

DISCIPLINE OF STUDENTS WITH DISABILITIES

A student with a disability is a student identified as a "child with a disability" under the eligibility criteria of state regulations implementing the Individuals with Disabilities Education Act (IDEA) as amended, or as a person with a qualifying disability for the purpose of Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act.

The district does not believe in a double standard for intentional misbehavior and holds the welfare and safety of all persons in the district in highest regard. Students with disabilities who violate the school district's discipline code will be disciplined in accordance with the district's normal discipline code, subject to the modifications of the normal discipline implementation process mandated by law. It is expressly this district's policy that it will use the full scope of authority available under law in applying its regular disciplinary code to all students. All students, including those with disabilities, may be referred for law enforcement action when their conduct warrants the referral.

Due Process

Due process procedures, applicable to suspension, removal or expulsion of students from public schools under state law, shall be afforded in accordance with policy JGD, Student Suspension and Expulsion. Regular pre-discipline "due process" should not be confused with the "due process hearing" appeal process under the IDEA. When an incident of behavior is found to be unrelated to a disability by an IEP or Section 504 team, that question will be taken as settled for the purpose of the normal disciplinary hearing process.

Discipline of a "Child with a Disability" Receiving Special Educational Services

The term "child with a disability" means a student eligible for special education and related services under Part B of the IDEA as implemented under state law. Special extra procedures are required by law in order to implement the district's disciplinary policies as fully as possible for a "child with a disability," and these are summarized below. Note that these summaries are for informational purposes only. The district's official policy on IDEA discipline procedures is to use whatever lawful special methods best serve the ultimate purpose of implementing the general discipline code as fully and equally as possible. Consult the IDEA, IDEA regulations, and State and Local Plans for IDEA for details of the following procedures:

1. *Discipline Code calls for short-term suspensions, placement in an appropriate interim alternative educational setting, or placement in another setting, for ten (10) school days or less per occurrence.*

- ▶ Such removals may be applied in the same manner such removals are applied to all students under the discipline policy. When such absences aggregate to 11 or more days, the child with a disability is provided some educational services even if regular education students would not be provided educational services during such a removal. If such a short-term removal or suspension would cause a "change of placement" to occur under the factors outlined by law, the removal should be handled as a "long-term suspension."

2. *Discipline Code calls for long-term suspension or expulsion.*

- ▶ If a child's IEP team determines that conduct in violation of the regular discipline code is unrelated to the disability, the district may implement suspensions in excess of ten (10) consecutive school days, a suspension of shorter length where a pattern of suspension constituting a "change in placement" is thereby created, and even an expulsion. The law calls for the continuation of some services during the long-term suspension or expulsion. If doing so would not itself create a "change of placement," a short-term suspension may be implemented to give the IEP team time to complete its duties.

3. *Special Rule: 45 calendar day removals*

- ▶ For possession of weapons defined in 18 U.S.C. § 930, or use, possession, sale, or solicitation of a sale of certain drugs identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act, a removal of up to 45 calendar days in an appropriate interim alternative educational setting may be ordered. This may be used in conjunction with the short- and long-term suspension or expulsion provisions.
- ▶ The district may seek a removal of a dangerous or violent student to a 45 calendar day alternative educational placement through a hearing officer appointed by the Department of Elementary and Secondary Education. Pursuit of this option does not replace or prevent the implementation of short- and/or long-term suspensions or expulsion when the discipline policy calls for that consequence and, if a change of placement would occur as a result, the behavior is not a manifestation of the disability.

4. *Court Injunction*

- ▶ The district may seek a court injunction ordering removal or a changed placement of a dangerous or violent student.

Students Not Yet Identified as Disabled

A student who qualifies as a child with a disability but has not been identified as a child with a disability may be subjected to the same disciplinary measures applied to students without disabilities if the district did not have knowledge of the disability.

Students with Disabilities Not Eligible under IDEA

This section summarizes the procedural rules for students who have disabilities under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, but do not require special educational services as a "child with a disability" under Part B of the IDEA.

The expulsion of such a student, the exclusion of the student for an indefinite period, or the exclusion of the student for more than ten (10) consecutive school days constitutes a "significant change in placement." A series of suspensions each of which is ten (10) or fewer days in duration, but that creates a pattern of exclusions, may also constitute a "significant change in placement." Before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, a school district must conduct a re-evaluation of the student to determine whether the misconduct in question is caused by the student's disability and, if so, whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the child's disability, the child may be excluded from school in the same manner as are similarly situated children who do not have disabilities.

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Note: The reader is encouraged to review administrative procedures and/or forms for related information in support of this policy area.

Adopted:

Cross Refs: IGBA, Programs for Students with Disabilities
JFCH, Student Alcohol/Drug Abuse
JG, Student Discipline
JGD, Student Suspension and Expulsion

Legal Refs: Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*
34 C.F.R. Part 300
§ 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
34 C.F.R. Part 104
§§ 160.261, 162.680, .955 - .963, 167.161 - .171, RSMo

FILE: JGE
Critical

21 U.S.C. § 812(c); 18 U.S.C. § 930
Honig v. Doe, 108 S.Ct. 592 (1988)
Light v. Parkway C-2 School District, 41 F.3d 1223 (8th Cir. 1994)
Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*
28 C.F.R. Part 35

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