



## **5400.2: DISCIPLINE OF STUDENTS WITH DISABILITIES**

**I. General Statement.** The suspension and expulsion of students with disabilities for disciplinary purposes shall be in accordance with District procedures and state and federal law.

## **II. Students with Disabilities.**

**A. Students with disabilities** are those students who have been verified by a multidisciplinary team as having autism, behavior disorders, deaf-blindness, developmental delay, hearing impairments (including deafness), intellectual disabilities, multiple impairments, orthopedic impairments, other health impairments, specific learning disabilities, speech-language impairments, traumatic brain injury, or visual impairments (including blindness), and who because of these impairments need special education and related services.

**B. Students who have not been determined to be eligible for special education and related services and who have engaged in behavior that violates any rule or code of conduct of the District, may, as hereinafter provided in Section VI of this Rule, assert any of the protections provided for students with disabilities under Section III of this Rule, if the District had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.**

## **III. Suspension, Expulsion and Emergency Exclusion Of Students With Disabilities.**

**A. Suspension For Ten (10) Days Or Less.** To the extent that suspension would be applied to a student without disabilities, a student with disabilities may be suspended for ten (10) consecutive school days or less, and even if the student's misconduct is a manifestation of the student's disability.

**1. Services shall not be provided to a student with a disability who has been suspended for ten (10) school days or less in the school year if services are not provided to a student without disabilities who has been similarly suspended.**

**2. A suspension of five (5) school days or less shall follow the procedures for a short term suspension set forth in District Rule 5400.1. A suspension of more than five (5) school days, but for not more than ten (10) school days, shall follow the procedures for a long term suspension set forth in District Rule 5400.1.**

**B. Additional Suspensions For Ten (10) Days Or Less.** To the extent that suspension would be applied to a student without disabilities, a student with disabilities may be subjected to additional suspensions for ten (10) consecutive school days or less in the same school year for separate incidents of misconduct, and even if the student's misconduct is a manifestation of the student's disability, just as long as the suspensions do not constitute a pattern of suspensions.

**1. Suspensions may constitute a pattern of suspensions if a student is subjected to a series of suspensions that cumulate to more than ten (10) school days in a school year, the student's behavior is substantially similar to the student's behavior in previous incidents**

that resulted in a series of suspensions, and because of additional factors such as the length of each suspension, the total amount of time the student is suspended, and the proximity of the suspensions to each other.

**2. The student's IEP Team shall determine whether a pattern of suspensions exists.**

**3. If the IEP Team determines that a pattern of suspensions does not exist, then the student may be subjected to additional suspensions.**

**4. If the IEP Team determines that a pattern of suspensions does exist, then the student may not be subjected to additional suspensions unless:**

**a. The student's IEP Team determines for each additional suspension that the student's misconduct was not a manifestation of the student's disability; and**

**b. The procedures for a change in placement set forth in Section III (F) hereinafter are complied with.**

**c. If the student's IEP Team determines for any additional suspension that the student's misconduct was a manifestation of the student's disability, then the student cannot be subjected to the additional suspension.**

**5. After a student with a disability has been suspended for more than ten (10) school days in the same school year, then the District shall provide special education services during any subsequent suspensions to the extent required by Title 92, Nebraska Administrative Code, Chapter 51-004.01. Alternative schools, classes or programs pursuant to District Rule 5400.5 shall also be available to students with disabilities who are expelled or suspended for ten (10) school days or more.**

**6. After a student with a disability has been suspended for more than ten (10) school days in the same school year, then the procedures in Section IV (D) hereinafter regarding a functional behavioral assessment and intervention plan shall be followed.**

**C. Suspension For More Than Ten (10) Days. To the extent that suspension would be applied to a student without disabilities, a student with disabilities may be suspended for more than ten (10) school days and for less than twenty (20) school days, but only if:**

**1. The student's IEP Team determines that the student's misconduct was not a manifestation of the student's disability;**

**2. The procedures for a long term suspension set forth in District Rule 5400.1 are complied with; and**

**3. The procedures for a change in placement set forth in Section III (F) hereinafter are complied with.**

**4. If the student's IEP Team determines that the student's misconduct was a manifestation of the student's disability, then the student cannot be suspended for more than ten (10) school days.**

**5. The District shall provide special education services during a suspension for more than ten (10) school days to the extent required Title 92, Nebraska Administrative Code, Chapter 51-004.01. Alternative schools, classes or programs pursuant to District Rule 5400.5 shall also be available to students with disabilities who are expelled or suspended for ten (10) school days or more.**

**6. Either before or not later than ten (10) school days after implementing a suspension for more than ten (10) school days, the procedures in Section IV (D) hereinafter regarding a functional behavioral assessment and intervention plan shall be followed.**

**D. Expulsion. To the extent that expulsion would be applied to a student without disabilities, a student with disabilities may be expelled, but only if:**

**1. The student's IEP Team determines that the student's misconduct was not a manifestation of the student's disability;**

**2. The procedures for an expulsion set forth in District Rule 5400.1 are complied with; and**

**3. The procedures for a change in placement set forth in Section III (F) hereinafter are complied with.**

**4. The District shall provide special education services during the expulsion to the extent required by Title 92, Nebraska Administrative Code, Chapter 51-004. Alternative schools, classes, or programs pursuant to District Rule 5400.5 shall also be available to students with disabilities who are expelled.**

**5. Either before or not later than ten (10) school days after implementing an expulsion, the procedures in Section IV (D) hereinafter regarding a functional behavioral assessment and intervention plan shall be followed.**

**E. Emergency Exclusion. A student with disabilities may be subject to emergency exclusion for the reasons and pursuant to the procedures set forth in District Rule 5400.1**

**F. Change Of Placement Procedures. If a student with a disability is to be suspended for more than ten (10) school days in accordance with Section III (C) above, or is to be expelled in accordance with Section III (D) above, or a pattern of suspension is determined to exist in accordance with Section III (B) (4) above, then the procedures required for a change in placement must be complied with before the suspension or expulsion, including:**

**1. Written notification to the parents, in accordance with Title 92, Nebraska Administrative Code, Chapter 51-009.05B, of the intended suspension or expulsion; and**

**2. Providing the parents with a copy of the District's Parental Rights In Special Education booklet.**

**IV. Placement in Alternative Educational Settings for Disciplinary Reasons.**

**A. The District may order a change in the placement of a student with a disability:**

**1. To an appropriate interim alternative educational setting or another setting for not more than ten (10) school days, to the extent such alternatives would be applied to students without disabilities; or**

**2. To an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but not for more than forty- five (45) school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:**

**a. The student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;**

**b. The student 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 the State or a local educational agency; or**

**c. The student 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.**

**B. The interim alternative educational setting shall be determined by the student's IEP Team.**

**C. Any interim alternative educational setting in which a student is placed shall:**

**1. Be selected so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and**

**2. Include services and modifications designed to address the behavior so that it does not recur.**

**D. Either before or not later than ten (10) school days after taking a disciplinary action described in Sections III (B), III (C), III (D), or IV (A) (2):**

**1. If the District did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the disciplinary action, the District shall convene an IEP Team meeting to conduct a functional behavioral assessment and implement a behavioral intervention plan to address that behavior, or**

**2. If the student already has a behavioral intervention plan, then the IEP Team shall review the plan and modify it, as necessary, to address the behavior.**

**3. If a student with a disability is suspended for ten (10) school days or less in a given school year and no further**

suspension or disciplinary action is contemplated, then the functional behavioral assessment need not be conducted.

## **V. Manifestation Determination Process.**

**A. Manifestation Determination Review.** If a student with a disability is to be suspended for more than ten (10) school days in accordance with Section III (C) above, or is to be expelled in accordance with Section III (D) above, or a pattern of suspensions is determined to exist in accordance with Section III (B) (4) above, then not later than the date on which the decision to take such disciplinary action is made, the parents shall be notified of such disciplinary decision and of all procedural safeguards, and immediately if possible, but in no case later than ten (10) school days after the date on which the decision to take disciplinary action is made, a review shall be conducted of the relationship between the student's disability and the behavior which is subject to the disciplinary action.

**1. The manifestation determination review shall be conducted by the District, parent, and relevant members of the student's IEP Team (as determined by the parent and the District), and shall consist of a review of all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent to determine:**

**a. If the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or**

**b. If the conduct in question was the direct result of the District's failure to implement the student's IEP.**

**2. If it is determined that either Section V(A)(1)(a) or (b) is applicable, then the conduct shall be determined to be a manifestation of the student's disability and the IEP Team must:**

**a. Either conduct a functional behavioral assessment and implement a behavioral intervention plan or, if such a plan already exists, review and modify it as necessary so as to address the behavior; and**

**b. Except as provided in Section IV (A)(2) above, return the student to the placement from which the student was removed, unless the parent and District agree to a change of placement as part of a modification of the behavioral intervention plan.**

**3. Determination That Behavior Was Not A Manifestation Of Disability.**

**a. If as a result of the manifestation determination review, the behavior of the student with a disability was not a manifestation of the student's disability, then the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education must be available.**

**b. If the District initiates disciplinary procedures applicable to all students, then the District shall ensure that the**

special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

c. If a parent requests a hearing to challenge the manifestation determination that the behavior of the student was not a manifestation of the student's disability, the stay-put provision of Title 92, Nebraska Administrative Code, Chapter 55 applies.

**B. Parent Appeal.** If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement, the parent may request a due process hearing under Title 92, Nebraska Administrative Code, Chapter 55.

**C. Manifestation Determination Review Not Required.** If the student with disabilities is suspended for ten (10) school days or less in a given school year and no further disciplinary action is contemplated, then a manifestation determination review need not be conducted.

## **VI. Protections For Students Not Yet Eligible For Special Education And Related Services.**

**A.** A student who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the District, may assert any of the protections provided for students with disabilities in this Rule, if the District had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

**B.** The District shall be deemed to have knowledge that a student is a student with a disability if:

- 1.** The parent of the student has expressed concern in writing to supervisory or administrative personnel of the District, or to a teacher of the student, that the student is in need of special education and related services;
- 2.** The parent of the student has requested an evaluation of the student pursuant to Title 92, Nebraska Administrative Code, Chapter 51-006.02B; or
- 3.** The teacher of the student, or other personnel of the District, have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the District's Director of Special Education or to other supervisory personnel of the District.

**C.** The District will not be deemed to have knowledge that a student is a student with a disability if,

- 1.** The student has been evaluated pursuant to Title 92, Nebraska Administrative Code, Chapter 51-006 and was determined not to be a student with a disability under Title 92, Nebraska Administrative Code, Chapter 51; or
- 2.** The parent of the student has not allowed an evaluation of the student pursuant to Title 92, Nebraska Administrative Code, Chapter 51-006, or the parent has refused services under Title 92, Nebraska Administrative Code, Chapter 51.

**D. If the District does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, then the student may be subjected to the same disciplinary measures applied to students without disabilities who engage in comparable behaviors, subject to the following:**

- 1. If a request is made for an evaluation of a student during the time period during which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.**
- 2. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.**
- 3. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the District and information provided by the parents, the District shall provide special education and related services in accordance with the provisions of Title 92, Nebraska Administrative Code, Chapter 51. Alternative schools, classes or programs pursuant to District Rule 5400.5 shall also be available to students with disabilities who are expelled or suspended for ten (10) school days or more.**

#### **Date of Revision**

**June 15, 1998**

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#### **Related Policies and Rules**

**[5300.1: Bus Conduct](#)**

**[5300.2: Conduct at School](#)**

**[5400: Student Discipline](#)**

**[5400.2: Discipline of Students with Disabilities](#)**

**[5400.3: Discipline of Students under Section 504 of the Rehabilitation Act of 1973](#)**

**[5400.4: Curtailment of Extracurricular Activities](#)**

**[5400.5: Academic Credit for Expelled Students and Students Suspended for Ten School Days or More through Alternative Courses or Programs](#)**

**[5400.6: Standards for Student Conduct](#)**

**[5410.1: Substance Abuse](#)**

#### **Legal Reference**

**Individuals with Disabilities Education Act, 42 U.S.C. § 1400 et seq.**



**34 C.F.R. § 300.1 et seq.**

**Neb. Rev. Stat. § 79-1110 et seq.**

**Title 92, Nebraska Administrative Code, Chapter 51**

**Title 92, Nebraska Administrative Code, Chapter 55**