

CHANGE OF PLACEMENT/EXPULSION

Special education students must not be improperly excluded from school for disciplinary reasons. WSD shall take steps to ensure that each employee, contractor and other agent of WSD responsible for education or care of a special education student is knowledgeable of WAC 148-120-300 through 148-120-313, WAC 392-172-370 and WAC 392-172-38410. WSD shall not authorize, permit or condone the use of disciplinary procedures that violate the rules and chapter 180-40 WAC, by any employee, contractor or agent of WSD responsible for the education or care of a special education student.

Authorized school personnel may order the removal of a special education student from his/her current placement for not more than ten consecutive school days, and additional removals of not more than ten consecutive school days in the same school year for separate instances of misconduct, as long as those additional removals do not constitute a change of placement under WAC 148-120-301(2) to the extent such removal would be applied to students without disabilities.

WSD need not provide services to a special education student removed from his/her current placement for ten school days or less in any school year, if services are not provided to a student without disabilities who has been removed. WSD shall provide services to a special education student who has been removed for additional periods of ten school days or less, as long as there has been no change of placement under WAC 148-120-301(2), to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving goals set out in the student's IEP. School personnel, in consultation with the student's special education teacher, shall make the determination of such necessary services.

A change of placement occurs when a special education student is:

- removed from his/her current placement for more than ten consecutive school days in a school year, or
- subjected to a series of removals cumulating to more than ten school days in a school year and which constitute a pattern of removal because of factors such as the length of each removal, the total amount of time a student is removed, and the proximity of the removals to one another.

If a disciplinary action constituting a change of placement is contemplated, WSD shall notify the student's parents of that decision, provide the procedural safeguards notice described in Chapter 148-120 WAC, and provide any other

notices required under Chapter 180-40 WAC, not later than the date on which the decision to remove the student is made. WSD shall notify the student's local school district of the possible change of placement concurrent with parental notification. WSD shall also conduct a "manifestation determination" of the relationship between the student's disability and the behavior subject to the disciplinary action immediately, if possible, but in no case later than ten school days after the date on which the decision to remove the student is made.

To the extent hearing processes available to all students under Chapter 148-120 WAC are invoked by a special education student and his/her parents, WSD shall transmit the student's special education and disciplinary records for consideration by the person(s) making the final determination in said hearing.

The review of the relationship between a student's disability and the behavior subject to the disciplinary action shall be done in a meeting by the IEP team and other qualified personnel. This may be the same meeting as that convened for the IEP team to address a functional behavioral assessment and behavioral intervention plan.

The team may determine that the behavior was not a manifestation of the student's disability only if the team first considers all relevant information, as described in WAC 148-120-309 and then determines that:

- in relationship to the behavior, the student's IEP and placement were appropriate and that special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with said IEP and placement;
- the student's disability did not impair his/her ability to understand the impact and consequences of the behavior; and
- the student's disability did not impair his/her ability to control the behavior.

If the team determines that any of the above standards were not met, the behavior must be considered a manifestation of the student's disability and the contemplated disciplinary action shall not proceed. If the review identifies deficiencies in the student's IEP or placement, or in their implementation, WSD shall take immediate steps to remedy those deficiencies.

If, however, the results of the manifestation determination review indicate that the behavior was not a manifestation of the student's disability, the special education student may be disciplined in the same manner as a student without disabilities, subject to the requirement that special education services shall continue to be made available to special education students consistent with Chapter 148-120 WAC. The determination of 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, during the period of disciplinary removal constituting a change of placement, shall be made by the IEP team.

Within ten business days after first removing a special education student for more than ten school days in a school year, WSD shall take the following action:

- If a functional behavioral assessment was not previously conducted and a behavioral intervention plan implemented for the student before the behavior occurred that resulted in the removal, an IEP meeting shall be convened to develop an assessment plan.
- If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify it, as necessary, to address the behavior.

