

# DISCIPLINE, SUSPENSION, EXPULSION OF SPECIAL EDUCATION STUDENTS

## ADMINISTRATIVE REGULATION

5061

### STATEMENT OF PURPOSE

These procedures are designed to ensure Tucson Unified School District complies with laws and regulations applicable to providing educational programming to students who receive special education and related services pursuant to the Individuals With Disabilities Education Act (20 USC §1400 et. seq.), relevant Arizona Revised Statutes (§15-760 et. seq.), and applicable Federal and State case law. No student of the Tucson Unified School District will be discriminated against because of a disability nor disciplined for behavior that is a result or manifestation of the student's disability.

### DEFINITIONS

**Behavior intervention plan:** goals and objectives that focus on the behavior that gave rise to the discipline and specific strategies to prevent reoccurrence of the behavior. The plan must be a functional analysis of the target behavior of concern. Such an analysis is critical to the understanding of the structure and function of the behavior and the development or strengthening of more appropriate alternative behaviors.

**Free Appropriate Public Education (FAPE):** The term ‘free appropriate public education’ means special education and related services that—

- (A) are provided at public expense, under public supervision and direction, without charge;
- (B) meet the standards of the Arizona Department of Education;
- (C) include an appropriate preschool, elementary, or secondary school education; and
- (D) are provided in conformity with the Individualized Education Program.

**Functional behavior assessment:** examination of the behavior in the setting in which it occurs. This can be limited to observing a child within the educational environment. Observers should look for what precedes the behavior, what is the consequence or pay off when the behavior occurs, and how often it occurs.

**Home School:** a student’s regular school of attendance within the Tucson Unified School District.

**IEP:** common acronym for “Individualized Education Plan.”

**IEP Team:** a team which consists of the *parent*, special education administrative designee, a general education teacher, the person who will provide or is certified to provide special education, and the student, if appropriate. Other people may attend as appropriate including the principal, related service provider, counselor, advocate or any other person with information about the student or who may be working with the student.

**Illegal Drug:** the term “illegal drug”—

- (i) means a controlled substance; but
- (ii) does not include such 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 the law.

**Interim Alternative Education Setting (IAES):** a setting presumably other than the one in which the student’s behavior occurred that is deemed appropriate by the IEP team. These settings include, but are not necessarily limited to, alternative classes, inhouse supervision and special classes, teleteaching, home tutoring, provision of videotaped classes, a day treatment program. Access to the general education curriculum *must* be a part of an IAES.

**Long-Term Suspension:** removal of the student from school for more than 10 school days (cumulative) during a single academic year.

**Manifestation Determination:** a determination whether misconduct for which a Special Education student faces a change in placement was a manifestation of the student’s disability. This determination is accomplished by the IEP Team.

**Parent:** the term “parent” includes natural parent, step-parent, adoptive parent, surrogate(s) and guardian(s).

**Short-Term Suspension:** removal of a student from school for 10 or fewer school days (cumulative).

**Weapon:** is defined as any *firearm*, BB gun, pellet gun, knife, club, *explosive* or *destructive device*, or any other item or object which may cause bodily injury, death or which may be used to threaten others. Small folding pocket or utility knives with non-locking blades of less than two-and-one-half (2 ½) inches will not be considered *weapons* unless used, or attempted to be used to cause bodily injury or to threaten others.

**SHORT-Term SUSPENSION (Less than 10 consecutive cumulative school days)**

Students with disabilities may not be suspended <b>for more than 10 school days in a school year</b> for behavior <i>related to their disability</i> . The 10 school day limit is cumulative or consecutive.
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**Short-Term Procedures**

***(1-5 school days, cumulative or consecutive)***

- 1) Determine if the student is a special education student. Determine if there have been prior short-term suspensions during the current school year.
- 2) *Immediately* notify the special education teacher responsible for the IEP **AND** call, (fax or e-mail) the Service Center Assistant Director immediately.

***(6-10 school days, cumulative or consecutive)***

- 1) Determine if the student is a special education student. Determine if there have been prior short-term suspensions during the current school year.
- 2) *Immediately* notify the special education teacher responsible for the IEP **AND** call, fax or e-mail the Service Center Assistant Director.
- 3) The IEP Team *must* meet within 10 school days to:
  - a) develop or review a Functional Behavior Assessment
  - b) Develop or review the Behavior Intervention Plan
  - c) Hold a manifestation determination review

**(Suspension/Expulsion Notification Form #SE 148R, revised 07/99).**

- 4) The school *must* keep track of the cumulative number of days a special education student has been suspended in one school year, including the pending or current suspension. Prior suspension information should be available in the *SONORA* database along with all prior information from previous school(s) (cumulative records).
- 5) Provide Documentation to the Parent(s):
  - a) Provide a copy of the revised IEP, if any.
  - b) Provide a copy of the Notice of Procedural Safeguards (Form #821) (in the native language, if possible). The Notice of Procedural Safeguards (Form #821) should be given to the parent(s) personally at the IEP Team meeting. If the parent(s) fail or refuse to attend the IEP Team meeting, the Notice of Procedural Safeguards (Form #821) must be hand-delivered or sent to them by certified mail, return receipt requested. (It is good policy to also send a copy via first class mail as well).

<p><b>REMEMBER:</b> the IEP Team <i>always</i> must include the parent(s) of the child. Parent(s) include natural parent(s), step-parent(s), adoptive parent(s), surrogate(s) and guardian(s).</p>
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## Long- Term Suspension

*The procedures set forth in this Administrative Regulation shall be followed in addition to the due process procedures set forth in Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils which apply to all students facing disciplinary proceedings. To the extent there is a conflict between this Administrative Regulation and Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils the provisions of this Administrative Regulation shall govern.*

## Long-Term Suspensions and Expulsion Procedures

Long-term suspensions and expulsions are, by definition, considered to be *changes in placement*. Therefore, if long-term suspension or expulsion is being considered for a special education student, the following procedure shall be used:

### I. FOR VIOLATIONS OTHER THAN THOSE INVOLVING DRUGS OR WEAPONS

**If the IEP Team determines the behavior IS related to the student's disability, the Team shall complete Suspension/Expulsion Notification Form SE 148R, (revised 07/99**

- a) The Program Specialist and/or Department Chair must attend the IEP Team meeting.
- b) Long-term suspension is *not* available. However, the IEP Team may examine whether the student's current placement is appropriate under the circumstances.

**If the Team determines that the behavior IS NOT related to the student's disability, the Team shall complete Suspension/Expulsion Notification Form SE 148R, revised 07/99.**

- a) The Program Specialist and/or Department Chair must attend the IEP Team meeting.
  - b) **Student must continue to receive FAPE even if on long-term suspension or expulsion.**
  - c) The student's home school and the Department of Exceptional Education shall coordinate their efforts to provide special education and related services and access to the general curriculum after imposition of the long-term suspension or expulsion.
  - d) The provisions of Administrative Regulation apply to these proceedings.
- 1) Determine if the student is a special education student. Determine if there have been prior suspensions during the current school year.

- 2) *Immediately* notify the special education teacher responsible for the IEP **AND** call, fax or e-mail the Service Center Assistant Director.
- 3) Notify the Program Specialist/High School Department Chair or Psychologist.
- 4) The IEP Team *must* meet within 10 school days to:
  - a) Develop or review a Functional Behavior Assessment
  - b) Develop or review the Behavior Intervention Plan
  - c) Hold a manifestation determination review
  - d) Review the IEP to determine if the placement is appropriate

