

## Hamilton County Board of Education

Monitoring: Review: Annually in October	Descriptor Term: <b>Disciplinary Procedures for Students Receiving Special Education</b>	Descriptor Code: 6.3023	Issued Date: 05/11/23
		Rescinded:	Revised: 01/18/24

The purpose of this policy is to inform students, parents/guardians, and educators in general terms of the procedures governing the discipline of students with disabilities under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act (Section 504). In the event of an apparent conflict between this policy and the provisions of federal law, federal law shall control.

### LIMITS ON OUT OF SCHOOL SUSPENSIONS

Administrators may suspend students with disabilities for misconduct just as they would non-disabled students for up to ten (10) days during the course of any given school year.<sup>1</sup>

Any time an administrator determines that a student with a disability should be suspended for five (5) days, or if any given suspension, when added to previously imposed suspensions, exceeds the total of five (5) days, the principal shall have the student's case manager convene an IEP team or Section 504 committee meeting as soon as practicable. The purpose of this meeting may be to obtain permission for a functional behavior assessment (FBA), develop a behavioral intervention plan (BIP) and, if necessary, revise the IEP or Section 504 plan. The team must consider whether the IEP or Section 504 is appropriate to the student's needs and, if so, whether it is being implemented with fidelity. It is the Board's intention that the school administration and the IEP team or Section 504 committee will collaborate to develop appropriate interventions aimed to reduce the need for further disciplinary measures.<sup>2</sup>

For any given suspension that would exceed ten (10) days, or for any suspension that, when combined with previous suspensions, would exceed a total of ten (10) days for any given school year, the school principal shall immediately notify the Department of Exceptional Education (in the case of a student receiving services under the IDEA) or SEAD (in the case of a student receiving services under Section 504) to convene a manifestation determination review (MDR). The MDR shall operate in accordance with this policy and the requirements of federal law.

### MANIFESTATION DETERMINATION REVIEW<sup>3</sup>

The MDR meeting will include a fully convened IEP team, including the parents/guardians of the student, the principal or his/her designee, a representative from the Department of Exceptional Education or SEAD, Psychologist, Case Manager, and such other members of the IEP team or Section 504 committee as may be appropriate.

The MDR shall meet within ten (10) days of the decision to suspend the student to determine whether the behavior was a manifestation of the student's disability.<sup>4</sup> The MDR shall occur prior to the implementation of further discipline. The MDR shall consider all relevant information, including the IEP, teacher observations, and the most current evaluations of the student. The MDR shall also consider any functional behavioral assessment (FBA) and behavioral intervention plan (BIP) or any student safety plan. The MDR shall also consider whether the student's behavior might be a manifestation of any

disability or documented and suspected disability voiced by any member of the IEP team or Section 504 committee.

**For behavior that is a manifestation:**

If the MDR is unable to rule out a known or suspected disability as a cause of or a direct and substantial factor in the student's misconduct, then the IEP team shall take appropriate steps to address the educational needs of the student, including obtaining consent for and conducting a FBA (unless the MDR determines that any recent FBA is adequate), the developments or the refining of a BIP, and the revision of any IEP or 504 plan.

Except as set forth below, the student may not be suspended or removed from the existing educational placement but must "stay put" in that placement unless the IEP team or Section 504 committee, including the parents/guardians, agree that a more restrictive placement is appropriate for the implementation of the BIP so that the student may receive a free appropriate public education.<sup>5</sup>

**For behavior that is not a manifestation:**

If the MDR can rule out a known or suspected disability as a cause or direct and substantial factor in the student's misconduct, then the MDR shall adjourn. The student may be disciplined as would any student without disabilities per Board Policy Nos. 6.300 and 6.3021, which provides for the student Code of Acceptable Behavior and Discipline.<sup>6</sup>

In the case of a student receiving services under the IDEA, the case manager will coordinate to ensure that the student will continue to receive any services required by the IEP during the time of his/her suspension. The case manager shall convene an IEP team meeting to discuss the change of placement if such a meeting is necessary to provide a free appropriate public education.

In the case of a student receiving services under Section 504, services will cease during the period of any out-of-school suspension. If the student is remanded to an alternative educational setting and services are required to enable the student to participate in the program, the case manager will coordinate these services.

**EXCEPTIONS TO "STAY-PUT"**<sup>7</sup>

Irrespective of whether a student's conduct may be a manifestation of his/her disability, a student may be suspended to an interim alternative educational placement for up to forty-five (45) days for:

- Carrying or possessing a dangerous weapon as defined in 18 U.S.C. § 930 on school property or at a school function;
- Knowingly using or possessing or selling or soliciting the sale of illegal drugs on school property or at a school function; or
- Inflicting serious bodily injury, meaning an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a

bodily member, organ or mental faculty, while on school property or at a school function.

An interim alternative educational placement shall not automatically be forty-five (45) days but shall be in conformity with consequences imposed on students without disabilities. The case manager at the student's school of enrollment will coordinate with the interim alternative educational placement how to provide services to any students with an IEP assigned to an interim alternative educational placement.

## APPEAL RIGHTS FOR STUDENTS WITH DISABILITIES

Any student or parent/guardian who disputes that the student violated the Code of Acceptable Behavior, Board policy, or state law; or who disagrees with the decision of the MDR that the student's behavior was not a manifestation of a known or suspected disability; or who objects to the consequences imposed by the administrator may request a hearing before the disciplinary hearing authority, the COO, and the Board of Education pursuant to Board Policy No. 6.3022.

Alternatively, a student or parent/guardian may request a due process hearing before an administrative law judge.<sup>8</sup>

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### Legal References:

1. C.F.R. § 300.530(b)(1)
2. T.C.A. § 49-6-3401(c)(3)
3. 34 C.F.R. § 300.530(e)
4. 34 C.F.R. § 300.530(e)(1)
5. 34 C.F.R. § 300.530 € and (f)
6. 34 C.F.R. § 300.530(d)(1)
7. 34 C.F.R. § 300.530(g)
8. 34 C.F.R. § 300.532

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### Cross References: