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The Board of Education (“Board”) of the Ballston Spa Central School District recognizes that it may become necessary to suspend, remove or otherwise discipline students with disabilities who violate the District’s student code of conduct, and/or to temporarily remove a student with disabilities from his or her current placement because maintaining the student in that placement is substantially likely to result in injury to the student or to others.

The Board also recognizes that students with disabilities deemed eligible for special education services under the IDEA and Article 89 of the New York State Education Law as well as students deemed disabled under Section 504 of the Rehabilitation Act enjoy certain procedural protections that school authorities must observe when they decide to suspend or remove them. Under certain conditions those protections extend, as well, to students not currently deemed to be a student with a disability but determined to be a student presumed to have a disability for discipline purposes.

Therefore, the Board is committed to ensuring that the District follows suspension and removal procedures that are consistent with those protections. This Policy is intended to afford students with disabilities and students presumed to have a disability for discipline purposes, the express rights they enjoy under applicable law and regulations.

Definitions

For purposes of this Policy, and consistent with applicable law and regulations, the following definitions will apply:

1. Behavioral intervention plan (BIP) means a plan that is based on the results of a functional behavioral assessment that, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.
2. Business day means Monday through Friday, except for Federal and State holidays.
3. Committee on Special Education means a committee on special education, subcommittee on special education, or other multidisciplinary team established in accordance with the Education Law §4402 or, in the case of a preschool student with a disability, the committee on preschool special education or in the care of a student deemed disabled under §504.
4. Controlled substance means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)).

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5. Disciplinary change in placement means a suspension or removal from a student's current educational placement that is either:
 - a. For more than 10 consecutive school days; or
 - b. For a period of ten consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than ten school days in a school year; because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and because of such additional factors as the length of each suspension or removal, the total amount of time the student has been removed and the proximity of the suspensions or removals to one another.
6. Expedited due process hearing means an impartial hearing conducted in an expedited manner.
7. Expedited evaluation means an individual evaluation conducted in an expedited manner under the circumstances.
8. Functional behavioral assessment means the process of determining why the student engages in behaviors that impede learning and how the student's behavior relates to the environment. The functional behavioral assessment shall include, but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
9. Impartial Hearing Officer means an individual assigned by the Board pursuant to Education Law, §4404(1), or by the commissioner, to conduct a hearing and render a decision. Such term shall not include a hearing officer designated by the Superintendent of Schools to conduct a Superintendent's Hearing pursuant to Education Law §3214(5)(c).
10. Illegal drug means a controlled substance, but does not include a controlled substance legally possessed or used under the supervision of a licensed health-care professional, or a substance that is otherwise legally possessed or used under the authority of the Controlled Substances Act or under any other provision of federal law.
11. Interim alternative educational setting (IAES) means a temporary educational placement, other than the student's current placement at the time the behavior

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precipitating the IAES placement occurred. An IAES must allow a student to continue to receive educational services that enable him or her to continue to participate in the general curriculum and progress toward meeting the goals set out in the student's individualized education program; as well as to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

12. Manifestation review means a review of the relationship between the student's disability and the behavior subject to disciplinary action required when the disciplinary action results in a disciplinary change of placement, and conducted in accordance with requirements set forth later in this policy.
13. Manifestation team means a District representative, the parent or person in parental relation, and relevant members of the committee on special education, as determined by the parent or person in parental relation and the District.
14. Removal means a removal of a student with a disability for disciplinary reasons from his or her current educational placement, other than a suspension; and a change in the placement of a student with a disability to an IAES by an impartial hearing officer.
15. School day means any day, including a partial day that students are in attendance at school for instructional purposes.
16. Serious bodily injury means bodily injury which involves:
 - a. a substantial risk of death;
 - b. extreme physical pain;
 - c. protracted obvious disfigurement; or
 - d. protracted loss or impairment of the function of a bodily member, organ or mental faculty.
17. Student presumed to have a disability for discipline purposes means a student who, under the conditions set forth later in this policy, the District is deemed to have had knowledge was a student with a disability before the behavior that precipitated the disciplinary action.
18. Superintendent means the District's superintendent of schools, a BOCES superintendent, or the chief school officer of an approved private school.

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19. Superintendent's Hearing means a disciplinary hearing conducted by the District's Superintendent of Schools, or a hearing officer designated by the Superintendent of Schools, to determine whether a student would be suspended from instruction for more than five consecutive school days.
20. Suspension means a suspension pursuant to §3214 of New York State Education Law.
21. Weapon has the same meaning given the term "dangerous weapon" under 18 USC §930(g)(2) which includes 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 a pocket knife with a blade of less than two and one-half inches in length.

Authority of School Personnel to Suspend or Remove Students with Disabilities

School personnel may consider any unique circumstances on a case-by-case basis when determining discipline for a student with a disability who violates a code of student conduct.

1. The Board, the Superintendent of Schools or a building principal shall have authority to order placement of a student with a disability into an appropriate IAES, another setting, or suspension for a period not to exceed five consecutive days, and not to exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior.
2. Subject to the procedures set forth in §3214 of the Education Law, the Superintendent of Schools, either directly, or upon recommendation of a hearing officer, may order the placement of a student with a disability into an IAES, another setting, or suspension for up to ten consecutive school days, inclusive of any period in which the student has been suspended or removed for the same behavior, where the Superintendent of Schools determines that the student has engaged in behavior that warrants suspension, provided that the duration of any such suspension shall not exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior. The Superintendent of Schools may order additional suspensions of not more than ten consecutive days in the same school year for separate incidents of misconduct.

Furthermore, the Superintendent of Schools, either directly or upon recommendation of a hearing officer designated to conduct a superintendent's hearing pursuant to §3214 of the Education Law may, remove a student to an IAES for a period of up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student does any of the following, constituting special circumstances:

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1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function, under the District's jurisdiction, or
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the District's jurisdiction, or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the District's jurisdiction.

The IAES provided for shall be determined by the CSE or §504 team.

Procedures for the Suspension or Removal of Students with Disabilities by School Personnel

In the case of a suspension for five consecutive school days or less, the parents of the student shall be provided an opportunity for an informal conference.

The removal of a student with a disability, other than a change in placement to an IAES, shall be conducted in accordance with the due process procedures applicable to such removals of nondisabled students, except that school personnel may not impose such removal for more than ten consecutive days or for a period that would result in a disciplinary change in placement, unless there has been a determination that the behavior is not a manifestation of the student's disability.

Superintendent's hearings on disciplinary charges against students with disabilities and students presumed to have a disability for disciplinary purposes shall be bifurcated into a guilt phase and a penalty phase and conducted in accordance with the following procedures:

1. The Superintendent of Schools or hearing officer shall proceed with the guilt phase and determine whether the student is guilty of the alleged misconduct. If it is determined that the student is guilty, the Superintendent of Schools or hearing officer shall make a threshold determination of whether a suspension or removal in excess of ten consecutive school days or that would otherwise constitute a disciplinary change in placement should be considered. If the threshold determination is that such a suspension or removal should be considered, before the Superintendent of Schools orders, or hearing officer recommends any such removal, the superintendent's hearing shall be adjourned until a manifestation determination is made by the manifestation team. If the Superintendent of Schools or hearing officer determines that a suspension or removal that would constitute a disciplinary change in placement should not be considered, the hearing shall proceed to the penalty phase.

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2. Upon a determination by the manifestation team that the behavior of a student with a disability was not a manifestation of the student's disability, such student may be disciplined in the same manner as a non-disabled student, except that the student shall continue to receive special education services. Upon receipt of notice of such determination, the Superintendent of Schools or hearing officer in the superintendent's hearing shall proceed with the penalty phase of the hearing. If the manifestation team determines that the behavior was a manifestation of the student's disability, the Superintendent of Schools or hearing officer in the Superintendent's hearing shall dismiss the superintendent's hearing, except as provided in subdivision (3) below.
3. Notwithstanding subsections (1) and (2) above, if the Superintendent of Schools or hearing officer in the superintendent's hearing is considering the change in placement of a student with a disability to an IAES, upon a determination that the student is guilty of the alleged misconduct relating to serious bodily injury, weapons, illegal drugs, or controlled substances, the Superintendent of Schools may order, or the hearing officer may recommend, such change in placement to an IAES, to be determined by the CSE or §504 team, for up to forty-five school days, but not to exceed the length of time that a non-disabled student would be suspended for the same misconduct. The Superintendent of Schools may order such change in placement of a student with a disability to an IAES, directly or upon recommendation of a hearing officer in the superintendent's hearing, even where the manifestation team determines that the student's behavior is a manifestation of the student's disability.
4. The penalty phase of a superintendent's hearing for a student with a disability or a student presumed to have a disability for discipline purpose shall be conducted in the same manner as the penalty phase of a hearing involving a non-disabled student, including the admission of anecdotal evidence of past instances of misconduct. The District shall assure that copies of the special education and disciplinary records of the student are transmitted to the Superintendent of Schools or hearing officer in the superintendent's hearing for consideration. Such records shall be transmitted whether or not the manifestation teams has determined that the student's behavior is a manifestation of the student's disability.
5. Nothing in this Policy shall be construed to authorize the suspension or removal of a student with a disability from his or her current educational placement for violation of school rules following a determination by the manifestation team that the behavior is a manifestation of the student's disability except where the student is placed in an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances or is placed in an IAES by an impartial hearing officer pursuant to this Policy.

