

DISCIPLINE OF STUDENTS WITH DISABILITIES

The Board of Education recognizes that the need to address disruptive or problem behavior within its schools may result in the suspension, removal or other discipline of students with disabilities eligible for services under the Individuals With Disabilities Education Act (I/D/E/A) and Article 89 of the NYS Education Law, and their implementing regulations. It also recognizes that these students with disabilities enjoy certain procedural protections whenever school authorities intend to impose discipline upon them.

Accordingly, it shall be the policy of the Board of Education that the procedures followed for suspending, removing or otherwise disciplining students with disabilities eligible for services under I/D/E/A and Article 89 will conform to the procedural safeguards required by applicable laws and regulations.

This policy incorporates by reference the *Procedural Safeguards For Students With Disabilities Subject To Discipline* set forth in Part 201 of the Regulations of the Commissioner of Education, which implement the procedural protections provided under NYS Education Law and which coordinate the state's general procedures for suspension of students with disabilities with the requirements of I/D/E/A and its implementing regulations.

The superintendent of schools is directed to ensure, on an ongoing basis, that a copy of the most current version of the *Procedural Safeguards For Students With Disabilities Subject To Discipline*, Part 201 of the Regulations of the Commissioner of Education, is attached as an exhibit to this policy.

This policy affords students with disabilities subject to disciplinary action no greater or lesser rights than those expressly afforded by applicable federal and state law and regulations.

A. AUTHORIZED SUSPENSIONS OR REMOVALS OF STUDENTS WITH DISABILITIES

In accordance with the procedural protections applicable to the discipline of students with disabilities:

1. Definitions:

A *suspension* means a suspension pursuant to Education Law, § 3214

A *removal* means a removal for disciplinary reasons from the student's current educational placement other than a suspension and change in placement to an Interim Alternative Educational Setting (IAES) ordered by an impartial hearing officer because the student poses a risk of harm to himself/herself or others.

POLICY ADOPTED: July 11, 2001

WAYNE CENTRAL SCHOOL DISTRICT
Ontario Center, New York 14520

DISCIPLINE OF STUDENTS WITH DISABILITIES (continued)

1. Definitions (continued)

An *IAES* means a temporary educational placement for a period of up to forty-five (45) days, other than the student's current placement at the time the behavior precipitating the *IAES* placement occurred, that enables the student to continue to progress in the general curriculum, although in another setting, to continue to receive those services and modifications, including those described on the student's current IEP, that will enable the student to meet the goals set out in such IEP, and include services and modifications to address the behavior which precipitated the *IAES* placement that are designed to prevent the behavior from recurring.

2. Suspension Or Removal Of A Student With Disabilities

School personnel may order the suspension or removal of a student with a disability from his or her current educational placement as follows:

- (a) The Board of Education, the superintendent of schools or a building principal delegated the authority to suspend students may order the placement of a student with a disability into an *IAES*, another setting or suspension for a period not to exceed five (5) consecutive school days and not to exceed the amount of time a non-disabled student would be subject to suspension for the same behavior.
- (b) The superintendent of schools may order the placement of a student with a disability into an *IAES*, another setting, or suspension for up to ten (10) consecutive school days, inclusive of any period in which the student has been suspended or removed under subparagraph (a), above, for the same behavior, if the superintendent of schools determines that the student has engaged in behavior that warrants a suspension and the suspension or removal does not exceed the amount of time non-disabled students would be subject to suspension for the same behavior.
- (c) The superintendent of schools may order additional suspensions of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.
- (d) The superintendent of schools may order the placement of a student with a disability in an *IAES* to be determined by the Committee on Special Education (CSE), for the same amount of time that a student without a disability would be subject to discipline, but not more than forty-five (45) days, if the student carries or possesses a weapon to school or to a school function, or the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

DISCIPLINE OF STUDENTS WITH DISABILITIES (continued)

Suspension Or Removal Of A Student With Disabilities (continued)

