Jefferson County Education Service District

Code: JGDA/JGEA-AR
Adopted: 10/9/06
Readopted: 4/2/08

Discipline of Students with Disabilities**

Definition

1. The district applies the following definitions when considering disciplinary action:

    a. "Behavioral intervention plan" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
    b. "Current educational placement" means the type of educational placement of the student as described in the student's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the types of placement on the continuum of placement options.
    c. "Disciplinary removal" means suspension, expulsion or other removal from school for disciplinary reasons, including removals pending completion of a risk assessment. It does not include:

        (1) Removals by other agencies;
        (2) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);
        (3) In-school suspensions if the student continues to have access to the general curriculum and to special education and related services as described in the student's IEP, and continues to participate with nondisabled students to the extent they would in their current placement; or
        (4) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

2. "Functional behavioral assessment" means an individualized assessment of the student that results in a team hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

3. "Suspension" means any disciplinary removal other than expulsion.

Disciplinary Change of Placement

1. Disciplinary removal of a student with a disability constitutes a change in the student's educational placement when:

    a. The removal is for more than 10 consecutive school days; or
    b. The removal is for more than 10 cumulative school days and constitutes a pattern of removals.

2. The district may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary change in placement.

Manifestation Determination

1. Within 10 days of any decision to initiate a disciplinary change in placement of a student with a disability, the district convenes a manifestation determination meeting.

2. The district follows all required special education procedures for determining whether a student's conduct that led to a disciplinary removal from school was caused by, or had a substantial relationship to, the student's disability or was a direct result of the district's failure to implement the student's IEP.

Disciplinary Removals for up to 10 School Days

1. The district may remove students with disabilities from their current educational placement, to an appropriate interim alternative educational setting, another setting, or suspension, for up to 10 school days in a school year to the same extent, and with the same notice, for violation of a code of conduct as for students without disabilities. These removals are not considered a change in placement.

2. During disciplinary removals for up to 10 school days:

    a. The district is not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.
    b. The district is not required to determine whether the student's behavior resulting in the disciplinary removal is a manifestation of the student's disability.
    c. The district counts days of suspension for the purposes of procedural safeguards as follows:

        (1) Suspensions of a half day or less will be counted as a half day; and
        (2) Suspensions of more than a half day will be counted as a whole day;
        (3) If a student moves from another district in Oregon, any days of suspension from the former district apply, unless the district does not have knowledge of previous suspensions.

Disciplinary Removals of More than 10 Cumulative School Days and Pattern of Removal

1. The district may remove students with disabilities from their current educational placement to an appropriate interim alternative educational setting, another setting or suspension for additional periods of up to 10 days in a school year to the same extent, and with the same notice as for students without disabilities, if the removals do not constitute a pattern. These removals do not constitute a change in placement.

2. In determining whether removals of additional periods of up to 10 school days constitute a pattern or removals, school personnel will consider, on a case by case basis:

    a. Whether the behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
    b. Additional factors such as the length of each removal, the total number of days of removal, and the proximity of removals to one another.

3. During removals of additional periods of up to 10 school days in a school year that do not constitute a pattern, the district will provide services that are necessary to enable the student to:

    a. Continue to participate in the general education curriculum;
    b. Progress toward achieving the goals in the student's IEP; and
    c. The services and location for delivery of services in this section will be determined by school personnel, in consultation with at least one of the student's teachers, or by the student's IEP team.

4. The determination regarding whether a series of removal constitutes a pattern is subject to review in an expedited due process hearing.

Removal to an Interim Alternative Educational Setting for Not More Than 45 Days by the District under Special Education Circumstances

1. The district may remove a student with disabilities from the student's current educational placement to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 school days in a school year for a drug or weapon violation, or for infliction of serious bodily injury, without regard to whether the behavior is manifestation of the student's disability. This removal is considered a change in placement. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order such a removal.

2. For the purpose of determining a drug or weapon violation or serious bodily injury, the district will apply the following definitions:

    a. "Drug" means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.
    b. "Drug violation" means the use, possession, sale or solicitation of drugs at school or a school function.
    c. "Infliction of serious bodily injury" means serious bodily injury caused by a student to another person while at school, on school premises or at a school function under the jurisdiction or ODE or a district.
    d. "Serious bodily injury" means bodily injury, which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
    e. "Weapon" means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length.
    f. "Weapon violation" means carrying a weapon to school or to a school function or acquiring a weapon at school.

3. On the date that the district decides to remove a student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, the district notifies that parent(s) of the decision and gives the parent(s) a Procedural Safeguards Notice.

4. Within 10 school days of any decision to remove the student to an interim alternative educational placement because of a drug or weapon violation or for serious bodily injury, the district:

    a. Convenes a meeting to determine whether the behavior is a manifestation of the student's disability; and
    b. Conducts, as appropriate, a functional behavior assessment, and develops a behavior intervention plan based on the functional behavior assessment that is designed to address the behavior so it does not recur.

Removal to an Interim Alternative Educational Setting for Not More than 45 Days by

Administrative Law Judge for Injurious Behavior

1. The district may request an expedited due process hearing to obtain an administrative law judge's order to remove a student to an interim alternative educational setting for not more than 45 school days if the student is exhibiting injurious behavior. For the purpose of this request, "injurious behavior" is defined as behavior that is substantially likely to result in injury to the student or to others.

