

## Special Education - Discipline

### 1. Definitions

- a. The district applies the following definitions when considering disciplinary action:
  - (1) "Behavioral intervention plan" means an individualized plan, including positive interventions, designed to assist a student to decrease in appropriate behavior and increase or teach an alternative appropriate behavior;
  - (2) "Current educational placement" means the type of educational placement of the student as described in the student's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the types of placement on the continuum of placement options;
  - (3) "Disciplinary removal" means suspension, expulsion or other removal from school for disciplinary reasons, including removals pending completion of a risk assessment. It does not include:
    - (a) Removals by other agencies;
    - (b) Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.);
    - (c) In-school suspensions if the student continues to have access to the general curriculum and to special education and related services as described in the student's individualized education program (IEP), and continues to participate with nondisabled students to the extent they would in their current placement; or
    - (d) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student and the student does not attend school as a result of the bus suspension.
  - (4) "Functional behavioral assessment" means an individualized assessment of the student that results in a team hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan;
  - (5) "Suspension" means any disciplinary removal other than expulsion.

### 2. Disciplinary Removals for up to 10 School Days

- a. The district may suspend students with disabilities from their current educational placement for up to 10 school days in a school year to the same extent, and with the same notice, as for students without disabilities. These removals are not considered a change in placement.
- b. During disciplinary removals for up to 10 school days:

- (1) The district is not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time;
  - (2) The district is not required to determine whether the student's behavior resulting in the disciplinary removal is a manifestation of the student's disability;
  - (3) The district counts days of suspension as follows:
    - (a) Suspensions of a half day or less will be counted as a half day; and
    - (b) Suspensions of more than a half day will be counted as a whole day;
    - (c) If a student moves from another school district in Oregon, any days of suspension from the former district apply, unless the district does not have knowledge of previous suspensions.
- c. If a student disagrees with a suspension and requests a due process hearing:
- (1) The district may require the student to complete the suspension before returning to his/her current educational placement;
  - (2) The student will return to the current educational placement after the suspension unless the student is removed to an interim alternative educational setting, or if the parent and district agree to another placement pending the hearing.
3. Additional Disciplinary Removals of up to 10 School Days When There is No Pattern of Removal
- a. The district may suspend students with disabilities from their current educational placement for additional periods of up to 10 days in a school year to the same extent, and with the same notice, as for students without disabilities, if the removals do not constitute a pattern. These removals do not constitute a change in placement.
  - b. In determining whether removals of additional periods of up to 10 school days constitute a pattern of removals, school personnel will consider:
    - (1) The length of each removal;
    - (2) The total time of removals; and
    - (3) The proximity of the removals to one another.
  - c. During removals of additional periods of up to 10 school days in a school year that do not constitute a pattern, the district will provide services that are necessary to enable the student to:
    - (1) Appropriately progress in the general curriculum;
    - (2) Appropriately advance toward achieving the goals in the student's IEP; and
    - (3) The services and location for delivery of services in this section will be determined by school personnel, in consultation with the student's special education teacher, or by the student's IEP team.
  - d. Within 10 business days of the first removal for additional periods of up to 10 school days in a school year that do not constitute a pattern, the district will:
    - (1) Hold an IEP meeting to develop a plan for conducting a functional behavioral assessment unless a functional behavioral assessment has been completed on the

- behavior that resulted in the removal; or
- (2) If there is a behavioral intervention plan in place, review the plan if one or more team members believe that revisions are needed.
- e. As soon as practicable after developing a plan for conducting a functional behavioral assessment and completing the assessments required by the plan, the district will hold an IEP meeting to develop appropriate interventions to address the behavior and shall implement those interventions.
- f. The district is not required to determine whether the behavior resulting in the disciplinary removal is a manifestation of the student's disability.
- g. Upon subsequent removals of up to 10 school days that are not a pattern, the IEP team shall review the behavior intervention plan and its implementation to determine if modifications are necessary.
- h. If a parent disagrees with the suspension and requests a due process hearing:
  - (1) The district may require the student to complete the suspension before returning to his/her current educational placement;
  - (2) The student will return to the current educational placement after the suspension unless the student is removed to an interim alternative educational setting or the parent and district agree to another placement pending the hearing.
- 4. Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)
  - a. When a student is removed for disciplinary reasons for more than 10 school days, it is considered a change in the student's educational placement if:
    - (1) The removal is for more than 10 consecutive school days; or
    - (2) The removal is for more than 10 cumulative school days, and it constitutes a pattern of removals.
  - b. In initiating this type of removal, the district will:
    - (1) Immediately schedule an IEP meeting for the purpose of addressing the student's behavior;
    - (2) Not later than the date on which the decision to remove a student under A. is made:
      - (a) Provide notice of disciplinary action for an expulsion; and
      - (b) Provide *Notice of Procedural Safeguards* to the parent.
  - c. Within 10 school days of any decision to change the student's placement because of a violation of a code of student conduct, the district, parent and relevant members of the IEP team shall review all relevant information to determine:

