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**OFFICE OF THE SUPERINTENDENT
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DISCIPLINING STUDENTS WITH DISABILITIES

When a student currently receiving services under the IDEIA or who has a Section 504 accommodation plan commits a violation of the student code of conduct warranting serious disciplinary action, the first step requires an analysis of the length of the exclusion. In those instances where a suspension is for ten (10) consecutive days or less, removal is authorized for any violation of school rules to the same extent that removal would be applied to students without disabilities. Such short-term suspensions from a program are not considered a change in educational placement under IDEA or a significant change of placement under Section 504 (unless the short-term removals are a pattern of removal as discussed below) and the procedural safeguards associated with the change of placement are not required. A removal for disciplinary reasons for more than ten (10) consecutive days, or a series of non-consecutive removals that total more than ten (10) days that is a pattern of removal, is a change of placement under IDEIA and a significant change of placement under Section 504.

In the instance where the removal is for more than ten (10) consecutive days for a violation of school rules, or where a series of suspensions that are each ten (10) or fewer days in duration but exceed ten (10) days in the aggregate in a school year and the District determines they create a pattern of removal that constitutes a change of placement under IDEA or a significant change of placement under Section 504, two (2) basic options are available to the school district depending on the nature and severity of the student's conduct. The first option is exclusion of the student by expulsion or additional suspension from school, contingent upon a manifestation determination as discussed below. The second option is a unilateral removal of the student by the District to an Interim Alternative Education Setting (IAES), regardless of the results of the manifestation determination, for one (1) of three (3) infractions:

- A. carrying or possessing a weapon to or at school, on school premises, or to or at a school function;
- B. knowingly possessing or using illegal drugs, or selling or soliciting the sale of a controlled substance while at school, on school premises, or at a school function;

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- C. inflicting serious bodily injury upon another person while at school, on school premises, or at a school function.

Each option is dealt with below.

(NOTE: the following provisions and protections do not apply to students who have been identified under the IDEIA but whose parents have refused initial consent for services, or to students who have been identified as handicapped or disabled under Section 504 but whose parents have refused consent to implement a Section 504 plan.)

"In-school" suspensions are not considered to count toward the ten (10) days of suspension/removal as long as the student is afforded the opportunity in the in-school setting to continue to appropriately participate in general curriculum, continue to receive the services specified in the student's IEP or Section 504 plan, and continue to participate with non-disabled children to the extent that they would have in their current placement. Otherwise, any use of in-school suspension that does not meet this standard would be counted toward the ten (10) days suspension limit and analysis.

Whether an IDEIA or Section 504 student's removal from transportation services "counts" as a day of suspension depends upon whether the student receives such services as a part of his/her IEP or Section 504 plan. If those services are included in the IEP or Section 504 plan, then each day a student is removed from the bus would count as a day of suspension under the above.

In those instances where a removal is for less than ten (10) days, but the principal contemplates that further disciplinary action will probably be necessary during the school year, it is advisable to consider convening the I.E.P. Team to determine whether the student's behavior is impeding his/her ability to learn, to review the appropriateness of conducting a Functional Behavior Assessment (FBA), and/or to consider whether or not to develop a Behavioral Intervention Plan (BIP).

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Expulsion or Change in Placement by Cumulative Suspensions

If the principal decides to recommend that the student be expelled from school, or where the District determines that a series of short-term suspensions (each ten (10) or fewer days in duration) in the aggregate exceed ten (10) days and creates a pattern of removal that constitutes a change in the student's placement, the parents are to be notified on the date the principal makes the request for the expulsion or additional suspension/removal beyond ten (10) days, accompanied by prior written notice of the proposed change in placement and notice of parent rights delineating all of the rights and procedural safeguards to which the parents and students have access in connection with an expulsion or suspension/removal to the same extent as any other student facing expulsion. In determining whether a series of suspensions each ten (10) or fewer days has resulted in a pattern of removal and is, therefore, a change of placement, the District will consider whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in removals, the length of each removal, the proximity in time of the removals to one another, and the total amount of time the child is excluded from school. The determination will be made on a case-by-case basis and the District will notify the parents of the outcome of the determination and their right to challenge the determination through an impartial due process hearing.

