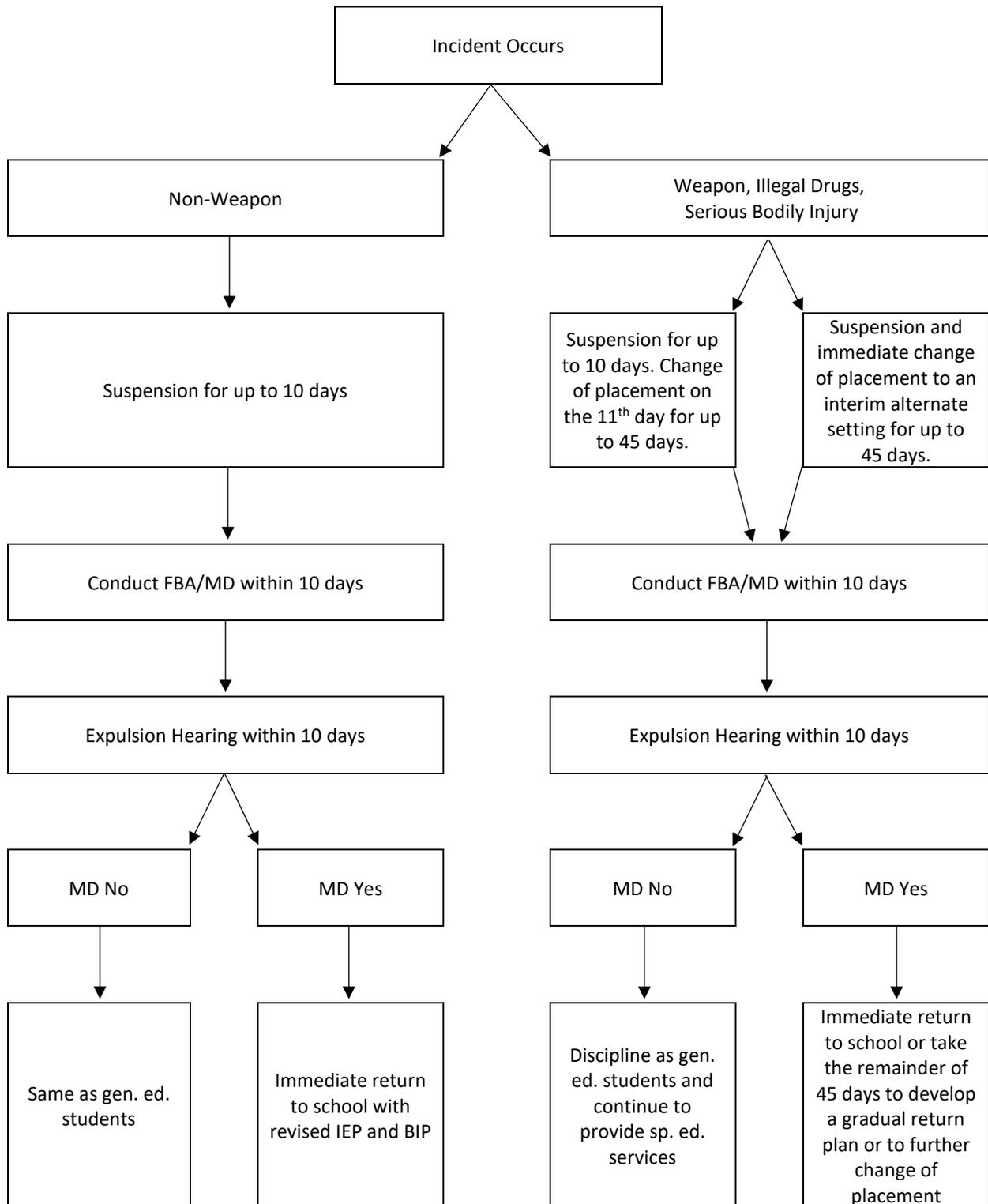


### Suggested Expulsion Hearing Process for Students Receiving Special Education Services

Expulsion Hearing Process for Student with Special Needs



## Definitions

- *Change of Placement (long-term removals)* occurs when either
  1. The removal is for more than 10 consecutive school days; or
  2. The student has been subjected to a series of removal that constitute a pattern:
    - a. Because the series of removals total more than 10 school days in a school year;
    - b. Because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
    - c. Because of additional factors such as the length of each removal, the total amount of time the student has been removed and the proximity of the removals to one another.
  3. The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement and this determination is subject to review through due process and judicial proceedings.
- *Controlled substance* 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)).
- *Functional behavioral assessment*: Functional behavioral assessment is generally considered to be a problem-solving process for addressing student's inappropriate behavior.
- *Interim alternative educational setting*: A different setting that must allow a student covered by IDEA to continue to receive educational services that will enable him/her to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP.
- *Illegal drug* means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- *Manifestation determination*: A process that occurs prior to a change of placement. During this process, the students' parents and IEP team reviews all relevant information including:
  1. Test results and any independent educational evaluations;
  2. Information provided by the parents;
  3. Observations of the child; and

4. The child's IEP and placement

After the review of information, the team then determines if:

1. The conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
  2. The conduct in question was the direct result of the school's failure to implement the IEP.
- *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
  - *Short-term removal*: Any appropriate interim alternative educational placement, placement in another setting, or suspension that does not result in a change of placement (see definition above)
  - *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.

**Short-Term Removals (No Change of Placement)**

School personnel may remove a child with a disability who violates a student conduct policy 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, 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 34 CFR 300.536). Suspension procedures under district regulations must be followed, and if the student is incapable of understanding any part of the suspension procedures, his/her parent should be present during the suspension due-process procedure contained in district regulations.

After determining if the student should be suspended, the principal or the Superintendent, in consultation with at least one of the student's teachers, determines how best to address the student's needs during short-term removals.<sup>1</sup> Providing alternative educational services for the first 10 days of short-term removals is only required if the District provides these services to regular education students.

Parents should be notified of short-term removals. The content of this notice does not have to follow the format of a change of placement notice (e.g., not required to provide procedural safeguards). In other words, notice of short-term removals need only state the charges against

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<sup>1</sup> Law does not require parents be involved in making the determination of the extent to which services are needed for a student removed from school on a short-term basis. However, there is nothing in federal regulations that would prohibit the principal or Superintendent, if they choose to do so, from including parents in the consultation.

the student, the form and duration of the disciplinary action taken, and any services that will be provided/withheld during the disciplinary sentence.<sup>2</sup>

### **Change of Placement (Long-Term Removals)**

Longer removals include expulsion and suspensions that would constitute a change in placement. If a longer removal is being considered, the District must have a meeting with parents and the IEP team to make a manifestation determination. This meeting must be held within 10 school days of any decision to change the placement of a student. The manifestation determination meeting would occur after the initial suspension/expulsion proceedings, which must be held in accordance with district policy. The purpose of these proceedings shall only be to determine if the student violated policy and to make a tentative disciplinary recommendation if a policy violation is substantiated. Any disciplinary sentence recommended at the suspension/expulsion hearing shall only go into effect if criterion "1" below is satisfied and notice of change of placement is issued to parents.

### **Manifestation Determination Criteria**

1. 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 nor a result of the school's failure to implement the IEP, the District:
  - a. 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.
  - b. Must provide services that enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP.
  - c. As appropriate, must conduct a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications that are designed to address the behavior violation so that it does not reoccur.
  
2. If the team concludes that the misconduct was a manifestation of the student's disability or a result of the school's failure to implement the IEP, the school must:
  - a. Conduct a FBA, unless the school had already conducted an FBA before the behavior occurred, and implement a behavior intervention plan; or
  - b. Review the behavior intervention plan, if a behavior intervention plan already has been developed, and modify it as necessary to address the behavior; and
  - c. Return the student to the placement from which s/he was removed unless the student's parent and the school agree to a change of placement as part of the modification of the behavior intervention plan, or the student's misbehavior was related to drugs, weapons or serious bodily injury.

