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160-4-7-.14 STUDENT MANAGEMENT, DISCIPLINE AND SUSPENSION/EXPULSION.

(1) GENERAL PROVISIONS.

(a) According to Georgia school laws, local school systems and state-operated programs (LSSs/SOPs) are given the responsibility to develop appropriate and legally based disciplinary procedures.

(b) The code of conduct for students shall apply to all students unless a student's individualized education program (IEP) specifically provides otherwise. The LSS/SOP shall ensure that the parent(s)/guardian(s)/surrogate(s) and the student with a disability receive notice of the rules and regulations applicable to students with disabilities with respect to student management, discipline and suspension/expulsion upon the student's entry into a special education program or at the annual IEP review.

(c) In the case of a student whose behavior impedes his or her learning or the learning of others, the IEP Committee shall consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior. [refer to 34 CFR 300.346]

(d) Change of placement for disciplinary removals. For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if :

1. The removal is for more than 10 consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. [refer to 34 CFR 300.519]

(2) AUTHORITY OF SCHOOL PERSONNEL.

(a) The LSS/SOP need not provide services during periods of removal for a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. [refer to 34 CFR 300.121]

(b) School personnel may order to the extent removal would be applied to students without disabilities, the removal of a student with a disability from the student's current placement for not more than 10 consecutive school days for any violation of school rules, and 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). [refer to 34 CFR 300.520]

(c) In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LSS/SOP, for the remainder of the removals, must provide services to the to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the removal is under the school personnel's authority to remove for not more than 10 consecutive days as long as that removal does not constitute a change in placement or for behavior that is not a manifestation of the student's disability. [refer to 34 CFR 300.12; 300.520]

(d) School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change in placement. [refer to 34 CFR 300.121]

(e) School personnel may order a change in placement of a student with a disability 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 for not more than 45 calendar days if:

1. The student carries a weapon to school or to a school function or possesses a weapon at school or at a school function under jurisdiction of the LSS/SOP; or
2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a LSS/SOP. [refer to 34 CFR 300.520]

(f) Either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change of placement, including the action described in paragraph (e) of this section:

1. If the LSS/SOP did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal, the LSS/SOP shall convene an IEP meeting to develop an assessment plan. [refer to 34 CFR 300.520]
2. If the student already has a behavioral intervention plan, the IEP Committee shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior. [refer to 34 CFR 300.520]
 - (i) As soon as practicable after developing the plan and completing the assessments required by the plan, the LSS/SOP shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions. [refer to 34 CFR 300.520]
3. If subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. [refer to 34 CFR 300.520]
 - (i) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary. [refer to 34 CFR 300.520]
 - (g) For purposes of this section, the following definitions apply:
 1. *Controlled substance* - 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)). [refer to 34 CFR 300.520]
 2. *Illegal Drug* - a controlled substance; but does not include 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 any other authority under that Act or under any other provision of Federal law. [refer to 34 CFR 300.520]
 3. *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. [refer to 34 CFR 300.520]

(3) AUTHORITY OF ADMINISTRATIVE LAW JUDGE.

- (a) An administrative law judge under this section may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 calendar days if the administrative law judge, in an expedited due process hearing:
 1. Determines that the LSS/SOP has demonstrated by substantial evidence that maintaining the current placement of such student is substantially likely to result in injury

to the student or to others;

2. Considers the appropriateness of the student's current placement;

3. Considers whether the LSS/SOP has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher, meets the requirements as specified in section (4) below. [refer to 34 CFR 300.521]

(b) *Substantial evidence* - beyond a preponderance of the evidence. [refer to 34 CFR 300.521]

(4) DETERMINATION OF SETTING.

(a) The interim alternative educational setting for the student who carries or possesses a weapon to school or to a school function or the student who knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or LSS/SOP shall be determined by the IEP/Placement team. [refer to 34 CFR 300.522]

(b) 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 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 that are designed to prevent the behavior from recurring. [refer to 34 CFR 300.522]

(5) MANIFESTATION DETERMINATION REVIEW.

(a) If an action is contemplated regarding a student who: carries or possess a weapon to school or a school function; or knowingly possess or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or involves a removal that constitutes a change of placement for a student with a disability who has engaged in behavior(s) that violated any rule or code of conduct of the LSS/SOP that applies to all students, the LSS/SOP shall:

1. Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Rule 160-4-7-.05 Procedural Safeguards/Parents Rights; and

2. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the

relationship between the student's disability and the behavior subject to the disciplinary action. [refer to 34 CFR 300.523]

(i) A manifestation determination review shall be conducted by the IEP Committee and other qualified personnel in a meeting.

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3. In carrying out a manifestation determination, the IEP Committee and other qualified personnel may determine that the behavior of the student was not a manifestation of such student's disability only if the IEP Committee and other qualified personnel:

(i) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:

(I) Evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the student;

(II) Observations of the student; and

(III) The student's IEP and placement; and

(ii) Then determine that:

(I) In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

(II) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

(III) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action. [refer to 34 CFR 300.523]

4. If the IEP Committee determines that any of the standards in paragraphs (ii)(I), (ii)(II), or (ii)(III) of this section were not met, the behavior must be considered a manifestation of the student's disability. [refer to 34 CFR 300.523]

5. The manifestation determination review described in this section may be conducted at the same IEP Committee meeting that is convened to conduct the functional behavioral assessment and develop or review the behavior intervention plan. [refer to 34 CFR 300.523]

6. If, in the manifestation review, an LSS/SOP identifies deficiencies in the student's IEP or placement or in the implementation, it must take immediate steps to remedy those deficiencies. [refer to 34 CFR 300.523]

(6) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.

(a) If the result of the manifestation determination review is a determination that the behavior of the student with a disability was not a manifestation of the student's .14-6 disability, 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 the student shall be provided a free appropriate public education (FAPE). [refer to 34 CFR 300.524]

(b) If the LSS/SOP initiates disciplinary procedures applicable to all students, the agency 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. [refer to 34 CFR 300.524]

(c) Except as provided in paragraph (8) below, if a parent requests a hearing to challenge a determination, that the behavior of the student was not a manifestation of the student's disability, the student involved in the complaint must remain in his or her current educational placement. [refer to 34 CFR 300.524]

(7) PARENT(S)/GUARDIAN(S)/SURROGATE(S) APPEAL.

(a) If the student's parent(s)/guardian(s)/surrogate(s) disagree(s) 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(s)/guardian(s)/surrogate(s) may request an expedited due process hearing, consistent with procedures in Rule 160-4-7-.18 Hearing Process. [refer to 34 CFR 300.525]

1. The state or LSS/SOP shall arrange for an expedited hearing in any case described in this rule when requested by parent(s)/guardian(s)/surrogate(s). [refer to 34 CFR 300.525]

(b) Review of decision.

1. In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the LSS/SOP has demonstrated that the student's behavior was not a manifestation of such student's disability. [refer to 34 CFR 300.524]

2. In reviewing a decision under paragraphs (2)(e) 1 and 2 to place the student in an interim alternative educational setting, the administrative law judge shall apply the standards set out in paragraph (3) of this rule. [refer to 34 CFR 300.525]

(8) PLACEMENT DURING APPEALS.

(a) When a parent(s)/guardian(s)/surrogate(s) request(s) a hearing or an appeal regarding a disciplinary action to challenge the interim alternative educational setting

described in paragraph (2)(e) 1 and 2 or paragraph (3) of this rule or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the 45 .14-7

calendar day time period, whichever occurs first, unless the parent(s)/ guardian(s)/surrogate(s) and LSS agree otherwise. [refer to 34 CFR 300.526]

(b) If a student is placed in an interim alternative educational setting described in paragraph (2)(e) 1 and 2 or paragraph (3) of this rule and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in subparagraph (c) below. [refer to 34 CFR 300.526]

(c) Expedited hearing.

1. If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LSS/SOP may request an expedited due process hearing, consistent with procedures in Rule 160-4-7-.18 Hearing Process. [refer to 34 CFR 300.526]

2. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the administrative law judge, the administrative law judge shall apply the standards set out in paragraph (3) of this rule. [refer to 34 CFR 300.526]

3. A placement ordered in this section may not be longer than 45 calendar days. [refer to 34 CFR 300.526]

4. The procedure may be repeated as necessary. [refer to 34 CFR 300.526]

(9) PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.

(a) A student 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 any rule or code of conduct of the LSS/SOP, may assert any of the protections provided for in this part if the LSS/SOP had knowledge as determined in accordance with paragraph (b) below, that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. [refer to 34 CFR 300.527]

(b) A LSS/SOP shall be deemed to have knowledge that a student is a student with a disability if:

1. The parent(s)/guardian(s) of the student has/have expressed concern in writing (or orally if the parent(s)/guardian(s) does/do not know how to write or has/have a disability

that prevents a written statement) to personnel of the appropriate LSS/SOP that the student is in need of special education and related services;

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2. The behavior or performance of the student demonstrates the need for such services;

3. The parent(s)/guardian(s) of the student has/have requested an evaluation of the student; or

4. The teacher of the student, or other personnel of the LSS/SOP, has expressed concern about the behavior or performance of the student to the director of special education of the LSS/SOP or to other personnel in accordance with the LSS's/SOP's established student find or special education referral system. [refer to 34 CFR 300.527]

5. *Exception.* A LSS/SOP would not be deemed to have knowledge if, as a result of reviewing the information specified in that paragraph, the LSS/SOP either

(i) Conducted an evaluation and determined that the student was not a student with a disability; or

(ii) Determined that an evaluation was not necessary; and

(iii) Provided notice to the student's parents of its determination. [refer to 34 CFR 300.527]

(c) Conditions that apply if no basis of knowledge.

1. If a LSS/SOP does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with paragraph (i) below.

(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under paragraph (2) or paragraph (3) of this rule, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LSS/SOP and information provided by the parents, the LSS/SOP shall provide special education and related services in accordance with the provisions of this rule. [refer to 34 CFR 300.527]

(10) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.

(a) Nothing in this part prohibits a LSS/SOP from reporting a crime committed by a student with a disability to appropriate authorities or to prevent 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 student with a disability. [refer to 34 CFR 300.529]

(b) A LSS/SOP reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. [refer to 34 CFR 300.529]

(c) A LSS/SOP reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). [refer to 34 CFR 300.529]

**(11) This rule shall become effective July 1, 2000.
Authority O.C.G.A. § 20-2-730; 20-2-759.
Adopted: August 10, 2000 Effective: July 1, 2000**