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Parental Notification of a Disciplinary Change of Placement

No later than the date on which the decision to take disciplinary action is made, the District shall notify the parents of that decision. Such notice will be accompanied by a copy of the procedural safeguards notice.

Authority of an Impartial Hearing Officer to Remove a Student with a Disability

An impartial hearing officer appointed pursuant to Education Law §4404(1), in an expedited due process hearing, may order a change in placement of a student with a disability to an appropriate IAES for not more than forty-five (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 others.

This procedure may be repeated, if the District believes that returning the student to the original placement is substantially likely to result in injury to the student or to others. The District is not required to commence a disciplinary action against a student with a disability as a prerequisite for initiating an expedited due process hearing to obtain an order of an impartial hearing officer pursuant to this procedure.

A determination that the student's behavior is a manifestation of the student's disability shall not preclude an impartial hearing officer from ordering a change in placement to an IAES pursuant to this procedure.

Manifestation Review

A review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the conduct is a manifestation of the disability must be made immediately, if possible, but in no case, later than ten school days after:

1. A decision is made by the Superintendent of Schools to change the placement of a student to an IAES because a student has been involved in behavior regarding a serious bodily injury, weapons, illegal drugs or controlled substances;
2. A decision is made by an impartial hearing officer to place a student in an IAES finding that maintaining the current placement of the student is likely to result in injury to the student or others.
3. A decision is made that the Superintendent of Schools impose a suspension that constitutes a disciplinary change in placement.

A review shall be conducted by a manifestation team in a meeting, which shall include: a representative of the District knowledgeable about the student and the interpretation of

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information about student behavior; the parent; and relevant members of the CSE Team. The parent must receive written notification prior to any manifestation team meeting to insure that the parent has an opportunity to attend. The notification shall inform the parent of the purpose of the meeting, the names of the individuals expected to attend and inform the parent of his or her right to have relevant members of the CSE participate at the parent's request.

This review includes 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:

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 the District's failure to implement the IEP.

If either subclause (1) or (2) is found applicable to the student, the conduct shall be determined to be a manifestation of the student's disability. If it is determined that the conduct in question was the direct result of the District's failure to implement the IEP, the District must take immediate steps to remedy those deficiencies.

If a determination is made that the behavior was a manifestation, the IEP team shall:

1. Conduct a functional behavioral assessment, unless the District had conducted one before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for such student; or
2. In the situation where a behavioral intervention plan has been developed, review the plan and modify it, as necessary to address the behavior; and
3. Except where the student is alleged to have engaged in conduct relating to serious bodily injury, weapons, illegal drugs, or controlled substances, return the student to the placement from which he or she was removed, unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan.

Services for Students with Disabilities during Periods of Suspension or Removal

During any period of suspension, a student with a disability shall be provided services to the extent required under this policy and §3214 of the Education Law.

During suspensions or removal from a current placement for up to ten school days in the same year which does not constitute a change of placement, students with disabilities of compulsory attendance age shall be provided with alternative instruction on the same basis as nondisabled

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students. Students with disabilities who are not of compulsory attendance age shall be entitled to receive services during such suspensions only to the extent that services are provided to nondisabled students of the same age who have been similarly suspended.

If school personnel seek to order a change in placement that would exceed ten school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student’s disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which the procedures would be applied to students without disabilities, although it may be provided in an interim alternative educational setting.

During subsequent suspensions or removals for periods of ten consecutive days or less, that in the aggregate total more than ten school days in a school year but do not constitute a disciplinary change in placement, regardless of the manifestation determination, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student’s IEP and to receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. School personnel, in consultation with at least one of the student’s teachers, shall determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in meeting the goals set out in the student’s IEP.

During suspensions or other disciplinary removals, including suspensions or removals for behavior involving weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury, for periods in excess of ten (10) school days in the school year which constitute a disciplinary change in placement, regardless of the manifestation determination, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum to progress toward meeting the goals set out in the student’s IEP, and to receive, as appropriate under this policy, a functional behavioral assessment, behavior intervention services and modifications that are designed to address the behavior violation so it does not recur. The IAES and services shall be determined by the CSE.

Students Presumed to Have a Disability for Discipline Purposes

The parent of a student who is facing disciplinary action but who has not been identified as a student with a disability at the time of misconduct, has the right to invoke any of the protections set forth in this policy in accordance with applicable law and regulations, if the District is deemed to have had knowledge, as determined below, that the student was a student with a disability before the behavior precipitating disciplinary action occurred, such student is a “student presumed to have a disability for discipline purposes”.

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The District will be deemed to have had such knowledge if, before the behavior that precipitated the disciplinary action occurred:

1. The student's parent expressed concern in writing to supervisory or administrative personnel, or to a teacher of the student, that the student is in need of special education, provided that the expression of concern may be oral if the parent does not know how to write or has a disability that prevents written statement; or
2. The student's parent has requested an evaluation of the student; or
3. A teacher of the student or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the District's director of special education or other supervisory personnel.

Nonetheless, a student will not be considered a student presumed to have a disability for disciplinary purposes, if, notwithstanding the District's receipt of information supporting a claim that it had knowledge of the student's disability:

1. The student's parent has not allowed an evaluation of the student; or
2. The student's parent has refused services; or
3. The District conducted an evaluation of the student and determined that the student is not a student with a disability.

If it is claimed by the parent of the student or by District personnel, that the District had a basis for knowledge that the student was a student with a disability, prior to the time the behavior subject to disciplinary action occurred, it shall be the responsibility of the Superintendent of Schools, building principal, or other school official imposing the suspension or removal to determine whether the student is a student presumed to have a disability.

If there is no basis for knowledge that the student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as any other non-disabled student who engaged in comparable behaviors. However, if the District receives a request for an individual evaluation while the student is subjected to disciplinary measures, the District will conduct an expedited evaluation of the student in accordance with applicable law and regulations. If the student is determined to be a student with a disability, the District shall provide special education and related services, except that, pending the results of the evaluation, the student shall remain in the educational placement determined by the District which can include suspension.

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Expedited Due Process Hearings

The District will arrange for an expedited due process hearing under the following circumstances:

1. The District requests an expedited hearing to obtain an order from an impartial hearing officer placing a student with a disability in an IAES where school personnel maintain that it is dangerous for the student to be in his or her current educational placement;
2. The District requests an expedited hearing to obtain an order from an impartial hearing officer placing a student with a disability in an IAES during the pendency of a due process hearing where District personnel maintain that it is dangerous for the student to be in his or her current educational placement during such proceedings;
3. The parent requests a hearing from a determination that the student's behavior was not a manifestation of the student's disability; or
4. The parent requests a hearing relating to any decision regarding placement, including but not limited to any decision to place the student in an IAES.

The District shall arrange for an expedited due process hearing in accord with the Commissioner's Regulations. Unless the parent and District agree in writing to waive the resolution meeting or agree to use mediation, the expedited hearing shall be held within the following time-lines:

1. A resolution meeting shall occur within seven days of receiving notice of the due process complaint;
2. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of receipt of the due process complaint;
3. The hearing shall occur within twenty school days of the date the complaint requesting the hearing is filed;
4. The impartial hearing officer shall make a determination within ten school days after the hearing.

No extension to an expedited impartial hearing timeline may be granted.

If a parent requests a hearing or an appeal regarding the change in placement of a student to an IAES by the Superintendent of Schools, or regarding a change in placement by an impartial hearing officer where the District maintains that it is dangerous for the student to remain in his or her current educational placement, or regarding a determination that the behavior is not a

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manifestation of the student’s disability for a student who has been placed in an IAES, the student shall remain in the IAES pending the decision of the impartial hearing officer or until expiration of the time period determined under this policy, whichever occurs first, unless the parents and the school District otherwise agree.

The decisions on expedited due process hearings are appealable.

Referral to Law Enforcement and Judicial Authorities

Consistent with its authority under applicable law and regulations, nothing in this policy will prohibit the District from reporting a crime committed by a student with a disability to appropriate law enforcement and judicial authorities. In such an instance, The District will ensure that copies of the special education and disciplinary records of the student are transmitted for consideration to the appropriate authorities to whom the crime is reported, only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

*Individuals with Disabilities Education Act, 20 USC §1415(k);
34 CFR § 300.530 et seq.
N.Y. Education Law § 3214(g)
8 NYCRR Par*

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