2. The interim alternative educational setting must meet the requirements of the "Interim Alternative Educational Setting" section.

Interim Alternative Educational Setting

When a student with a disability is placed in an interim alternative educational setting, the setting:

1. Is determined by the student's IEP; and

2. Enables the student to:

    a. Continue to participate in the general curriculum, although in another setting;
    b. Progress toward achieving the goals in the student's IEP; and
    c. Receive services and modifications designed to address the misconduct that led to placement in the interim alternative educational setting and to prevent the misconduct from recurring.

Placement Pending Appeal

If a parent disagrees with the manifestation determination or any decision about placement related to the disciplinary removal and requests a due process hearing, the student will remain in the interim alternative educational setting pending the decision of the administrative law judge, or until the end of the disciplinary removal, whichever is shorter, unless the parent and district agree to another placement pending the hearing.

Conduct and Outcome of a Manifestation Determination

1. Within 10 school days of any decision to change the placement of a student with a disability for disciplinary reasons, the district convenes a manifestation determination meeting.

2. The team that determines whether a student's behavior that led to a disciplinary removal from school was caused by, or had a substantial relationship to the student's disability or was a direct

result of the district's failure to implement the student's IEP, includes the parent(s), district representatives and other relevant members of the IEP team, as determined by the parent and district.

a. The team reviews all relevant student information, including the student's IEP, teacher observations and information provided by the parent.
b. The team concludes that the conduct in question is a manifestation of the student's disability if it determines the behavior was caused by, or had a substantial relationship to, the child's disability, or if it was the direct result of the district's failure to implement the IEP.

3. If the team determines that the district did not implement the student's IEP or identifies other deficiencies in the student's IEP or placement, the district corrects the identified deficiencies immediately.

4. Regardless of whether the behavior was a manifestation of the student's disability, the district may remove the student to an interim alternative educational setting for weapons or drug violations or for infliction of serious bodily injury for up to 45 days.

5. When behavior is a manifestation of disability.

If the team concludes that the behavior was a manifestation of the student's disability:

a. The district will not proceed with a disciplinary removal for more than 10 days.

b. The district conducts a functional behavioral assessment and develops a behavior plan to address the behavior that led to the disciplinary action. If the district has already conducted a functional behavioral assessment or, if the student already has a behavior intervention plan regarding that behavior, the district reviews, modifies as necessary and implements the plan to address the behavior.

c. The district may review and revise the student's IEP and placement through normal IEP and placement processes.

d. The district may enter into an agreement with the parent to change the student's placement as part of the modification of the behavioral intervention plan.

e. If the district believes that maintaining the current placement of the child is substantially likely to result in injury to the student or to others, the district may appeal the decision of the manifestation determination team by requesting an expedited due process hearing. An administrative law judge who concludes that maintaining the current educational placement is substantially likely to result in injury to the student or to others may order a change in placement to an interim alternative educational setting for no more than 45 days.

6. When behavior is not a manifestation of disability.

If the IEP team determines that the student's behavior is not a manifestation of the student's disability the district may proceed with disciplinary removals, in the same manner and for the same duration, as would

be applied to students without disabilities. If the district takes such action, applicable to all students, the district:

a. Notifies the parent(s) of the decision to remove the student on the date that decision is made and gives the parents a Procedural Safeguards Notice;

b. Give the parent(s) prior written notice of any proposed change in placement;

c. Provides services to the student in an interim alternative educational setting that is determined by the IEP team; and

d. Provides, as appropriate, a functional behavioral assessment, develops appropriate behavioral interventions to address the behavior and implements those interventions.

Protections for Students not yet Eligible for Special Education

1. The district will follow all special education disciplinary procedures for a student who has not yet been identified as a student with a disability if the district had knowledge that the student had a disability and needed special education.

2. The district is presumed to have such knowledge if, before the behavior that precipated the disciplinary action occurred:

    a. The student's parent(s) expressed a concern in writing to supervisory or administrative school personnel, or to a teacher of the student, that the student is in need of special education and related services;
    b. The student's parent(s) requested a special education evaluation of the student; or
    c. The student's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the district's special education director or other district supervisory personnel.

3. The district is not presumed to have knowledge of a disability if:

    a. The parent has not allowed an evaluation of the student or has refused the initial provision of special education services to the student; or
    b. The student has been evaluated and found not eligible for special education services.

4. If the district did not have knowledge before taking disciplinary action against the student, the district may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behaviors. However:

    a. If a special education evaluation is requested, or if the district initiates a special education evaluation, the evaluation will be conducted in an expedited manner.
    b. Until the evaluation is completed, the student may remain in the educational placement determined by school personnel, which may include suspension, expulsion or placement in alternative education.
    c. Upon completion of the evaluation, if the student is determined to be a student with a disability, the district will conduct an IEP meeting to develop an IEP and determine placement and will provide special education and related services in accordance with the IEP.

d. The district will apply the IDEA discipline protections beginning on the date of the eligibility determination.