

**PROCEDURES FOR SUSPENSION AND EXPULSION
OF STUDENT WITH DISABILITIES**

**LAMOILLE NORTH SUPERVISORY UNION
DISCIPLINE PROCEDURES
(August 3, 2005)
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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. **"Behavior Intervention Plan"** means an individualized plan to develop behavior and social skills necessary for student success in the school setting that is based on an individual student's current abilities and areas for skill growth.

C. **"Suspension"** refers to removal from the student's usual educational setting, to an 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.

D. **"Short Term Suspension"** refers to a suspension of 10 consecutive school days or fewer.

E. **"Long Term Suspension"** refers to a suspension of more than 10 consecutive school days.

F. **"Expulsion"** refers to a long-term removal, usually until the end of the school year, or for a calendar year, as provided by State law.

G. **"Manifestation Determination"** means the process used to determine if a student with a disability who commits an infraction of school rules should be disciplined as any other student without a disability or if their disability prevented them from following a school rule due to a direct or substantial relationship their disability had to their behavior.

H. **"Change of Placement"** A "change of placement" occurs as a result of disciplinary removals if:

1. child's removal from school is for more than 10 consecutive school days, or
2. if the child is subjected to a series of removals that add up to more than 10 days in a school year, and constitute a pattern based upon such factors as:
 - a. The length of each removal, and the total amount of time the child is removed.
 - b. The proximity of the removals to one another, and
 - c. the reasons for the removals
 - d. whether reasons for removal are for similar or disparate behavior

I. **"Interim Alternative Education Setting " (IAES)** is a 45 day placement outside of the main stream setting that may be made due to events that involved weapons, controlled substances, illegal drugs or serious bodily injury.

J. **"Weapon"** means an instrument, object or device designed, readily capable of, or used for, or with the intent to cause personal injury or death. In addition, a Weapon includes, but is not limited to, a knife with a blade greater than 2 ½ inches in length, a switchblade knife, bayonet, sword or similar device. Swiss army knives, razors, box cutters and similar

cutting implements will be treated as Weapons under this policy if, in the determination of the Administration, the implement is used in any manner to threaten or hurt another person or to threaten damage or do actual damage to school property or property belonging to a member of the school community.

K. **"Controlled Substance"** means a drug or other substance identified under scheduled I, II, III, IV, or V in section 202(c) of the Federal Controlled Substances, Act (21 USC section 812 (c)).

L. **"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 under any other provision of Federal law.

M. **"Serious Bodily Injury"** is bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss of impairment of the function of at bodily member, organ or mental faculty".

II. APPLICABILITY OF GENERAL EDUCATION DUE PROCESS POLICY AND PROCEDURES

Students with suspected as well as identified 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).

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

A. Short Term Suspensions: 10 or Fewer Consecutive Days

1. A building principal with the agreement of the case manager or building special education coordinator, 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, allows the school administrator to suspend students without disabilities. The school is not required to provide educational services during such a 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

B. Short Term Suspension: Cumulatively More than 10 Days in a School Year

1. Additional Removals 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. Decision as to Whether a Change of Placement Will Result: When a school district administrator is contemplating imposition of 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 or removal, LNSU Director of Special Education 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 LNSU Special Education Director determines that a change of placement will result, it may follow the rules in Part III C and D below, where applicable; or the District may seek parental agreement or an order through administrative due process changing the student's placements
- b. If the LNSU Director of Special Education determines that a change of placement will not result, a record of reasons for that finding shall be made and the administrator may impose the short-term discipline under consideration.
- c. The IEP team shall then or also develop or review the student's behavioral intervention plan and its implementation to see if modifications are necessary.
- d. After the 10th 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.

A building principal with the agreement of the case manager or building special education coordinator 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 a removal, unless services would be provided to a child without disabilities.

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

3. Early Intervention Where Behavior 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 reevaluation 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 and due process 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, that would result in a change of placement, is contemplated.
 - a. Notice of Rights. Not later than the date on which the decision to undertake an additional short-term 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. Manifestation Determination. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take the disciplinary action is contemplated; 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
(Use the LNSU Procedures Manifestation Determination form)
 - a. The local educational agency, the parent and relevant members of IEP team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:
 - b. if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - c. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.
3. Finding that Misconduct is a Manifestation
 - a. If the local educational agency, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall:
 1. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement.
 2. In the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan and modify it as necessary to address the behavior and return the child to the placement from which the child was removed. The child would not return to the placement from which they were removed if the local education agency places the child in an interim alternative educational setting or the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

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.

