

STUDENTS

Discipline of Students with Disabilities

Students with disabilities may be suspended to an alternative setting or out of school for ten (10) school days per school year to the extent that such setting is also used for non-disabled students. Subsequently, a student with disabilities may be removed ~~for up to ten (10) additional cumulative school days~~ for separate incidents of misconduct as long as the removals do not constitute a pattern. Students with disabilities may be suspended for longer than ten (10) school days at a time or expelled from school after the manifestation determination review team~~school~~ administration has followed procedures to determine whether the student's misconduct was not a manifestation of the student's disability.

Students with disabilities who fall under the protection of Section 504 of the Rehabilitation Act but not under the Individuals with Disabilities in Education Act (IDEA) do not have all of the disciplinary rights afforded students who have been identified under IDEA.

A. Definitions

1. Behavioral intervention plan (BIP) means a plan that utilizes positive behavioral interventions and supports to address behaviors which interfere with the learning of students with disabilities or with the learning of others or that require disciplinary action.
2. Business day means Monday through Friday, twelve months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).
3. Calendar days mean consecutive days, including Saturdays, and Sundays ~~and officially designated holidays~~. Whenever any period of time expires on a Saturday, Sunday, or state or federal holiday, the period of time for taking such action is extended to the next day which is not a Saturday, Sunday, or state or federal holiday.
4. Change of placement, for purposes of discipline, means:
 1. a. ~~a~~ removal of a student from the student's current educational placement for more than ten consecutive school days; or when
 2. b. the student is subjected to a series of removals that constitute a pattern because it cumulates to more than ten school days in a school year, and because of factors such as:

- a. 1) the length of each removal;
- b. 2) the total amount of time the student is removed;
- c. 3) the proximity of the removals to one another; or
- d. 4) The substantial similarity of the student's behavior to the student's behavior in the previous ~~and current~~ incidents that resulted in the series of removals.

5. Controlled substances or drugs mean under the federal definition, those substances listed in the schedule of controlled substances in 21 U.S.C. 812(c), as amended.

6. Functional Behavioral Assessment (FBA) means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student with a disability or the learning of the student's peers. A Functional Behavioral Assessment may include a review of existing data or new testing data or evaluation as determined by the IEP Team.

7. Free and appropriate public education (FAPE) means special education and related services that:

- 3. a. are provided at public expense, under public supervision and direction, and without charge;
- 4. b. meet standards of the Virginia Board of Education;
- 5. c. include an appropriate preschool, elementary school, middle school, or secondary school education in ~~the state~~ Virginia; and
- 6. d. are provided in conformity with an individualized education program that meets the requirements of the federal and state laws and regulations governing special education.

8. General curriculum means the curriculum that applies to students who are not disabled. The term further means the curriculum adopted by a local school division, schools within the school division, or where applicable, the Virginia Board of Education, for all children from preschool through secondary school. The term relates to content of the curriculum and not the setting in which it is taught. The term includes vocational education.

9.- Individuals with Disabilities in Education Improvement Act (IDEIA) means the federal law enacted at 20 U.S.C. §1400 *et seq.* and the regulations found at 34 C.F.R. Part B §300 *et seq.* The most recent

reauthorization in 2004 changed the title to Individuals ~~W~~with Disabilities Education Improvement Act, (IDEIA).

10. Individual Education Program (IEP) means a written statement for a student with a disability that is developed, reviewed, and revised in a team meeting in accordance with federal and state law. The IEP specifies the individual educational needs of the student and what special education and related services are necessary to meet the needs.

11. IEP team means those persons required by federal and state law to be on the team, including: the student's parent(s); at least one regular education teacher of the student; at least one special education teacher of the student; a representative of the local educational agency who is qualified to provide or supervise services unique to students with disabilities, knowledgeable of the general curriculum and knowledgeable of the resources of the local educational agency; an individual who can interpret instructional implications of evaluation results (may be a person already serving on the team who is not the parent or student); at the discretion of the parents or school team members, any other individuals who have knowledge of or special expertise related to the student; and the student, if appropriate.