- (1) the term *weapon* means the same as “dangerous weapon” under 18 U.S.C. §930(g)(w) 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... [for] a pocket knife with a blade of less than 2 1/2 inches in length.”
 - (2) the term *controlled substance* means a drug or other substance identified in certain provisions of the Controlled Substances Act specified in both federal and state law and regulations applicable to this policy.
 - (3) The term *illegal drugs* means a controlled substance except for those legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or any other federal law.
- (e) Subject to specified conditions required by both federal and state law and regulations, an impartial hearing officer may order the placement of a student with a disability in an IAES setting for up to forty-five (45) days at a time, if maintaining the student in his or her current educational placement poses a risk of harm to the student or others.

3. Change Of Placement Rule

1. A disciplinary change in placement means a suspension or removal from a student’s current educational placement that is either:
 - (a) for more than ten (10) consecutive school days, *or*
 - (b) for a period of ten (10) consecutive school days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they accumulate to more than ten (10) school days in a school year, *or*
 - (c) because of such factors as the length of each suspension or removal, the total amount of time the student is removed and the proximity of the suspensions or removals to one another

DISCIPLINE OF STUDENTS WITH DISABILITIES (continued)

3. Change Of Placement Rule (continued)

2. The parent/guardian(s) of a student who is facing disciplinary action, but who has not been determined to be eligible for services under I/D/E/A and Article 89 at the time of misconduct, shall have the right to invoke applicable procedural safeguards set forth in federal and state law and regulations if, in accordance with federal and state statutory and regulatory criteria, the school district is deemed to have had knowledge that their child was a student with a disability before the behavior precipitating disciplinary action occurred.

If the district is deemed to have had such knowledge, the student will be considered a student presumed to have a disability for discipline purposes.

- (a) It shall be the responsibility of the superintendent of schools, the building principal or other school official imposing a suspension or removal to determine whether the student is a student presumed to have a disability.
- (b) A student will not be considered a student presumed to have a disability for discipline purposes if, upon receipt of information supporting a claim that the district had knowledge the student was a student with a disability, the district either:
 - (1) conducted an individual evaluation and determined that the student is not a student with a disability, or
 - (2) determined that an evaluation was not necessary and provided notice to the parents of such determination, in the manner required by applicable law and regulations.

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 a request for an individual evaluation is made while such non-disabled student is subjected to a disciplinary removal, an expedited evaluation shall be conducted and completed in the manner prescribed by applicable federal and state law and regulations. Until the expedited evaluation is completed, the non-disabled student who is not a student presumed to have a disability for discipline purposes shall remain in the educational placement determined by the district, which can include suspension.

DISCIPLINE OF STUDENTS WITH DISABILITIES

3. Change Of Placement Rule (continued)

3. The school district shall provide parents with notice of disciplinary removal no later than the date on which a decision is made to change the placement of a student with a disability to an IAES for either misconduct involving weapons, illegal drugs or controlled substances or because maintaining the student in his/her current educational setting poses a risk of harm to the student or others; or a decision is made to impose a suspension or removal that constitutes a disciplinary change in placement.

The notice of disciplinary removal shall be accompanied by the notice of procedural safeguards prescribed by the Commissioner of Education.

- (4) The parents of a student with disabilities subject to a suspension of five (5) consecutive school days or less shall be provided with the same opportunity for an informal conference available to parents of non-disabled students under the NYS Education Law.
- (5) Superintendent's hearings on disciplinary charges against students with disabilities subject to a suspension of more than five (5) school days shall be bifurcated into a guilt phase and a penalty phase in accordance with the procedures set forth in the Regulations of the Commissioner of Education incorporated into this policy.

The removal of a student with disabilities other than a suspension or placement in an IAES shall be conducted in accordance with the due process procedures applicable to such removals of non-disabled students, except that school personnel may not impose such removal for more than ten (10) consecutive days or for a period that would result in a disciplinary change in placement, unless the Committee on Special Education has determined that the behavior is not a manifestation of the student's disability.

