

Suspension, Assignment or Expulsion

Students with Disabilities – Special Education/504 Students

STUDENTS:

Introduction: IDEA, Section 504 of the Rehabilitation Act of 1973, nor COMAR prohibit school administration from imposing disciplinary actions, including short-term suspensions, long-term suspensions, and expulsion, on students with disabilities. However, the federal and State regulations require that the School System, through the IEP team for IDEA/SST team for Section 504, follow appropriate procedures and provide educational services when students with disabilities are removed from school for disciplinary reasons.

PROCEDURES:

- I. **The disciplinary procedures apply to:**
 - a. Students that are currently identified as having a disability and requiring special education services under IDEA;
 - b. Students that are currently suspected of having a disability or are currently being evaluated for the need for special education and related services under IDEA;
 - c. Students whose parents have expressed concerns in writing to school staff regarding the need for services or evaluation; whose behavior demonstrates a need for special education interventions; or, whose teacher (or other school staff) has expressed a concern over behavior or performance to the appropriate special education staff (IEP Chairperson; Department Chair; etc.) in the student's home school.
 - d. Students who have or who are being considered for a Section 504 Plan under the Rehabilitation Act of 1973.
- II. **The disciplinary procedures do not apply to:**
 - a. Students determined by the IEP/SST team not to have a disability that requires special education services under IDEA/504 and whose parents have received written notice of the IEP/SST team decision;
 - b. Students determined by the IEP team to have an educational disability and require special education services under IDEA, but whose parents will not consent to the initial implementation of services or placement;
 - c. Students whose behavior or performance did not warrant a referral for identification and assessment and whose parents did not request special education services or evaluation prior to the disciplinary action.¹

¹ The student, who is referred for identification and evaluation after the decision to disciplinarily remove the student from school, is entitled to an expedited assessment and evaluation process, but may remain out-of-school while the process is completed. The regulations state that until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (See, 34 CFR §300.527(d)(2)(ii))

III. Categories of disciplinary removal

- a. Short-term suspension: the temporary removal of the student by the school principal for less than ten (10) school days;
- b. Long-term suspension: the removal of a student for more than ten (10) school days, but less than one (1) marking quarter; and
- c. Expulsion: the removal of a student for more than one (1) marking quarter.

IV. Short-term suspensions (Less than ten (1) school days): School personnel have the authority to remove students with disabilities from school for less than ten (10) cumulative school days in the academic year without “triggering” the requirements of IDEA or COMAR. Between days one (1) and nine (9), the IEP/504 team may convene to review the exhibited behavior and determine whether the IEP/504 and placement are appropriate to address each of the student’s needs and determine whether the special education services/504 accommodations/related services are being provided, as required. **School staff must maintain a log of the number of the days the student has been removed from the education environment.** In maintaining the log, the school staff must ensure that bus suspensions are included if these suspensions result in the student being unable to receive the required special education services. Additionally, school staff must include the use of in-school suspensions if the student is not provided educational services.

Short-term suspensions (that total more than ten (10) school days): School personnel may propose or recommend the student for short-term suspensions that cumulate to more than ten (10) school days in a given school year, but after the tenth (10th) day of removal, the School System must follow the requirements of IDEA and COMAR.

The IEP/SST team must meet to determine:

- a. Whether a pattern of exclusion has taken place. To determine if a pattern exists, the team must consider the length of each removal, the proximity of each removal to each other, and the total number of days removed.
 - i. If the team determines no pattern of exclusion, then the student may be removed from school, but the student must be provided with the services necessary to receive **Free and Appropriate Public Education (FAPE)**. The services must allow the student to appropriately progress in the general education curriculum and appropriately progress toward achieving the goals and objectives in the IEP/504.
 - ii. The IEP/SST team must be convened within ten (10) days of the student’s removal to either review and revise, as appropriate, the existing behavior intervention plan; or if the student does not have a behavior intervention plan, then the team must determine whether a functional behavior assessment (FBA) is necessary and discuss the positive behavior interventions, strategies, and supports

- that may be required. The parent is part of the team that develops the behavior intervention plan and assists in the determination of whether a functional behavior assessment is needed. If as part of the functional behavior assessment, school staff will be collecting *new* behavioral data, conducting classroom observations, interviewing the student, teachers or parents, then the parent must consent to the functional behavior assessment. If school staff is only collecting and examining data that already exists, then the parent need not consent to the functional behavior assessment.
- iii. The IEP/SST team must provide the parent with written notice of the determination that no pattern of removal exists and that the short-term suspensions did not result in a change of placement for the student.² Written notice is provided through the use of an IEP team summary.
- b. **If a pattern of removal exists**, then the IEP/SST team must convene within ten (10) calendar days of the removal that includes the tenth (10th) school day and conduct a manifestation determination review.

