

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter E. Special Education

Part 130. Procedural Requirements and Program Standards

Subpart 11. Discipline Procedures

6 CAR § 130-1101. 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 34 C.F.R. §§ 300.530 – 300.535, a change of placement occurs if the:

- (1) Removal is for more than ten (10) consecutive school days; or
- (2)(A) Child has been subjected to a series of removals that constitute a pattern because the series of removals total more than ten (10) school days in a school year and because of factors such as:
 - (i) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
 - (ii) The length of each removal;
 - (iii) The total amount of time the child is removed; and
 - (iv) The proximity of the removals to one another.
- (B)(i) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
 - (ii) This determination is subject to review through due process and judicial proceedings.

6 CAR § 130-1102. Services.

(a) A child with a disability who is removed from the child's current placement pursuant to this section must:

- (1) Continue to receive educational services, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to:

(A) Participate in the general education curriculum, although in another setting; and

(B) Progress toward meeting the goals set out in the child's IEP; and

(2) 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.

(b) The services required by subsection (a) of this section may be provided in an interim alternative educational setting.

(c) 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 ten (10) school days or less in that school year if it provides services to a child without disabilities who is similarly removed.

(d) After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement under 34 C.F.R. § 300.536, school personnel, in consultation with at least one (1) of the child's teachers, determine the extent to which services are needed, as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to:

(1) Participate in the general education curriculum, although in another setting; and

(2) Progress toward meeting the goals set out in the child's IEP.

(e) If the removal is a change of placement under 34 C.F.R. § 300.536, the child's IEP team determines appropriate services under subsection (a) of this section.

6 CAR § 130-1103. Authority of LEA/public agency personnel.

(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.

(b) To the extent removal would be applied to children without disabilities, the removal of a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities), and additional removals of not more than ten (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 34 C.F.R. § 300.536 and 6 CAR § 130-1104(c)).

(c) After a child with a disability has been removed from his or her current placement for more than ten (10) school days in the same school year, during any subsequent days of removal the LEA/public agency must provide services to the extent required under 34 C.F.R. § 300.101(a) and 6 CAR § 130-1102.

(d) **Additional authority.** For disciplinary changes in placement that would exceed ten (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 6 CAR § 130-1105, 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 6 CAR § 130-1102.

(e) **Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability if the child:

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) 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

(3) 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.

(f) **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 a code of student conduct, the LEA must:

- (1) Notify the parents of that decision; and
- (2) Provide the parents the procedural safeguards notice described in 34 C.F.R. § 300.504.

(g) For purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 812(c);

(2) "Illegal drug" means a controlled substance, but does not include a controlled substance that is:

(A) Legally possessed or used under the supervision of a licensed healthcare professional; or

(B) Legally possessed or used under any:

(i) Authority under that act; or

(ii) Other provision of federal law;

(3) "Serious bodily injury" has the meaning given the term "serious bodily injury" under 18 U.S.C. § 1365(h)(3); and

(4) "Weapon" has the meaning given the term "dangerous weapon" under 18 U.S.C. § 930(g)(2): "The term 'dangerous weapon' means a weapon, 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 term does not include a pocket knife with a blade of less than 2 ½ inches in length."

6 CAR § 130-1104. Determination of setting.

(a) The child's IEP team determines the interim alternative education setting for services under 34 C.F.R. § 300.530(c), (d)(5), and (g).

(b)(1) The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531 or the manifestation

determination under 34 C.F.R. § 300.530(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 hearing.

(2) The hearing is requested by filing a complaint pursuant to 34 C.F.R. § 300.507 and § 300.508(a) and (b).

(c) Authority of hearing officer.

(1) A hearing officer under 34 C.F.R. § 300.511 hears and makes a determination regarding an appeal under subsection (b) of this section.

(2) In making the determination under subdivision (c)(1) of this section, the hearing officer may:

(A) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the:

- (i) Removal was a violation of 34 C.F.R. § 300.530; or
- (ii) Child's behavior was a manifestation of the child's disability; or

(B) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (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.

(3) The procedures under 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.

6 CAR § 130-1105. Manifestation determination.

(a) Within ten (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 observation, and any relevant information provided by the parents to determine if the conduct in question was:

(1) Caused by, or had a direct and substantial relationship to, the child's disability; or

(2) The direct result of the LEA's failure to implement the IEP.

