

Section 2 – Services and Support

Discipline State Board Rule 160-4-7-.10

Georgia Rules and federal laws have provisions that control what happens if a child violates a school rule, uses or sells illegal drugs or weapons, or does something that causes serious bodily injury to him/herself or someone else. These provisions clarify what action the district can take and what rights are afforded the child's parent. The possible actions by the district and the parental/student rights in these matters are explained in the following discipline information. ***A student with an IEP, even when suspended or expelled for more than 10 days, always maintains the right to services that allow the opportunity to make progress in the general curriculum and the right to receive IEP services.***

District personnel should follow specific procedures when they discipline students with disabilities. In this manual, removals of students by district officials refer to Out-of-school Suspensions (OSS), expulsions, or other disciplinary actions of students under the Individuals with Disabilities Education Act (IDEA). Questions concerning disciplinary actions for students with disabilities should be addressed with the administrator, the local special education director, or the Georgia Department of Education (GaDOE). All schools in Georgia including Towns County Schools have a code of student conduct and school rules. A handbook is given out at the time of enrollment. Parents, students, educators, and administrators need to know what the code of conduct and rules are, and students with disabilities should be expected to follow the rules that are in effect for all of the students in the school. Disciplinary procedures described in this section pertain to all students with disabilities in any category of eligibility who violate the code of student conduct.

Disciplinary Actions of 10 School Days or Less

Students with disabilities should be expected to follow the code of conduct. A student with a disability, who has an Individualized Education Program (IEP) in effect, can be removed to OSS, another setting, or an appropriate interim alternative educational setting (IAES), just as any other student without a disability can, for up to a total 10 school days, for violations of the code of conduct or school rules. The 10 days can be consecutive or cumulative and can occur during one school year. If a pattern of frequent disciplinary referrals is presenting, the IEP team should consider conducting a functional behavioral assessment and development of a behavior intervention plan. If a behavior intervention plan already exists, the IEP team should consider whether or not the behavior intervention plan continues to be appropriate and decide whether or not a new behavior intervention plan should be written based on the current functional behavioral assessment or a new one. It is not necessary to complete a manifestation determination at this time.

In-School Suspension

Students with disabilities who are in In-School Suspension (ISS) must continue to have access to the general curriculum and to progress toward the goals in the IEP in order for ISS not to be considered a removal and not to be counted toward the 10 days of suspension. If a student's special education services and supports are not provided during the in-school suspension period, the days do count as a removal and would count toward the 10 days of suspension. If a pattern of frequent disciplinary referrals is presenting, the IEP team should consider conducting a functional behavioral assessment and development of a behavior intervention plan. If a behavior intervention plan already exists, the IEP team should consider whether or not the behavior intervention plan continues to be appropriate and decide whether or not a new behavior intervention plan should be written based on the current functional

behavioral assessment or a new one. It is not necessary to complete a manifestation determination at this time.

The Director of Special Education must be notified if building level administrators want to have a student's educational setting changed to an interim alternative educational setting for up to 45 school days for weapon or drug possession or for infliction of serious bodily injury on another person. In this case district officials must notify the parent immediately of this decision.

District personnel may consider unique circumstances when determining whether a change in placement is appropriate for a student with a disability. These circumstances are best determined at the local level by district personnel who know the student and the facts and factors related to the behavioral violation. District personnel may consider various forms of information such as the student's disciplinary history, ability to understand the consequences, and expression of remorse, as well as the supports that were provided to the student prior to the behavioral violation.

Bus Suspension

Suspension from the school bus may be counted toward days allowed for out-of-school suspension if the student's IEP services have been interrupted due to the absence of the student related to the school bus suspension.

Manifestation Determination

The building level administrator must notify the Director Special Education if disciplinary action is being considered that would constitute more than a total of 10 days within the same school year of a change in placement to include out-of-school suspension and in-school-suspension in which special education services and supports were not provided. At that time, the student's IEP team along with the building level administrator(s) will schedule a manifestation determination meeting. The team will complete the manifestation determination form in Infinite Campus during the meeting with input from all members of the IEP team. The school psychologist may be consulted if there are questions pertaining to the determination of whether or not the conduct in question had a direct and substantial connection to the student's disability. The team must consider whether the conduct was a result of the district's failure to implement the student's IEP. In making this determination, the district, the parent, and relevant members of the IEP team (as determined by the parent and the district), will review the student's IEP,

- the student's behavior intervention plan,
- any relevant teacher observations, and
- any other information provided by the parents.

