

Appendix J: Disciplining Students with Disabilities, Policy JGDA

Policy JGDA

Students with disabilities, who violate the student code of conduct, or engage in conduct for which they may be disciplined, will be disciplined in accordance with this policy. Additionally, the regular disciplinary procedures must be followed. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability as a result of discipline.

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

For the purpose of removing students with disabilities from their current educational placements, a change in placement occurs when:

The removal is for more than 10 consecutive school days; or

A series of removals for 10 days or less cumulate to more than 10 days in a school year and constitute a pattern because of:

- The length of each removal
- The proximity of the removals,
- The total time the child is removed, and
- The child's behavior is substantially similar to the child's behavior in previous incidents.

If the disciplinary action will result in a change of placement for a student with a disability, then that student's parent/guardian must be sent notice that same day of the recommendation for discipline and be provided with a copy of the procedural safeguards. The procedures outlined in Section IV must be followed.

II. Short-Term Suspension

A short-term suspension is a suspension of 10 consecutive days or less at a time.

School authorities may remove any student with a disability from his or her current educational setting for up to 10 school days cumulative in a year to the extent that such removal would be applied to children without a disability and for additional short-term suspensions provided no pattern exists.

III. Functional Behavior Assessments and Behavior Intervention Plans

If the school administration, the parent/guardian, and the relevant Individualized Education Program (IEP) team members determine that a manifestation exists, the IEP team must:

1. Conduct a Functional Behavior Assessment (FBA) and implement a Behavioral Intervention Plan (BIP), if no FBA was conducted previously; or
2. If the student already has a FBA and BIP in place, review/modify the BIP, as necessary, to address the behavior.

IV. Educational Services While Disciplined

For the first 10 days of removal in a school year, ACPS is 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.

After the first 10 days of removal in a school year, ACPS shall provide services to the student during the removal to the extent necessary for the student, considering his or her disability, to:

1. Progress in the general curriculum and
2. Appropriately advance toward achieving the goals set out in the student's IEP.

The determination of needed services is made by the IEP team for discipline that constitutes a change in placement. For discipline that is not a change in placement, the decision is made by school personnel in consultation with the student's special education teacher.

V. Manifestation Determination

When a disciplinary action that results in a change of placement is being considered for a student with a disability, a manifestation determination review shall be conducted, if within 10 school days after the date on which the decision to take disciplinary action is made. This review shall be conducted by the relevant members of the IEP Team, including a representative of the Office of Specialized Instruction, the parent/guardian, and others as determined by the school division.

The IEP Team may determine that the behavior of the student was not a manifestation of such student's disability only if the IEP Team:

1. Considers all relevant information in the student's file, including the student's IEP, any teacher observations, any relevant information provided by the parent/guardian; and
2. Determines that:
 1. The conduct in question was not caused by, or had a direct and substantial relationship to, the student's disability; and
 2. The conduct in question was not the direct result of the school division's failure to implement the IEP.

If a manifestation is found, the student cannot be disciplined beyond any permissible short-term removal that may be available. The student's parent/guardian may request an expedited due process hearing if the parent/guardian disagrees with the determination that the behavior was not a manifestation of the student's disability or if the parent/guardian disagrees with any decision regarding the placement of the student while disciplined. The student will remain in the interim alternative education setting pending the decision of the hearing officer or the expiration of a 45-day removal.

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

Once it is determined that the behavior was not a manifestation of the student's disability, the disciplinary procedures will be applied to the student with a disability in the same manner as applied to non-disabled students. Following a removal that constitutes a change in placement, the student must continue to receive the educational services necessary to appropriately progress in the general curriculum, although in another setting, and to progress toward meeting the goals set forth in the student's IEP. In addition, the special education and disciplinary records of the child must be made available to the person who makes the final decision regarding the discipline.

VII. Disciplinary Action and/or Alternative Placement for Behavior that is Determined to be a Manifestation

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 permitted by law. The student may also be moved to a different location not constituting a change in placement, or may be removed to a different or more restrictive placement by following change in placement procedures. The IEP team shall conduct or review a FBA and/or BIP as provided in Section III.

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

Students with disabilities 1) who carry or possess a weapon to or at school, on school premises, or to or at a school function, or 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, or 3) who inflict serious bodily injury upon another person while at school, on school premises, or at a school function may be disciplined pursuant to Policy JFCD: Weapons in School and JFCF: Drugs in School or JGDB: Discipline of Students with Disabilities for Infliction of Serious Bodily Injury and may be placed in an appropriate interim alternative education setting for up to 45 school days. This option is available without regard to whether a manifestation exists. If no manifestation is found, the student may be disciplined to the extent a student without disabilities would be disciplined.

IX. Change of Placement Hearing

In addition to the other options for removal, a hearing officer may order a change in placement for a student with a disability to an appropriate interim alternative educational setting for not more than 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. Additional 45 school day removals may be authorized by the hearing officer as necessary.

X. Placement During Appeals

Students with disabilities are entitled to the due process rights available to a nondisabled student. 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. During the course of any appeals, the student's placement shall be in accordance with the provisions of the Virginia Regulations Governing Students with Disabilities unless the parent/guardian and the school division agree otherwise.

XI. Students Not Identified as Disabled

Students for whom the parent/guardian assert there is a disability but who have not yet been identified as disabled are subject to the same measures applicable to students without disabilities if the school division did not have knowledge of the disability before the behavior that precipitated the disciplinary action occurred. The school division will be deemed to have knowledge of the student's disability if:

1. The parent/guardian had previously expressed concern in writing (or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement) to school personnel that the student was in need of special education and related services; or
2. The parent/guardian requested an evaluation of the student for special education eligibility through formal evaluation procedures; or
3. The student's teacher or other school personnel has expressed specific concern about a pattern of behavior or performance to the Executive Director of Specialized Instruction or to other supervisory personnel of the school division.

The school division would not be found to have knowledge of a student's disability if:

1. The parent/guardian 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.

If a request for evaluation is made during the period such student is subject to disciplinary action, the evaluation shall be conducted in an expedited manner. If the student is found eligible as a student with a disability, taking into consideration information from the evaluation conducted by the school division and information provided by the parent/guardian, then the

student must be provided special education and related services in the least restrictive environment, even if in another setting, in compliance with the procedures for suspended and expelled students with disabilities. Pending the results of the evaluation, the student shall remain in the educational placement determined by the school authorities.

XII. Disciplining Certain Section 504 Students Who Violate Alcohol and Drug Policies

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. 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.