In the case of a 504 student, the District will convene the relevant members of the 504 team and District personnel familiar with the student's misconduct and will conduct a manifestation determination review (MDR) of the child's misconduct before any significant change of placement (i.e. expulsion, or more than ten (10) non-consecutive days of suspension that is a pattern of removal) takes place.

In the case of a student with an IEP, the District will convene the relevant members of the IEP team and District personnel familiar with the student's misconduct and will conduct an MDR of the child's misconduct within ten (10) school days of any decision to change the placement of the child with a disability because of a violation of the code of student conduct. Both the IDEIA and its implementing regulations contain guidance as to the steps that are to be followed in reaching a determination of causal relationship.

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Prior to making its manifestation determination, the M.D.R. Team must review all relevant information in the student's file, including the child's IEP or 504 plan, any teacher observations, and any relevant information provided by the parents to determine whether or not:

- A. the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- B. the conduct in question was the direct result of the District's failure to implement the child's IEP or 504 plan.

Behavior Determined NOT to be a Manifestation of the Disability

If the M.D.R. Team determines that the behavior is not a manifestation of the student's disability, the school may continue with its expulsion or suspension procedures to the same extent as it would with any other student. The M.D.R. Team is to arrange for a copy of the student's special education records and disciplinary records to be forwarded to the expulsion examiner for his/her consideration.

In the case of a 504 student, the 504 team shall determine whether any additional evaluation of the student is necessary and, if so, complete such additional evaluation. The 504 team shall also determine whether any modifications to the student's 504 plan are necessary while the student is in the disciplinary placement.

In the case of a student with an IEP, the I.E.P. Team shall meet to determine the student's educational setting and services during the disciplinary change in placement.

If the parents appeal the causal relationship determination through the filing of a due process complaint, the student shall remain in the disciplinary setting pending the complaint, which shall be expedited, unless the school and the parents can agree to a different placement pending the outcome of the hearing.

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In the case of a student with an IEP, if the student is expelled, the District has a continuing responsibility for providing educational services to the student. The I.E.P. Team shall consider the nature and extent of educational services to be provided in order to make available a free appropriate public education (FAPE) to the student so as to enable the student to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

Behavior Determined to be a Manifestation of the Disability

If a causal relationship between the student's disability and the misbehavior is determined as set forth above, the expulsion or removal beyond ten (10) days **cannot** go forward. The I.E.P. Team or 504 team should immediately proceed to attempt to remedy any deficiencies in the IEP or 504 plan, the placement of the student, or the implementation of the IEP or 504 plan. This should include the development of strategies, including positive behavioral interventions, supports and other strategies to address the behavior so that the child will receive services appropriate to his/her needs.

The 504 team should determine whether the child's educational placement is appropriate and what, if any, modifications to the 504 plan, including placement, are necessary to provide the child with a free appropriate public education.

In addition, the I.E.P. Team must:

- A. conduct a functional behavioral assessment (FBA) unless the District has already done so prior to the behavior that resulted in the exclusion/change of placement, and implement a behavioral intervention plan (BIP); or
- B. if a BIP has already been developed, review the BIP and modify it as necessary, to address the behavior under review.

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Functional Behavioral Assessment (FBA)

The general purpose of an FBA is to provide the I.E.P. Team with additional information, analysis and strategies for dealing with undesirable conduct on the part of a student with a disability, particular where such behavior impedes or interferes with the child's education. An FBA should include:

- A. the specific behavior(s) of concern, including the intensity, frequency, and duration;
- B. the setting where the behavior usually occurs, e.g., cafeteria, transition periods, bus, regular classroom, etc.;
- C. the circumstances antecedent to behavior;
- D. the consequences of the behavior;
- E. conditions that may impact the behavior, e.g., medications, diet, schedule, etc.;
- F. the apparent purpose of the behavior;
- G. modification/interventions attempted to change the behavior;
- H. behaviors that would serve as functional alternatives to the target behavior.

Behavioral Intervention Plan (BIP)

A BIP should clearly describe the target behavior(s) and the appropriate behavior that is sought, the reinforcements that will be used to modify the target behavior, and the progressively intrusive consequences that will be invoked if the target behavior does not change. The plan should address methods such as time-out, safe-haven, drawing a student back into a special education room from a regular classroom when conditions warrant, etc., all of which focus on remediating or improving a student's behavior rather than merely disciplining behavior. The plan should also describe who will be involved in the intervention (classroom teacher, aide, specialist), their respective roles and responsibilities, and how data will be collected to assess the effectiveness of the intervention.

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If deemed appropriate, the FBA and/or BIP should be completed as soon as possible.

Interim Alternative Educational Setting for Weapons, Illegal Drugs, and/or the Infliction of Serious Bodily Injury

A student may be placed in an Interim Alternative Educational Setting (IAES) if such alternative has already been made a part of the student's IEP/BIP as well as under one of the following conditions (regardless of whether the student's conduct was a manifestation of the student's disability):

- A. The student carried a weapon to, or possessed a weapon at school, on school premises, or to or at a school function (see below).
- B. The student knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school functions.
- C. The student inflicted serious bodily injury upon another person while at school, on school premises, or at a school function (see below).

The Superintendent may unilaterally place a student in a forty-five (45) school day Interim Alternative Educational Setting (IAES) if the student is found to have violated the Code of Conduct by carrying or possessing a weapon to or at school, on school premises, or to or at a school function; by knowingly possessing or, using illegal drugs, selling, or soliciting the sale of a controlled substance while at school, on school premises or at a school function; or by inflicting serious bodily injury on another while on school premises or at a school function. The definition of weapon is as follows:

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 less than two and one-half (2 1/2) inches long.

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The definition of serious bodily injury is as follows:

Bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

The District shall provide the parent with prior written notice of the IAES and provide the parent with a copy of the procedural safeguards to which they are entitled.

The student's I.E.P. Team is to convene as soon as possible to determine where and how educational services will be delivered to the student during his/her placement in the IAES.

Should the student's parents dispute the order for a forty-five (45) school day interim alternative educational setting or the placement determined by the I.E.P. Team, they have a right to request an expedited special education due-process hearing.

A student is to remain in the IAES until a hearing and appeal decision is rendered or the forty-five (45) school days expire, whichever happens first.

Retention and Transmission of Disciplinary Information

The District will include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. Additionally, when a child with a disability transfers from one school to another (including a county board of DD or other educational agency), the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

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The statement of disciplinary action must:

- A. specify the circumstances that resulted in the disciplinary action and provide a description of the disciplinary action taken if the disciplinary action was taken because the child:
 - 1. carried a weapon to or possessed a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District;
 - 2. knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the District; or
 - 3. inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District;
- B. include any information that is relevant to the safety of the child and other individuals involved with the child.

The statement may also include a description of any other behavior engaged in by the child that required disciplinary action, and a description of the disciplinary action taken.

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SUSPENSION* OR EXPULSION

(Students with IEPs)



Single suspension (removal for ten (10) days or less) with no further discipline contemplated (strong encouragement to review and address behavior and IEP, if necessary). Does the student's behavior impede his/her ability to learn? Is a functional behavior assessment and behavior intervention plan appropriate?



Further discipline contemplated beyond ten (10) days (e.g. expulsion); or there is a series of suspensions that cumulate to more than ten (10) days that are a pattern of removal.



Within ten (10) days of decision to change placement (e.g. expel or suspend as part of a series of removals that constitute a pattern of removal), conduct a manifestation determination review.



(The manifestation determination review may be conducted before the expulsion hearing).

- * Suspensions of ten (10) school days or less accumulating to no more than ten (10) days per school year may be unilaterally levied by the school without parent consent.

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MANIFESTATION DETERMINATION REVIEW*

Student violates code of conduct.



School decides to request expulsion
or suspend student as part of a series of suspensions that are a
pattern of removal, thereby causing a change of placement.



Provide parent with prior written notice of the
proposed disciplinary change in placement and notice of
procedural safeguards.



Within ten (10) school days.

Manifestation Determination Review held where relevant members of the I.E.P.
Team consider:

- A. all relevant information in the student's file, including the child's IEP
- B. any teacher observations
- C. any relevant information provided by the parents

And then determine whether

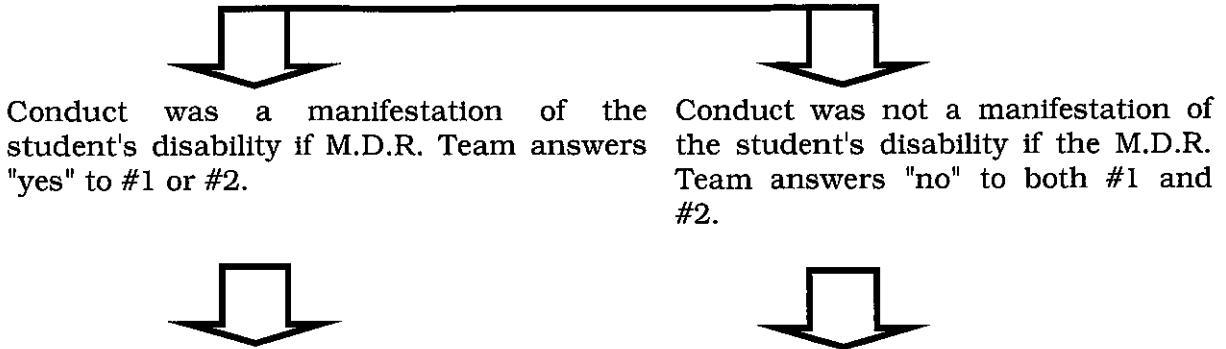
1. the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. the conduct in question was the direct result of the District's failure to implement the child's IEP.

* This determination may be made at the same conference where the behavioral assessment and plan are discussed.

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I.E.P. Team must:

- A. Conduct a functional behavioral Assessment (FBA), unless the District has already done so prior to the behavior that resulted in the exclusion/change of placement, and implement a behavior intervention plan (BIP); or

Follow school's expulsion procedures (see AG 5610). Send special education records and disciplinary records to expulsion examiner. If student is expelled, deliver to parent prior written notice of the disciplinary change in placement and notice of procedural safeguards. District must make available a free appropriate public education (FAPE) to the student so as to enable the student to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

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- B. If a BIP has already been developed, review the BIP and modify it as necessary, to address the behavior under review.



I.E.P. Team determines if change in IEP, services and/or placement is warranted. Student returns to his/her prior placement on day eleven (11) unless parent agrees otherwise or Superintendent order a forty-five (45) school day interim alternative educational setting ("IAES").



If the Superintendent orders a forty-five (45) day IAES, deliver to parent prior written notice of the disciplinary change in placement and notice of procedural safeguards.



I.E.P. Team meets to determine how and where educational services will be delivered starting on day eleven (11) of the expulsion.



Parent may file a request for an expedited due process hearing. Student remains in the disciplinary placement pending the due process hearing and decision.

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I.E.P. Team meets to determine how and where educational services will be delivered during the forty-five (45) days IAES.



Hearing officer reviews the outcome of the manifestation determination review and/or disciplinary placement.



Parent may file a request for an expedited due process hearing. Student remains in the IAES pending the due process hearing and decision.



Hearing officer reviews the use of the IAES and/or the disciplinary placement.

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