Long-term Suspensions, Assignments of Expulsions: If a student with a disability is recommended for a disciplinary removal from school for more than ten (10) consecutive school days (either through a long-term suspension or an expulsion), then the IEP/SST team must convene within ten (10) calendar days of the recommendation for removal and conduct a manifestation determination review.

V. Procedures for the manifestation determination review

- a. The IEP/SST team, consisting of the required team members (i.e. the general education teacher, the special education teacher, the representative of the public agency, and a parent of the student) and other appropriate persons (school psychologist, school counselor, advocate) must be convened within ten (10) days of the date of the disciplinary removal that includes the tenth (10th) day of removal. (BCPS Policy recommends that the team convene within five (5) days.) The parent must receive written invitation to the IEP team meeting that provides the date, time, location, and purpose of the meeting. In addition, the written invitation must include who will be in attendance at the meeting. **Remember, in matters relating to discipline, the ten (10) day notice requirement of an IEP/SST Team meeting does not apply.**

² In general, the Maryland State Department of Education treats the imposition of multiple short-term suspensions as a pattern of exclusion and requires that the school system follow the requirements of IDEA and COMAR for a student with a disability and who has an IEP that has been removed from the school setting for more than ten (10) cumulative or consecutive school days in a school year.

- b. The IEP/SST team shall ensure that the parent receive copies of the A-1 determination, the “FAPE” form, and the IEP/SST team summary. (Remember, the manifestation determination meeting is an IEP/SST team meeting. Therefore, the parent must be provided with written notice of the decisions that includes the reasons for the decision, a description of the data upon which the decision is made, and the options considered.)
- c. When determining whether the behavior for which the student is being removed from school is related to the disability, the IEP/SST team must consider the following information:
 - i. Diagnostic results and evaluations
 - ii. Teacher reports
 - iii. Classroom observations
 - iv. Information supplied by Parents
 - v. The student’s IEP/504 and
 - vi. The student’s current placement
- d. In formulating its decision, the team must consider:
 - i. The nature of the student's disability;
 - ii. If the student has a history of such behaviors;
 - iii. The extent to which the behaviors can be reasonably attributed to the student's disabling condition, etc.
- e. In order for the team to determine that the behavior is not a manifestation, the team must decide:
 - i. If the conduct in question was caused by or had a direct and substantial relationship to the student’s disability; or
 - ii. If the conduct in question was the direct result of the public agency’s failure to implement the IEP/SST.

VI. If the IEP SST Team determines that there is no manifestation:

- a. The student with a disability may be expelled or suspended in the same manner as a nondisabled student. The length of suspension or expulsion should be similar in nature and amount as a nondisabled student would receive for the same type of violation.
- b. The IEP/SST Team must notify the student's parents, in writing, within 10 days of the team's decision. The school must also advise the parents of their right to appeal this determination by contacting the Coordinator of Special Education Compliance in Baltimore County Public Schools' Law Office. **Remember that the manifestation determination review is an IEP/SST team meeting and therefore, the team must provide the parent with written notice that includes the reasons for the decision, the options considered, the data relied upon, and the action determined to be taken, as required by IDEA and COMAR.**
- c. Refer the case to the Superintendent's Designee with copies of the necessary packet of information including copies of the manifestation

- determination, IEP/504, and IEP/SST Team Summary.
- d. If the parents appeal the manifestation determination, the student remains in the interim alternative educational setting until an Administrative Law Judge makes a decision or the expiration of the 45 calendar day removal, whichever is earlier.³
 - e. The IEP/SST team determines the special education/504 accommodations and related services necessary to provide the student with FAPE while disciplinarily removed from school. If the student is to receive the services in a different setting or different manner (i.e. less restrictive environment or individual versus group setting), the decision of the IEP/SST team must be provided to the parent in writing and reflected in the team summary that is provided to the Superintendent's designee.

VII. If the behavior is a manifestation of the student's disability:

- a. The student returns to school and remains in the current placement, unless for weapon, drugs, or serious bodily harm, see IX.
- b. The IEP/SST team must conduct a functional behavior assessment and develop behavior interventions designed to address the student's behavior problem(s). If a behavior intervention plan is already being implemented, then the team must review and revise the plan, as appropriate, to address the student's identified needs.
- c. The IEP/SST team shall review the student's IEP, the identified needs, and revise the IEP/504, as appropriate to address the existing behavior and any newly identified needs. The team must review the student's placement based on the student's IEP and any revisions thereto. If a change of placement is recommended, the IEP team must follow the requirements of IDEA and COMAR.
- d. The IEP/SST team takes steps to ensure the IEP/505 is implemented, as required.
- e. If the team suspects that the student may have another disability that is impacting his education, then the team must recommend the completion of assessments and review these assessments in accordance with COMAR.

