

STUDENT DISCIPLINE

JK-E

Student Suspension

[JKD-E]

Student Expulsion

[JKE-E]

The following is quoted from the State of Delaware, Special Education Regulations, Delaware Administrative Code, Title 14 Education, 900 Special Populations (06/01/2007). Procedures are consistent with the Individuals with Disabilities Education Act, Part B, 2004. *Questions and Answers on Discipline Procedures*, revised June, 2009, can be reviewed at <http://idea.ed.gov>.

30.0 Discipline Procedures Authority of School Personnel.

30.1 Case by case determination: School personnel may consider any unique circumstances on a case by case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

30.2 School personnel under 30.0 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement 36.0).

30.2.1 After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency shall provide services to the extent required under 30.4 of this section.

30.3 Additional authority: For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 30.5, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 30.4.

30.4 Services for Students with Disabilities Removed from Current Placement:

30.4.1 A child with a disability who is removed from the child's current placement pursuant to 30.3 or 30.7 shall continue to receive educational services, as provided in 14 **DE Admin. Code** 923.1.2 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

30.4.2 The services required by paragraphs 30.4.1, 30.4.3, 30.4.4, and 30.4.5 may be provided in an interim alternative educational setting.

30.4.3 A public agency is only required to provide services during periods of removal to a child 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 it provides services to a child without disabilities who is similarly removed.

30.4.4 After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement under 36.0, school personnel, in consultation with at least one (1) of the child's teachers, determine the extent to which services are needed, as provided in 14 **DE Admin. Code** 923.1.2 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

30.4.5 If the removal is a change of placement in 36.0, the child's IEP Team determines appropriate services in 30.4.1.

30.5 Manifestation Determination: Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

30.5.1 If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

30.5.2 If the conduct in question was the direct result of the LEA's failure to implement the IEP.

30.5.3 The conduct shall be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either 30.5.1 or 30.5.2 was met.

30.5.4 If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 30.5.2 was met, the LEA shall take immediate steps to remedy those deficiencies.

30.6 Determination that the behavior was a manifestation: If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall either:

30.6.1 Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

30.6.2 If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

30.6.3 Except as provided in 30.7, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

30.7 Special circumstances: School personnel may remove a student to an interim alternative educational setting for not more than forty five (45) school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child (*School personnel shall complete a manifestation determination within ten (10) days as provided in 30.5*):

30.7.1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the DOE or an LEA;

30.7.2 Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the DOE or an LEA; or

30.7.3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the DOE or an LEA.

30.8 Written notification: *The LEA or other public agency shall ensure that the parents, guardian or relative caregiver of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, and exclusion as a treatment procedure at the beginning of each school year or upon entry into a special education program during the school year; and*

30.8.1 On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in 4.0.

30.9 Definitions: For purposes of this section, the following definitions apply:

“Controlled Substance” means a drug or other substance identified under schedules I, II, III, IV, or V in section 202c of the Controlled Substances Act (21 U.S.C. 812(c)).

“Illegal Drug” means a controlled substance; but does not include a controlled 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.

“Serious Bodily Injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

“Weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7); 14 Del.C. §3110)

Determination of Setting

31.0 The child's IEP Team determines the interim alternative educational setting for services in 30.3, 30.4.5 and 30.7. (Authority: 20 U.S.C. 1415(k)(2); 14 Del. C. §3110)

32.0 Expedited Appeal

32.1 General: The parent of a child with a disability who disagrees with any decision regarding placement in 30.0 and 31.0, or the manifestation determination in 30.5, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 7.0, 8.1 and 8.2. 32.2 A single, impartial hearing officer appointed by the DOE from its Registry of Impartial Hearing Officers shall make a determination regarding an appeal under paragraph (a) of this section. The hearing officer may:

32.2.1 Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 30.0 or that the child's behavior was a manifestation of the child's disability; or

32.2.2 Order a change of placement of the child 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 the child is substantially likely to result in injury to the child or to others.

