

STUDENT SERVICES

File: JGDA-R

DISCIPLINING STUDENTS WITH DISABILITIES

1. All required procedures shall be followed for any student with a disability when an offense requiring disciplinary action has been committed.
2. A student with a disability shall receive the same consideration for a consequence for a disciplinary action as a student without a disability even if procedures for placement of the student with disabilities may be different as a result of the discipline.

Long-Term Suspensions, Expulsions or Short-Term Suspensions Which Constitute a Pattern -- Change in Placement

1. For the purpose of removing students with disabilities from their current educational placements, a change in placement occurs when:
 - (1) the removal is for more than 10 consecutive school days at a time; or
 - (2) pattern analysis: there is a series of removals during the school year, each of which is for 10 days or less and they cumulate to more than 10 days in a school year and constitute a pattern because of:
 - (a) the length of each removal,
 - (b) the proximity of the removals,
 - (c) the total time the student is removed, and
 - (d) the child's behavior is substantially similar to the child's behavior in the series of removals for previous incidents in the school year.
 - (e) the pattern analysis determination is made and documented by the administration.
2. If the disciplinary action will result in long term removal, the student's parents must be sent notice of the recommendation of discipline the same day as the decision is made for the disciplinary change in placement and must be provided with a copy of the procedural safeguards.
3. The student with a disability shall be eligible for services when the placement has been changed and the process in the "Educational Services While Disciplined" must be followed during the disciplinary consequences.
4. Procedures for a long-term suspension or expulsion are located in the Special Education and Student Services Procedural Manual.
5. A parent may request a due process hearing to challenge the pattern analysis determination. For any disciplinary change in placement, a Manifestation Determination Review ("MDR") must be held and the Individualized Education Program (IEP) team must meet to determine the educational services to be provided during the long-term removal.

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Short-Term Suspensions

1. A short-term suspension is a suspension of 10 consecutive days or less at a time.
2. School authorities may remove a student with a disability from his or her current educational setting for up to 10 school days cumulative in a school year to the extent that such removal would be applied to students without disabilities and for additional short-term suspensions during the school year provided no pattern exists. Short term suspensions which constitute a pattern will be handled through long term removal procedures.
3. Procedures for short-term discipline are located in the Code of Student Conduct and in the Department of Special Education and Student Services Procedural Manual.
4. If the student has received at least eight days of out-of-school discipline, the principal or case manager shall contact the special education coordinator to inform the coordinator that the number of days is approaching 10 and a possible change of placement.

Functional Behavior Assessments and Behavior Intervention Plans

1. If the school administration, the parent, and the relevant Individualized Education Program (IEP) team members determine that a manifestation exists following a Manifestation Review Committee meeting, the IEP team must:
 - conduct a Functional Behavioral Assessment (FBA) and implement a Behavioral Intervention Plan (BIP), if no FBA was conducted previously; or
 - if the student already has a FBA and BIP in place, review and modify the BIP, as necessary to address the behavior.
2. If a manifestation is found, the school division and the parent may still agree to a change in placement made through the IEP process. Without this agreement, the student must return to the placement from which the student was removed. Nothing in this section limits the authority of the school division for the first ten days of removal in a school year or for applicable forty-five school day removals. If the MDR team members determine that there is no manifestation, then the IEP team should decide whether there is a need to conduct or review an FBA and BIP.

Educational Services While Disciplined

1. For the first 10 days of removal in a school year, Charlottesville City Schools is

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not required to provide educational services to the student with a disability if services are not provided to students without disabilities who have been similarly removed.

2. After the first 10 days of removal in a school year, CCS shall provide educational services to the student during the period of removal. The services must enable the student to:
 - 1) continue to progress in the general curriculum, although in another setting, and
 - 2) make progress toward meeting the goals set out in the student's IEP.
3. The determination of educational services is made by the IEP team for discipline which constitutes a change in placement. For discipline that is not a change in placement, the determination is made by school personnel in consultation with the student's special education teacher.

Manifestation Determination

1. When a disciplinary action is proposed that will result in a disciplinary change of placement, an MDR shall be conducted within 10 school days after the date on which the decision to take disciplinary action is made.
2. This review shall be conducted by the Manifestation Team which consists of a local educational agency representative, the parents and relevant members of the IEP team (as determined by the parent and the school division).
3. The Manifestation Team may determine that the behavior of the student was not a manifestation of such child's disability only if the Team:
 - 1) considers all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information supplied by the parents; and
 - 2) determines that:
 - (a) the conduct in question was not caused by, or did not have a direct and substantial relationship to, the student's disability; and
 - (b) the conduct in question was not the direct result of the school division's failure to implement the IEP.