- (6) During any period of suspension or removal, including placement in an IAES, students with disabilities shall be provided services as required by the Regulations of the Commissioner of Education incorporated into this policy.

DISCIPLINE OF STUDENTS WITH DISABILITIES

4. Expedited Due Process Hearings

1. An expedited due process hearing shall be conducted in the manner specified by the Regulations of the Commissioner of Education incorporated into this policy, if:
 - (a) The district requests such a hearing to obtain an order of 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, or during the pendency of due process hearings where school personnel maintain that it is dangerous for the student to be in his or her current educational placement during such proceedings.
 - (b) The parent requests such a hearing from a determination that the student's behavior was not a manifestation of the student's disability, or relating to any decision regarding placement, including but not limited to any decision to place the student in an IAES.
 - (1) during the pendency of an expedited due process hearing or appeal regarding the placement of a student in an IAES for behavior involving weapons, illegal drugs or controlled substances, or on grounds of dangerousness, or regarding a determination that the behavior is not a 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 IAES placement, whichever occurs first, unless the parents and the district agree otherwise.
 - (2) if school personnel propose to change the student's placement after expiration of an IAES placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the placement prior to removal to the IAES, except where the student is again placed in an IAES.
2. An expedited due process hearing shall be completed within fifteen (15) business days of receipt of the request for a hearing. Although the impartial hearing officer may grant specific extensions of such time period, s/he must mail a written decision to the district and the parents within five (5) business days alter the last hearing date, and in no event later than forty-five (45) calendar days alter receipt of the request for a hearing, without exceptions or extensions.

DISCIPLINE OF STUDENTS WITH DISABILITIES

B. REFERRAL TO LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

In accordance with the provisions of I/D/E/A and its implementing regulations:

1. The district may report a crime committed by a child with a disability to appropriate authorities, and such action will not constitute a change of the student's placement.
2. The superintendent of schools shall ensure that copies of the special education and disciplinary records of a student with disabilities are transmitted for consideration to the appropriate authorities to which a crime is reported.
3. School personnel may not suspend or remove a student with disabilities if imposition of the suspension or removal would result in a disciplinary change in placement based on a pattern of suspension or removal.
4. However, the district may impose a suspension or removal which would otherwise result in a disciplinary change in placement based on a pattern of suspensions or removals if the Committee on Special Education has determined that the behavior was not a manifestation of the student's disability, or the student is placed in an IAES for behavior involving weapons, illegal drugs or controlled substances.

DISCIPLINE OF STUDENTS WITH DISABILITIES

B. Special Rules Regarding The Suspension Or Removal Of Students With Disabilities

1. The Committee on Special Education shall:

- (a) Conduct functional behavioral assessments to determine why a student engages in a particular behavior, and develop or review behavioral intervention plans whenever the district is first suspending or removing a student with a disability for more than ten (10) school days in a school year or imposing a suspension or removal that constitutes a disciplinary change in placement, including a change in placement to an IAES for misconduct involving weapons, illegal drugs or controlled substances.

If, subsequently, a student with a disability who has a behavioral intervention plan and who has been suspended or removed from his or her current educational placement for more than ten (10) school days in a school year is subjected to a suspension or removal that does not constitute a disciplinary change in placement, the members of the Committee on Special Education shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more members of the Committee on Special Education believe that modifications are needed, the school district shall convene a meeting of the Committee on Special Education to modify such plan and its implementation, to the extent the committee determines necessary.

- (b) Conduct a manifestation determination review of the relationship between the student's disability and the behavior subject to disciplinary action whenever a decision is made to place a student in an IAES either for misconduct involving weapons, illegal drugs or controlled substances or because maintaining the student in his current educational setting poses a risk of harm to the student or others; or a decision is made to impose a suspension that constitutes a disciplinary change in placement.