

## DISCIPLINE OF STUDENTS WITH DISABILITIES

*It is the intention of the Somerset Public Schools and Somerset Berkley Regional School District to meet all compliance standards and to observe all federal guidelines in addressing the discipline of students with disabilities. Therefore, these procedures have been revised and reissued to reflect the regulation changes contained in the Individuals with Disabilities Education Act, amendments of 2004 (IDEA-04). Discipline of students with a disability is now governed by these federal regulations.*

### DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES

Students with disabilities may be disciplined in the same manner as non-disabled peers for up to 10 **school** days in the same school year, as long as the removal does not constitute a change of placement.

When suspension of a disabled student will constitute a change of placement (including expulsion or removal to a 45-day interim alternative educational setting) the Principal **must** comply with the following procedures. Relevant members of the student's IEP Team, as determined by the parent and school, shall conduct a Manifestation Determination Team meeting. As in a Team meeting, the parent shall receive *written invitation* to the manifestation Team determination meeting. At that review the Team must determine if the misconduct was a manifestation of the student's disability. This must take place within 10 **school** days of the occurrence of the behavioral incident in question. In making this determination the TEAM must consider all relevant information in the student's file, including:

- a. The IEP
- b. Any teacher observations
- c. Any relevant information provided by the parent

The results of the manifestation determination TEAM meeting should be made available to the administrator conducting the disciplinary hearing. The Special Education Coordinator from the Team must be present at the hearing to present their findings. A copy of the Manifestation Determination finding should be on file in the student's folder.

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- (2) 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 either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- (f) 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—
    - (i) 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

- (ii) 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 paragraph (g) of this section, 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.

If the Team determines the misconduct is *not* a manifestation of the student's disability, the disciplinary process may proceed, and the student is subject to the same disciplinary proceeding as a non-disabled peer. *However*, special education services must be provided in the new placement during the period of suspension or expulsion so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting his or her IEP goals.

Please note that if the parents do not agree to a change in placement or with the manifestation determination, they may request a hearing at the Bureau of Special Education Appeals.

### **Discipline Procedures Under Special Circumstances**

In special circumstances, IDEA 2004 allows for a change in placement regardless of whether the behavior is a manifestation of the child's disability. This placement is to an Interim Alternative Education Setting (IAES) for a period up to but not to exceed 45 **school** days. However, a Free Appropriate Public Education (FAPE), including provision of all IEP services, must be provided at such a site. A 45-day placement can occur in the following circumstances:

1. A student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency. (**Weapon:** a device, 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 less than 2 ½ inches, as defined in 18 USC, Section 930).
2. A student 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 a state or local educational agency. (**Controlled substance:** does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or used under any other authority provided by federal law.)
3. A student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency. (**Serious bodily injury:** is bodily injury that involves a substantial risk of death, *extreme physical pain*, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty, as defined in 18 USC, Section 930).
4. Also, a Bureau of Special Education Appeals (BSEA) hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. (Please note this circumstance may occur upon the filing of an appeal by a parent who disagrees with any decision regarding placement or a

manifestation determination, or by an LEA that believes maintaining the current placement is likely to result in injury to the child or to others.)

**NOTE:** Parents must be notified on the day the decision to take disciplinary action is made. As soon as there is a decision to contemplate a change in the student's placement for more than 10 school days, notice of all procedural safeguards regarding discipline must be given to the parent/guardian (Parents' Notice of Procedural Safe Guards).

### **Protections for Students Not Yet Eligible for Special Education**

Under IDEA 2004 a student who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violated any rule or code of conduct, may assert any of the protections under the IDEA **provided** the school had **knowledge** the student was a student with a disability **before** the behavior that precipitated the disciplinary action occurred.

*The school department is deemed to have knowledge that a student is a student with a disability if:*

The parent expressed concern, in writing, to supervisory or administrative personnel or the child's teacher that the child is in need of services.

1. The parent has requested an evaluation.
2. The teacher of the child or other LEA personnel has expressed specific concerns about a pattern of behavior directly to the director of special education or other supervisory personnel.

**NOTE:** Under the revised Act, an LEA does not have knowledge, if the parent has not allowed an evaluation, has refused services, or the child has been evaluated and determined not to be a child with a disability.

*If there is no prior knowledge of disability, the following applies:*

The student may be subjected to the same disciplinary measures as those applied to children without disabilities with the following limitations:

If a request is made for an evaluation during the time period in which the 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 school authorities.

Students with disabilities' placement cannot be changed unilaterally or through disciplinary removals. A change in placement occurs when:

- the removal is for more than 10 consecutive school days, or
- the student has been subject to a series of removals that constitute a pattern because the removals aggregately amount to more than 10 school days in a school year, or
- the child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively is determined to have been

a manifestation of the child's disability, and such other factors such as length of each removal, total amount of time removed and the proximity of removals to one another (300.536 IDEA).

For students who are removed more than 10 school days, but which does not constitute a change in placement, services must be provided to the extent necessary to enable the pupil to appropriately progress in the general curriculum, as well as advance toward achieving the goals in the IEP.

