occurs when:
  - (1) The removal is for more than 10 consecutive school days; or,
  - (2) A series of removals constitutes a pattern because the removals cumulate to more than ten (10) school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- b. Positive behavioral support – Positive behavioral support is a process for designing and implementing individualized behavioral intervention plans based on understanding relationships between the student's behavior and his or her environment as determined through a functional behavioral assessment.
- c. Functional behavioral assessment – A functional behavioral assessment (FBA) is a process for developing a useful understanding of how behavior relates to the environment and may include any or all of the following:
  - (1) review of records;
  - (2) interviews;
  - (3) observations; and,
  - (4) collection of data using formal and informal measurement procedures.
- d. Controlled substance – A controlled substance is a drug or other substance identified through the Controlled Substances Act, 21 U.S.C. 812(c), and s. 893.02, F.S.
- e. Illegal drug – An illegal drug means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 U.S.C. 812(c) or under any other provision of federal law.
- f. Weapon - A weapon is defined in s. 790.001(13), F.S., and includes a dangerous weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.
- g. Firearm – A firearm is defined in Section 790.001(6), Florida Statutes.
- h. Individual Educational Plan (IEP) team – An IEP team must meet the requirements specified in the Provisions for an Individual Educational Plan for Students with Disabilities section of this document.

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- i. Manifestation determination – A manifestation determination examines the relationship between the student’s disability and a specific behavior that may result in disciplinary action.
- j. Interim alternative educational setting – An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons.
- k. Expedited due process hearings – Expedited due process hearings may be held at the request of either the parent or the school district regarding disciplinary actions. These hearings must meet the requirements prescribed in Rule 6A-6.03311(11), FAC, except that the written decision must be mailed to the parties within forty-five (45) days of the school district’s receipt of the parent’s request or the filing of the district’s request for the hearing without exceptions or extensions.
- l. Short term removals – A short term removal is the removal of a student with a disability for a total of ten (10) school days or less in a school year that does not constitute a change in placement as defined above in (a).
- m. Long term removals – A long term removal is the removal of a student with a disability for more than ten (10) school days in a school year which may or may not constitute a change in placement as defined in paragraph (a) above.
- n. Substantial evidence – Substantial evidence shall be defined to mean beyond a preponderance of the evidence.

#### **2. Authority of school personnel**

Consistent with the district’s Code of Student Conduct and to the extent removal would be applied to students without disabilities, school personnel may order:

- a. the removal of a student with a disability from the student’s current placement for not more than ten (10) consecutive school days;
- b. additional removals of a student with a disability of not more than ten (10) consecutive days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement as defined in paragraph (a) above.

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#### **3. Manifestation determination**

A manifestation determination, consistent with the following requirements, must be made any time disciplinary procedures result in long term removal or a change of placement.

In conducting the review, the IEP team and other qualified personnel consider all relevant evaluation and diagnostic information including information supplied by the parents of the student, observations of the student, the student's current IEP and placement, and any other relevant information, then determine whether, in relationship to the behavior subject to disciplinary action:

- a. the student's IEP and placement were appropriate and whether the specially designed instruction and related services, supplementary aids and services, accommodations and modifications, and positive behavior intervention strategies were provided consistent with the student's IEP and placement;
- b. the student's disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and,
- c. the student's disability impaired the student's ability to control the behavior subject to disciplinary action.

If the IEP team and other qualified personnel determine that the student's behavior was not related to the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities. However, services are provided in accordance with Rule 6A-6.03312(5), FAC.

With the exception of placement in an interim alternative educational setting, as described in subsection 6 below, if the IEP team determines the student's behavior was related to the disability, the student's placement cannot be changed by school personnel as a disciplinary intervention. However, the IEP team may determine that change of placement is necessary to provide the student a free appropriate public education in the least restrictive environment.

If the IEP team and other qualified personnel determine that there were deficiencies in the student's IEP or placement or in their implementation, or that the student's disability impaired his or her ability to understand the impact and consequences of the behavior or impaired his or her ability to control the behavior, the behavior must be considered a manifestation of the student's disability. Any deficiencies in the student's IEP or placement or in their implementation identified during the manifestation determination are remedied immediately.