If the IEP team finds that the student's behavior was caused by or had a direct and substantial relationship to the student's disability, or that the behavior was a direct result of the district's failure to implement the IEP, then the behavior is a manifestation of the student's disability. The student must be returned to the placement from which he or she was removed. In this case, if the student does not have a behavior intervention plan, the IEP team must conduct a functional behavioral assessment and implement a behavior intervention plan to address the behavioral violation. If the student already has a behavior intervention plan that addresses the conduct in question, the IEP team must review and modify it as necessary to address the behavior.

If the IEP team finds that the student's behavior was not a manifestation of the student's disability, the same disciplinary actions can be imposed on the student with a disability as those imposed on any student. If these actions include expulsion, the IEP team must determine how the student will continue to receive educational services that allow him or her to continue to participate in the general education

curriculum and progress toward meeting the goals in the IEP. In addition, the IEP team, if appropriate, will conduct a functional behavior assessment and develop a behavior intervention plan.

Towns County Schools may conduct a tribunal to determine guilt or innocence when a student is accused of a serious or repeated violation of the code of conduct. However, the manifestation determination should be conducted before the tribunal.

Special Offenses

Certain serious behavior problems can lead to a student being moved to an interim alternative educational setting (IAES) for up to 45 school days, even if the conduct is determined to be a manifestation of the student's disability. Removing the student for these offenses does not require parent consent or agreement, nor does it require a tribunal hearing. These provisions are in effect when students are:

- at school;
- on school premises; and
- at school functions.

These offenses involve:

Weapons—if a student carries or possesses a weapon

- to school
- on school premises
- at a school function

Drugs—if the student knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substances

- at school
- on school premises
- at a school function

Serious bodily injury—if a student has inflicted bodily injury upon another person

- at school
- on school premises
- at a school function

Definitions:

Functional Behavioral Assessment:

A functional behavioral assessment (FBA) is the process of gathering information in order to determine the cause or function of a behavior prior to developing a behavior intervention plan.

Many tools and assessments can be used for functional behavioral assessment. These should be individually selected on a case-by-case basis. Data for functional behavioral assessments should be derived from the student's school setting in order for accurate conclusions to be made.

Components of a Functional Behavioral Assessment (FBA):

- Collaboration of FBA team members throughout the process of data collection, documentation, and analysis.
- Utilization of the Antecedent-Behavior-Consequence (ABC) model as the basis for behavior.
- Development of an operational definition of the problem behavior (target) to include a clear description of what the student is doing in observable, objective, and measurable terms.
- Towns County FBA team members should utilize the behavioral binder distributed to all case managers after attendance of the GNETS FUTURES program FBA and BIP development course. From this binder, team members should select appropriate measurements for target behaviors (frequency, duration, latency, interval recording, time sampling, and permanent product recording).
- The FBA team should make manageable decisions toward strategies for data collection during relevant times and contexts.
- The FBA team should make a plan for how the raw data collection will be converted into a standardized format. This is included in the FBA/BIP binder.
- Data collection may occur through any combination of direct observation of the behavior, student interviews, parent interviews, teacher interviews, checklists, questionnaires, and record review. There should be discussion of previous interventions tried and the educational impact of the given behavior.
- An analysis of the collected data should identify patterns and result in summative information to include
 - Time of date in which behavior typically occurs
 - Setting in which behavior typically occurs
 - Frequency/Duration/Intensity of behavior
 - People present during the behavior
 - Antecedents (events or conditions that immediately precede the behavior)
 - Consequences (events or conditions that occur immediately after behavior)
- Through the analysis of the collected data and decision making process, the team agrees on a hypothesis summary statement as to the function (purpose) of the behavior.

Behavioral Intervention Plan:

A behavioral intervention plan (BIP) consists of positive interventions, strategies, and supports designed to address the behavior in question. A team approach that includes relevant district staff and the parent is critical to developing a successful BIP. The BIP is a fluid plan that should be modified as necessary.