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Disciplinary Action for Behavior that is Determined Not to be a Manifestation

1. If the behavior is not a manifestation of the student's disability, the disciplinary procedures will be applied in the same manner as applied to students without disabilities.
2. The student must continue to receive the educational services necessary to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
3. In addition, the special education and disciplinary records of the student must be made available to the person who makes the final decision regarding the imposition of discipline.
4. A parent may request an expedited due process hearing if the parent disagrees with the determination that the behavior was not a manifestation of the student's disability or if the parent disagrees with any decision regarding the placement of the student while disciplined. During any appeal, the student will remain in the interim alternative education setting unless reversed by decision of the hearing officer; provided, however, the student may still serve the balance of any applicable forty-five school day removal. The placement may also be changed through the IEP process with the consent of the parent.

Disciplinary Action Following MDR Determination that there is a Manifestation

1. A student with a disability whose behavior is determined to be a manifestation of his or her disability may not be disciplined except to the extent a removal is otherwise.
2. The student may also be removed to a more restrictive placement by following change in placement procedures. The IEP team must conduct or review a FBA and/or BIP as provided in the FBA section above.

Interim Alternative Educational Settings for Weapons and Drugs and Infliction of Serious Bodily Injury

1. Students with disabilities 1) who carry or possess a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency; 2) who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or 3) who inflict serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local

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educational agency may be disciplined pursuant to Policies JFCD, JFCF or JGDB and the accompanying regulations.

2. These students may be placed in an interim alternative educational setting for up to forty-five school days. These options are available even if a manifestation exists. If no manifestation is found, the student may be disciplined to the extent a student without disabilities would be disciplined.
3. Any interim alternative educational setting shall be selected, by the IEP team, so as to enable the student to continue to progress in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
4. The student must also receive, as appropriate, an FBA, behavioral intervention services and modifications designed to address the behavior so it does not recur.

Change of Placement by Hearing Officer

1. In addition to the other options for removal, a hearing officer through an expedited due process hearing requested by the school division, may order a change in the placement for a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of such student is substantially likely to result in injury to the student or others.
2. Additional forty-five (45) school day removals may be authorized by the hearing officer as appropriate.

Placement During Appeals

1. During the course of any appeals, the student's placement shall be in accordance with the provisions of state and federal law unless the parent and the school division agree otherwise.
2. Students with disabilities are also entitled to the due process rights available to a non-disabled student who is subject to discipline. In addition, students with disabilities are entitled to the due process procedures available under the Individuals with Disabilities Education Act, as amended, and any state procedures.

Students Not Identified as Disabled

1. Students for whom the parents assert there is a disability but who have not yet been identified as disabled may be subjected to the same measures applied to students without disabilities if the school division did not have knowledge of the disability before the behavior that precipitated the disciplinary action occurred.

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2. A school division will be found to have knowledge of the student's disability if before the behavior that precipitated the disciplinary action occurred, one of the following occurred:
 - (1) the parent expressed concern in writing to supervisory or administrative personnel of the school division, or to a teacher of the student, that the student is in need of special education and related services; or
 - (2) the parent requested an evaluation of the student for special education eligibility; or
 - (3) the student's teacher or other school personnel had expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school division that suggests the presence of a disability.
3. A school division would not be found to have knowledge of a student's disability if:
 - (1) the parents refused to allow an evaluation of the student or refused special education services; or
 - (2) the student was evaluated and found not eligible for special education services.
4. If a request for an initial evaluation is made during the period such student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner.
5. If the student is found eligible as a child with a disability, taking into consideration information from the evaluation conducted by the school division and information provided by the parents, then the student must be provided special education and related services, although in another setting.
6. Pending the results of the evaluation, the student shall remain in the educational placement determined by the school authorities which placement can include suspension or expulsion without services.

Disciplining Students Determined Eligible for Section 504 Who Violate Alcohol and Drug Policies

1. Students who are identified as disabled solely under Section 504 of the Rehabilitation Act, and who are currently engaging in the illegal use of drugs or alcohol, may be disciplined for violating the division's alcohol and drug policies to the same extent as non-disabled students.

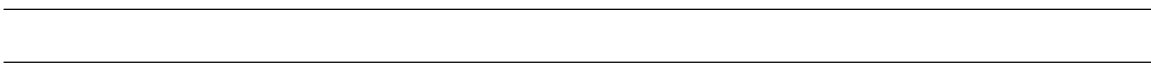
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2. The student is not entitled to a due process hearing under special education procedures in this circumstance but does retain the protections afforded to regular education students.

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Legal References.: 20 U.S.C. § 1415(k).
29 U.S.C. § 705(20)(C)(iv)
34 C.F.R. 300.530-30.536

8 VAC 20-81-160

Cross Reference: JFC Student Code of Conduct
JFCD Weapons in School
JFCF Drugs in School
JGD/JGE Student Suspensions/Expulsions
JGDB Discipline of Students With Disabilities for
Infliction of Serious Bodily Injury