**Provision of services for the first 10 school days of removal are not required.** However, provision of services for each day beyond the first 10 school days is required under IDEA-04. At least one of the child's teachers will determine the extent to which services are needed, if any, and the location in which the services will be provided.

Please note that a suspension register should be kept on file for each student with disabilities who has been suspended. It should reflect the offense for which the student was suspended, the dates and duration of the suspension, as well as the cumulative number of days suspended.

**Please note:** The Special Education Administrator/Facilitator Coordinator should be informed if a suspension is being imposed or considered for a student with disabilities. All records of suspension must be forwarded to the Special Education Administrator/Facilitator Coordinator to be included in the student's special education record for that school year.

**Somerset Public Schools/Somerset Berkley Regional School District  
Manifestation Determination**

Student Name: \_\_\_\_\_ Date(s): \_\_\_\_\_  
Age: \_\_\_\_\_ Grade: \_\_\_\_\_ School: \_\_\_\_\_  
Participants in Manifestation Determination \_\_\_\_\_

Teacher(s) Name(s): \_\_\_\_\_  
\_\_\_\_\_

It is not the purpose of a manifestation determination to decide if the student did what he/she is accused of doing or to decide what the student's punishment should be. The team's task is to determine whether there is a causal relationship between the behavior for which the student is being disciplined and the student's disability. To accomplish this task, the team should discuss the following points.

Data being considered (check each one):

- |  |        |
|--|--------|
| <input type="radio"/> IEP  | Dates: |
| <input type="radio"/> Assessments/evaluations                                  | Dates: |
| <input type="radio"/> Medical information, including diagnosis and medications | Dates: |
| <input type="radio"/> Direct observations                                      | Dates: |
| <input type="radio"/> Discipline reports for the current school year           | Dates: |
| <input type="radio"/> Functional Behavioral Assessment, (attach)               | Date:  |
| <input type="radio"/> Information from Parents                                 | Date:  |

Date of Incident in question: \_\_\_\_\_

Number of days student has been suspended this school year prior to this incident: \_\_\_\_

Was a weapon involved? \_\_\_\_\_

Were drugs involved? \_\_\_\_\_

Did serious bodily injury occur? \_\_\_\_\_

Using the information gathered regarding the student's specific misbehavior, and the guidance below, answer the following two questions to determine if the student's specific misbehavior is a manifestation of the student's disability:

**1) Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?**     Y     N

**The Team should consider:**

**Prior to** the specific behavior resulting in the disciplinary action, has the student:

Demonstrated the ability to follow class and school rules?

Explained what would happen if he or she displayed the misbehavior?

Showed he or she was able to control behavior and act in a socially acceptable manner?

Demonstrated adequate communication skills to acceptably express his or her needs?

Demonstrated the specific misbehavior across multiple settings?

Demonstrated the specific misbehavior over a specific period of time?

**2) Was the conduct in question the direct result of the district's failure to implement the student's IEP?**     Y     N

**The Team should consider:**

Identified special education and supplementary aids and services were provided

Identified accommodations and modifications were provided

Identified positive behavioral intervention strategies were provided

If the Team has determined that the student was receiving all the services set forth in the student's IEP and the Behavior Support Plan, if any, was being followed, then the answer to question two is "No"

If the student's IEP was **not** being fully implemented, however, then the Team must determine whether that failure contributed to the conduct that gave rise to the issue in question. The Team should consider:

If the IEP had been fully implemented, could the conduct that gave rise to discipline still have occurred?

If the IEP had been fully implemented, would the conduct in question have been less likely?

If the answer to **both** questions numbered 1) and 2) is "**NO**" then the behavior is **not** a manifestation of the student's disability, Student can be disciplined in the same manner as non-

disabled students. If student is removed from school placement, the student must continue to receive education services to enable the student to participate in general education curriculum and to progress toward meeting the goals set out in the student's IEP. The IEP team determines what services are necessary in the alternative setting.

If **ANY** of the questions has an answer of “**YES**” the manifestation team has decided that the behavior **is** a manifestation of the student's disability. The student must remain in the educational placement indicated on the IEP unless the parent and the district agree to change the placement at a meeting. The team must immediately take steps to remedy any and all deficiencies found in the student's IEP or its implementation.

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**FINDING:**

The determination of the MD Team is that behavior subject to discipline is:

- NOT a manifestation of the disability
- a Manifestation of the Disability

Manifestation Determination Signatures (Direction to Team Members: Sign and indicate if you agree or disagree)

Parent Signature

- I agree with the determination above
- I disagree with the determination above

**SOMERSET PUBLIC SCHOOLS  
SOMERSET BERKLEY REGIONAL SCHOOL DISTRICT  
REGISTER OF SUSPENSIONS OF STUDENTS WITH DISABILITIES**

Student Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
 School: \_\_\_\_\_ Year \_\_\_\_\_

Date	Day	Description of Student Behavior	Description of Disciplinary Action	Comment
	1			
	2			
	3			
	4			
	5			
	6			
	7			
	<b>At this point consideration may be given to scheduling a review/re-evaluation of alternatives that have been employed and whether the student may be in need of additional services.</b>			
	8			
	9			
	10			