Expected components of a behavioral intervention plan may include:

- Target behavior as defined during the functional behavioral analysis, hypothesized function of the behavior as determined through use of the FBA team, and a summary of the data collection from the functional behavioral analysis
- Interventions driven by the hypothesis and individualized for the student
 - Positive (preventive) strategies to avoid the target behavior may include
 - Antecedent modifications
 - Instructional modifications
 - Behavioral precursors as signals
 - Modifications to the routine
 - Opportunities for choice (control)
 - Clear expectations
 - Pre-Correction
 - Errorless learning
 - Replacement Behavior (selected new skill(s) to replace the problem behavior that can be as or more effective than the problem behavior which may include
 - Communication skills
 - Social skills
 - Self-management and monitoring skills
 - Choice making
 - Consequences and rewards that promote the learning of the replacement behavior that are based on student preferences
 - Consequences that address the occurrence of the target behavior
 - The desired outcomes of the behavioral intervention plan for the student
- The action plan for the implementation of the Behavioral Intervention Plan (BIP) should include
 - Activities, dates, and documentation describing who is responsible for completing each task
 - Materials, training, and support for the implementers of the plan
 - Explanation of how data will be collected and analyzed to ensure the plan is working
 - Timelines for team meetings, data analysis, and monitoring the success of the BIP
- If necessary, a crisis intervention plan is developed when the safety of the student or others must be assured. Depending on the nature of the safety issue, the school counselor may be involved in this process.

Definitions Continued:

Dangerous Weapon:

“The term *dangerous weapon* means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.” The definition as of the date of publication of this manual is from 18 U.S.C Section 930 (g)(2). This definition from the United States Code is used for the term “weapon” in Georgia’s Special Education Discipline Rule.

Serious Bodily Injury:

“*Serious bodily injury* means injury that involves (A) substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” Accusing a student of inflicting serious bodily injury is a serious matter. Best practice suggests that careful consideration should be made to ensure the validity of the injury claim. For the purposes of this rule, the definition of serious bodily injury is found in the United States Code. The definition as of the date of publication of this manual is found in 21 U.S.C. Section 18(c).

Controlled Substance:

For the purposes of this rule, the definition of controlled substance is that found in section 202(c) of the Controlled Substances Act. The definition is not included here because it is lengthy and changes frequently.

Notification:

The district is responsible for notifying the parent and providing procedural safeguards on the date on which the decision is reached to make such a removal that constitutes a change of placement.

Appeals

What decisions about discipline can a parent appeal?

A parent may appeal

- the manifestation determination and
- the selection of an interim alternative educational setting regarding the issues of weapons, illegal drugs or controlled substances, or serious bodily injury.

Can the district appeal any decisions related to discipline?

Yes, the district may appeal if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.

What occurs if the parent or the district wants to appeal?

An expedited due process hearing occurs within 20 school days of the date the hearing is requested. A determination must be made by the administrative law judge within 10 school days after the hearing. [Also, see first two questions under “Appeals.”]

May the hearing officer’s decision on an expedited due process hearing be appealed?

Yes. The parent or the district may appeal the administrative law judge’s opinion consistent with Rule 160-4-7:10 Dispute Resolution.

Placement during Appeals

What happens to the student's placement when an appeal under the Discipline Rule is made?

When the parent disagrees and appeals, the student will remain in the interim alternative educational setting (IAES) pending the hearing decision or until the expiration of the 45 school day time period if the infraction involved illegal drugs, controlled substances, weapons, or serious bodily injury, unless the parent and the district agree otherwise. The student does not stay put in his or her special education placement that was in place prior to the IAES.

Protections for Students Not Yet Eligible

What protections are in place for a student who has not been determined to be eligible for special education and related services and who has violated the code of student conduct?

A student may assert protections under the Discipline Rule if the district had knowledge that the student was a student with a disability.

How is it determined that the district had knowledge that the student was a student with a disability?

A district is deemed to have knowledge that a student was a student with a disability if any of the following occurred prior to the behavior that precipitated the disciplinary action:

- The parent expressed concern that the student was in need of special education and related services. (This concern must have been expressed in writing to supervisory or administrative personnel in the district, or to a teacher of the student.)
- The parent requested an evaluation of the student (consistent with Rule 160-4-7.04 Evaluation & Reevaluations).
- The teacher of the student, or other district personnel, expressed specific concerns about a pattern of behavior of the student. (These concerns must have been expressed directly to the local special education director or other district supervisory personnel.)

