

UTAH SCHOOLS FOR THE DEAF AND THE BLIND

DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES

1 PHILOSOPHY

Consistent with the requirements of Part B of the IDEA and these Rules, each school district shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

2 DEFINITIONS

The following definitions apply to this section only:

2.1 **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202 © of the Controlled Substances Act (21 USC 812 c)).

2.2 **Weapon** has the meaning of the term “**dangerous weapon**” given under paragraph (2) of the first subsection (g) of Section 930 of Title 18, USC. “**Dangerous weapon**” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

2.3 **Illegal drug** means a controlled substance but does not include a substance that is 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 that Act or under any other provision of federal law.

2.4 **Substantial evidence** means beyond a preponderance of the evidence.

3 CHANGE OF PLACEMENT FOR DISCIPLINARY REMOVALS

For purposes of removals of a student with a disability from the student’s current educational placement as described in this section, a change of placement occurs if:

3.1 The removal is for more than 10 consecutive school days.

3.2 The student is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of

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time the student is removed, and the proximity of the removals to one another.

4 REMOVALS – TEN (10) SCHOOL DAYS OR LESS

- 4.1 To the extent removal would be applied to students without disabilities, school personnel may order the removal of a student with a disability from the student's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under Utah State Office of Education Special Education Rules.

5 REQUIRED SERVICES – NO CHANGE OF PLACEMENT

- 5.1 A school district need not provide services during periods of removal, to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
- 5.2 In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in the same school year, the school district, for the remainder of the removals, shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.
- 5.3 School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

6 REMOVALS FOR WEAPONS OR DRUGS

School personnel may order a change in placement of a student with a disability 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, if:

- 6.1 The student carries a weapon to school or to a school function under the jurisdiction of a state or local school district.

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- 6.2 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 under the jurisdiction of a state or local school district.
- 6.3 The interim alternative educational setting must be determined by the IEP team.

7 FUNCTIONAL BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN

Within 10 business days after first removing a student for more than ten (10) school days in a school year, or for weapons violations, drugs violation, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the school district:

- 7.1 If the school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the school district shall convene an IEP meeting to develop an assessment plan.
- 7.2 If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify it, as necessary to address the behavior.
- 7.3 As soon as practicable after developing the assessment plan described above in number one (#1) of this section, and completing the assessments required by the plan, the school district shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.
- 7.4 If, subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year, is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.
 - 7.4.1 If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

8 AUTHORITY OF HEARING OFFICER

A hearing officer under IDEA-B may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting

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for not more than forty-five (45) calendar days if the hearing officer, in an expedited due process hearing:

- 8.1 Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
- 8.2 Considers the appropriateness of the student's current placement.
- 8.3 Considers whether the school district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.
- 8.4 Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of interim alternative educational setting, described below.

9 DETERMINATION OF INTERIM ALTERNATIVE EDUCATIONAL SETTING

Any interim alternative educational setting in which a student is placed under the rules of removal for weapons or drugs, or by authority of a hearing officer must:

- 9.1 Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP.
- 9.2 Include services and modification designed to address the behavior that is likely to result in injury to the student or to others, or for removal for weapons or drugs, that are designed to prevent the behavior from recurring.

The IEP must determine the interim alternative educational setting referred to under the rule for removals for weapons or drugs.

10 MANIFESTATION DETERMINATION REVIEW REQUIREMENT

If a school district removes, or contemplates removing a student for weapons violations, drug violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement, the following actions shall be taken by the school district:

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- 10.1 Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice.
- 10.2 Immediately, if possible, but in no case later than 10 schools days after the date on which the decision to removed the student is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action. The review must be conducted by the IEP team and other qualified personnel in a meeting.

11 PROCEDURES FOR CONDUCTING A MANIFESTATION DETERMINATION REVIEW

The IEP team and other qualified personnel in a meeting must conduct a manifestation determination review. In carrying out the review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the team and other qualified personnel:

- 11.1 First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
 - 11.1.1 Evaluation and diagnostic results, including the results for other relevant information supplied by the parents of the student.
 - 11.1.2 Observations of the student.
 - 11.1.3 The student's IEP and placement
- 11.2 Then determines that:
 - 11.2.1 In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided with the student's IEP and placement.
 - 11.2.2 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.
- 11.3 If the IEP and other qualified personnel determine that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's disability.