If a parent disagrees with the manifestation determination decision made by the IEP team, the parent may request an expedited due process hearing as described in subsection 7 below.

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#### **4. Long-term removals**

For all long-term removals, the district notifies the parent of the removal decision and provides the parent with a copy of the procedural safeguards on the same day as the date of the removal decision. An IEP meeting is held immediately, if possible, but no later than 10 school days after the removal decision in order to conduct a manifestation determination. Services are provided in accordance with Rule 6A-6.03312(5), FAC.

Either before or not later than ten (10) business days after either first removing the student for more than ten (10) school days in a school year or beginning with a removal that constitutes a change in placement, if the school district did not conduct a functional behavioral assessment (FBA) and implement a positive behavior intervention plan (PBIP) before the behavior that resulted in the removal, the IEP team will meet to develop an assessment plan.

As soon as practicable after developing the assessment plan and completing the FBA, the IEP team will meet to develop appropriate positive behavioral interventions to address the behavior and shall implement those interventions. If the student has a PBIP, the IEP team will meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior.

If a student with a disability who has a PBIP and who has been removed from his or her current placement for more than ten (10) school days in a school year is subjected to a removal that does not constitute a change in placement as described in the definition section above, the IEP team members will review the PBIP and its implementation to determine if revisions to the plan are necessary. If one or more of the IEP team members believe that revisions are needed, the IEP team will modify the plan and its implementation to the extent the IEP team determines necessary.

#### **5. Free appropriate public education for students with disabilities who are suspended or expelled**

The district is not required to provide services to a student with a disability during short-term removals totaling ten (10) school days or less in a school year if services are not provided to students without disabilities during such removals. The district must provide a free appropriate public education (FAPE) to a student with a disability, consistent with the requirements of Rule 6A-6.03312(5), FAC, beginning on the eleventh cumulative school day of removal in a school year. Requirements for the provision of FAPE include the following:

- a. The district will provide services to a student with a disability who has been removed for more than ten (10) school days in a school year to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP.
- b. If the removal is for not more than ten (10) consecutive school days in a school year and is not considered a change in placement, school personnel, in consultation with the

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student's special education teacher, will determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the IEP goals.

- c. If the removal is due to behavior that was determined not to be a manifestation of the student's disability, the IEP team will determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the IEP goals.

#### **6. Interim alternative educational setting**

The IEP team determines the interim alternative educational setting (IAES), unless it is determined by an administrative law judge in accordance with Rule 6A-6.03312(8)(a), FAC.

- a. The IAES is selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services, accommodations, and modifications, including those described in the student's current IEP, that will enable the student to meet IEP goals.
- b. The IAES will include services, accommodations, and modifications to address the behavior that resulted in the change of placement and that are designed to prevent the misconduct from recurring.

School personnel may place a student in any IAES for the same amount of time a student without a disability would be placed, but for not more than forty-five (45) calendar days without the consent of the parent or guardian if the student:

- a. carries a weapon to school or to a school function, or
- b. knowingly possesses or uses illegal drugs, or
- c. sells or solicits the sale of a controlled substance while at school or a school function.

School personnel will notify the parent of any IAES placement contemplated and provide the parent with a copy of the notice of procedural safeguards, consistent with Rule 6A-6.03311, FAC, on the day the placement decision is made.

#### **7. Expedited hearings**

An expedited hearing may be requested:

- a. by the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge regarding a change in placement; and,
- b. by the district if school personnel maintain that the current placement of the student is substantially likely to result in injury to the student or to others (prior to removal to an

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interim alternative educational setting) during the pendency of a due process hearing or an appeal as prescribed in Rule 6A-6.03311(11), FAC.

- c. School district personnel may seek subsequent expedited hearings for alternative placements if after the initial forty-five (45) day term has expired, the district maintains the student's dangerous behavior is still likely to result in injury to the student or others.

The decision of the administrative law judge rendered in an expedited hearing may be appealed by bringing a civil action in federal district or state circuit court, as provided in s. 1003.57(5), F.S., or by requesting an impartial review by the appropriate district court of appeals as provided by s. 120.68 and 1003.57(5), F.S.

