



DISCIPLINARY CONSIDERATIONS FOR STUDENTS WITH DISABILITIES

Special education students are not immune from the school's disciplinary process once placement procedures are properly followed.

Immediate removal. Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school pursuant to the process outlined above.

Short-term suspension. Students with disabilities may have short term suspension imposed in accordance with the "Suspension/Expulsion" section herein, provided that the student is returned to the same educational placement after the short-term suspension, and unless a short-term suspension is prohibited pursuant to the student's IEP. Students may be suspended or removed to an appropriate interim alternative educational setting or another setting for not more than 10 consecutive school days. Additional removals may occur in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement pursuant to 34 CFR Sec. 300.536 and 6.11.2.11(G) NMAC.

Long-term suspension/ expulsion/ disciplinary changes of placement. Since the exclusion of a student with a disability from his/her education program for more than a total of ten (10) days during a school year may constitute a significant change in placement, the following considerations must be addressed:

- **Manifestation Determination:** when considering long-term suspension or expulsion or disciplinary changes of placement as specified in 34 CFR 300.530 through 300.536, an Individualized Education Program (IEP) Team must first determine whether the behavior that gave rise to the occurrence is a manifestation of the student's disability, or whether the conduct in question was the direct result of the school's failure to implement the IEP.
- If the IEP Team determines that the behavior is related to the student's disability or was the direct result of the school's failure to implement the IEP, then no further disciplinary proceeding shall occur. Any deficiencies in IEP implementation shall immediately be remedied and the IEP Team shall comply with 34 CFR 300.530(f).
- If the IEP Team determines that the behavior is not a manifestation of the student's disability, disciplinary actions may be taken in accordance with the procedures above in the same manner and for the same duration as the procedures would be applied to students without disabilities, provided that a student with a disability who is removed from the student's current placement continues to receive special education and related services pursuant to the provisions of 34 CFR Sec. 300.530(d).
- The decision to change a student from his/her current placement must be made on an individual basis. Changes in placement occur if the student is removed from the student's current placement for more than ten consecutive days, if the student is removed from



- current placement for more than ten school days in a school year, or other reason specified in 34 CFR 300.536.
- On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a occurrence of a code of student conduct, the school shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

Removal to Interim Alternative Educational Setting without Manifestation Determination.

In accordance with 34 CFR Sec. 300.530(g) and (i), school personnel can remove a student to an interim alternative educational setting (as determined by the student's IEP Team) for not more than 45 school days without regard to a manifestation determination (described above), if the student (1) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; (2) knowingly possesses or uses illegal drugs, or sells them at school; (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. The student's IEP team determines the interim alternative educational setting for services.

Appeals for Students with Disabilities

The parent/guardian of a student with a disability who disagrees with any decision regarding a disciplinary-related placement or the manifestation determination, or an administrative authority that believes that maintaining the current placement of a student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to the procedures specified in 6.31.2.13 NMAC.

When an appeal has been filed by either the parent/guardian or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the disciplinary time period, whichever occurs first, unless the parent/guardian and administrative authority agree otherwise.

Disciplinary Considerations for Students under Section 504

Students with 504 accommodations are not immune from the school's disciplinary process once identification and placement procedures are properly followed. Students with Section 504 accommodations being considered for removal from school for 10 or more days must also receive a manifestation determination review prior to action. The committee must determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability, and whether the conduct in question the direct result of the school's failure to implement the student's 504 Plan.

If the behavior is a manifestation of the disability, any disciplinary recommendation for a change of placement should be withdrawn. If the behavior is not a manifestation of the disability, the student may be disciplined in the same manner as non-disabled students.