

DISCIPLINE OF STUDENTS WITH DISABILITIES

- A. For purposes of removal of a student with a disability from the student's current educational placement, a *change of placement* occurs when
1. a student with a disability is removed from his or her current educational placement for more than ten (10) consecutive school days; or
 2. a student with a disability is subjected to a series of removals that constitute a pattern because they cumulate to more than ten (10) school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- B. School personnel have the authority to order a *change in placement* for a student with a disability when certain conditions exist.
1. School personnel may order a removal of a student with a disability from the student's current educational placement for not more than ten (10) consecutive school days for any violation of school rules to the extent a removal would be applied to a student without a disability, and school personnel may order additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a *change of placement*.
 2. 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 a student without a disability would be subject to discipline, but for not more than forty-five (45) days, if:
 - a. the student carries or possesses a weapon at school or at a school function under the jurisdiction of the State or any School Board; or
 - b. 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 the State or any School Board.
- C. For purposes of this section, the following definitions apply:
1. *Controlled substance* means a drug or other substance identified under schedule I, II, III, IV, or V in Sec. 202(c) of the Controlled Substance Act (21 U.S.C. 812 (c)).
 2. *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.

3. *Weapon* has the meaning given the term *dangerous weapon* under paragraph (2) of the first subsection (g) of Sec 930 of Title 18, United States Code.
- D. A hearing officer, who meets the requirements of Section 502 of Bulletin 1706, has the authority to order *change in placement* for a student with a disability when certain conditions exist.
1. The hearing officer may order a *change in placement* of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:
 - a. determines that the School Board 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 (*substantial evidence* means beyond a preponderance of the evidence);
 - b. considers the appropriateness of the student's current placement;
 - c. considers whether the School Board has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
 - d. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in subsection G below.
- E. A School Board need not provide services during periods of removal under B.1 above to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
1. In the case of a student with a disability who has been removed from his or her current placement for more than ten (10) school days in that school year, the School Board, for the remainder of the removals, shall provide services to the extent necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP, if the removal is:
 - a. under the school personnel's authority to remove under paragraph B.1 above for not more than ten (10) consecutive school days as long as that removal does not constitute a *change of placement*; school personnel, in consultation with the student's special education teacher, shall determine the extent to which services are necessary to enable the student to progress appropriately

and who has been removed from his or her placement for more than ten (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 behavior intervention plan and its implementation to determine whether modifications are necessary.

- a. 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.
- G. The interim alternative educational setting referred to in subsection B above shall be determined by the IEP team. Any interim alternative educational setting in which a student is placed under paragraph B.2 and subsection D above shall:
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; and
 2. include services and modifications designed to address the behavior described in paragraph B.2 and subsection D above, and to prevent the behavior from recurring.
- H. A *manifestation determination review* is required whenever an action involving a removal that constitutes a *change of placement* for a student with a disability is contemplated.
1. Not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and shall be provided the procedural safeguards notice (*Louisiana's Educational Rights of Children With Disabilities*.)
 2. Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.
 3. The review shall be conducted by the IEP team and other qualified personnel in a meeting.
 4. In carrying out the manifestation determination 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 IEP team and other qualified personnel:
 - a. consider, in terms of the behavior subject to disciplinary action, all relevant information, the evaluation and diagnostic results, including the results or other relevant information supplied by the parent or student; observations of the student; and the student's IEP and placement; and

- b. determine that:
 - i. 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 consistent with the student's IEP and placement;
 - ii. the student's disability did not impair the ability of the student to understand the impact and consequence of the behavior subject to disciplinary action; and
 - iii. the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

- 5. If the IEP team and other qualified personnel determine that any of the standards in paragraph 4.b. above were not met, the behavior shall be considered a manifestation of the student's disability.

- 6. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur, unless the removal is in accordance with paragraph B. 2(a) and (b), and subsection D above.

- 7. The manifestation review meeting may be conducted at the same IEP meeting that is convened to conduct the functional behavioral assessment.

- 8. If in the review, the School Board identifies deficiencies in the student's IEP or placement or in their implementation, it shall take immediate steps to remedy those deficiencies.

- I. When the determination is made that the behavior was not a manifestation of the student's disability, prescribed guidelines shall be followed.
 - 1. If the results of the manifestation determination review is that the behavior of the student 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 a FAPE as defined in subsection E above shall be provided.

