

**TITLE: Discipline Policy for Students With Disabilities**

**CODE: F1A**

It is the policy of the Windham Southeast Supervisory Union and its member districts to afford all students with disabilities the same due process protections which are afforded to students without disabilities.

It is also the policy of the Windham Southeast Supervisory Union to ensure that students with disabilities are provided any additional procedural and substantive protections afforded to students with disabilities by federal and State law.

The Superintendent and/or his designee shall develop, implement and update as necessary, procedures to implement this policy.

Date Warned: March 8, 2001

Date Adopted: March 19, 2001

Legal Reference(s): 16 V.S.A., Section 1161 a, et seq.

Education of the Handicapped Act, P.L. 94-142 Section 504, Rehabilitation Act of 1973

Vermont State Board of Education Manual of Rules & Practices, Section 4300

Cross Reference: Interrogation or Searches of Students by Law Enforcement Officers or Other Non-School Personnel(F5)

Search and Seizure(F4)

Drug and Alcohol Abuse (F9)

Student Conduct and Discipline (F1)

Student Records/FERPA (F6)

Weapons (F24)

Threats and Disruptions to School Operations (F24A)

BRATTLEBORO UNION HIGH SCHOOL  
DISTRICT #6  
Brattleboro, Vermont

## **PROCEDURES FOR SUSPENSION AND EXPULSION OF STUDENTS WITH DISABILITIES**

### **I. DEFINITIONS**

- A. **"Student with a disability"** means a student who has been found eligible for services under the Individuals With Disabilities Education Act ("IDEA") or is determined to be an individual with a disability who is protected by Section 504 of Rehabilitation Act of 1973. With respect to some disciplinary protections, the term may also include students who have been referred for evaluation under the IDEA and/or Section 504. If, upon completion of the evaluation, the child is found to be covered by either law, the protections of that law and this policy continue to apply. If the child is found not eligible or not protected by Section 504, (s) he may then be disciplined pursuant to the same procedural safeguards provided to a child without a disability.
- B. **"Suspension"** refers to removal from the student's usual educational setting, to an in-school or out of school setting. Depending on the type of suspension, services may or may not be terminated during such removal, as provided by law and the procedures below.
- C. **"Short term suspension"** refers to a suspension of 10 consecutive school days or fewer; **"long term suspension"** refers to a suspension of more than 10 consecutive school days.
- D. **"Expulsion"** refers to a long-term removal, usually until the end of a school year, or for a calendar year, as provided by State law.

### **II. APPLICABILITY OF GENERAL EDUCATION DUE PROCESS POLICY AND PROCEDURES**

Students with disabilities are entitled to all procedural protections available to students without disabilities, including the due process procedural requirements of VDE Rule 4311 (or successor rules). Under federal and State law, in some circumstances, students with disabilities are afforded additional protections based on disability.

### **III. PROCEDURAL SAFEGUARDS FOR SUSPENSION/EXPULSION OF STUDENTS WITH DISABILITIES.**

#### **A. Short Term Suspensions: 10 or Fewer Consecutive Days**

- 1. A school administrator may suspend or remove a child with disabilities for not more than 10 consecutive school days in a given school year for a violation of school rules, to the same extent that school policy and rules, and state and federal law allow the school administrator to suspend students without disabilities. The school is not required to provide educational services during such removal, unless services would be provided to a child without disabilities.

2. In imposing a short term suspension, the administrator must provide the general education due process procedures and safeguards, but is not required to afford the student with disabilities any additional special procedural rights.

**B. Short Term Suspensions: Cumulatively More Than 10 Days in a School Year**

1. A school may also order additional removals of a student with a disability during a given school year, of not more than 10 days each, so long as the removals do not constitute a **change of placement**.
2. A "**change of placement**" occurs as a result of disciplinary removals if:
  - a. a removal is for more than 10 consecutive school days; or
  - b. over the course of a school year, the student is subject to a series of short term removals that constitute a pattern because they cumulate to more than 10 school days for that school year, and because of factors such as the length of each removal, total amount of time the child is removed, and the proximity of the removals to one another.
3. **Decision as to Whether a Change of Placement Will Result.** Where a school district administrator is contemplating imposition of a short term of suspension which, when added to the cumulative days of suspension previously imposed during the current school year, will exceed a total of more than 10 days of removal, the IEP team must first determine whether the imposition of the additional term of suspension will or will not result in a change of placement.
  - a. If the IEP Team determines that a change of placement **will** result, it may, by consensus of the team (including the parents) perform a supplemental evaluation and change the student's placement by agreement; or it may follow the rules in Parts III. C.-D. below, where applicable; or the District may seek an order through administrative due process changing the student's placement.
  - b. If the IEP Team determines that a change of placement **will not** result in a change of placement, it shall make a record of its reasons for that finding, and the administrator may impose the short term discipline under consideration.
    - i. The IEP Team shall review the student's behavioral intervention plan and its implementation to see if modifications are necessary. (If there is no behavioral intervention plan, the IEP Team shall implement the procedures described in Part D.1.a. below.)
    - ii. After the 10<sup>th</sup> cumulative day of suspension in a school year, during any subsequent short term removals the school must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

4. **Early Intervention Where Behavioral Issues Arise.** It is the usual practice of this school district to convene an IEP meeting as soon as it appears to school staff that a child with a disability is having significant behavioral problems. At the IEP meeting, the Team shall receive information from staff and parents about the child's performance and behavior, and shall review the current IEP and evaluation data, and consider: whether the current IEP requires modification; whether a functional behavioral assessment is needed; whether a behavior plan is needed; whether a re-evaluation or supplemental evaluation is necessary; whether the current behavior plan requires modification; and/or whether to institute further data collection efforts in order to do IEP planning and/or to develop/modify an appropriate behavior plan for the child.