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<sup>2</sup> This notice is not required by law but is strongly recommended

### **Drugs, Weapons, and Serious Bodily Injury**

School personnel may remove a student governed by IDEA to an interim alternative educational setting, after holding an expulsion hearing, for not more than 45 school days if:

1. The student carries a weapon to school or to a school function;
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; or
3. The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

### **Referral to Law Enforcement /Transmission of Records**

A school may report a crime committed by any child with a disability to appropriate authorities. In doing so, the school must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by appropriate authorities to whom the crime is reported, but must also obtain parental consent to send those records, consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

### **Notice for Change of Placements**

Parents must be provided prior written notice before an enacting a change of placement decision. This notice must include:

1. A description of the action proposed or refused by the District;
2. An explanation of why the action is proposed or refused;
3. A description of any other options considered and the reasons why those options were rejected;
4. A description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
5. A description of any other factors relevant to the action proposed or refused;
6. A notice that parents can invite individuals with knowledge or special expertise about their child to an IEP meeting;
7. A statement that parents of a child with a disability are protected by the procedural safeguards and a copy of these safeguards; and
8. A list of resources parents can use to contact help in understanding these procedural safeguards, and a description of how parents can file a complaint.

Prior written notice must be provided in parents' native language unless doing so is clearly not feasible. The district's special education unit should have a sample notice and sample procedural safeguards to assist the District with notification requirements.

### **Protections for Children Not Yet Eligible for Special Education and Related Services**

A student is entitled to the procedural safeguards under IDEA if the school had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred. A school is considered to have knowledge that a child is a child with a disability if:

1. The student's parent expressed concern in writing to supervisory or administrative personnel of the school, or a teacher, that the student is in need of special education and related services;
2. The student's parent requested an evaluation of his/her child; or
3. The teacher of the student or other school personnel expressed specific concerns directly to the director of special education of the agency or to other supervisory personnel of the school about a pattern of behavior demonstrated by the student.

A school district would not be deemed to have knowledge if the parent of the child has not allowed an evaluation of the child, or has refused services to the child, or if the child has been evaluated in accordance to federal law and determined not to be a child with a disability.

### **Appeals**

If a parent disagrees with any decision regarding the placement of his/her child as a result of a disciplinary action, the manifestation determination, or if the school believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, then the parent or the School District may appeal the decision by requesting a due process hearing.

The hearing officer may:

1. Return the student to the placement from which s/he was removed; or
2. Order a change in placement of the student to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing officer believes that maintaining the current placement of the student is substantially likely to result in injury to him/her or others.

When an appeal has been made, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the timeline determined by the district's disciplinary procedures, whichever occurs first, unless the District and parent agree otherwise.

### **Expedited Due Process Hearing**

Whenever a due process hearing is requested regarding a dispute over placement, then the parent and the school must have the opportunity to an expedited due process hearing. The expedited due process hearing timelines differ from the standard due process hearing timelines in that:

1. The hearing must occur within 20 school days of the date the due process complaint is received and;
2. The hearing officer must make a determination (final decision) within 10 school days after the conclusion of the hearing.

### **Resolution Session and Expedited Due Process Hearings**

Unless parents and the school agree in writing to waive the resolution meeting or agree to use the mediation process to resolve the issues in dispute:

1. The resolution meeting must occur within 7 days of receiving the due process complaint notice; and
2. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

### **Placement by a Hearing Officer**

A hearing officer may order a change in placement of a student covered by IDEA to an interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to student child or other students.

Extensions of 45 school day removals by a hearing officer may be repeated, if necessary, when returning the student to the current placement would be substantially likely to result in injury to student or other students.

### **Civil Action**

The decisions on expedited due process hearing are appealable through civil action within 90 days from the date of the decision of the hearing officer.