#### **8. Authority of an administrative law judge**

An administrative law judge may order a change in the placement of a student with a disability to an appropriate interim alternative or another educational setting for not more than forty-five (45) days if the administrative law judge, in an expedited due process hearing:

- a. determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others;
- b. considers the appropriateness of the student's current placement;
- c. considers whether the school 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; and,
- d. determines that the interim alternative educational setting (IAES) that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of subsection (6) above.

In reviewing a decision with respect to the manifestation determination, the administrative law judge will determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability in accordance with Rule 6A-6.03312(3), FAC. In reviewing a decision to place a student in an IAES, the administrative law judge will apply the requirements of Rule 6A-6.03312(6) and (8)(a), FAC.

#### **9. Student's placement during proceedings**

A student's placement during proceedings is determined by the following:

- a. If a parent requests a hearing or an appeal to challenge an IAES placement, a manifestation determination or disciplinary action resulting from the student's involvement with a weapon, illegal drug, or a controlled substance, the student will

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remain in the IAES pending the decision of the administrative law judge or until the expiration of the forty-five (45) day time period, whichever occurs first, unless the parent and the district agree otherwise.

- b. If the district proposes to change the student's placement after the expiration of the forty-five (45) day IAES placement, and the parent challenges that proposed change of placement, the student will return to his or her placement prior to the IAES, except as provided in Rule 6A-6.03312(7)(b), FAC.
- c. Except as specified in paragraphs 8 (a) and (b) above, if a parent requests a hearing to challenge the manifestation determination, the student's placement shall be consistent with the requirements of s. 1003.57(5), F.S. and Rule 6A-6.03311(11)(d), FAC.

#### **10. Protections for students not yet eligible for special education**

A regular education student who is the subject of disciplinary actions may assert any of the protections afforded to a student with a disability if the school district had knowledge of his or her disability before the misbehavior occurred for which the disciplinary action is being taken.

- a. A school district is determined to have knowledge that a student may have a disability if:
  - (1) the parent has expressed concerns in writing (or orally, if unable to write) to school district personnel that the student needs specially designed instruction and related services;
  - (2) the behavior or performance of the student demonstrates the need for specially designed instruction and related services;
  - (3) the parent has requested an evaluation to determine a need for possible specially designed instruction and related services; or,
  - (4) the teacher of the student or other school district personnel have expressed concern about the student's behavior or performance to the special education director or to other appropriate school district personnel in accordance with the district's child find or special education referral system.
- b. A school district would not be deemed to have knowledge if, as a result of receiving the information specified in subsection (10)(a) above, the school district:
  - (1) conducted an evaluation and determined that the student was not a student with a disability; or
  - (2) determined that an evaluation was not necessary; and,

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- (3) provided notice to the student's parents of the determination that the student was not a student with a disability as required by Rule 6A-6.03311, FAC.
- (4) If the district has no knowledge that the student is a student with a disability prior to disciplinary action, the student may be disciplined in the same manner as a student without a disability.

If an evaluation request is made for the student during the time period of the disciplinary action, the evaluation will be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. After considering the evaluation results and information provided by the parents, if the student is determined to be a student with a disability, the school district will provide specially designed instruction and related services consistent with the requirements of Rule 6A-6.03312(5), FAC.

#### **11. Student records in disciplinary procedures**

The district will ensure that the special education and disciplinary records of students with disabilities are transmitted, consistent with the provisions of s. 1002.22, F.S., and Rule 6A-1.0955, FAC:

- a. for consideration by the person making the final determination regarding the disciplinary action; and,
- b. for consideration by the appropriate authorities to whom school districts report crimes.

#### **12. Disciplinary records of students with disabilities**

The district will include in the records of students with disabilities a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with the student records of nondisabled students.

- a. The statement may be a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student.
- b. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

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#### **13. Suspension and expulsion rates**

The Florida Department of Education will examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions for students with disabilities among local education agencies in the state or compared to the rates for nondisabled students within the districts.

If discrepancies are occurring, the Department of Education will review, and if appropriate, revise (or require the affected state or local education agency to revise) the policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that they comply with IDEA.