If a student becomes involved in a disciplinary action and has been previously evaluated and determined ineligible for services, what is the district's responsibility? In addition, if a parent requests an additional evaluation, what is the district's responsibility?

The district is not deemed to have knowledge that a student is a student with a disability if the parent has refused services or the student has been evaluated and found ineligible for services.

If a parent requests an evaluation of a student during the time in which a student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by district authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, the district must provide special education and related services.

Referral to and Action by Law Enforcement and Judicial Authorities

Can law enforcement officials be informed of suspected criminal activity of a student with a disability?

Yes. The district may report criminal acts committed by a student with a disability. Nothing in the Discipline Rule prohibits district officials from reporting criminal activity allegedly committed by a student with a disability.

What happens when the district or other agency reports a crime committed by a student with a disability?

Copies of the student's special education and disciplinary records, if appropriate, are sent to the agency to which the crime was reported.

Change of Placement Because of Disciplinary Removals

When does a change of placement occur?

A change of placement occurs

- if the disciplinary removal is for more than 10 consecutive days or
- if the removal is part of a series of removals that constitutes a pattern.

What constitutes a pattern of removals?

A pattern of removals occurs when

- a series of removals totals more than 10 school days in a school year;
- the behavior is substantially similar to previous incidents that required removal; and
- the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another have been considered.

How is it determined that a series of removals constitutes a change of placement?

The district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process hearings and judicial proceedings.

Length of Removal	Services Required	IEP Meeting Required	Services Determined by Whom	If Challenged
First 10 School days	None. However, if this removal includes the 11th cumulative day (and any subsequent day) of removal in a school year, required services are those that are necessary to enable the student to (1) participate in the general curriculum, although in another setting; and (2) progress toward meeting the goals in the IEP.	Not required, But also see Row 2	If removal includes the 11th day, or any subsequent day, district officials (district administrator, special education director, and special education teacher).	N/A
Removal for (a) more than 10 consecutive days, or (b) another removal that accumulates to more than 10 school days, and shows a pattern constituting a change of placement.	Those services necessary to enable the student to (a) participate in the general curriculum although in another setting; and (b) progress toward achieving the goals in the IEP and, if the behavior is a manifestation of the disability or it is otherwise appropriate, an FBA and BIP designed to address the behavior so it does not recur	Yes, (a) to make a Manifestation determination (Notice of action and Procedural safeguards immediately, and meeting within 10 school days.) (b) If the behavior is a manifestation of the disability or if otherwise appropriate, to develop an FBA plan and BIP or to review existing BIP and its implementation and make any changes needed to address behavior.	IEP team determines services and place where the services will be provided	STAY PUT in Disciplinary Placement
45-day alternative educational setting (weapons, drugs or serious bodily injury)	Same as above	Yes, same as above, and determine the alternative educational setting	IEP team	Alternative Educational Setting pending Hearing Officer decision or end of 45 school days, or by agreement. Process may be repeated
45-day alternative educational setting ordered by the hearing officer (Dangerous behavior)	Same as above	Yes. Same as above	Proposed by district officials (district administration, special education director, as special educational teacher. Review by Hearing Officer	Same as above

Length of Removal	Services Required	IEP Meeting Required	Services Determined by Whom	If Challenged
Short term removals, not exceeding 10 consecutive school days, and not cumulating to more than 10 school days	None	No, but if a long term suspension or expulsion is anticipated, conduct a manifestation determination within 10 days, and prior to formal disciplinary hearing. See row 4.	N/A	N/A
Next short term removal that includes the 11th cumulative day and each subsequent short term removal (but does not constitute change of placement)	Those, if any, that are necessary to enable the student to (1) participate in the general curriculum although in another setting); and (2) progress toward meeting the goals in the IEP and the location of the services.	No, No manifestation determination is required. Also see row 4 if long term suspension/expulsion is anticipated.	District Officials, (General Education Administrator, Director of Special Education, and the student's special education teacher.	N/A
45-day alternative educational settings	Services are provided in Interim Alternative Educational Setting (IAES)	IEP meeting is not required	School personnel and/or IEP team	Student remains in IAES until conclusion of appeals process