(b) 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 subsection (a) of this section was met.

(c) If the LEA, the parent, and relevant members of the child's IEP team determine the condition described in subsection (a) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(d) **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:

(1) Either:

(A) 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

(B) If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

(2) Except as provided in 6 CAR § 130-1103(e), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

6 CAR § 130-1106. Appeal.

(a)(1) **General.** The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531 or the manifestation determination under 34 C.F.R. § 300.530(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 hearing.

(2) The hearing is requested by filing a complaint pursuant to 34 C.F.R. § 300.507 and § 300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under 34 C.F.R. § 300.511 hears and makes a determination regarding an appeal under 11.06.1.1 of this section.

(2) In making the determination under 11.06.1.2 A of this section, the hearing officer may:

(A) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the:

(i) Removal was a violation of 34 C.F.R. § 300.530; or

(ii) Child's behavior was a manifestation of the child's disability; or

(B) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (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.

(3) The procedures under §§ 11.06.1.1 and 11.06.1.2 A and B 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.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under subsection (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 34 C.F.R. § 300.507 and § 300.508(a) – (c) and 34 C.F.R. §§ 300.510 – 300.514, except as provided in subdivisions (c)(2) and (3) of this section.

(2)(A) The SEA is responsible for arranging the expedited due process hearing, which must occur within twenty (20) school days of the date the complaint requesting the hearing is filed.

(B) The hearing officer must make a determination within ten (10) school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in subdivision (c)(3)(A) of this section or agree to use the mediation process described in 34 C.F.R. § 300.506:

(A) A resolution meeting must occur within seven (7) days of receiving notice of the due process complaint; and

(B) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the due process complaint.

(4) The decisions on expedited due process hearings are appealable consistent with 34 C.F.R. § 300.516, civil action.

6 CAR § 130-1107. Protections for children not determined eligible for special education and related services.

(a) **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 violated a code of student conduct of the LEA/public agency may assert any of the protections provided for in this part if the LEA/public agency had knowledge (as determined in accordance with subsection (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) **Basis of knowledge.** An LEA/public agency 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:

(1) Parent of the child 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 need of special education and related services;

(2) Parent of the child requested an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 – 300.311 and 6 CAR § 130-601 et seq.; or

(3) Teacher of the child, or other personnel of the LEA/public agency, expressed specific concerns about a pattern of behavior demonstrated by the child

directly to the director of special education of the agency or other supervisory personnel of the agency.

(c) **Exception.** An LEA/public agency would not be deemed to have knowledge under subsection (b) of this section if either the:

(1) Parent of the child:

(A) Has not allowed an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 – 300.311; or

(B) Has refused services under this part; or

(2) Child has been evaluated in accordance with 34 C.F.R. §§ 300.300 – 300.311 and determined to not be a child with a disability under this part.

(d) **Conditions that apply if no basis of knowledge.**

(1) If an LEA/public agency does not have knowledge that a child is a child with a disability (in accordance with subsections (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 subdivisions (d)(2) – (4) of this section.

(2) If a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530, the evaluation must be conducted in an expedited manner.

(3) Until the evaluation is completed, the child remains in the educational placement determined by school/public agency authorities, which can include suspension or expulsion without educational services.

(4) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA/public agency and information provided by the parents, the LEA/public agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of 34 C.F.R. §§ 300.530 – 300.536, and Section 612(a)(1)(A) of the Individuals with Disabilities Education Act.

6 CAR § 130-1108. Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an LEA/public agency 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.

(b)(1) An LEA/public agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An LEA/public agency 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 of 1974, 20 U.S.C. § 1232g.

6 CAR § 130-1109. Corporal punishment.

A school district that authorizes use of corporal punishment shall not:

(1) Use corporal punishment on a child who is:

- (A) Intellectually disabled;
- (B) Nonambulatory;
- (C) Nonverbal; or
- (D) Autistic; or

(2) Include in its written student discipline policy a provision to allow the use of corporal punishment on a child who is:

- (A) Intellectually disabled;
- (B) Nonambulatory;
- (C) Nonverbal; or
- (D) Autistic.

6 CAR § 130-1110. Applicable statutes and rules — Note.

In addition to the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and this subpart, school districts must follow all requirements and meet all obligations to its students under Arkansas Code § 6-18-501 et seq., and § 6-16-1406, and the Division of Elementary and Secondary Education rules regarding student discipline.