**C. Long Term Suspension or Expulsion.**

1. **Notice of Parental Rights re: Discipline.** When an administrator is considering referring a student with a disability to the school board for long term discipline, the parents of the student shall be given notification of their special education rights, including those rights dealing with discipline.

**D. Manifestation Determination**

1. **Notice and Manifestation Determination.** When a removal for more than 10 consecutive days, or a removal that will bring the total cumulative days of suspension in a given year to more than 10, is contemplated:
  - a. **Notice of Rights.** Not later than the date on which the decision to undertake the removal, the parents must be notified of that decision and must be provided with a copy of the procedural safeguards notice ("Parental Rights in Special Education"); and
  - b. **Need for, Timing of, Manifestation Determination.** Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take the action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.
2. **Conducting the Manifestation Determination**
  - a. The IEP Team and other qualified personnel shall carry out the review at a meeting.
  - b. The IEP Team and qualified personnel may determine that the behavior of the child was **not** a manifestation of the disability only if they:
    - i. First consider, in terms of the behavior subject to the disciplinary action, all relevant information, including evaluation and diagnostic

results, including results and other information supplied by the parents of the child and observations of the child and the child's IEP and placement; and then

- ii. Determine that:
  - (aa) In relationship to the behavior subject to the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; **and**
  - (bb) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; **and**
  - (cc) The child's disability did not impair the ability of the child to control the behavior subject to the disciplinary action.

**3. Finding That Misconduct is a Manifestation.**

- a. If, as a result of that process, the IEP Team determines that any of the standards outlined in subparagraphs aa-cc immediately above were not met, then the behavior must be considered a manifestation of the disability, then the child may not be given a long term suspension or expulsion. The IEP team may consider whether further changes to the student's IEP, or placement, are necessary in order to address the misconduct.
- b. If, in reviewing the IEP and placement, the IEP team identifies any deficiencies in the IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

**4. Finding that Misconduct is not a Manifestation.**

- a. If the IEP Team determines that the behavior **was not** a manifestation of the disability, then the child may be given a long term suspension or expulsion to the same extent that a non-disabled student could receive such discipline.
- b. If the child is referred to the school board for long term suspension or expulsion, the school district shall ensure that the special education records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
- c. **FAPE Must Be Provided During Long Term Removal.** During the course of the long term suspension or expulsion, the school district must provide services to the extent necessary to enable the child to appropriately progress in

the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

**E. Functional Behavioral Assessment.**

**1. Functional Behavioral Assessment and Behavior Plan Modifications.**

Either before or not more than 10 business days after either first removing a child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under this procedure, including paragraph Part B.2. above -

- a. If the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal, then the district shall convene an IEP meeting to develop an assessment plan.
- b. If the child already has a behavioral intervention plan, the IEP Team shall meet to review the plan and its implementation, and modify the plan and its implementation as necessary, to address the behavior.

- 2. Development of Behavioral Intervention Plan.** As soon as practicable after developing the plan described in subparagraph 1.a. above, and completing the assessments required by the plan, the school district shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

**F. 45 Unilateral Removal to IAES: Drugs or Weapons.**

1. A school may unilaterally change the placement of a child with a disability to an interim alternative educational setting ("IAES") for the same amount of time a child without a disability would be subject to discipline (but not for more than 45 days), if -

- a. The child carries a weapon to school or to a school function under the school district's jurisdiction; or
- b. The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the school district's jurisdiction.

- 2. Definition of "Weapon".** Refer to Weapons Policy (F24)

**G. Expedited Hearing for 45 Day Removal by Hearing Officer: Reasonable Likelihood of Bodily Injury if Child is Returned to Prior Placement.**

- 1. Expedited Hearings Available to School District.** Where the behavior of a child with a disability causes the school district to believe that to maintain the

current placement of the child is substantially likely to result in injury to the child or others, the school district may request an expedited hearing by a Vermont Department of Education due process hearing officer, seeking a 45 day interim alternative educational setting (IAES) for the child.

2. **Required Proof for Hearing Officer.** If the school can demonstrate the substantial likelihood of injury by substantial evidence, the Hearing Officer may, after considering the appropriateness of the child's current placement and whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement (including the use of supplementary aids and services), order a change of placement to an appropriate IAES. The school district (in consultation with the child's special education teacher) shall propose to the Hearing Officer an IAES that meets the requirements of Part H immediately below.

#### **H. Interim Alternative Educational Setting.**

1. A 45 day IAES chosen by an IEP Team (in the case of removal for weapons or drugs) or by a Hearing Officer (in the case of substantial likelihood of injury to self or others) must:
  - a. Enable the child 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 child's IEP, that will enable the child to meet the goals set out in the IEP; and
  - b. Include services and modifications to address the behavior that resulted in seeking the removal, that are designed to prevent the behavior from recurring.
2. If a parent challenges the appropriateness of the IAES, or the manifestation determination, or other decision in the course of these procedures, through due process, the child shall remain in the IAES during the pendency of the due process, or through the expiration of the 45 day period, whichever occurs first.
3. Applications for 45 day extensions of the IAES may be made to the hearing officer under circumstances and upon the showing, required by state and federal law.