12. In-School Suspension (ISS) means removal of a student from the regular or special education classroom and placement in a special setting within the school that is monitored by school personnel. In-school suspensions that result in the student not receiving special education or related services, which do not allow contact with general education peers or do not allow the student to progress in the general curriculum may be counted as a day of suspension. Partial day suspensions or bus suspensions may also be counted.

13. Interim Alternative Educational Setting (IAES) means an alternative educational placement for a maximum of forty-five (45) school days occasioned by a disciplinary action involving weapons, drugs, or inflicted serious bodily injury upon another person. A hearing officer, for disciplinary situations involving safety/danger, may also order such a placement.

14. Long term removal or suspension means suspension of a student with a disability for more than ten (10) consecutive school days in a school year; or, multiple short term suspensions occurring when the student is subjected to a series of removals that constitutes a pattern because they cumulate to more than ten (10) school days in a school year.

15. Manifestation Determination Review (MDR) means a process to review all relevant information and the relationship between the student's disability and the behavior subject to the disciplinary action.
16. Out-of-School Suspension (OSS) means disciplinary removal of a student from school with or without services.
17. "Parent" means a natural or adoptive parent or parents of a child, a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), a foster parent under the circumstances described below, or a surrogate parent who has been appointed in accordance with this chapter. The term means either parent, unless the local educational agency has been provided with evidence that there is a legally binding instrument, state law, or court order that has terminated the parent's or parents' rights. A foster parent may also serve as a parent:
7. a. If the natural parent's or parents' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, § 16.1-277.01 or § 16.1-277.02 of the Code of Virginia or a comparable law in another state;
 8. b. The child is in permanent foster care pursuant to § 63.1-206.1 of the Code of Virginia or comparable law in another state; and
 9. c. The foster parent or parents (i) have an ongoing, long-term parental relationship with the child; (ii) are willing to make the educational decisions required of the parent or parents under this chapter; and (iii) have no interest that would conflict with the interests of the child.
- The term "parent or parents" does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency. Notice to any one parent will constitute adequate notice under this regulation.
18. Pattern means separate incidents of removal that cumulate to more than ten (10) school days in a given school year and constitute a change in placement.
19. Principal means the principal of the school or another staff member authorized by the principal to act on student disciplinary matters.
20. Removal means excluding the student from the student's current placement as reflected in the student's IEP due to inappropriate behavior.

21. Serious Bodily Injury means bodily injury which involves:

~~10.a.~~ A substantial risk of death;

~~11. b.~~ Extreme physical pain;

~~12. c.~~ Protracted and obvious disfigurement; or

~~13. d.~~ Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

22. School day means any day, including a partial day, which students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

23. Section 504 means The Rehabilitation Act of 1973, 29 U.S.C. Section 504.

24. Weapons means, under federal definition, 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 2-1/2 inches in length (20 U.S.C. sec 614(k)(10)(D); 18 U.S.C. sec 903(f)(2). Only weapons as defined by federal law may count toward a forty-five (45) school day removal under IDEIA. The Code of Virginia includes everything in the federal law and, in addition, other weapons that are not commonly thought of as firearms, including: destructive devices such as explosives, incendiary or poison gas, bombs, grenades, rockets, mines or other devices as set forth in Virginia Code § 22.1-277.08 (as amended); or firearms which include any weapon prohibited on school property or a school sponsored events and otherwise defined in Virginia Code § 22.1-277.08 (as amended). Any weapon, explosive, firework, firearm, look-alike weapon or other item prohibited by School Board policy or regulation or the Code of Student Conduct is also included in this definition.

25. Other terms— Definitions found at 8 VAC 20-801-10, as amended, will govern the interpretation of terms not set forth in this Regulation.

B. Short Term Removals

Short term removal means suspending a student with disabilities from ~~his~~their current educational setting for ten (10) school days or less in a year. It also applies when the cumulative amount of suspensions is ten (10) school days in a school year but is not consecutive and does not constitute a pattern or change in the student's placement.

