

**DISCIPLINE OF STUDENTS WITH DISABILITIES**  
**UNDER IDEA AND ARTICLE 89**

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 (IDEA) and Article 89 of Education Law (Article 89) 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 Board's policy that the procedures followed for suspending, removing or otherwise disciplining students with disabilities eligible for services under IDEA and Article 89 will conform with 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 New York's Education Law and which coordinate the state's general procedures for suspension of students with disabilities with the requirements of IDEA 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 Commission of Education is available.

The 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.

*Authorized Suspensions or Removals of Students with Disabilities*

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

1. A suspension means a suspension pursuant to Education Law Section 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.

- An IAES means a temporary educational placement for a period of up to 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 to 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. 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, the District 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 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 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 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 suspension of not more than 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 as 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 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.
      - (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 ½ inches in length.

(2) Controlled substance means a drug or other substance identified in certain provisions of the federal Controlled Substances Act specified in both federal and state law and regulations applicable to this policy.

(3) 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 Substance Act or any other federal law.

3. 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 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.

#### *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 10 consecutive school days; or
  - b. for a period of 10 consecutive school days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year and 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.
2. 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.

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 CSE 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.

#### *Special Rules Regarding the Suspension or Removal of Students with Disabilities*

1. The District's 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 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 substance.

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 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 CSE shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more members of the CSE believe that modifications are needed, the school District shall convene a meeting of the CSE or 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.
2. The parents of a student who is facing disciplinary action, but who has not been determined to be eligible for services under IDEA 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, 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 not 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 nondisabled student who engaged in comparable behaviors. However, if a request for an individual evaluation is made while such nondisabled 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 nondisabled 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.

3. The District shall provide parents with notice of disciplinary removal no later than the date of 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 procedural safeguards notice prescribed by the Commissioner of Education.

4. The parents of a student with disabilities subject to a suspension of five consecutive school days or less shall be provided with the same opportunity for an informal conference available to parents of nondisabled students under the Education Law.
5. Superintendent hearings on disciplinary charges against students with disabilities subject to a suspension of more than five 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.
6. 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 nondisabled students, except that school personnel may not impose such removal for more than 10 consecutive days or for a period that would result in a disciplinary change in placement, unless the CSE has determined that the behavior is not a manifestation of the student's disability.

7. 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.

*Expedited Due Process Hearings*

1. An expedited due process hearing shall be conducted in the manner specified by the Regulations of the Commissioner 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 request 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 15 business days of receipt of the request for a hearing. Although the impartial hearing officer may grant specific extensions of such time period, he or she must mail a written decision to the District and the parents within five business days after the last hearing date, and in no event later than 45 calendar days after receipt of the request for a hearing, without exceptions or extensions.

*Referral to law enforcement and judicial authorities*

In accordance with the provisions of IDEA 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 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 whom a crime is reported.

References:

Education Law §§3214(3), 4404(1)  
8 NYCRR Part 201  
20 U.S.C.1415(k)  
34 C.F.R. §300.519 et. seq.

Adopted: November 28, 2000