5. 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

(Sample Functional Behavior Assessment Observation Forms can be found at the end of the Procedures)

1. Functional Behavioral Assessment and Behavior Plan Modifications

Before or not more than 10 school 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 Par B.2. above:

- a. 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.
- b. 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.
- c. 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 Day Unilateral Removal to IAES: Drugs, Weapons or Serious Bodily Injury

1. Making the placement: 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.
 - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.
- 2. Notification: Not later than the date on which the decision to take disciplinary action for a unilateral removal is made, the local educational agency shall notify the parents of that decision to take discipline action and also of all procedural safeguards accorded under this section.
- 3. Determination of Setting: The interim alternative education setting shall be determined by the IEP team.
- 4. Appeal: In general, the parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a due process hearing.
- 5. Placement During Appeals: When an appeal has been requested by either the parent or the local educational agency, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in the placement, whichever occurs first, unless the parent and the state or local educational agency agree otherwise. The state or the local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the due process hearing is requested and shall result in a determination within 10 school days after the due process hearing.

G. Protections for Children not yet Eligible for Special Education and Related Service

In general, a child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

- 1. Basis of Knowledge: A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:
 - a. The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child that the child is in the need of special education and related services.
 - b. The parent of the child has requested an evaluation or an independent educational evaluation of the child in writing, unless they are not able to write.
 - c. The teacher of the child, or other personnel of the local education agency, has expressed specific concerns about a pattern of behavior demonstrated

by the child, directly to the Director/Coordinator of special education of such agency or to other supervisory personnel of the agency. (NOTE: The federal law does not state this notice must be in writing but would be good for records if parent refuses referral.)

- d. The parent provides an evaluation to the school.
2. Exception: The local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services or the child has been evaluated and it was determined that the child was not a child with a disability.
3. Limitations: If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with state and federal law. The child shall remain in the educational placement determined by school authorities.

H. Expedited Hearing for 45-Day Removal by Hearing Officer

This type of removal should be used if there is a reasonable likelihood of bodily injury if the 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.

I. Interim Alternative Educational Setting (IAES)

1. Criteria for IAES Placements: A 45-day IAES chosen by an IEP team (in the case of removal for weapons, drugs or serious bodily injury) or by a Hearing Officer (in the case of substantial likelihood of injury to self or others) must meet to review the current IEP and add any modifications necessary for the 45-day placement which will:
 - 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 the services and modifications to address the behavior that resulted in seeking the removal that are designed to prevent the behavior from recurring.
2. Parent Appeal

If a child's parent disagrees with a determination that the child's behavior was not a manifestation of a disability, or with a decision regarding placement made under these disciplinary procedures, including removal to an IAES, the parent may request a due process hearing, in which case an expedited hearing shall be

arranged to take up the matter after an attempt to resolve the dispute has been made through a resolutions session.

3. Placement During Discipline Appeals

If a parent requests a due process hearing to challenge the IAES placement or the manifestation determination, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of 45 calendar days from the time the placement was made, whichever occurs first, unless the parent and the school district agree otherwise.

If the school district determines that it is dangerous for the child to be in the placement immediately prior to the IAES, it may request an expedited due process hearing.

J. Protections for Children Not Yet Eligible for Special Education and Related Services

(NOTE: This is the same information included above. It is restated here for your ease of use)

In general, a child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

1. Basis of Knowledge: A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred.
 - a. The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child that the child is in the need of special education and related services.
 - b. The parent of the child has requested an evaluation of the child in writing, unless they are not able to write.
 - c. The teacher of the child, or other personnel of the local education agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the Director/Coordinator of special education of such agency or to other supervisory personnel of the agency. (NOTE: The federal law does not state this notice must be in writing.)
2. Exception: The local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services or the child has been evaluated and it was determined that the child was not a child with a disability.
3. Limitations: If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with state and federal law. The child shall remain in the

education placement determined by school authorities.

K. Referral to and Action by Law Enforcement and Judicial Authorities

Nothing in these procedures prohibits a school district from reporting a crime suspected or actually committed by a child eligible for special education services and the students disciplinary records must be made available if the State's Attorney wants them.