- (1) If the conduct was caused by or had a direct and substantial relationship to the student's disability; or
- (2) If the conduct was the direct result of the district's failure to implement the IEP.

If the district, parent and relevant members of the IEP team conclude that either of the above two is applicable to the student, the conduct shall be determined to be a manifestation of the child's disability.

- d. If the district, parent and relevant members of the IEP team concludes the misconduct is a manifestation of the student's disability, the IEP team shall:
  - (1) Conduct a functional behavioral assessment, and implement a behavior intervention plan for the student (provided that the district had not conducted such assessment prior to such determination before the behavior that resulted in the change of placement);
  - (2) When a behavioral intervention plan has been developed, review and modify the plan as necessary to address the behavior; and
  - (3) Return the student to the placement from which the student was removed unless the parent and district agree to change the placement as part of the behavioral intervention plan.
- e. If the IEP team determines that the student's behavior is not a manifestation of the student's disability, the district may proceed with disciplinary action as it would for a nondisabled student. In taking this action, the district will:
  - (1) Ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and
  - (2) Provide the services, determined by the IEP team, that are necessary to enable the student to:
    - (a) Appropriately progress in the general curriculum; and
    - (b) Appropriately advance toward achieving the goals in the student's IEP.
  - (3) As soon as practicable after developing a plan for conducting a functional behavioral assessment and completing the assessments required by the plan, hold an IEP meeting to develop appropriate behavioral interventions to address the behavior and shall implement those interventions;
  - (4) If a student's educational placement changes as a result of the IEP/placement reviews, provide prior written notice of change in placement.
- f. If a parent disagrees with the manifestation determination or any decision about placement related to the disciplinary removal, and requests a due process hearing, the student will remain in the current educational placement unless the student is removed to an interim alternative educational setting or unless the parent and district agree to another placement pending the hearing.

## 5. Manifestation Determination

- a. The district will complete a manifestation determination before a student is removed for disciplinary reasons for more than 10 school days if the removal constitutes a change in the student's educational placement. A change in placement is:
  - (1) A removal for more than 10 cumulative days that constitutes a pattern;
  - (2) A removal for more than 10 consecutive days; or
  - (3) A removal to an interim alternative educational setting.
- b. The manifestation determination will be conducted by district, parent and relevant members of the IEP team and, as appropriate, other qualified personnel. All relevant information related to the behavior subject to disciplinary action will be considered, including:
  - (1) Evaluation and diagnostic results, including information from the parents;
  - (2) Observations of the child; and
  - (3) The student's IEP and placement.
- c. The IEP team will determine that the student's behavior is not a manifestation of the student's disability only if:
  - (1) The student's IEP and placement were appropriate in relationship to the behavior subject to the disciplinary action;
  - (2) The special education services, supplementary aids and services and behavior intervention strategies were provided consistent with the child's IEP and placement;
  - (3) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and
  - (4) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.
- d. The IEP team and other qualified personnel will determine that the student's behavior is a manifestation of the student's disability if:
  - (1) The student's IEP and placement were found to be inappropriate in relationship to the behavior subject to the disciplinary action; or
  - (2) The special education services, supplementary aids and services and behavior intervention strategies were provided inconsistently with the student's IEP and placement;
  - (3) The student's disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; or
  - (4) The student's disability impaired the ability of the student to control the behavior subject to disciplinary action;
  - (5) If the conduct was the direct result of the district's failure to implement the IEP.
- e. If, in conducting the manifestation determination review, deficiencies in the student's IEP, placement or implementation are identified, the district will take immediate steps to remedy those deficiencies.

