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Colt Gill

Director of the Oregon Department of Education

Guidance Regarding Discipline of Special Education Students under IDEA 2004

20 U.S.C § 1415(k), 34 CFR §§ 300.530-300.536 and OAR 581-015-2400 through 581-015-2445

The flowchart below should be read in conjunction with discipline procedures pursuant to state law, (OAR 581-015-2400 through OAR 581-015-2445), along with district-wide and school-wide student codes of conduct.

- Under the Individuals with Disabilities Education Act (IDEA), additional procedures apply in instances of discipline for students who have been found eligible for special education and to students for whom the school is deemed to have knowledge that the child might have a disability (i.e. students who have not yet been found eligible but the school had a basis of knowledge of a disability, including students who have been referred for initial evaluation). 34 CFR § 300.354 (OAR 581-015-2440). These procedures arise in three different scenarios:

Scenario 1:

Removal from school for 11 or more *consecutive* days is an automatic change of placement. 34 CFR 300.536(a)(1).

Districts must:

- Provide prior written notice (PWN) of the change of placement. 34 CFR 300.530(h); OAR 581-015-2310
- Provide FAPE. 34 CFR 300.530(d)(5); OAR 581-015-2415
- Conduct a manifestation determination review (MDR). 34 CFR 300.530(e); OAR 581-015-2415.

Scenario 2:

Removal for current misconduct is for less than 10 *consecutive* school days, but removals total more than 10 school days in the school year, *and* the series of removals constitute a pattern resulting in a change of placement. Districts must:

- Follow the steps in **Scenario 1**. 34 CFR 300.536(a)(2); OAR 581-015-2415

Scenario 3:

Removal for current misconduct is for less than 10 *consecutive* school days, but removals total more than 10 school days in the school year, *and* the series of removals *do not* constitute a pattern resulting in a change of placement.

Districts must:

- Provide FAPE. 34 CFR 300.530(d)(4); OAR 581-015-2410

If the conduct that the student is being disciplined for involves the “special circumstances” of weapons, illegal drugs, controlled substances or serious bodily injury, school personnel may remove the student to an interim alternative educational setting (IAES) for up to 45 school days, regardless of the manifestation determination. 34 CFR § 300.530(g).

The following flowchart lays out the steps that a school district must take when disciplining a student under the IDEA. It is important to note that parents and school districts can agree to change a student’s placement for disciplinary reasons at any point. Agreements should be in writing and signed by school personnel and the parent.

For questions, please contact Lisa Bateman, Education Specialist at Oregon Department of Education, Office of Student Services. lisa.bateman@ode.state.or.us, or (503) 947-5655.

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This document should be used as guidance and is not intended as legal advice.

Student protected under IDEA violates a school code of conduct
Verify who is Eligible –
 (See OAR 581-015-2440 Protections for Children Not Yet Eligible)

Disciplinary removal for current misconduct is for fewer than 11 *consecutive* school days *and* removals total fewer than 11 *cumulative* school days in the school year. 34 CFR § 300.530(b).

Disciplinary removal for current misconduct is for less than 10 consecutive school days but removals total more than 10 school days in the school year. 34 CFR § 300.530(b)(2).

Disciplinary removal for current misconduct is for 11 or more consecutive school days.

District may exclude student from the current placement without obligation to provide FAPE unless the district provides services for student without disabilities who are similarly removed. 34 CFR § 300.530(d)(3). Types of disciplinary removals may be suspension, removal, and assignment to an interim alternative educational setting (IAES). In-school suspensions will not be considered disciplinary removals if the student continues to have access to the general curriculum and special education and related services as described in the student's IEP, and continues to participate with students without disabilities to the extent they would in their current placement. OAR 581-015-2400(3)(c).

Is the current removal one in a series that is a pattern of removal constituting a **change of placement?**

NO

By the 11th cumulative school day of removal in the same school year, the district must consult with at least one of the student's teachers to determine the extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum, although in another setting, and to progress toward meeting IEP goals. 34 CFR § 300.530(d)(4).

Yes

Removal is a change in placement. 34 CFR § 300.536(a)(1).

Notify parent/guardian immediately of decision to change placement for disciplinary reasons, and of procedural safeguards under IDEA. 34 CFR § 300.530(h). Student is entitled to FAPE services as determined by the IEP team. 34 CFR § 300.530(d)(5).

Within 10 school days of decision to remove student for disciplinary reasons the district, parent/guardian, and relevant members of the IEP team must review relevant information and make a manifestation determination. 34 CFR § 300.530(e).

Manifestation Determination: Is the conduct: (1) a direct result of the district's failure to implement the IEP? (2) Does the conduct have a direct and substantial relationship to the disability? 34 CFR § 300.530(e).

No to BOTH

Yes to EITHER

Student's conduct is NOT a manifestation of their disability. 34 CFR § 300.530(c).

Student's conduct IS a manifestation of their disability. 34 CFR § 300.530(f).

May apply relevant disciplinary procedures in the same manner and for the same duration as to students without disabilities. 34 CFR § 300.530(c).

If conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies and review. 34 CFR § 300.530(e)(3).

IEP team determines extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum and progress toward meeting IEP goals. 34 CFR § 300.530(d)(5).

Conduct a functional behavioral assessment and develop a behavioral implementation plan, or review and modify an existing plan as needed. 34 CFR 300.530(f)(1)(i)-(ii).

Provide, as appropriate, functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 CFR § 300.530(f)(1).

Return student to placement from which the student was removed unless (1) parent/guardian and district agree to a different placement, (2) hearing officer orders new placement, or (3) removal is for "special circumstances" under 34 CFR § 300.530(g). 34 CFR § 300.530(f)(2).

Return student to placement when the disciplinary period expires, unless parent/guardian and school agree otherwise, or student is lawfully expelled.