1. Students with disabilities may be suspended from school without services for either ten (10) consecutive school days or a cumulative total of ten (10) school days in one (1) school year. Suspensions of this length do not constitute a change in placement for a student with disabilities.
2. The principal may suspend a student with disabilities from school for a period of up to five (5) school days. The principal may suspend a student with disabilities for six (6) to ten (10) school days ~~after notification to the Director of the Office of Programs for Exceptional Children and~~ with the approval from the Director of Student Leadership.
3. Prior to imposing a suspension, the student must be given written notice of the charges against him. If the student denies the charges, the principal will explain the facts as known to school personnel. The student will be given the opportunity to present the student's version of the incident and to appeal any decision.
4. Students with disabilities who are subject to short term suspensions are subject to normal disciplinary procedures which apply to students without disabilities whether or not the misconduct was a manifestation of the student's disability.
5. Removal of a student from school for less than one (1) day should be counted as one half day removal. Removal of a student for less than one (1) day must be counted when considering total days of suspension. Indirect removals from school that are the result of a bus suspension must be considered a one day suspension if alternate transportation arrangements are not made.
6. Educational services during the first ten (10) days of suspension are not required unless provided to students without disabilities during the first ten (10) days of removal.

C. Serial Suspensions

A student with disabilities may be removed for a series of short term suspensions for separate, unrelated incidents of misconduct, as long as the removals do not constitute a pattern.

1. A student with disabilities may be removed from school for a series of short term suspensions for misconduct. If the removals total more than ten (10) school days in a school year, the suspensions still will not constitute a change in the student's placement provided that a pattern of removal by the school is not established. The school administrator should make this determination in consultation with the student's special education teacher. Parents are not

required to be involved in this decision. A pattern that equates to a change in placement is determined by close examination of:

~~1.~~

- a. The length of each removal;
- b. The total time the student is out of school; and
- c. The proximity of the removals.

- d. Whether the student's behavior is substantially similar to the student's behavior in the previous and current incidents.

2. Separate unrelated incidents are defined as behavioral episodes that occur under different circumstances or situations. Such episodes are considered unrelated if the behaviors involved do not naturally seem to fall into similar categories. Examples include: behaviors that constitute general disobedience such as talking back, talking out, or non-compliance would be related; acts of physical fighting or aggression may be related.
3. School personnel, in consultation with the student's special education teacher, determine the extent to which educational services are necessary during the suspension. Educational services must be provided to the extent necessary for the student to: ~~1a~~) progress in the general curriculum; and ~~2b~~) appropriately advance toward achieving the goals set out in the student's IEP. Parents are not required to participate in the decision regarding the need for and extent of educational services when the short term suspension does not constitute a change in placement.
4. After a student has been removed from school for a total of ten (10) school days (ISS and OSS) the IEP team should complete a Functional Behavioral Assessment plan (FBA) within ten (10) school days and develop a Behavioral Intervention Plan (BIP) as soon as practical following the completion of the FBA. If a FBA and a BIP already exist as part of this student's IEP, the IEP team must meet to review the BIP and determine its appropriateness in relation to the behavior in question.

D. Long Term Suspensions and Expulsions

For the safety of students and staff or to ensure an educational environment conducive to learning for all persons, students with disabilities may be recommended for and disciplined by suspensions in excess of ten (10) consecutive school days or a series of suspensions cumulating more than ten (10) school days within a school year or recommended for expulsion. Prior to imposing such discipline, a review of the student's history of misconduct in relation to the behavior currently being considered for disciplinary action as well as any special education and related services being provided must be undertaken. School personnel

are permitted to consider any unique circumstances on a case-by-case basis when deciding whether or not to remove a student with a disability long term from a current educational placement as a result of a violation of the code of conduct.

