

SPECIAL EDUCATION - FREE AND APPROPRIATE PUBLIC EDUCATION

A free and appropriate public education is available to all pupils with disabilities between the ages of three and twenty-one including pupils with disabilities who have been suspended or expelled from school.

Procedures regarding the provision of a free and appropriate public education to pupils with disabilities who are suspended or expelled are as follows:

1. School officials responsible for implementing suspensions/expulsions in the District are the following:
 - a. Principal and Vice Principal(s) of Pennsville Memorial High School and/or their designee;
 - b. Principal and Vice Principal(s) of Pennsville Middle School and/or their designee;
 - c. Principal and Vice Principal(s) of Pennsville Elementary Schools and/or their designee; and
 - d. The Superintendent.
2. Each time a pupil with a disability is removed from his/her current placement for disciplinary reasons, notification of the removal is provided to the case manager by the Principal or his/her designee. (Notification must be in written format for documentation.)
 - a. Removal for at least half of the school day shall be reported via the Electronic Violence and Vandalism Reporting System.
3. Each Principal or designee will ensure that a system is in place to track the number of days a pupil with disabilities has been removed for disciplinary reasons. Documentation will include:
 - a. Pupil's name;
 - b. The infraction;
 - c. Time suspended; and

- d. The cumulative days suspended including removal for a portion of the school day which is counted proportionately.
 4. When a pupil is suspended from transportation:
 - a. Suspension from transportation is not counted as a day of removal if the pupil attended school.
 - b. Suspension from transportation is counted as a day of removal if the pupil does not attend school.
 - c. If transportation is included in the pupil's IEP as a required related service, the school District shall provide alternate transportation during the period of suspension from the typical means of transportation.
 - d. Suspension from transportation may be counted as a day of absence rather than a day of removal if the District made available an alternate means of transportation and the pupil does not attend school.
 5. When a pupil with a disability participates in an in-school suspension program, the Principal or designee shall ensure that participation in the program is not considered removal when determining whether a manifestation determination must be conducted if the program provides the following:
 - a. Opportunity for the pupil to participate and progress in the general curriculum,
 - b. Services and modifications specified in the pupil's IEP,
 - c. Interaction with non-disabled peers to the extent they would have in the current placement, and
 - d. The pupil is counted as present for the time spent in the in-school suspension program.
 6. Discipline of Students with Disabilities
 - a. General Provisions
 - i. The District will comply with the requirements of N.J.A.C. 6A:16-7.2 and 7.3, in addition to all the procedural protections

- set forth in N.J.A.C. 6A:14 for each pupil with a disability who is subject to a short-term or long-term suspension.
- ii. For the purposes of this procedure, “suspension” means the temporary removal of a pupil from the regular instructional program.
 - iii. For the purposes of this procedure, “short term suspension:” means a suspension for a term of ten consecutive school days or less.
 - iv. For purposes of this procedure, “long term suspension” means a suspension for more than ten consecutive school days.
- b. Discipline of Student with Disabilities who have been or will be removed for ten or fewer days
- i. The student is subject to the same disciplinary policy as non-disabled students
 - 1. N.J.A.C.6A:16-7.2(a)5 requires that for removals of 5 consecutive days or longer, services be provided within five days for all students
 - ii. The Case manager and student’s parent are notified of each removal (in writing, including reason for removal and number of days)
 - 1. N.J.A.C. 6A:14-2.8(a)
 - iii. A tracking system must be implemented which maintains a record of all removals
 - iv. State and federal regulations require that students with disabilities who are suspended or expelled are entitled to receive FAPE [6A:14-1.1(b)]
 - v. Students with disabilities are provided services in the same manner as general education students [6A:14-2.8(a) and 34 CFR 300.530(d)]
 - vi. Students with disabilities receive services consistent with the IEP [N.J.A.C. 6A:16-7.2(a)5ii]
- c. Discipline of Student with Disabilities who have been or will be removed for more than ten cumulative or consecutive days
- i. School officials, in consultation with the student’s case manager, must determine if the removal constitutes a change in placement.
 - ii. Change in Placement
 - 1. A change in placement occurs: (1) if the student is subjected to a removal of more than 10 consecutive school days or (2) is subjected to a series of removals

that constitute a pattern. Factors to consider when determining whether a series of removals constitutes a pattern which resulted in a change in placement include:

