

DISCIPLINING STUDENTS WITH DISABILITIES

I. GENERALLY

When ACPS Student Code of Conduct violations result in a student with a disability being issued disciplinary consequences, ACPS utilizes the Multi-Tiered Systems of Supports (MTSS) framework for positive behavioral interventions, including the use of restorative practices and the Parent Resource Center (PRC). When issuing disciplinary consequences for a student with a disability, the following procedures must be followed. School IEP teams may consider any unique circumstances on a case-by-case basis when determining if a change in placement is necessary for a child with a disability as a result of discipline.

II. LONG-TERM SUSPENSIONS, EXPULSIONS OR SHORT-TERM SUSPENSIONS WHICH CONSTITUTE A PATTERN ARE LONG TERM REMOVALS AND CONSIDERED A DISCIPLINARY CHANGE IN PLACEMENT

For the purpose of removing students with disabilities from their current educational placements, a disciplinary change in placement occurs when:

- A. The removal is for more than 10 consecutive school days at a time; or
- B. Pattern Analysis: There is a series of removals during the school year, each of which is for 10 days or less and they cumulate to more than 10 days in a school year and constitute a pattern because of:
 - 1. The length of each removal,
 - 2. The proximity of the removals to each other,
 - 3. The total time the student is removed, and
 - 4. The student's behavior is substantially similar to the student's behavior in the series of removals for previous incidents in the school year.
 - 5. The pattern analysis determination is made and documented by the administration.

If the disciplinary action will result in a long term removal, then that student's parents/guardians must be sent notice of the recommendation of discipline the same day as the decision is made for the disciplinary change in placement and must be provided with a copy of the procedural safeguards. The procedures outlined in Section V must also be followed.

A parent may request a due process hearing to challenge the pattern analysis determination. For any disciplinary change in placement, a Manifestation Determination Review (MDR) must be held and the Individualized Education Program (IEP) team must meet to determine the educational services to be provided during the long-term removal.

III. SHORT-TERM SUSPENSIONS

A short-term suspension is a suspension of 10 consecutive days or less at a time.

School authorities may remove any student with a disability from their current educational setting for 10 school days cumulative in a school year to the extent that such removals would be applied to students without disabilities and for additional short-term suspensions during the school year provided no pattern exists. Short term suspensions which constitute a pattern will be handled through long term removal procedures.

No MDR or IEP meeting is required for a short term removal, although an IEP meeting may be held if needed. Educational services are provided for each day of removal after the first ten days of removal in a school year. Educational services will also be provided during the first ten days of removal if services are provided to a student without disabilities in the same circumstances.

IV. FUNCTIONAL BEHAVIOR ASSESSMENTS (FBAs) AND BEHAVIOR INTERVENTION PLANS (BIPs)

If the MDR team members determine that a manifestation exists, the IEP team must:

- A. Conduct a Functional Behavior Assessment (FBA) and implement a Behavioral Intervention Plan (BIP), if no FBA was conducted previously; or
- B. If the student already has an FBA and BIP in place, review and modify the BIP, as necessary, to address the behavior.

If a manifestation is found, ACPS and the parent/guardian may still agree to a change in placement made through the IEP process. Without this agreement, the student must return to the placement from which the student was removed. Nothing in this section limits the authority of ACPS for the first ten days of removal in a school year or for applicable forty-five school day removals.

If the MDR team members determine that there is no manifestation, then the IEP team should decide whether there is a need to conduct or review an FBA and BIP.

V. EDUCATIONAL SERVICES WHILE DISCIPLINED

For the first 10 days of removal in a school year, ACPS will provide educational services to the student with a disability if services are provided to students without disabilities who have been similarly removed.

After the first 10 days of removal in a school year, ACPS provides services to the student during the period of removal. The services must enable the student to:

- A. Continue to progress in the general curriculum, although in another setting; and
- B. Make progress toward meeting the goals set out in the student's IEP.

The determination of the educational services is made by the IEP team if the discipline constitutes a change in placement. For a short term removal that is not a change in placement, the determination of the education services is made by school personnel in consultation with the student's special education teacher.

VI. MANIFESTATION DETERMINATION REVIEW

When a disciplinary action is proposed that will result in a disciplinary change of placement, a Manifestation Determination Review (MDR) will be conducted within 10 school days after the date on which the decision to take disciplinary action is made. The review is conducted by the Manifestation Team, which consists of a representative of the Office of Specialized Instruction, the parent(s)/guardian(s), and relevant members of the IEP team (as determined by the parent(s)/guardian(s) and the school division).

The Manifestation Team may determine that the behavior of the student was not a manifestation of such student's disability only if the Team:

- A. Considers all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent/guardian; and
- B. Determines that:
 - 1. The conduct in question was not caused by, or did not have a direct and substantial relationship to, the student's disability; and
 - 2. The conduct in question was not the direct result of the school division's failure to implement the IEP.

If a manifestation is found, the student cannot be disciplined beyond any permissible short-term removal that may be available.

VII. DISCIPLINARY ACTION FOLLOWING AN MDR DETERMINATION THAT THERE IS NO MANIFESTATION

If the behavior is not a manifestation of the student's disability, the disciplinary procedures will be applied in the same manner as applied to students without disabilities. The student must continue to receive the educational services necessary to enable the student to continue to participate in the general curriculum, even if placed in another setting, and to progress toward meeting the goals set out in the student's IEP. In addition, the special education and disciplinary records of the student must be made available to the person who makes the final decision regarding the imposition of discipline.

A parent/guardian may request an expedited due process hearing if the parent/guardian disagrees with the determination that the behavior was not a manifestation of the student's disability or if the parent/guardian disagrees with any decision regarding the placement of the student while disciplined. The placement may also be changed through the IEP process with the consent of the parent/guardian.

**DISCIPLINARY ACTION AND/OR ALTERNATIVE PLACEMENT
FOLLOWING MDR DETERMINATION THAT THERE IS A MANIFESTATION**

A student with a disability whose behavior is determined to be a manifestation of the student's disability may not be disciplined except to the extent a removal is otherwise permitted by law. The student may be removed to a different location not constituting a change in placement, or may be removed to a different or more restrictive placement by following change in placement procedures through the IEP process. The IEP team conducts or reviews an FBA and/or BIP as provided in Section IV.

**VIII. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS FOR WEAPONS,
DRUGS AND INFLICTION OF SERIOUS BODILY INJURY**

Students with disabilities 1) who carry or possess a weapon to or at school, or on school premises, or to or at a school function under the jurisdiction of a state or local educational agency; 2) who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school, on school premises, or at a school function, or 3) who inflict serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency may be disciplined pursuant to Policy JFCD: *Weapons in School* and JFCF/JFCI: *Alcohol and Other Drugs (AOD) in Schools* or JGDB: *Discipline of Students with Disabilities for Infliction of Serious Bodily Injury* and may be placed in an appropriate interim alternative education setting for up to 45 school days. These options are available even if a manifestation exists. If no manifestation is found, the student may be disciplined to the extent a student without disabilities would be disciplined.

Weapons, controlled substance and serious bodily injury have the meaning given under state regulations in 8 VAC 20-81-10.

Any interim alternative educational setting will be selected by the IEP team, so as to enable the student to continue to progress in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student

must also receive, as appropriate, an FBA, behavioral intervention services and modifications designed to address the behavior so it does not recur. During any appeal, the student will remain in the interim alternative education setting unless reversed by decision of the hearing officer; provided, however, the student may still serve the balance of any applicable forty-five school day removal.

X. CHANGE OF PLACEMENT BY HEARING OFFICER

In addition to the other options for removal, a hearing officer, through an expedited due process hearing requested by ACPS, may order a change in the placement for a student with a disability 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 such student is substantially likely to result in injury to the student or others. Additional 45 school day removals may be authorized by the hearing officer as appropriate.

XI. PLACEMENT DURING APPEALS

During the course of any appeals, the student's placement will be in accordance with the provisions of state and federal law unless the parent/guardian and ACPS agree otherwise. Students with disabilities are also entitled to the due process rights available to a non-disabled student who is subject to discipline. In addition, students with disabilities are entitled to the due process procedures available under the Individuals with Disabilities Education Act (IDEA), as amended, and any state procedures.

During the course of any appeals, the student's placement will be in accordance with the provisions of the Virginia Regulations Governing Students with Disabilities unless the parent/guardian and ACPS agree otherwise.