1. When a student with disabilities is recommended for suspension longer than ten (10) consecutive school days or when serial suspensions (that constitute a pattern) cumulate to more than ten (10) school days in a school year or when the principal has recommended expulsion, the principal will notify the Directors of the Office of Programs for Exceptional Children and Student Leadership. The principal will give the student written notice of the charges against him. If the student denies the charges, the principal will explain the facts as known to school personnel. The student will be given the opportunity to present the student's version of the incident. The principal will give the student's parent written notice of the recommendation for long term suspension or expulsion on the day that the recommendation for discipline is made. The notice may be provided by mailing the recommendation by first class mail. A copy of the Virginia Special Education Procedural Safeguards may be provided at this time if the parent has not yet received his annual copy of the Safeguards as required by the Individuals with Disabilities Education Improvement Act of 2004 (i.e., at the time of the annual review of the IEP, at the time of an initial referral for a suspected disability, at the time of a request for a due process hearing, or any time a parent requests a copy) or if the parent requests an additional copy in the particular instance of a recommended disciplinary action.
2. Long term suspension, expulsion, and placement in an interim alternative educational setting constitute changes in placement which require that a Manifestation Determination Review be undertaken.

3. Manifestation Determination Review—

~~3.~~ ¶ The principal will arrange for a Manifestation Determination Review meeting to be set within ten (10) school days after the recommendation for long term suspension or expulsion is made. Schools must consider the number of days the student has already been suspended during the year and convene the Manifestation Determination Review so as to expedite a decision and determine the educational services to be provided to the student.

Notice

Notification to the parent of the Manifestation Determination Review meeting date, participants, purpose(s), and time may be made verbally if insufficient time is available to send written notification. Written notification of the meeting date, participants, time, and the purpose(s) of the meeting should be sent to the parent prior to the meeting if time permits or provided to the parent and student no later than the beginning of the Manifestation Determination Review meeting. Notice of the

Manifestation Determination Review meeting will include notice that a Manifestation Determination will be made, that the student's IEP may be modified to provide for an alternative education program, and that the FBA and BIP will be reviewed or developed.

4. Manifestation Determination Review Team Composition

The following individuals must be invited to attend the Manifestation Determination Review meeting:

- a. The parent (if the parents does not attend after being provided reasonable notice the meeting will go forward);
- b. The student, if appropriate;
- c. The Special Education Coordinator or a representative of the Office of Programs for Exceptional Children;
- d. Not less than one general education teacher of the student;
- e. Not less than one special education teacher of the student, or if appropriate, at least one special education provider of the student;
- f. A representative of the ~~s~~School ~~d~~Division who must meet all of the following criteria: ~~a~~1) is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities; ~~b~~2) is knowledgeable about the general curriculum; and ~~e~~3) is knowledgeable about the availability of resources of the ~~s~~School ~~d~~Division (e.g. principal, assistant principal, administrative designee);
- g. An individual who can interpret the instructional implications of evaluation results, who may be one of the other members of the team described above (e.g. assistant principal, general or special educator, psychologist, social worker/visiting teacher). The parent or student may not serve in this capacity;
- h. At the discretion of the parent or the ~~s~~School ~~d~~Division, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- i. Other qualified personnel.

5. Manifestation Determination Review meeting

Within ten (10) school days after the decision to take disciplinary action is made, the manifestation determination review meeting must be held unless the conditions for an expedited meeting exist. The manifestation determination team works toward consensus of the participants not a majority vote on the final manifestation determination decision. The participants must consider: the behavior subject to the disciplinary action; all relevant information including evaluations and diagnostic results: information supplied by the parent; observations of the student; and the student's current IEP and placement.

6. Manifestation Determination Review

The Manifestation Determination Review Team and other qualified personnel shall determine that a behavior was a manifestation of the student's:

- a. After considering, in terms of behavior subject to disciplinary action, all relevant information, including:
 - 1) Evaluation and diagnostic results including the results of other relevant information supplied by the parents;
 - 2) observations of the student, and;
 - 3) the student's IEP and placement.
- b. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- c. If the conduct in question was the direct result of the ~~s~~School ~~d~~Division failure to implement the student's IEP.

7. Manifestation Determination decision

The participants must either determine that:

- a. The student's misconduct was not a manifestation of the student's disability, therefore the student is subject to the same disciplinary action as non-disabled students.