6. Removal to an Interim Alternative Educational Setting by School District (Drugs and Weapons)
  - a. A student may be removed from the current educational placement to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 calendar days in a school year for a drug or weapon violation or if the student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or district. This removal is a change in placement.
  - b. For the purpose of determining a drug or weapon violation, the district will apply the definitions in Board policy JGDA/JGEA - Discipline of Disabled Students.
  - c. If a student is removed for a drug or weapon violation or for inflicting serious bodily injury as defined above, the district will:
    - (1) Immediately schedule an IEP meeting (which will be convened within 10 business days of the disciplinary action);
    - (2) Not later than the date on which the decision to take action is made, provide the parent with notice of disciplinary action for a suspension or expulsion, and notice of the decision to remove the student to an interim alternative educational setting; and
    - (3) Provide *Notice of Procedural Safeguards* to the parent.
  - d. Immediately or within 10 business days, the district will convene an IEP meeting to:
    - (1) Develop a functional behavioral assessment plan; or
    - (2) If a functional behavioral assessment has already been completed on the behavior that resulted in the removal, the IEP team will review the plan and revise it as needed; and
    - (3) Determine whether the student's behavior is a manifestation of the student's disability;
    - (4) Review the student's IEP, and revise, as appropriate;
    - (5) Determine the specific interim alternative educational setting which will enable the student to continue to:
      - (a) Progress in the general curriculum, although in another setting;
      - (b) Receive special education services and modifications described in the student's IEP that will enable the student to meet IEP goals; and
      - (c) Include services and modification that address the misconduct and are designed to prevent the misconduct from recurring.
  - e. If the IEP team determines that the student's behavior is a manifestation of the disability, the district will not proceed with this disciplinary action, but may:
    - (1) Continue the student's placement in the interim alternative educational setting until the end of the 45-day period;
    - (2) Review and revise the student's IEP and placement; and
    - (3) Seek a hearing officer's removal for injurious behavior.
  - f. If the IEP team determines that the student's behavior is not a manifestation of his/her disability, the district may proceed with disciplinary action applicable to students without disabilities, in the same manner in which it would apply to students without disabilities.

If proceeding with this disciplinary action, the district will:

- (1) Ensure that the special education and disciplinary records of the student are given to school personnel for consideration in making the final determination regarding the disciplinary action;
  - (2) Provide the services, determined by the IEP team, that are necessary to enable the student to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals in the student's IEP.
- g. If the student's educational placement changes as a result of the IEP/placement reviews, the district will provide the parent with prior written notice of change in placement.
- h. As soon as practicable after developing a plan for conducting a functional behavioral assessment and completing the assessments required by the plan, the district will hold an IEP meeting to develop appropriate behavior interventions to address the behavior and shall implement those interventions.
- i. If the parent(s) of the student requests a due process hearing because he/she disagrees with the manifestation determination, the removal to the interim alternative educational setting or any decision about placement related to a disciplinary removal:
- (1) The student will remain in the interim alternative educational setting pending the decision of the hearings officer or for 45 calendar days, whichever occurs first; unless
    - (a) The parent and school district agree otherwise; or
    - (b) The student is removed for injurious behavior to an interim alternative educational setting by a hearings officer.
- j. In reviewing a decision to place the student in an interim alternative educational setting for a drug or weapons violation, the hearings officer shall apply the standards in OAR 581-015-0056 (3).
7. Removal to an Interim Alternative Educational Setting by Hearings Officer (Injurious Behavior)
- a. The district may request an expedited due process hearing to obtain a hearings officer's order to remove a student to an interim alternative educational setting for not more than 45 days if the student is exhibiting injurious behavior. For the purpose of this request, "injurious behavior" is defined as behavior that is substantially likely to result in injury to the student or to others.
  - b. District personnel will determine the specific alternative educational setting in consultation with the student's special education teacher(s) or with the IEP team.
  - c. If a student is removed to an interim alternative educational setting by a hearings officer for injurious behavior, the district will:
    - (1) Immediately schedule an IEP meeting (which will be convened within 10 business days of the disciplinary action); and
    - (2) Not later than the date on which the decision to take action is made:

