

Canadian Public Schools
Michael Broyles Superintendent
mbroyles@canadian.k12.ok.us
Pittsburg County 61 (918) 339-2705 District I002

DISCIPLINARY REMOVAL OF CHILDREN WITH DISABILITIES

Purpose

The purpose of this policy is to explain how the District complies with the requirements of federal and state law and regulations when it seeks to implement the disciplinary removal of a child with a disability.

Definitions

“Child with a disability” means a child who has been identified for educational purposes under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act.

“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).

“Disciplinary removal” means

- (a) Removal from school for out-of-school suspension.
- (b) Removal from school at District request without an out-of-school suspension, even if the child’s IEP, 504 Plan or Behavior Intervention Plan provides that the child’s removal from school for a period of time is appropriate to address behavior concerns.
- (c) Placement in an in-school intervention program, **unless** the child (i) is afforded the opportunity to continue to progress appropriately in the general curriculum while in in-school intervention; (ii) continues to receive the services specified in his or her IEP or 504 Plan while in in-school intervention; **and** (iii) continues to participate with nondisabled children while in in-school intervention to the extent the child would have in the current placement.
- (d) Removal from the bus or other required school vehicle if bus/other transportation is included as a part of the child’s IEP or 504 Plan, **unless** the District provides the child with an alternate form of transportation during the removal.

“Illegal drug” means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a license health care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

“School day” means any day, including a partial day, that children are in attendance at school for instructional purposes.

“Serious bodily injury” means bodily injury that involves (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

“Weapon” means a dangerous weapon as defined by 18 U.S.C. § 930(g)(2), specifically, 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 such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Disciplinary Removal Days

District personnel will keep track of the number of disciplinary removal days for each child with a disability during each school year. For disciplinary removals that are less than a full school day in length, District personnel will keep track of the number of school hours of removal.

Change of Placement

When a proposed disciplinary removal would constitute a change of placement for a child with a disability, District personnel will follow the process identified in this policy.

By law, a change of placement for a child with a disability occurs when (a) the disciplinary removal is for more than ten (10) consecutive school days during the school year; or (b) the child has been subject to a series of disciplinary removals during the school year that constitutes a pattern.

When reviewing a series of disciplinary removals to determine whether a pattern exists, District personnel will consider the following factors:

- (a) The series of removals total more than ten (10) school days in a school year;
- (b) The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
- (c) Such additional factors as the length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another.

Case-by-Case Determination

District personnel shall consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a child with a disability who has violated the District’s code of student conduct.

Short-Term Disciplinary Removal

District personnel may remove a child with a disability who has violated the District’s code of student conduct from the child’s current placement to (a) an appropriate interim alternative educational setting; (b) another setting; or (c) suspension, for not more than ten (10) consecutive school days. This removal is not a change of placement.

In addition, District personnel may subject the child to additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as those additional removals do not constitute a change of placement.

Educational Services During Short-Term Disciplinary Removal

During removals for ten (10) school days or less during the school year, the District will provide a child with a disability the same level of services it provides to children without disabilities.

After the District has removed a child with a disability from the child's current placement for ten (10) school days during a school year, if the District imposes another disciplinary removal of ten (10) consecutive school days or less and determines that that removal is not a change of placement, then District personnel, in consultation with the child's special education teacher, will determine the extent to which the child needs services during that removal. In making this decision, District personnel will consider whether services are needed to enable the child (a) to continue to appropriately progress in the general curriculum, although in another setting, and (b) to advance appropriately toward meeting the goals set out in the child's IEP or Section 504 Plan. The District will provide whatever services the group determines necessary during the removal.

Notice to Parent

When the District imposes a disciplinary removal for a child with a disability that constitutes a change of placement, the District will immediately take certain actions.

On the day it makes the decision to impose a disciplinary removal that constitutes a change of placement, District personnel will notify the child's parent of the decision and provide the parent a copy of the appropriate IDEA or Section 504 procedural safeguards form.

Making a Manifestation Determination

Within ten (10) school days of any District decision to change the placement of a child with a disability for a violation of the District's code of student conduct, the child's IEP or 504 team will meet to conduct a manifestation determination. The purpose of the manifestation determination is to determine whether the child's behavior is a manifestation of the child's disability.

In making the manifestation determination, the IEP or 504 team will review all relevant information in the child's file, including (a) the IEP or 504 Plan; (b) any teacher observations; and (c) any relevant information provided by the parents. The team will determine:

- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (b) If the conduct in question was the direct result of the District's failure to implement the IEP or 504 Plan.

The team will determine that the conduct is a manifestation of the child's disability if the team determines that either (a) or (b), above, is correct.

If the team determines that the conduct in question was the direct result of the District's failure to implement the IEP or 504 Plan, the District will take immediate steps to remedy those deficiencies.

Special Circumstances

The District may remove a child with a disability to an interim alternative educational setting for up to 45 school days whether or not the behavior is determined to be a manifestation of the child's disability, if the child:

- (a) Carries or possesses a weapon at school, on school premises, or to or at a school function;

- (b) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at school, on school premises or at a school function; or
- (c) Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

Team Determines that Behavior is a Manifestation of Child's Disability

If the IEP or 504 team determines that the child's behavior was a manifestation of the child's disability, the team will either:

- (a) Seek parent consent to conduct a functional behavior assessment (FBA), unless the District already conducted a FBA before the behavior that resulted in the change of placement occurred and the team determines that further FBA is unnecessary, and develop and implement a behavior intervention plan (BIP) for the child; or
- (b) If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.

If the team determines that the behavior is a manifestation of the child's disability, then the District will not implement the disciplinary removal, unless Special Circumstances exist, as discussed above.

Unless Special Circumstances exist, the IEP or 504 team will return the child to the placement from which the child was removed, unless the parent and the District agree to a change of placement as part of modifying the child's BIP.

Team Determines that Behavior Is Not a Manifestation of Disability

If the IEP or 504 team determines that the child's behavior is not a manifestation of the child's disability, then District personnel may apply the relevant disciplinary procedures to that child in the same manner and for the same time period as the procedures would be applied to children without disabilities, subject to the requirement identified below.

Educational Services During Long-Time Disciplinary Removal

During a long-term disciplinary removal, a child with a disability identified under the IDEA will:

- (a) Continue to receive educational services so as to enable the child to continue to progress appropriately in the general education curriculum, although in another setting, and to advance appropriately toward achieving the goals set out in the child's IEP; and
- (b) Receive, as appropriate, a FBA and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The child's IEP team will determine appropriate services and the location in which services will be provided. These services may be provided in an interim alternative educational setting determined by the IEP team.

During a long-term disciplinary removal, a child with a disability identified only under Section 504 will receive educational services to the same extent that a child without disabilities would receive educational services during a disciplinary removal for the same offense.

Appeal to Hearing Officer Under the IDEA

The parent of a child eligible for special education and related services under the IDEA who disagrees with any decision regarding placement or the manifestation determination may appeal the decision by filing a due process hearing complaint seeking an expedited hearing. The District may also appeal the decision if District personnel believe that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

In making the determination, the hearing officer may

- (a) Return the child to the placement from which the child was removed, if the hearing officer determines that the removal violated the IDEA or that the child's behavior was a manifestation of the child's disability; or
- (b) Order a change of placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the child's current placement is substantially likely to result in injury to the child or others.

These procedures may be repeated, if the District believes that returning the child to the original placement is substantially likely to result in injury to the child or others.

When either the parent or District requests an appeal to a hearing officer, the child will remain in the interim alternative educational setting pending the hearing officer's decision or until the time period set for the placement expires, whichever occurs first, unless the parent and District agree otherwise.

The District may also seek a court order to remove a child with a disability from school or to change the child's current educational placement if District personnel believe that maintaining the child's current placement is substantially likely to result in injury to the child or others.

Providing Records to Disciplinary Decisionmaker

If the District initiates discipline that would constitute a change of placement for a child with a disability, District personnel will ensure that the child's special education and disciplinary records are provided for consideration to the school personnel making the final determination regarding the disciplinary action.