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- 11.4 The manifestation determination review described in this section may be conducted at the same IEP meeting that is convened to address a functional behavioral assessment and behavioral intervention plan.
- 11.5 If the review identified deficiencies in the student's IEP or placement, or in their implementation, the school district must take immediate steps to remedy those deficiencies.

12 DETERMINATION THAT BEHAVIOR WAS NOT A MANIFESTATION OF DISABILITY

- 12.1 If the results of the manifestation determination review indicate that the behavior of the student with a disability was not 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 in which they would be applied to students without disabilities, except that FAPE shall continue to be made available to those students who have been removed from his or her current placement for more than 10 school days, in the same school year.
- 12.2 The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.
- 12.3 If the school district initiates disciplinary procedures applicable to all students, the school district shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
- 12.4 If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, then the student shall remain in the student's current educational placement as described in previous section titled "student's Status During Proceedings" or in an interim alternative educational setting whichever applies.

13 PARENT APPEAL

- 13.1 If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability, or with any decision regarding placement, the parent may request a hearing.

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- 13.2 The Utah State Office of Education shall arrange for an expedited hearing in any case described in this section if requested by the parent.
- 13.3 In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability.
- 13.4 In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards under "Authority of Hearing Officer."

14 PLACEMENT DURING APPEALS

- 14.1 If a parent requests a hearing regarding a disciplinary action described in "Removals For Weapons or Drugs" or "Manifestation Determination Review Requirement", to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) days time period provided for, whichever occurs first, unless the parent and the school district agree otherwise.
- 14.2 If a student is placed in an interim alternative educational setting pursuant to removal for weapons or drugs, by authority of a hearing officer, and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting) except as provided for in this section.
- 14.3 If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the school district may request an expedited due process hearing.
- 14.4 In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under "Authority of Hearing Officer".

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- 14.5 A placement ordered pursuant to this section may not be longer than forty-five (45) days. The procedure in number three (#3), above, may be repeated as necessary.

15 PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.

- 15.1 A student who has not been determined to be eligible for special education and related services under the Utah State Office of Education Special Education Rules, and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behaviors described in this section, may assert any of the protections provided for in this section, if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- 15.2 A school district must be deemed to have knowledge that a student is a student with a disability if:
- 15.2.1 The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate school district that the student is in need of special education and related services.
 - 15.2.2 The behavior or performance of the student demonstrates the need for these services in accordance with student evaluation/classification procedures, contained in the Special Education Rules.
 - 15.2.3 The parent of the student has requested an evaluation of the student pursuant to Special Education Rules.
 - 15.2.4 The teacher of the student, or other personnel of the school district, has expressed concern about the behavior or performance of the student to the director of special education of the school district or to other personnel of the school district in accordance with their established Child Find or special education referral system.
- 15.3 A school district would not be deemed to have knowledge under this section, if, as a result of receiving the information, the school district either:

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- 15.3.1 Conducted an evaluation consistent with the Special Education Rules, and determined that the student was not a student with a disability; or
- 15.3.2 Determined that an evaluation was not necessary, and provided notice to the student's parents of its determination consistent with prior notice requirements.
- 15.4 If a school district does not have knowledge that a 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 measures applied to students without disabilities who engage in comparable behaviors consistent with this section.
- 15.5 If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this section, the evaluation must be conducted in an expedited manner.
- 15.6 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.
- 15.7 If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of the Special Education Rules, including the discipline procedures and FAPE requirements

16 REFERRALS TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

- 16.1 Nothing in Part B of the IDEA prohibits a school district from reporting a crime committed by a student with a disability to appropriate authorities, or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
- 16.2 A school district reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

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- 16.3 A school district reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Title: DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES	
Authority: Administrative Staff Institutional Council	Effective Date: 11/19/03 Revisions: