

Board File: JK-2

PROCEDURAL REQUIREMENTS FOR DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES

Consistent with Board Policy JK, effective student discipline is a prerequisite for sound educational practice and productive learning and should promote disciplinary responses that refrain from interrupting a student's education to the extent possible. Effective discipline considers the age and development of the student in framing the instruction in appropriate behavior and the consequences for misbehavior and includes consideration of repair of harm and restoring relationships and restorative practices to re-engage students in their learning community. Schools should minimize the use of out-of-school suspension, recommendations for expulsion, and referrals to law enforcement, to the extent practicable while remaining consistent with the requirements of state and local law.

Students with disabilities who engage in disruptive activities and/or actions dangerous to themselves or others will be disciplined in accordance with their Individualized Education Programs (IEPs), any behavioral intervention plan, this policy, and applicable law including the Individuals with Disabilities Education Act of 2004, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act and consistent with the Code of Student Conduct.

Nothing in this policy shall prohibit an IEP team from establishing consequences for disruptive or unacceptable behavior as a part of the student's IEP and/or behavioral intervention plan (BIP).

Suspensions, expulsions, manifestation determinations, and provision of services

- a. **Suspension**: Students with disabilities may be suspended for up to 10 school days in any given school year for violations of the student code of conduct. These 10 days need not be consecutive. During any such suspension, the student shall not be entitled to receive educational services.

Upon the 11th cumulative school day of suspension during an academic school year, educational services shall be provided 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. School personnel, in consultation with at least one of the student's teachers, shall determine the educational services to be provided to the student during this period of suspension or removal. If the disciplinary removal is a change of placement, then the student's IEP team shall determine appropriate educational services during the period of removal.

- b. **Notification**: Notification of a suspension shall be implemented in the same manner as applied to nondisabled students. Prior to expulsion or other disciplinary change in placement, the student's parents shall be notified of the decision to take such disciplinary

action and of their procedural safeguards. This notification shall occur not later than the date on which such decision is made.

- c. **Manifestation determination**: Within 10 school days from the date of the decision to take disciplinary action that will result in an expulsion or other removal of a student from school for more than 10 cumulative days in a school year, relevant members of the student's IEP team, including the student's parents, shall 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 whether the student's behavior was a manifestation of the student's disability.

The team shall determine: (1) whether the student's conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; and (2) whether the student's conduct in question was the direct result of the school's failure to implement the student's IEP. If the answer to either of these two questions is "yes," the student's behavior shall be deemed to be a manifestation of the student's disability.

- d. **Disciplinary action that is a manifestation**: If the team determines that the student's behavior was not a manifestation of the student's disability, disciplinary procedures shall be applied to the student in the same manner as applied to nondisabled students. The student shall receive educational services during the period of expulsion or other disciplinary action which removes the student from school. When a student is expelled, educational services shall be provided as determined by the student's IEP team to enable the student to participate in the general education curriculum, although in another setting, and to progress toward meeting his or her IEP goals.

Within a reasonable amount of time after determining that the student's behavior is not a manifestation of the student's disability, the IEP team, as appropriate, may complete a functional behavioral assessment ("FBA"). In addition, a behavioral intervention plan ("BIP") may be developed for the student, as appropriate. If a BIP has already been developed, the BIP may be reviewed and modified, as appropriate.

- e. **Disciplinary action for behavior that is not a manifestation**: If the team determines that the student's behavior is a manifestation of the student's disability, expulsion proceedings or other disciplinary removal will be discontinued. However, the student may be placed in an alternative setting for up to 45 school days as discussed below or the student's placement may be changed for educational reasons as determined by the IEP team or as otherwise permitted by law.
- f. **Implementation of a functional behavioral assessment and behavioral intervention plan**: Within a reasonable amount of time after determining that the student's behavior is a manifestation of the student's disability, the student's IEP team shall: (1) conduct an FBA of the student, unless an FBA has already been conducted; and (2) implement a BIP for the student. If a BIP has already been developed, the IEP team shall review it and modify it as necessary to address the student's behavior.

Placement in an alternative setting for 45 school days

School personnel may remove a student with disabilities to an interim alternative setting for not more than 45 school days without regard to the manifestation determination if:

1. the student carried a weapon to school or a school function;
2. the student possessed a weapon at school or a school function;
3. the student possessed or used illegal drugs at school or a school function;
4. the student sold or solicited the sale of a controlled substance at school or a school function;
5. the student inflicted serious bodily injury on another person while at school or a school function; or
6. a hearing officer or court of appropriate jurisdiction so orders.

Such removal to an alternative setting is permissible even if the student's behavior is determined to be a manifestation of the student's disability. The student's IEP team shall determine the educational services to be provided to the student in the alternative setting.

Students not identified as disabled

Students who have not been identified as disabled shall be subjected to the same disciplinary measures applied to students with disabilities if the district had "knowledge" of the student's disability before the behavior that precipitated the disciplinary action occurred.

The district is deemed to have knowledge of the student's disability if:

1. the student's parent has expressed concern in writing to district supervisory or administrative personnel, or the student's teacher, that the student is in need of special education and related services;
2. the student's parent has requested an evaluation; or
3. the student's teacher or other district personnel have expressed specific concerns about the student's pattern of behavior directly to the director of special education or other district supervisory personnel.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed, the student shall remain in the district's determined educational placement, which can include suspension or expulsion.

The district shall not be deemed to have knowledge that the student is a child with a disability if the parent has not allowed an evaluation of the student, or the student has been evaluated and it

was determined that he or she is not a child with a disability, or the student was determined eligible for special education and related services, but the parent refused services.

Adopted: November 27, 2018

Revised and renamed: June 18, 2019

LEGAL REFS.:

20 U.S.C. 1401 et seq. (Individuals with Disabilities Education Improvement Act of 2004)

34 C.F.R. 300.530-300.537 (IDEIA regulations)

C.R.S. [22-20-101](#) et seq. (Exceptional Children's Educational Act)

C.R.S. [22-33-106](#) (1)(c)

CROSS REFS.:

[IHBA](#), Special Education Programs for Students with Disabilities

[JIC/JICDA](#), Student Conduct, and subcodes

[JK](#), Student Discipline, and subcodes