- 1-) The student should be referred to the Director of Student Leadership to continue the same disciplinary process that non-disabled students are subject to the disciplinary process will not be suspended if the parent appeals the manifestation determination decision;
 - 2) The IEP team must convene an IEP meeting to determine the extent to which educational services are necessary to enable the student to appropriately advance toward achieving the goals set out in the student's IEP and progressing in the general curriculum;
 - 3) The IEP team should transmit the manifestation and disciplinary records to the Director of Student Leadership.
- b. Or, the student's misconduct was a manifestation of the student's disability and the student should not be disciplined.

- 1-) The IEP team should convene and the student's IEP should be reviewed and revised as necessary to address the student's conduct;
- 2-) The FBA should be reviewed or plans must be made to complete the FBA;
- 3-) The student's BIP should be reviewed, or a BIP should be developed;
- 4-) The student can be removed from the current educational placement only by the IEP team.

8. Reporting Crimes to Law Enforcement

In accordance with School Board policy, regulation, and procedure, students with disabilities who commit crimes may be reported to the appropriate authorities. The student's disciplinary and special education records should be transmitted to the authority to whom the crime was reported.

9. Appeals and the "Stay Put" Provision

If the manifestation determination review decision is appealed through an expedited due process hearing requested by the parent, the student remains in the discipline setting pending the hearing officer's decision or the expiration of the removal time, whichever is first, unless the parent and ~~s~~School ~~d~~Division agree otherwise.

10. Interim Alternative Educational Setting (IAES) for Weapons, Drugs or Serious Bodily Injury

The principal may remove a student with disabilities from the student's current placement for up to forty-five (45) school days if the student: 1) carries or is in possession of a weapon at school or a school sponsored function; or 2) knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substances at school or a school sponsored event; or 3) has inflicted serious bodily injury upon another person while at school or on school premises, or at a school function under the jurisdiction of the state or school division

- a. The principal will give notice to the parent of the recommendation for discipline no later than the date on which the decision to discipline the student is made. This notice may be provided by first class mail.
- b. A Manifestation Determination Review process must be completed within ten (10) school days. Despite the decision of the manifestation determination participants, the student may still be required to serve up to forty-five (45) school days in the IAES. Additional days may be imposed if there is no manifestation.
- c. The IEP team determines the appropriate interim alternative educational setting (IAES) for the forty-five (45) school day period. Parental permission is not required to implement the IAES. The IAES must:
 - 1) Be selected to enable the student to progress in the general curriculum (even if in an alternative setting);
 - 2) Continue to receive services and modifications, including those described in the current IEP, that will enable the student to meet the student's IEP goals; and

- 3) Include services and modifications to address the behavior that led to the drug, weapons, or serious bodily injury violation so that it does not recur.
- d. A student may receive an additional forty-five (45) school days removal for new acts of misconduct related to weapons, drugs or serious bodily injury that may subsequently occur.
- e. A parent who disagrees with any decision regarding placement, or the manifestation determination, may appeal the IAES decision to a hearing officer. The student will remain in the placement pending this appeal or until the expiration of the 45 school days, whichever occurs first, unless the parent and school division agree otherwise.

11. Removal of Dangerous Students

If the ~~s~~School ~~d~~Division believes that maintaining the current placement of the student is substantially likely to result in the injury to the student or to others, the student with disability may be removed from his current placement:

- a. After an expedited hearing before a state hearing officer;
- b. After obtaining a court injunction from a state or federal court (Honig Injunction);
- c. With parental permission to placement change; or
- d. Changing placement pursuant to the IEP process.

School personnel, in consultation with the student's special education teacher, propose the interim alternative educational setting when a student is removed for dangerous behavior. Removal to an IAES for dangerous behavior may occur even if the behavior was a manifestation of the student's disability.

E. Students Not Yet Determined Eligible for Special Education Services

Students who have not been identified as ~~disabled~~eligible for special education services and who engage in misconduct may assert the protections of the disciplinary provisions of IDEIA, even though not formally identified as disabled, if the ~~s~~School ~~d~~Division had knowledge that the student was a student with a disability before the behavior occurred.

1. When a student is recommended for discipline the student or parent may assert the protections of the disciplinary provisions of IDEIA even though the student has not yet been identified as a student with disabilities. To do so, the student or parent must establish that the school division had knowledge that the student had a disability prior to the student's misconduct.
2. Circumstances which indicate that the school division has prior knowledge are:
 - a. The parent expressed concern in writing (or orally only if the parent cannot write or has a disability that prevents the parent from writing) to personnel of the school division that the student is in need of special education and related services. The parent must report sufficient information for the school division to determine that the student required evaluation for special education and related services;
 - b. The parent of the student has requested an evaluation to determine if the student qualifies as disabled; or
 - c. A student's teacher or other personnel of the school division have expressed specific concerns about a pattern of behavior to the Director of the Office of Programs for Exceptional Children or designee.
3. If the school division conducted a prior evaluation and determined that the student did not have a disability or the school division determined that an evaluation was not necessary, then the student will not be entitled to the disciplinary protections of IDEIA. The school division must have provided prior written notice to the parent of the refusal to evaluate or refusal to identify including the reasons for the determination, and other prior notice considerations. A copy of the Virginia Special Education Procedural Safeguards may be provided at this time if the parent has not yet received his annual copy of the Safeguards as required by the Individuals with Disabilities Education Improvement Act of 2004 (i.e., at the time of the annual review of the IEP, at the time of an initial referral for a suspected disability, at the time of a request for a due process hearing, or any time a parent requests a copy) or if the parent requests an additional copy in the particular instance of a recommended disciplinary action.
4. If the parent of the student has not allowed an evaluation of the student or has refused consent for services, then the student will not be entitled to the disciplinary protections of IDEIA.

5. If there is reason to suspect a disability, the school division will refer the student to the Special Education Committee for an expedited evaluation. If the student is determined to have a disability under IDEIA, a Manifestation Determination Review will be undertaken.
6. The student will remain on suspension or expulsion pending the evaluation. If the student is later found to have a disability, the student must be provided special education and related services.

F. Students with Disabilities Protected Only Under Section 504

The Rehabilitation Act of 1973 is a civil rights statute that prohibits discrimination against individuals with disabilities. The Rehabilitation Act does not provide for the same procedural rights as IDEIA. Students with disabilities that are protected under the Rehabilitation Act of 1973, Section 504, but not protected under IDEIA do not enjoy all of the disciplinary rights set forth above.

1. Students with disabilities who are protected only under Section 504 have similar rights regarding discipline as students with disabilities protected under IDEIA except for the following:
Use or possession of illegal substances or alcohol - students with disabilities who are protected under Section 504 only do not have the right to a manifestation determination review if such student uses, possesses or is currently engaging in the use of alcohol or illegal substances. Such a student may be disciplined to the same extent as non-disabled students. The student is not entitled to educational services during a suspension or expulsion for alcohol or illegal substances unless those services are available for non-disabled students. The student and parent have no right to a due process hearing with a state hearing officer for discipline related to alcohol or illegal substances.
2. Except as provided in Section F.1. a manifestation determination must be made for students identified under Section 504. If there is no manifestation, the student may be disciplined on the same basis as a non-disabled student. If there is a manifestation, the student may not be disciplined.
3. Impartial Hearing - a student with disabilities protected only under Section 504 may appeal the manifestation determination to a hearing officer, except in cases of drugs or alcohol as addressed in Section F.1. The Office of Programs for Exceptional Children will obtain a hearing officer and make arrangements for an impartial hearing. The party requesting an impartial hearing will bear the cost of recording or transcribing such hearing.
4. Educational services will be provided during a disciplinary removal only to the extent provided to non-disabled students.

Legal References

Virginia Board of Education Regulations Governing Special Education Programs for Children with Disabilities, 8 VAC 20-801-10 et seq., as amended.

The Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 et seq, 34 C.F.R. Part B § 300 et seq., as amended.

The Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as amended.

Code of Virginia, § 22.1-214, as amended. Board to prepare special education programs for children with disabilities.

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APPROVED AS TO
LEGAL SUFFICIENCY

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