**(Suspension/Expulsion Notification Form SE 148R, revised 07/99)**

- 5) The school *must* keep track of the cumulative number of days a special education student has been suspended in one school year, including the pending or current suspension. Prior suspension information should be available in the *SONORA* database along with all prior information from previous school(s) (cumulative records).
- 6) Provide Documentation to the Parent(s):
  - a) Provide a copy of the revised IEP, if any.
  - b) Provide a copy of the Notice of Procedural Safeguards (Form #821) (in the native language, if possible). The Notice of Procedural Safeguards (Form #821) should be given to the parent(s) personally at the IEP Team meeting. If the parent(s) fail or refuse to attend the IEP Team meeting, the Notice of Procedural Safeguards (Form #821) must be hand-delivered or sent to them by certified mail, return receipt requested. (In addition, it is recommended to send a copy via first class mail as well).

***NOTE: No special education student will serve a long-term suspension until the District has determined where the student will receive FAPE during that suspension. The placement will be in the student's home school until or unless an available alternative placement is found. If behavior WAS a manifestation of the student's disability, **DO NOT SUSPEND!*****

## **II. FOR DRUG OR WEAPON VIOLATIONS: *MANIFESTATION OF DISABILITY***

- a) School authorities may order a student into an interim alternative educational setting for *no more than forty-five (45) calendar days* if the student possesses a weapon on campus or other District property and/or if the student uses, distributes or possesses illegal drugs on campus or other District property.
- b) The Interim Alternative Educational Setting shall be determined by the IEP Team.
- c) The Interim Alternative Educational Setting shall provide FAPE to the student.
- d) An Interim Alternative Educational Setting shall not exceed forty-five (45) calendar days.
- e) The notice and hearing procedures set forth in Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils should be followed prior to referral to Interim Alternative Educational Settings, even though the Interim Alternative Educational Setting is not literally a *suspension* as that term is used in Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils. The parent(s) must receive a copy of the Notice of Procedural Safeguards (Form #821).
- f) The Interim Alternative Educational Setting is presumed to be, but does not have to be, at a location other than the student's home school.

## **III. FOR DRUG OR WEAPON VIOLATIONS: *NON-MANIFESTATION OFFENSES***

- a) Special education students who commit a weapon or drug violation shall be subjected to the provisions of Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils to the same extent a non-disabled student would be for a similar offense.
- b) *A special education student who is placed on long-term suspension, or who is expelled, still must receive FAPE during the suspension or expulsion.*
- c) The placement of a special education student who receives a long-term suspension pursuant to a weapon or drug violation, or who is expelled for such a violation, shall be determined by the IEP Team.
- d) Even though the penalties permitted by this section arise under Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils the student and parent(s) must still receive a copy of the Notice of Procedural Safeguards (Form #821).

## **PROCEDURAL SAFEGUARDS**

The site administrator (or designee) shall be responsible for arranging delivery of the Notice of Procedural Safeguards (Form #821), Prior Written Notice (Form SE 833), and a copy of the Suspension/Expulsion Notification Form SE 148R, (revised 07/99) to the parent(s). These documents should be hand-delivered to the parent(s) of the student immediately, wherever possible and receipt documented.

**NOTE: Parent(s) have the right to appeal placement decisions and manifestation determinations as specified in the Notice of Procedural Safeguards (Form #821).**

## **DUE PROCESS: NOTICES**

- 1) When school authorities decide to impose a long-term suspension on a special education student, they must provide the student with *due process*.
  - a) school administrators must comply with all of the requirements specified in the *long-term suspension due process section* of Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils.
  - b) a special education student may not be placed on a long-term suspension until the school has fully complied with the due process procedures of Administrative Regulation 5060, Discipline, Suspension and Expulsion of Pupils, applicable provisions of the Individuals with Disabilities Education Act and the requirements of this Regulation.

## **PLACEMENT DURING APPEALS**

When parent(s) of a special education student appeal referral to an Interim Alternative Educational Setting (IAES) they are entitled to an expedited hearing but the student remains in the IAES until:

- a) the hearing officer makes a determination after a due process hearing, or
- b) the IAES placement expires, or
- c) the parent(s) and District reach an agreement regarding the student's placement.