- a. Length of each removal
 - b. Total amount of time student is removed
 - c. Proximity of the removals to one another
2. If school officials determine that a change in placement has occurred,
- a. Parent is provided with written notification of the decision and is provided with a copy of PRISE
 - b. The District must convene a Manifestation Determination consultation meeting with relevant IEP team members and the parent within 10 school days. At this meeting, the parties shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or (2) if the conduct in question was the direct result of the District's failure to implement the IEP.
 - i. If it is determined that the behavior is a manifestation of the student's disability, (1) the student is returned to the current placement unless the parent and the District agree otherwise or special circumstances apply. (2) The District must conduct a functional behavioral assessment, and implement a behavioral intervention plan, provided that the District had not conducted such an assessment prior to the behavior. In cases where a behavioral interventional plan was already developed, the District must review the behavioral intervention plan and modify it, as necessary, to address the behavior.
 - ii. If it is determined that the behavior is NOT a manifestation of the student's disability, then the student may be disciplined in the same manner and for

the same duration as a student without disabilities would be disciplined. The District must provide educational services and, as appropriate, review the behavioral intervention plan and/or conduct a functional behavioral assessment.

3. If a change in placement has not occurred,
 - a. The District may suspend the student; however, the District must provide educational services. School personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward the goals set out in the student's IEP.
 - b. As appropriate, review behavioral intervention plan and/or conduct a functional behavioral assessment.

iii. Subsequent Removals

1. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the District must provide services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
2. Subsequent removals are considered an automatic change in placement. As such:
 - a. Parent is provided with written notification of the incident and is provided with a copy of PRISE
 - b. The IEP team determines the necessary appropriate services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP;
 - c. The District must convene a Manifestation Determination consultation meeting with relevant IEP team members and the parent within 10 school days. At this meeting, the

parties shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (2) if the conduct in question was the direct result of the District's failure to implement the IEP.

- d. If it is determined that the behavior is a manifestation of the student's disability:
 - i. The student is returned to the current placement unless the parent and the District agree otherwise or special circumstances apply.
 - ii. The District must conduct a functional behavioral assessment and implement a behavioral intervention plan, provided that the District had not conducted such an assessment prior to the behavior. In cases where a behavioral intervention plan was already developed, the District must review the plan and modify it, as necessary, to address the behavior.
- e. If it is determined that the behavior is NOT a manifestation of the student's disability, then the student may be disciplined in the same manner and for the same duration as a student without disabilities would be disciplined. The District must provide educational services and, as appropriate, review the behavioral intervention plan and/or conduct a functional behavioral assessment.

iv. Appeals

- 1. The parents may request an appeal when they disagree with any decision regarding the decision to discipline the student, the placement or the manifestation determination.
- 2. A school District may appeal when it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.
- 3. When an appeal has been filed, the student will remain in the interim alternative educational setting pending

the decision of the hearing officer or until the expiration of the time period for the suspension, whichever comes first, unless the parent and the District agree otherwise.

- v. Unique Circumstances
 - 1. School District personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a change in placement when a pupil with a disability violates a school code of conduct [N.J.A.C. 6A-14-2.8(b)].

- vi. Preschool Students
 - 1. Preschool students shall not be suspended or expelled [N.J.A.C. 6A:14-2.8(a)1].

- vii. District Hearing Requirements
 - 1. When a student with a disability is suspended from school more than ten days, the District will conduct a formal hearing before the District board of education [N.J.A.C. 6A:16-7.3(a)10].
 - 2. The meeting will take place no later than 30 calendar days following the day the student is suspended. Results of the hearing may be appealed to the Commissioner of Education.