As soon as possible after developing the plan described above and completing the assessments required by the plan, WSD shall:

- convene an IEP meeting to develop appropriate behavioral interventions to address the behavior that resulted in the removal, and
- implement those interventions.

In the event of any subsequent removal that does not constitute a change of placement for a student who has a behavioral intervention plan and who has previously been removed for more than ten school days during the school year, the IEP team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more team members believe that modifications are necessary, the IEP team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

School personnel may order a change in placement to an appropriate interim alternative educational setting for the same amount of time that a student without disabilities would be subject to discipline, but for not more than 45 days, if a special education student:

- possesses a "dangerous weapon," as defined in WAC 148-120-300(3), or carries such a weapon to school or to a school function; or
- knowingly possesses or uses "illegal drugs," as defined in WAC 148-120-300(2), while at school or a school function; or
- sells or solicits the sale of a "controlled substance," as defined in WAC 148-120-300(1), while at school or a school function.

Any interim alternative educational setting in which the student is placed is determined by the student's IEP team and will:

- Be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services and modifications, including those specified in the student's IEP, that will enable the student to meet the goals in the IEP; and
- Include services and modifications designed to address the behavior, to prevent the behavior from recurring.

WSD may ask a hearing officer, or seek injunctive relief through a court having jurisdiction of the parties, to order a change in placement to an appropriate interim alternative educational setting, for not more than 45 calendar days, or seek injunctive relief through a court having jurisdiction of the parties, when:

- WSD can demonstrate beyond a preponderance of the evidence that maintaining said student's current placement is substantially likely to result in injury to the student or others;
- WSD has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services; and
- The proposed interim alternative educational setting has been proposed by school personnel in consultation with the student's special education teacher and meets the requirements of WAC 148-120-307(1) and (2).

Unless the parent and WSD agree otherwise, if a parent requests a hearing to challenge either the manifestation determination or the interim alternative educational setting, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five day period, whichever occurs first.

If WSD proposes to change a student's placement, after expiration of a forty-five day interim alternative educational setting ("IAES"), and the parent requests a hearing to challenge the proposed change in placement, the student's "stay put" placement is his/her placement prior to the IAES, unless WSD requests an expedited due process hearing in accordance with WAC 148-120-311(1)(c) and proves that it is dangerous for the student to return to said placement.

A student who has not been determined eligible for special education services may assert the protections under WAC 148-120-300 through 148-120-313 if WSD had knowledge that the student was a special education student before the behavior that precipitated disciplinary action occurred.

WSD is deemed to have knowledge if:

- the parent expressed concern in writing (or orally, if the parent does not know how to write or has a disability that prevents a written statement) to personnel that the student is in need of special education,
- the behavior or performance of the student demonstrates the need for special education services,
- the parent requested that the student be evaluated for special education services, or
- the teacher or other school personnel has expressed concern about the behavior or performance of the student to any academic administrator.

If instituting disciplinary action that would exceed ten days, and the building supervisor believes that one or more of these events applies to the student, s/he

will notify the Assistant Superintendent to determine the appropriate disciplinary procedures.

WSD is not deemed to have knowledge if as a result of receiving the information described above, WSD either:

- Conducted a special education evaluation of the student and determined that the student was not eligible for services; or
- Determined through the referral process that evaluation was unnecessary; and
- Provided prior written notice to the parents of its determination.

If WSD is not deemed to have knowledge that a student is a special education student, s/he may be disciplined as a student without disabilities who engages in comparable behaviors. WSD shall conduct an evaluation, which is requested during the time period when a student is subjected to disciplinary measures, in an expedited manner. Until the evaluation is completed, such a student shall remain in the educational placement determined by WSD, which can include suspension or expulsion/change of placement without educational services.

Notwithstanding the foregoing, WSD may report a crime committed by a special education student to appropriate authorities. In the event of such a report, WSD shall ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the crime is reported, to the extent transmission of the records is permitted by the federal Family Educational Rights and Privacy Act (FERPA).

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