32.2.3 The procedures in 32.1 and 32.2 may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

32.3 Expedited Due Process Hearing:

32.3.1 Whenever a hearing is requested in 32.1, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of 7.0 and 8.1 through 8.3, and 10.0 through 14.0, and 14 Del.C. Ch. 31, except as provided in 32.3.2 through 32.3.4.

32.3.2 The DOE shall be responsible for arranging the expedited due process hearing, which shall occur within twenty (20) school days of the date the complaint requesting the hearing is received by the DOE. The hearing officer shall make a determination within ten (10) school days after the hearing.

32.3.2.1 Any party to an expedited due process hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing

32.3.2.2 At least two (2) business days prior to the expedited due process hearing, each party shall disclose to all other parties all evaluations completed by that date and

recommendations based on the offering party's evaluations that the party intends to use at the hearing.

32.3.2.3 *The hearing officer may bar any party that fails to comply with 32.3.2.1 and*

32.3.2.2 from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

32.3.3 Unless the parents and LEA agree in writing to waive the resolution meeting described in 32.3.3.1 or agree to use the mediation process described in 6.0:

32.3.3.1 A resolution meeting shall occur within seven (7) days of receiving notice of the due process complaint; and

32.3.3.2 The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

32.3.4 The decisions on expedited due process hearings are appealable consistent with 14.0.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A) 14 **Del.C.** §3110)

33.0 Placement During Appeals

33.1 When an expedited appeal under 32.0 has been made by either the parent or the LEA, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 30.3 and 30.7, whichever occurs first, unless the parent and the DOE or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A); 14 **Del.C.** §3110)

34.0 Protections for Children Not Determined Eligible for Special Education and Related Services

34.1 General: A child who has not been determined to be eligible for special education and related services under these regulations and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in these regulations if the public agency had knowledge (as determined in accordance with 34.2) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

34.2 Basis of knowledge: A public agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

34.2.1 The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

34.2.2 The parent of the child requested an evaluation of the child pursuant to 14 **DE Admin. Code** 925.1.0 through 925.12.0; or

34.2.3 The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

34.3 Exception: A public agency would not be deemed to have knowledge under 34.2 if the parent of the child has not allowed an evaluation of the child pursuant to **DE Admin. Code** 925.1.0 through 925.12.0; or has refused services under these regulations; or the child has been evaluated in accordance with **DE Admin. Code** 925.1.0 through 925.12.0 and determined to not be a child with a disability under these regulations.

34.4 Conditions that apply if no basis of knowledge: If a public agency does not have knowledge that a child is a child with a disability (in accordance with 34.2 and 34.3) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with the following requirements:

34.4.1 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures in 30.0, the evaluation shall be conducted in an expedited manner.

34.4.2 Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

34.4.3 If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with these regulations, including the requirements of 30.0 through 36.0 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(5); 14 **Del.C.** §3110)

35.0 Referral to and Action by Law Enforcement and Judicial Authorities

35.1 Rule of construction: Nothing in these regulations prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents Delaware law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

35.2 Transmittal of records: An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

35.2.1 An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6); 14 Del.C. §3110)

36.0 Change of Placement Because of Disciplinary Removals

36.1 For purposes of removals of a child with a disability from the child's current educational placement in 30.0 through 35.0, a change of placement occurs if:

36.1.1 The removal is for more than ten (10) consecutive school days; or 36.1.2 the child has been subjected to a series of removals that constitute a pattern:

36.1.2.1 Because the series of removals total more than ten (10) school days in a school year;

36.1.2.2 Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

36.1.2.3 Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; or.

36.1.3 *The child has been subjected to a series of in-school removals totaling more than ten (10) school days and it deprives the child from meeting the goals set out in the IEP; progressing in the general curriculum though another setting; and receiving those services and modifications described in the IEP; or the child has been subjected to a series of removals from transportation and it results in the child's absence from school for more than ten (10) school days.*

36.1.4 The public agency determines on a case by case basis whether a pattern of removals constitutes a change of placement.

36.1.5 This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k); 14 Del.C. §3110)

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