- viii. Students with Potential Disabilities
 - 1. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated the code of student conduct, may assert any of the protections provided for above *if* the District had knowledge that the student was a student with a disability *before* the behavior that precipitated the disciplinary action occurred.
 - 2. The District is deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:
 - a. The parent expressed concern in writing to the administration or teacher that the student is in need of special education and related services;
 - b. The parent has requested an evaluation; or
 - c. A teacher or other school personnel expressed specific concerns regarding patterns of behavior to an administrator.

- ix. 45-Day Interim Alternative Educational Settings

1. Consistent with the special circumstances defined at 20 U.S.C. §1415(G), the District may remove any student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student:
 - a. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the District;
 - b. 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 District;
 - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school, or
 - d. An Administrative Law Judge removes for actions likely to result in injury to self and/or others.
2. In such circumstances, school personnel will:
 - a. Provide the parent with written notification of the decision and provide a copy of PRISE
 - b. Convene a Manifestation Determination consultation meeting with relevant IEP team members and the parent within 10 school days. **(The District is permitted to remove a student with a disability to an interim alternative education setting for not more than 45 calendar days without regard to whether the behavior is determined to be a manifestation of the student's disability.)**
 - i. If it is determined that the behavior is a manifestation of the student's disability, the District must conduct a functional behavior assessment and develop a behavior intervention plan. In cases where a behavioral intervention plan is already in place, the District must review the plan and modify it, as necessary, to address the behavior.
 - ii. If it is determined that the behavior is NOT a manifestation of the student's disability, as appropriate, (case by case

- basis) review behavioral intervention plan and/or conduct a functional behavioral assessment
3. The interim alternative education setting for services is determined by the IEP Team.

Procedures Regarding the Provision of a Free and Appropriate Public Education to Preschool Age Pupils with Disabilities

To ensure that preschoolers with disabilities who are not participating in an early intervention program have their initial IEP's in effect by their third birthday, a written request for an initial evaluation shall be forwarded to the District.

The following procedures will be followed:

1. A parent of a preschool-age pupil suspected of having a disability, who requests a Child Study Team (CST) evaluation by telephone, will be advised to submit a written request for an evaluation to the Preschool Coordinator or the District Supervisor of the Child Study Team;
2. Upon receipt of the written request, the request shall be dated and signed by the recipient;
3. The District will respond to referrals of preschoolers according to N.J.A.C. 6A:14-3.3(e).
4. A file will be initiated for the potentially disabled preschooler;
 - a. The Preschool Coordinator or the District Supervisor of the Child Study Team will convene a referral/identification meeting within twenty calendar days (excluding school holidays but not summer vacation) of the date recorded on the request;
 - b. A "Notice of Referral/ Identification Meeting" will be sent to the parent(s);
 - c. The notice will contain "Parental Rights in Special Education" (PRISE) Booklet;
 - d. The meeting will be attended by the CST, including a speech language specialist, the parent(s), and a teacher who is knowledgeable about the District's program; and
 - e. A program shall be in place no later than ninety calendar days from the date of consent.

Procedures Regarding the Provision of a Free, Appropriate Public Education to Pupils with Disabilities Who Are Advancing From Grade to Grade

The District Supervisor of the Child Study Team through in-service training shall ensure pupils with disabilities who are advancing from grade to grade with the support of specially designed services, continue to be eligible when as part of a reevaluation, the IEP Team determines the pupil continues to require specially designed services to progress in the general education curriculum; and the use of functional assessment information supports the IEP Team's determination.

Procedures Involving Procedural Safeguards to Pupils Not Yet Eligible For Special Education

Disciplinary procedural safeguards will, as appropriate, apply to pupils not yet eligible for special education. The parent(s) and/or adult pupils may assert any of the protections of the law if the District had knowledge (as noted above) that the pupil was a pupil with a disability before the behavior that precipitated the disciplinary action occurred in accordance with applicable law and regulation.

Date: April 27, 2009