## **STUDENTS NOT IDENTIFIED AS SPECIAL EDUCATION**

A student who has not been identified eligible for services *may* invoke the same protections as stated above if:

- a) there have been any previous requests for evaluations but evaluation was not performed.

- b) he/she had previously been referred to a *site intervention*, such as Child Study Team, Teacher Assistance Team, and similar programs.
- c) the District had actual or constructive knowledge of the student's eligibility.

### **LONG-TERM SUSPENSION HEARINGS/EXPULSION HEARINGS**

Proceed according to schedule pursuant to Board Policy 5060, Student Discipline. The same is true of an expulsion hearing.

If the parent does not respond to the written notice of the determination of relatedness within five school days, any long-term suspension assessed may be imposed and any further disciplinary action may proceed according to Board Policy 5060, Student Discipline.

Even if the parent requests a due process hearing on the determination of relatedness, the long-term suspension hearing may proceed as scheduled. However, "stay put" will apply and the long-term suspension may not be imposed immediately. The long-term suspension may be imposed at the conclusion of the due process proceeding if the District prevails on the issue of relatedness.

### **PLACEMENT OPTIONS**

Although long-term suspensions and expulsions may not be imposed until a due process challenge is resolved, the IEP Team, which includes the parent(s), can draft an appropriate IEP to be in force pending the outcome of the due process hearing.

In the event the disabled student has committed an offense that constitutes a threat to the health and/or safety of the student or others, the District may bar the student from campus in cooperation with the student's parent(s). If the parent(s) refuse to agree to the exclusion from campus, the District may go to Court to obtain an injunction barring the student from campus during the pendency of the due process proceedings. If this occurs, alternative educational services must be made available to the student at home for the duration of the proceedings. The District also has the option of demanding a due process hearing and requesting a change of placement from a due process hearing officer.

**If expulsion is recommended, and the matter proceeds to an expulsion hearing, the student may not actually be formally expelled without receiving FAPE.**

### **CRIMINAL REFERRALS: SPECIAL PROCEDURES FOR DANGEROUS STUDENTS**

#### **A) *Students who commit crimes on campus; arrest; transmittal of records***

- 1) Nothing in this section or IDEA limits the right of school personnel to report a crime committed by a special education student to law enforcement authorities.
- 2) Any felony or misdemeanor may be reported to law enforcement agencies when the felony or misdemeanor occurs on District property or at a school function.

- 3) If a special education student is reasonably believed to have committed a felony or misdemeanor on District property or during a school function and the student is arrested and immediately incarcerated, the incarceration, if incidental to an arrest, is not a *suspension* within the meaning of this Administrative Regulation or IDEA.
- 4) An incarceration ordered by a court of competent jurisdiction shall not be considered a *suspension* or *expulsion* within the meaning of this Administrative Regulation or IDEA. Discipline action may be addressed when the student is released from incarceration.
- 5) When a special education student is arrested for commission of a felony or misdemeanor on District property or at a school function, the principal of the special education student's current home school shall immediately ensure that copies of the student's *special education* and *discipline* records are delivered to the adjudicating authority. The school authorities shall contact the student's probation officer to arrange for transmittal of the records. (At a minimum release the current IEP and discipline history).

**B) Procedures for students believed to be dangerous**

- 1) Nothing in this Administrative Regulation nor IDEA shall be construed as impeding the ability of school officials to remove dangerous special education students from the general population.
- 2) For the purposes of this section the term *dangerous* includes students who pose a danger to themselves, or others.
- 3) If a due process hearing is convened to examine whether a special education student should be placed in, or remain in, an alternative placement, or alternative interim placement, the District must prove with *substantial evidence* that the student is a danger to self or others.

**TUCSON UNIFIED SCHOOL DISTRICT  
TUCSON, ARIZONA**

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