XII. STUDENTS NOT YET IDENTIFIED AS HAVING A DISABILITY

Students for whom the parent(s)/guardian(s) assert there is a disability but who have not yet been identified as disabled may be subject to the same measures applied to students without disabilities if the school division did not have knowledge of the disability before the behavior that precipitated the disciplinary action occurred. ACPS will be found to have knowledge of the student's disability if, before the behavior that precipitated the disciplinary action occurred, one of the following occurred:

- A. The parent/guardian expressed concern in writing (or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel of the school division, or to a teacher of the student, that the student is in need of special education and related services; or
- B. The parent/guardian requested an evaluation of the student for special education

eligibility; or

- C. The student's teacher or other school personnel expressed specific concern about a pattern of behavior demonstrated by the student directly to any administrative personnel of the school division that suggests the presence of a disability.

A school division would not be found to have knowledge of a student's disability if:

1. The parent/guardian refused to allow an evaluation of the student or refused special education services; or
2. The student was evaluated and found not eligible for special education services.

If a request for initial evaluation is made during the period a student is subject to disciplinary measures, the evaluation is conducted in an expedited manner. If the student is found eligible as a student with a disability, taking into consideration information from the evaluation conducted by ACPS and information provided by the parent/guardian, then the student must be provided special education and related services, even if in another setting. Pending the results of the evaluation, the student will continue to receive educational services in a placement to be determined by school officials.

XIII. DISCIPLINING CERTAIN SECTION 504 STUDENTS WHO VIOLATE ALCOHOL AND DRUG POLICIES

Students who are identified as having a disability solely under Section 504 of the Rehabilitation Act, and who are currently engaging in the illegal use of drugs or alcohol, may be disciplined for violating the Division's alcohol and drug policies to the same extent as students without disabilities. The student is not entitled to a due process hearing under special education procedures in this circumstance but does retain the protections afforded to students without disabilities.

XIV. REPORTING OF CRIMES

Nothing in these procedures prevents the reporting of a crime to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities.

XV. COMMUNICATION WITH PARENT(S)/GUARDIAN(S)

All disciplinary incidents involving students with disabilities are documented by school administrators in collaboration with the Office of Specialized Instruction. All such required documentation is maintained by ACPS. Incident reports and all communications to the student's parents/guardians will be in the parents'/guardians' preferred language. In addition, ACPS will provide written notification of a student's rights throughout the entirety of the disciplinary process to the parents/guardians. This includes, but is not

limited to, procedural steps and safeguards, Manifestation Determination Reviews (MDR), the right to appeal determinations, and the right to legal representation. ACPS will also provide parents/guardians with a list of pro bono legal resources.

XVI. DATA COLLECTION AND REPORTING

The Superintendent will annually provide the School Board with the prior school year's data reflecting all occurrences of discipline involving students with disabilities for each school in the Division. The report will include disaggregated, demographic student data, as well as the resulting MDR outcome, administrative responses or consequences issued in accordance with the Student Code of Conduct, and any referrals to law enforcement. (The report will not include personally identifiable information regarding students.)

As outlined in the current Memorandum of Understanding (MOU) between the Alexandria City School Board and the Alexandria Police Department (APD), any incident in which a law enforcement officer(s) makes official contact with a student(s) will be documented, tracked and reviewed by the Office of Safety and Security Services by using the ACPS Law Enforcement Occurrence Report Form.

Adopted: September 5, 1996
Amended: July 10, 1997
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Amended: June 15, 2004
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Amended: July 1, 2011
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Legal Refs: 20 U.S.C. § 1415.
29 U.S.C. § 705.

34 C.F.R. 300.530-300.536.

Code of Virginia, 1950, as amended, § 22.1-279.6.

8 VAC 20-81-160.

Cross Refs.:	JFC	Student Conduct
	JFCD	Weapons in School
	JFCF/JFCI	Alcohol and Other Drugs (AOD) in Schools
	JFCF-R/JFCI-R	Alcohol and Other Drugs (AOD) Abuse: Regulations
	JGD/JGE	Student Suspension/Expulsion
	JGD-R/JGE-R	Student Suspension/Expulsion Regulations
	JGDB	Discipline of Students with Disabilities for Infliction of Serious Bodily Injury