

**DISCIPLINARY REMOVAL OF
SECONDARY STUDENTS WITH DISABILITIES**

Definitions

For purposes of this policy, the following definitions apply:

"Child with a disability" includes students who have been identified as having a disability or for whom an initial evaluation has been sought under the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act, or Title II of the Americans with Disabilities Act.

"Controlled substance" means a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act, 21 U.S.C. § 812(c).

"Illegal drug" means a controlled substance, but does not include a controlled 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 or under any other provision of federal law.

"School day" means any day, including a partial day that students are in attendance at the technology center for instructional purposes.

"Serious bodily injury" means bodily injury that involves –

1. a substantial risk of death;
2. extreme physical pain;
3. protracted and obvious disfigurement; or
4. protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Weapon" means a dangerous weapon as defined by 18 U.S.C. § 930(g)(2), specifically, 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 of less than 2½ inches in length.

Case-By-Case Determination

Technology center personnel must consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student with a disability who violates the code of student conduct.

Short-Term Disciplinary Removal

District personnel may remove a student with a disability who violates the code of student conduct from the student's current placement to an appropriate interim alternative educational setting, another setting or suspension, for not more than ten (10) consecutive school days and for additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct, as long as those additional removals do not constitute a change of placement.

A change of placement occurs if:

1. the removal is for more than ten (10) consecutive school days; or
2. the student has been subjected to a series of removals that are ten (10) days or less during the same school year that constitute a pattern.

School personnel determine whether a pattern exists by considering the following factors:

- the series of removals total more than ten (10) school days in a school year;
- the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
- such additional factors 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.

However, in an effort to promote uniformity in the decision-making process, the board of education has determined that it is in the district's best interest that it not require school personnel to weigh these factors to determine the existence of a pattern in each instance. Instead, when the student's short-term removals exceed ten (10) school days over the course of the school year, the district will follow the process identified in this policy for implementing a long-term removal.

In school alternative placements for more than ten (10) consecutive school days or that may constitute a pattern of exclusion may be a change of placement if the student does not receive education services required under the student's IEP or Section 504 / Title II Plan.

Educational Services During a Short-Term Disciplinary Removal

The technology center will provide a student with a disability the same level of services it provides students without disabilities during removals for ten (10) school days or less during the school year.

After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if a subsequent removal is imposed for not more than ten (10) consecutive school days and is not a change of placement, technology center personnel, in consultation with the student's special education teacher and the sending school district, will determine the extent to which services are needed, so as to enable the student to continue to appropriately progress in the general curriculum, although in another setting, and to appropriately advance toward meeting the goals set out in the student's IEP or Section 504 / Title II Plan.

Notification

On the date on which the decision is made to make a disciplinary removal that constitutes a change of placement of a student with a disability because of a violation of the district's code of student conduct, technology center personnel will notify the sending school district as well as the minor student's parents of the decision and ensure that the sending school provides the parents of students who are eligible for special education and related services under the IDEA with a copy of the *Parents Rights in Special Education: Notice of Procedural Safeguards* form. Personnel will provide the parents of students who are eligible for special education and related services only under Section 504>Title II with a copy of the district's *Section 504 Information and Procedural Safeguards* form.

Special Circumstances

Technology center personnel may also 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, if the student:

1. carries or possesses a weapon at school, on school premises, or to or at a school function;
2. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school, on school premises or at a school function; or
3. has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

Making a Manifestation Determination

The technology center will notify the sending school of any incidents involving the need to make a manifestation determination. These determinations will be made with full notice to and cooperation with the sending school. Except for removals that will be for not more than ten (10) consecutive school days and will not constitute a change of placement, within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of the technology center's code of student conduct, the student's sending school's IEP or Section 504 / Title II team will meet to review all relevant information in the student's file, including the student's IEP or Section 504 / Title II Plan, any teacher/instructor observations psychological evaluation date related to the student's current behavior, and any relevant information provided by the sending school and parents to determine:

1. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. if the conduct in question was the direct result of an inappropriate placement or the technology center's failure to implement the IEP or Section 504 / Title II Plan.

The conduct will be determined to be a manifestation of the student's disability if the student's IEP or Section 504 / Title II team determines that a condition in either (a) or (b) of this paragraph was met.

If the student's IEP or Section 504 / Title II team determines that the conduct in question was the direct result of the technology center's failure to implement the IEP or 504 Plan, immediate steps will be taken to remedy those deficiencies.

Determination that Behavior Is a Manifestation of the Student's Disability

If the IEP team determines that the conduct was a manifestation of the student's disability, the team will either:

1. conduct a functional behavior assessment, unless the technology center had conducted a functional behavior assessment before the behavior that resulted in the change of placement occurred and further functional behavior assessment is deemed unnecessary, and implement a behavior intervention plan for the student; or
2. if a behavior intervention plan already has been developed, review the behavior intervention plan and modify it, as necessary, to address the behavior.

If the Section 504 / Title II team determines that the conduct was a manifestation of the child's disability, the team will determine what, if any, modifications to the student's educational placement are necessary, including conducting a functional behavior assessment and developing or revising a behavior intervention plan (if appropriate).

A parent or guardian who disagrees with the manifestation determination may file a complaint requesting an impartial due process hearing.

Except as provided in this policy, the IEP or Section 504 / Title II team will return the student to the placement from which the student was removed, unless the parent, sending school and the technology center agree to a change of placement as part of the modification of the behavior intervention plan.

Determination that Behavior Is Not a Manifestation of the Student's Disability

If the behavior that gave rise to the violation of the technology center's code of student conduct is determined not to be a manifestation of the student's disability, then school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities.

A parent or guardian of a minor student who disagrees with the manifestation determination may file a complaint requesting an impartial due process hearing.

Educational Services During a Long-Term Disciplinary Removal

During a long-term disciplinary removal, a student eligible for special education and related services under the IDEA will:

1. continue to receive educational services so as to enable the student to continue to appropriately progress in the sending school's general education

- curriculum, although in another setting, and to appropriately advance toward achieving the goals set out in the student's IEP; and
2. receive, as appropriate through the sending school, a functional behavior assessment and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The student's IEP team will determine appropriate services and the location in which services will be provided. These services may be provided in an interim alternative educational setting determined by the IEP team.

During a long-term disciplinary removal, a student eligible for special education and related services only under Section 504/Title II will receive educational services to the same extent that a student without disabilities would receive educational services during a disciplinary removal for the same offense. In some instances a long-term disciplinary removal may effectively remove the student from the technology center and may limit or eliminate the student's return to the technology center.

Appeal to Hearing Officer Under the IDEA

The parent of a student eligible for special education and related services under the IDEA who disagrees with any decision regarding placement or the manifestation determination under this policy, or the technology center, if school personnel believe that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by filing a due process hearing complaint seeking an expedited hearing.

In making the determination, the technology center acknowledges that the hearing officer may:

1. return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of the applicable provisions of the IDEA or that the student's behavior was a manifestation of the student's disability; or
2. order a change of placement of the student to an appropriate interim 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.

These procedures may be repeated, if the sending school or technology center believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

When an appeal has been requested by either the parent, sending school or the technology center, the student will remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period set for the placement, whichever occurs first, unless the parent, sending school and the technology center agree otherwise.

The sending school or technology center may also seek a court order to remove a student with a disability from the technology center or change the student's current educational

placement if technology center personnel believe that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

Providing Records to Disciplinary Decisionmaker

If the technology center initiates disciplinary procedures that it concludes would constitute a change of placement for a student with a disability, school personnel will ensure that the student's special education and disciplinary records are provided for consideration to the sending school personnel making the final determination regarding the disciplinary action.