

Missoula County Public Schools

Students 3305

Misconduct by Students with Disabilities

Students with Disabilities Covered by Section 504

A student with a disability under Section 504 shall not be removed from school for more than ten consecutive school days unless the District first determines that the misbehavior is not a manifestation of the student's disability. That determination may be made by the same group of people who make eligibility decisions. At a minimum, the group shall include persons knowledgeable about the student and the meaning of the evaluation data. The group must have available to it evaluation data that is recent enough to afford an understanding of the student's current behavior.

If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated nondisabled students. If it is determined that the misconduct is caused by the student's disability, the District must determine whether the student's current educational placement is appropriate. See 34 CFR 104.35.

The District may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol to the same extent that the District would take disciplinary action against nondisabled students. The due process procedures afforded under Section 504 do not apply to such disciplinary action. See 29 U.S.C. 705(20)(C)(iv).

Students with Disabilities Covered by IDEA

Except as set forth below, the placement of a student with a disability who receives special education services may be made only by a duly constituted IEP team. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations.

Continuation of Service –

The District is not required to provide services to a student during periods of removal if the student has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. See 34 CFR 300.530(b)(1)

Subsequent Removals –

After a student has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal, the District shall provide the services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the student's IEP. This requirement applies if the subsequent removal is not a change in placement or the behavior is determined not to be a manifestation of the student's disability. If the removal is not a change in placement, school personnel, in consultation with the student's special education teacher, determine the extent to which these services are necessary. If the student is removed because of behavior that is determined not to be a manifestation of the student's disability, the student's IEP team determines the extent to which these services are necessary. See 20 U.S.C. 1412(a), 1413(a)(1); 34 CFR 300.530(d).

Procedural Safeguards –

Not later than the date on which the decision to take the disciplinary action is made, the District shall notify the student's parents of the decision and of all procedural safeguards 20 U.S.C. 1415(k)(1).

Removals of 10 Days or Less –

To the extent removal would apply to students without disabilities; school personnel may remove a student with a disability who violates a code of student conduct from the current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than ten school days.

School personnel may order additional removals of not more than ten consecutive school days in the same school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement. See 20 U.S.C. 1415(k)(1)(B); 34 CFR 300.530(b).

Removals of More than 10 Days – Change in Placement –

Any disciplinary action that would constitute a change in placement may be taken only after the student's IEP team conducts a manifestation determination review. A change of placement occurs if a student is:

- Removed from the student's current educational placement for more than ten consecutive school days; or
- Subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

See 34 CFR 300.536. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student who violates a code of student conduct. See 20 U.S.C. 1415(k)(1)(A).

Manifestation Determination –

Except as set forth below at Weapons/Drug Offenses, within 10 school days of any decision to change the placement of a student because of a violation of a code of student conduct, the District, parents, and relevant members of the IEP committee 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 whether the conduct in question was:

- Caused by, or had a direct and substantial relationship to, the student's disability; or
- The direct result of the District's failure to implement the IEP.

If the District, the parent, and relevant members of the IEP team determine that either of the above is applicable, the conduct shall be determined to be a manifestation of the student's disability. See 20 U.S.C. 1415(k)(1)(E); 34 CFR 300.530. If the determination is that the student's behavior was not a manifestation of the student's disability, the disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities, except that the District shall still provide services, although they may be provided in an interim alternative educational setting. 20 U.S.C. 1412(a)(1), 1415(k)(1)(C); 34 CFR 300.530.

Behavioral Intervention Plan –

If the District, the parents, and relevant members of the IEP team determine that the conduct was a manifestation of the student's disability, the team shall conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP) if the District had not conducted an FBA before the manifestation determination and before the behavior that resulted in the change in placement. If a BIP has already been developed, the team shall review the BIP and modify it, as necessary, to address the behavior. Except as provided at Weapons/Drug Offenses, the team shall return the student to the placement from which the student was removed, unless the parent and the District agree to a change in placement as part of the modification of the BIP. See 20 U.S.C. 1415(k)(1)(F); 34 CFR 300.530. If a student with a BIP

is subsequently removed and that removal is not a change in placement, the team shall review the BIP and its implementation to determine if modifications are necessary. If one or more members of the team believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary. 34 CFR 300.530.

#### Interim Alternative Educational Settings

##### Weapons/Drug Offenses

School personnel may remove a 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, if the student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or a school district; or
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 a state or a school district;
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 state or the District.

See 20 U.S.C. 1415(k)(1)(G); 34 CFR 300.530. In this policy, "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, but does not include a pocket knife with a blade of less than two and a half inches in length. 20 U.S.C. 1415(k)(7); 18 U.S.C. 930(g)(2); 34 CFR 300.530. "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812[c]). "Illegal drug" means a controlled substance, but does not include a 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 authority under the Controlled Substance Act or any other provision of federal law. 20 U.S.C. 1415(k)(7)(A), (B); 34 CFR 300.530. "Serious bodily injury" means bodily injury that involves:

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

##### Alternative Settings

The IEP team shall determine the interim alternative education setting. 20 U.S.C. 1415(k)(2) The setting shall be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP. The setting shall also include services and modifications designed to address the behavior that caused the student to be placed in the alternative setting so that the behavior does not recur. 20 U.S.C. 1415(k)(3); 34 CFR 300.530.

##### Proposed Change After Interim Placement

If school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed placement, the student shall remain in the current placement (the student's placement before the interim alternative educational setting), unless the District requests an expedited hearing. 20 U.S.C. 1415(k)(4); 34 CFR 300.532, 533. If school personnel maintain that it is dangerous for a student to be in the current placement (placement before removal to the interim alternative

educational setting) during the pendency of the due process proceedings, the District may request an expedited hearing. 20 U.S.C. 1415(k)(4); 34 CFR 300.532.

Policy History:

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