 - 2. If the School Board initiates disciplinary procedures applicable to all students, the School Board 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.

3. Except as provided in paragraph K.1 below, if a parent requests a hearing to challenge a determination made through the review process that the behavior of the student was not a manifestation of the student's disability, the student's status during the due process proceeding shall follow Section 514 of Bulletin 1706.
- J. 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 and discipline, the parent may request a hearing.
1. The State Department of Education, consistent with Sections 507 and 508.B of Bulletin 1706, shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.
 - a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the School Board has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of paragraph H.5 above.
 - b. In reviewing a decision under paragraph B.2 above, to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in subsection D above.
- K. The student's placement during appeal shall follow prescribed guidelines.
1. If the parents request a hearing regarding a disciplinary action described in paragraphs B.2 or D.1.a-d to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in paragraphs B.2 or D.1.a-d, whichever occurs first, unless the parent and the State or School Board agree otherwise.
 2. If a student is placed in an interim alternative educational setting pursuant to paragraphs B.2 and D.1.a-d above and school personnel propose to *change the student's placement* after expiration of the interim alternative placement, during the pending of any proceeding to challenge the proposed *change in placement*, the student shall remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in paragraph K.3 below.
 3. The School Board may request an expedited due process hearing 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.
 - a. 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 in paragraph D.1.a-d above.

- b. A placement ordered pursuant to 3.a above may not be longer than forty-five (45) days.
- c. The procedures in 3 above may be repeated as necessary.

L. A student who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violated any rule or code of conduct of the School Board including any behavior described in subsections B and E, may assert any of the protections provided for in this policy if the School Board had knowledge (as determined in accordance with paragraph 2 below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

- 1. A School Board shall be deemed to have knowledge that a student is a student with a disability if:
 - a. 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 School Board that the student is in need of special education and related services;
 - b. the behavior or performance of the student demonstrates the need for these services, in accordance with the definition of a student with a disability;
 - c. the parent of the student has requested an evaluation of the student; or
 - d. the teacher of the student or other school district personnel has expressed concern about the behavior or performance of the student to the director of special education or to other personnel in accordance with the School Board's established child find or special education referral system.
- 2. The School Board would not be deemed to have knowledge under paragraph 1 above, if as a result of receiving the information specified in that paragraph, the School Board either
 - a. conducted an evaluation and determined that the student was not a student with a disability; or
 - b. determined that an evaluation was not necessary and provided notice to the student's parents of its determination.
- 3. Certain conditions apply if there is no basis of knowledge.
 - a. If the School Board does not have knowledge that a student is a student with

a disability, in accordance with paragraphs 1 and 2 above, 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 engaged in comparable behaviors.

- b. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in less than sixty (60) business days without exception or extensions.
4. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
 5. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the School Board and information provided by the parents, the School Board shall provide special education and related services in accordance with the provisions of Bulletin 1706, *Regulations for Implementation of the Children with Exceptionalities Act* including the requirements of B-N of this policy and La. Rev. Stat. Ann. §17:1943.6.
- M. Expedited due process hearings addressed in subsection J above shall follow procedures prescribed below.
1. The hearing shall meet the requirements of Subsection 507.A of Bulletin 1706.
 2. The hearing shall be conducted by a due process hearing officer that meets the criteria established in Section 508 of Bulletin 1706.
 3. The hearing shall result in a written decision that shall be mailed to the parties within twenty (20) business days of the School Board's receipt of the request for the hearing, without exceptions or extensions.
 4. The hearing shall have time lines that are the same for hearings requested by the parents or the School Board.
 5. The hearing shall be conducted according to guidelines established in Section 508 of Bulletin 1706, where appropriate, except for the timelines at paragraph 508.C.4 and according to guidelines established by the Department.
 6. The decisions on expedited due process hearings are appealable consistent with the procedures established in Section 512 of Bulletin 1706.
- N. Nothing in this policy shall prohibit the School Board 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.

1. The School Board, in 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.
2. The School Board, in reporting a crime, 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*.

Revised: April 2001

Revised: August 2004

Ref: La. Rev. Stat. Ann. §§17:82, 17:416, 17:1941 et seq.; Bulletin 1706, Regulations for the Implementation of the Exceptional Children's Act, Louisiana State Department of Education; Board minutes, 6-15-99, 8-3-04.