- (a) Provide the parent with notice of any suspension or expulsion, if applicable, and notice of the decision to remove the student to an interim alternative educational setting; and
  - (b) Provide the parent with *Notice of Procedural Safeguards*.
- d. If the district initiates a disciplinary removal to an interim alternative educational setting, the district will, immediately or within 10 business days, convene an IEP meeting to:
  - (1) Develop a functional behavioral assessment plan; or
  - (2) If a functional behavioral assessment has already been completed on the behavior that resulted in the removal or, if there is a behavioral intervention plan in place, the IEP team will review the plan and revise it as needed; and
  - (3) Determine whether the student's behavior is a manifestation of his/her disability;
  - (4) Review the student's IEP, and revise it as appropriate;
  - (5) Determine the specific interim alternative educational setting which will enable the student to continue to:
    - (a) Progress in the general curriculum, although in another setting;
    - (b) Receive special education services and modifications described in the student's IEP that will enable the student to meet IEP goals;
    - (c) Include services and modifications that address the misconduct and are designed to prevent the misconduct from recurring.
- e. If the IEP team determines that the student's behavior is a manifestation of his/her disability the district will not proceed with the disciplinary action, but may:
  - (1) Continue the student's placement in the interim alternative educational setting until the end of the 45-day period;
  - (2) Review and revise the student's IEP and placement; or
  - (3) Seek another up to 45-day removal for injurious behavior from the hearings officer.
- f. If the IEP team determines that the student's behavior is not a manifestation of his/her disability, the district may proceed with disciplinary action applicable to students without disabilities, in the same manner in which it would apply to students without disabilities. In taking this disciplinary action, the district will:
  - (1) Ensure that the special education and disciplinary records of the student are given over for consideration to the school personnel making the final determination regarding the disciplinary action; and
  - (2) Provide the services, determined by the IEP team, that are necessary to enable the student to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals in the student's IEP.
- g. If the student's educational placement changes as a result of the IEP/placement reviews, the district will provide prior written notice of change in placement.

- h. As soon as practicable after developing a plan for conducting a functional behavioral assessment and completing the assessments required by the plan, the district will hold an IEP meeting to develop appropriate behavior interventions to address the behavior and shall implement those interventions.
- i. If the parent(s) of the student requests a due process hearing because he/she disagrees with the manifestation determination, the removal to the interim alternative educational setting or any decision about placement related to a disciplinary removal:
  - (1) The student will remain in the interim alternative educational setting pending the decision of the hearings officer or for 45 calendar days, whichever occurs first; unless
  - (2) The parent and school district agree otherwise; or, the student is removed by a hearings officer for additional 45-day period(s) for injurious behavior.
- j. The district may seek a court order to remove a student from his/her current educational placement to another placement if the district believes that maintaining the student in the current educational placement is substantially likely to result in injurious behavior.

## 8. Interim Alternative Educational Setting

- a. The district will ensure that an interim alternative educational setting:
  - (1) Enables the student to continue to progress in the general curriculum, although in another setting;
  - (2) Ensures that the student receives special education services described in the student's IEP that will enable the student to meet IEP goals; and
  - (3) Includes services and modifications that address the misconduct, and are designed to prevent the misconduct from recurring.

## 9. Protections for Children not yet Eligible for Special Education

- a. The district will apply these protections to students not yet identified as students with a disability if the district had knowledge that the student was a student with a disability. The district has such knowledge if:
  - (1) A parent has expressed a concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that his/her student is in need of special education and related services;
  - (2) The behavior or performance of a student demonstrates the need for special education and related services in relation to state eligibility criteria for disabilities;
  - (3) The parent of a student has requested a special education evaluation of his/her child; or
  - (4) The teacher of the student has, or other school personnel, expressed a concern about the behavior or performance of the student to the district's special education representative in accordance with the district's special education referral system.
- b. The district will not be considered to have knowledge of a disability if the district:

- (1) Conducted a special education evaluation in accordance with state eligibility criteria for disabilities and determined that the student was not eligible, and gave the parent prior written notice of that determination; or
  - (2) Determined that there was no suspicion of a disability, and gave the parent prior written notice of the refusal to evaluate.
- c. If the district did not have knowledge, it may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behavior. However:
- (1) If a special education evaluation is requested, or if the district initiates a special education evaluation, the evaluation will be conducted in an expedited manner;
  - (2) Until the evaluation is completed, the student will remain in the educational placement determined by school personnel, which can include suspension, expulsion or placement in alternative education;
  - (3) Upon completion of the evaluation, if the student is determined to be a student with a disability, the district will conduct an IEP meeting to develop an IEP and determine placement and shall provide special education and related services;
  - (4) The district will apply the discipline provisions beginning on the date of the eligibility determination.