

Discipline Procedures

Summary Points

- School staff may consider a number of individual characteristics of a student with a disability when making decisions regarding discipline
- A student with a disability can be suspended for 10 cumulative days per year without any special procedures required, similar to their non-disabled peers.
- If a student is suspended for more than 10 days, services to enable the student to make progress on their IEP and in the general curriculum must be provided on the 11th day and during any subsequent suspension.
- When a student is suspended for more than 10 cumulative days in a year, this may be considered a change in placement and the IEP team must reconvene within 10 days to conduct a manifestation determination to decide if the behavior that resulted in the suspension was caused by their disability.
- If there is a manifestation, the suspension is stopped and the student returns to school. If there is not a manifestation, the suspension continues and the child is provided appropriate services.
- If a student is found in possession of weapons or a controlled substance, or inflicts serious bodily injury on another person, they can be removed to an Interim Alternative Educational Setting (IAES) for a total of 45 calendar days.
- Parents have the right to appeal disciplinary decisions through mediation or a due process case. If so, the due process case must be expedited.
- The law provides discipline protections to children who may be considered to be students with disabilities if they are not yet identified and meet certain criteria.
- Nothing prevents the school from filing criminal charges against students with disabilities or from local law enforcement exercising their responsibilities in a response to crimes committed by a student with a disability.
- A student may be placed on homebound services in response to disciplinary violations under certain circumstances. The homebound placement must be reviewed every 30 calendar days.

Discipline Rules from Policies Governing Services for Children with Disabilities:

(a) Case-by-case determination.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. Circumstances considered should include area of disability, functioning level of the child, intent of the behavior, and other relevant factors.

(b) General.

- School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under NC 1504-2.7).

- After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority.

- For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

- A child with a disability who is removed from the child's current placement pursuant to paragraphs (c) or (g) of this section must--
 - Continue to receive educational services, as provided in NC 1501-1.1(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP;
 - and
 - Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. If a behavioral intervention plan already has been developed, it must be reviewed and modified, as necessary, to address the behavior.
- The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
- A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
- After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under NC 1504-2.7, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided NC 1501-1.1 so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
- If the removal is a change of placement under NC 1504-2.7, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

- Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must 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—
 - If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation.

- If the LEA, 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 must either—
 - Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- (Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA, through the IEP Team process, agree to a change of placement.

(g) Special circumstances.

- School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—
 - Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA;
 - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- Upon the end of the removal to the interim alternative educational setting for not more than 45 school days for reasons (1) through (3) above, the child shall be returned to the placement from which he/she was removed, unless the parent and the LEA, through the IEP Team process, agree to a change of placement.

(h) Notification.

- On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in NC 1504-1.5.
 - Definitions. For purposes of this section, the following definitions apply:
 - Controlled substances 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)).
 - Illegal drug means a controlled substance; but does not include a controlled 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 other authority under that Act or under any other provision of Federal law.
 - Serious bodily injury is defined as:
 - Bodily injury which involves –
 - a substantial risk of death;
 - extreme physical pain;
 - protracted and obvious disfigurement; or
 - protracted loss or impairment of function of a bodily member, organ, or mental faculty.
 - Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code and includes 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 a term does not include a pocket knife with a blade of less than 2 ½ inches in length.
 - The child's IEP Team determines the interim alternative educational setting for services under NC 1504-

(i) Appeal

- General. The parent of a child with a disability who disagrees with any decision regarding placement under NC 1504-2.1 and NC 1504-2.2, or the manifestation determination under NC 1504-2.1(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a petition pursuant to NC 1504-1.8 and NC 1504-1.9(a) and (b).

- Authority of hearing officer.
 - A hearing officer under NC 1504-1.12 hears, and makes a determination regarding an appeal requested under paragraph (a) of this section.
 - In making the determination under paragraph (b)(1) of this section, the hearing officer may—
 - Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of NC 1504-2.1 or that the child’s behavior was a manifestation of the child’s disability; or
 - Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
 - The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(j.) Expedited due process hearing.

- Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of NC 1504-1.8 and NC 1504-1.9(a) through (c) and NC 1504-1.11 through NC 1504-1.15, except as provided in paragraph (c)(2) through (4) of this section.
- The Office of Administrative Hearings is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the petition requesting the hearing is received by the other party. The hearing officer must make a determination within 10 school days after the hearing.
- Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in NC 1504-1.7—
- A resolution meeting must occur within seven days of the other party’s receiving notice of the due process petition, and
 - The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the other party’s receipt of the due process petition.
- The decisions on expedited due process hearings are appealable consistent with NC 1504-1.15.

(k.) Placement During Appeals

- When an appeal under NC 1504-2.3 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in NC 1504-2.1(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(l.) Protections for Children Not Yet Eligible for Special Education and Related Services

- General. A child who has not been determined to be eligible for special education and related services under these Policies and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in these Policies if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--
 - The parent of the child expressed concern in writing to supervisory or administrative personnel of the LEA, or a teacher of the child, that the child is in need of special education and related services;
 - The parent of the child requested an evaluation of the child pursuant to NC 1503-1 through NC 1503-3.5;
 - The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA; or
 - The behavior and educational performance of the child clearly and convincingly establishes the need for special education. [Note: Prior disciplinary infractions shall not, standing alone, constitute clear and convincing evidence.]
- Exception. An LEA would not be deemed to have knowledge under paragraph (b) of this section if the parent of the child—
 - Has not allowed an evaluation of the child pursuant to NC 1503-1 through NC 1503-3.5; or
 - Has refused services under these Policies; or
 - The child has been evaluated and determined to not be a child with a disability under these Policies.
- Conditions that apply if no basis of knowledge.
 - If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
- (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 NC 1504-2.1, the evaluation must be conducted in an expedited manner.
- Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by
- the parents, the LEA must provide special education and related services in accordance with these Policies, including the requirements of NC 1504-2.1 through NC 1504-2.7 and sections 612(a)(1)(A) of the IDEA.

(m.) Referral to and Action by Law Enforcement and Judicial Authorities

- Nothing in this part prohibits an LEA from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- Transmittal of records.
 - An LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the LEA reports the crime.
 - An LEA reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(n.) Change of Placement Because of Disciplinary Removals

- For purposes of removals of a child with a disability from the child's current educational placement under NC 1504-2.1 through NC 1504-2.6, a change of placement occurs if—
 - The removal is for more than 10 consecutive school days; or
 - The child has been subjected to a series of removals that constitute a pattern--
 - Because the series of removals total more than 10 school days in a school year;
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and
 - Because of 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.
- The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change in placement.
- This determination is subject to review through due process and judicial proceedings.

(o.) State Enforcement Mechanisms

Notwithstanding NC 1504-1.7(b)(7) and NC 1504-1.11(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, enforcement of such agreements may also be sought through the State complaint investigation process.

(p.) Discipline and Homebound Instruction

- If a change of placement occurs under the discipline requirements of these Policies, an LEA shall not assign a student to homebound instruction without a determination by the student's IEP Team that the homebound instruction is the least restrictive alternative environment for that student.

- If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP Team shall meet to determine the nature of the homebound educational services to be provided to the student.
- In addition, the continued appropriateness of the homebound instruction shall be evaluated monthly by the designee or designees of the student's IEP Team.
- "Educational services" means all of the following:
 - The necessary instructional hours per week in the form and format as determined by the child's IEP Team and consistent with federal and State law.
 - The instruction shall be delivered by appropriately qualified teachers to the extent required by federal and State law, which requires a free appropriate public education and the opportunity for a sound basic education.
 - Related services including in the child's IEP.
 - Behavior intervention services to the extent required
- "Homebound instruction" means educational services provided to a student outside the school