

## **K. SAMPLE DISCIPLINE POLICY FOR STUDENTS WITH DISABILITIES**

### **GENERALLY**

In addition to the discipline procedures applicable to all students, the following procedures are applicable to students with disabilities. A student not specifically identified as having a disability but whose school district of residence or charter school, prior to the behavior which is the subject of the disciplinary action, has a basis of knowledge—in accordance with 34 CFR 300.534 of the Code of Federal Regulations (“CFR”) —that a disability exists may request to be disciplined in accordance with these provisions. The school (“School”) shall comply with sections 300.530-300.536 of the CFR and the following procedures, except that in the event that the following procedures are inconsistent with federal law and regulations, such federal law and regulations shall govern.

The School shall maintain written records of all suspensions and expulsions of students with a disability including the name of the student, a description of the behavior engaged in, the disciplinary action taken, and a record of the number of days a student has been suspended or removed for disciplinary reasons.

If a student identified as having a disability is suspended during the course of the school year for a total of 10 days, such student shall not be further suspended without the involvement of the Individualized Education Program (IEP) team of the student’s district of residence prior to the 11<sup>th</sup> day of suspension, because such suspensions may be considered to be a change in placement.

In considering the placement of students referred because of disciplinary problems, the IEP team is expected to follow its ordinary policies with respect to parental notification and involvement.

### **PROVISION OF SERVICES DURING REMOVAL**

Those students removed for a period of fewer than 10 days will receive all classroom assignments and a schedule to complete such assignments during the time of his or her suspension. Provisions will be made to permit a suspended student to make up assignments or tests missed as a result of such suspension. The School also shall provide additional alternative instruction within the 10 days and by appropriate means to assist the student, so that the student is given full opportunity to complete assignments and master curriculum, including additional instructions, phone assistance, computer instruction and/or home visits, and one-on-one tutoring.

During any subsequent removal that, combined with previous removals equals 10 or more school days during the school year, but does not constitute a change in placement, services must be provided to the extent determined necessary to enable the child to appropriately progress in the general curriculum and in achieving the goals of his or her IEP. In these cases, school personnel, in consultation with the child's special education teacher, shall make the service determination.

During any removal for drug or weapon offenses pursuant to 34 CFR §300.530(g), services will be provided to the extent necessary to enable the child to appropriately progress in the general curriculum and in achieving the goals of his or her IEP. The IEP team will make these service determinations. The school will place students in interim alternative educational settings as appropriate per 34 CFR §300.520(g).

During any subsequent removal that does constitute a change in placement, but where the behavior is not a manifestation of the disability, the services must be provided to the extent necessary to enable the student to appropriately progress in the general curriculum and in achieving the goals of his or her IEP. The IEP team will make the service determination.

## **DUE PROCESS**

If discipline which would constitute a change in placement is contemplated for any student with an IEP, the following steps shall be taken: (1) not later than the date on which the decision to take such action is made, the parents of the student with a disability shall be notified by the school of that decision and provided the procedural safeguards notice described in 34 CFR §300.504; and (2) the IEP team shall meet and review the relationship between the child's disability and the behavior subject to the disciplinary action.

If, upon review, it is determined that the child's behavior was not a manifestation of his or her disability, then the child may be disciplined in the same manner as a child without a disability, except as provided in 34 CFR §300.530(d), which relates to the provision of services to students with disabilities during periods of removal.

If, upon review, if it is determined that the child's behavior was a manifestation of his or her disability, then the child may not be disciplined further in connection with that incident. A functional behavioral assessment shall be conducted if needed and a behavioral intervention plan either created or, if one already exists, revised. The school will then implement this plan.

Parents may request a hearing to challenge the manifestation determination. Except as provided below, the child will remain in his or her current educational placement pending the determination of the hearing.

If a parent requests a hearing or an appeal to challenge the interim alternative educational setting or the manifestation determination resulting from a disciplinary action relating to weapons or drugs, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in the disciplinary action, whichever occurs first, unless the parent and school agree otherwise.

**Other:** In addition to disciplinary actions provided for elsewhere in this policy, any breaches of state or federal law may be handled in cooperation with the local police department or other authorities. Where appropriate, school officials also will contact law enforcement agencies.

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<sup>i</sup> This section draws heavily on language included in: Rhim, L. M. & O'Neill, P. Improving Access and Creating Exceptional Opportunities for Students with Disabilities in Public Charter Schools (National Alliance for Public Charter Schools, 2013); and Rhim, L. M., Ahearn, E. M., Giovannetti, E.A., Lange, C. M., & Warren, S. H. (2004). *Primer for*

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*Charter School Authorizers: Special Education Requirements and Including Students with Disabilities in Charter Schools*. Alexandria, VA: National Association of State Directors of Special Education.

<sup>ii</sup> See *Brown vs. Board of Education*, 347 U.S. 483 (1954).

<sup>iii</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*

<sup>iv</sup> Under IDEA, children with disabilities are identified as having one of 13 categories of disabilities: autism, deaf-blindness, developmental delay, emotional disturbance, hearing impairments, intellectual disabilities, multiple disabilities, orthopedic impairments, other health impairments, specific learning disabilities, speech or language impairments, traumatic brain injury, or visual impairments. 20 U.S.C. 1401(3)(A)(i).

<sup>v</sup> For a detailed discussion of funding streams under IDEA, see L. M. Rhim and P. O'Neill, "Getting Lost While Trying to Follow the Money: Special Education Finance in Charter Schools" (National Alliance for Public Charter Schools 2015).

<sup>vi</sup> 34 C.F.R. § 300.29(d)

§ 300.209 Treatment of charter schools and their students.

(b) Charter schools that are public schools of the LEA.

(c) Public charter schools that are LEAs.

(d) Public charter schools that are not an LEA or a school that is part of an LEA.

(1) If the public charter school is not an LEA receiving funding under § 300.705, or a school that is part of an LEA receiving funding under § 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149.

<sup>vii</sup> Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

<sup>viii</sup> Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*

<sup>ix</sup> Every Student Succeeds Act of 2015, Pub. L. No. 114-95 § 114 Stat. 1177 (2015-2016). Retrieved from

<https://www.congress.gov/bill/114th-congress/senate-bill/1177/text>