VIII. Functional Behavior Assessment

- a. Functional Behavioral Assessments ("FBAs") are the analysis of antecedent behaviors that a student engaged in prior to the behavior against which disciplinary action has been taken. The information gathered or compiled in the Functional Behavior Assessment is

³ If a due process hearing is requested to challenge the interim alternative education setting or the manifestation determination, and the student's offense involved a weapon or drugs, the student remains in the interim alternative education setting pending the resolution of the matter or the expiration of the period of exclusion.

utilized in developing a behavior intervention plan.

- b. If the student is removed for ten (10) school days or more during the school year, the IEP/SST team must conduct a Functional Behavior Assessment and implement a behavior intervention plan, as appropriate, if not previously completed. If a behavior intervention plan is in effect, the Team must review the plan, its implementation, and make any necessary revisions.
- c. For a student removed for weapons or drugs, the IEP/SST team shall conduct the Functional Behavior Assessment, without regard to whether the behavior was a manifestation of the student's disability.
- d. For a student subjected to a series of short-term removals that cumulate to more than ten (10) school days, the IEP/SST team must convene a meeting and revise the BIP within ten (10) business days of the eleventh (11th) day of the student's disciplinary removal.

IX. Removal from school for drugs, weapons or serious bodily injury

School personnel have the authority to remove students with disabilities and place them in an interim alternative education setting for up to forty-five (45) calendar days if the student carries or possesses a weapon at a school function, the student knowingly possesses, uses, sells, or solicits the sale of a controlled substance, or commits an offense that results in a serious bodily injury⁴. However, the student must receive FAPE while out of school for these offenses. The placement in the alternative setting may occur whether or not the behavior is a manifestation of the student's disability. If the behavior is a manifestation, the student shall be returned to school at the conclusion of the 45 calendar day removal. If the behavior is not a manifestation, the student may be treated in the same manner as non-disabled students at the discretion of the Superintendent's Designee.

X. Dangerous students

- a. School personnel do not have the authority to remove a student to an interim alternative education setting because he is a danger to self and others. That decision and placement determination must be made by an Administrative Law Judge or an appropriate Court.
- b. The removal of these students is not *automatic* and must be ordered at the discretion of the judge. A removal based on the danger to self or others will only be considered if there have been a series of behavioral incidents,

⁴ Serious Bodily Injury: defined in USC 1365(g) to mean a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or faculty.

which pose a substantial threat of danger to the student or others. The school system must provide substantial and clearly documented proof of behaviors, which warrant a student's removal from the current school setting and the interventions, supports, strategies, and actions to address the behavior within the school setting.

- c. Injunctions are *temporary*. Although they can be renewed (via court or administrative order), they must not be construed as a means of permanently removing a student.

XI. Parental appeals

- a. Parents have an absolute right to request mediation and/or due process regarding IEP/SST team decisions, including the decisions involving discipline. If a parent wishes to appeal or request mediation, notify the parent to contact the Staff Attorney for Special Education, Baltimore County Public Schools Office of Law at 410 887-2990. For requests to mediate and/or due process regarding Section 504 and SST team decisions, including the decisions involving discipline a parent should notify the school system's 504 Coordinator, and Executive Director of Student Support Services.
- b. All requests for mediation and/or due process must be made *in writing* to the Staff Attorney for Special Education or for 504 to the Executive Director of Student Support Services as follows:
 - 1. IDEA/ Special Education/ IEP Teams
Through mail delivery at the following address: Baltimore County Public Schools, Law Office, 6901 Charles Street, Towson, MD 21204; or, by facsimile transmittal at (410) 887-2036.
 - 2. Section 504/ SST Teams
Through mail delivery at the following address: Baltimore County Public Schools, Student Support Services 9610 Pulaski Park Dr. Suite 219, Baltimore, MD 21220; or, by facsimile transmittal at (410-887-4360.
- c. Schools *are not* to accept written requests for due process hearings (i.e., parental appeals) themselves. Rather, schools must advise parents of their right to appeal by providing them the name, business address, telephone and/or fax number of the Staff Attorney for Special Education or the Executive Director of Student Support Services.
- d. Parents also have the right to appeal the decision rendered by the Superintendent's Designee regarding the student's "guilt or innocence." This appeal is taken through the Appeals & Mitigation Office, which may

be reached at (410) 887-7656. Information regarding this process will be provided by the Superintendent's Designee.

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