

160-4-7-.10 DISCIPLINE.

(1) GENERAL PROVISIONS.

(a) According to Georgia school laws, LEAs are given the responsibility to develop appropriate and legally based disciplinary procedures.

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

(2) AUTHORITY OF SCHOOL PERSONNEL.

(a) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this Rule, is appropriate for a child with a disability who violates a code of student conduct. [34 C.F.R. § 300.530(a)].

(b) School personnel may remove a child with a disability who violates a code of student conduct 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 (to the extent those alternatives are applied to children without disabilities), 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 this Rule). [34 C.F.R. § 300.530(b)(1); 34 C.F.R. § 300.536]

(c) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the LEA must provide services to the extent required under this Rule. [34 C.F.R. § 300.530(b)(2)]

(d) For disciplinary changes in placement that would exceed 10 consecutive school days, 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 under this Rule, school personnel 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 except as provided in (e) of this Rule. [34 C.F.R. § 300.530(c)]

(e) Services. A child with a disability who is removed from his or her current placement for more than 10 consecutive school days must:

1. Continue to receive educational services, as provided in Rule 160-4-7-.02 Free and Appropriate Public Education, so as to enable the child to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

2. Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications as set forth in the behavioral intervention plan and IEP, where appropriate, that are designed to address the behavior violation so it does not recur. [34 C.F.R. § 300.530(d)(1)(i) – (ii)]

3. The LEA is only required to provide services during periods of removal to a child 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 provided to a child without disabilities who has been similarly removed. [34 C.F.R. § 300.530(d)(3)]

4. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is not for more than 10 consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed in order to provide a free, appropriate public education, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. [34 C.F.R. § 300.530(d)(4)]

5. If the removal is for more than 10 consecutive school days or is a change in placement because of disciplinary removals, the child's IEP Team determines appropriate services needed in order to provide a free, appropriate public education, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. [34 C.F.R. § 300.530(d)(5)]

6. The services required in (e) may be provided in an interim alternative educational setting. [34 C.F.R. § 300.530(d)(2)]

(3) MANIFESTATION DETERMINATION

(a) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and the relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

2. If the conduct in question was the direct result of the LEA's failure to implement the IEP. [34 C.F.R. § 300.530(e)(1)(i) – (ii)]

(b) 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 the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or the conduct in question was the direct result of the LEA's failure to implement the IEP. [34 C.F.R. § 300.530(e)(2)]

(c) If the LEA, the parent and the relevant members of the child's IEP Team determines the conduct in question was a direct result of the failure of the LEA to implement the IEP, the LEA must take immediate steps to remedy those deficiencies. [34 C.F.R. § 300.530(e)(3)]

(4) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION

(a) 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 either:

1. 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

2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior, and except as provided in paragraph (5) below, 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. [34 C.F.R. § 300.530(f)(1) – (2)]

(5) SPECIAL CIRCUMSTANCES

(a) School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the State or the LEA;

2. 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 the State or the LEA; or

3. Has inflicted serious bodily injury upon another person while at school, on school

premises, or at a school function under the jurisdiction of the State or the LEA . [34 C.F.R. § 300.530(g)(1) – (3)]

(b) The interim alternative educational setting is determined by the IEP Team. [34 C.F.R. § 300.531]

(6) NOTIFICATION

(a) On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of child conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in Rule 160-4-7-.09 Procedural Safeguards. [34 C.F.R. § 300.530(h)]

(7) DEFINITIONS. For purpose of this section, the following definitions apply:

(a) 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)).

(b) Illegal drug - a controlled substance; but does not include a controlled 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 .

(c) 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.

(d) 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. [34 C.F.R. § 300.530(i)(1) – (4)]

(8) APPEAL

(a) The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination under this Rule, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a due process hearing request pursuant to Rule 160-4-7-.12 Dispute Resolution. [34 C.F.R. § 300.531(a)].

(b) Authority of administrative law judge or hearing officer. An administrative law judge or hearing officer under Rule 160-4-7-.12 Dispute Resolution hears the facts and makes a determination regarding an appeal under the disagreement in (8)(a) above. [34 C.F.R. § 300.531(b)(1)]

1. In making a determination under this Rule, the administrative law judge or hearing officer may:

(i) Return the child with a disability to the placement from which the child was removed if the administrative law judge or hearing officer determines that the removal was a violation of this Rule or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge or hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. [34 C.F.R. § 300.531(b)(2)(i) – (ii)]

(c) These appeal procedures may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. [34 C.F.R. § 300.531(b)(3)]

(d) Expedited due process hearing. Whenever a hearing is requested under paragraph (8)(a) this Rule, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with Rule 160-4-7-.12 Dispute Resolution, except as provided in (d) 1 and 2 below. [34 C.F.R. § 300.531(c)(1)]

1. The State is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge or hearing officer must make a determination within 10 school days after the hearing. [34 C.F.R. § 300.531(c)(2)]

2. Unless the parents and LEA agree in writing to waive the resolution meeting described in Rule 160-4-7-.12 Dispute Resolution or agree to use the mediation process described in the same Rule:

(a) A resolution meeting must occur within seven days of receiving notice of the due process hearing request/complaint; and

(b) 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 hearing request/complaint. [34 C.F.R. § 300.531(c)(3)]

(c) The decisions on expedited due process hearings are appealable consistent with Rule 160-4-7-.12 Dispute Resolution. [34 C.F.R. § 300.531(c)(5)]

(9) PLACEMENT DURING APPEALS

(a) When an appeal under this Rule has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of

the administrative law judge or hearing officer or until the expiration of the 45 school day time period provided for in this Rule, section 5, Special Circumstances, whichever comes first, unless the parent and the LEA agree otherwise. [34 C.F.R. § 300.533]

(10) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

(a) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this Rule if the LEA had knowledge (as determined in accordance with this Rule) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. [34 C.F.R. § 300.534(a)]

1. An LEA must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred -

(i) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child, that the child is in need of special education and related services;

(ii) The parent of the child requested an evaluation of the child pursuant to Rule 160-4-7-.04 Eligibility Determinations and Criteria; or

(iii) The teacher of the child or other personnel of the LEA expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA. [34 CFR § 300.534(b)(1) – (3)]

2. An LEA would not be deemed to have knowledge that a child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services or the child has been evaluated and determined not to be a child with a disability as described in Rule 160-4-7-.04 Eligibility Determinations and Criteria. [34 C.F.R. § 300.534(c)(1) – (2)]

3. If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors. [34 C.F.R. § 300.534(d)(1)]

4. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and

the information provided by the parents, the agency must provide special education and related services. [34 C.F.R. § 300.534(d)(2)(i) – (iii)]

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

(a) Nothing in this Rule prohibits a LEA from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement or judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. [34 C.F.R. § 300.535(a)]

(b) A LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. [34 C.F.R. § 300.535(b)(1)]

(c) A LEA reporting a crime under this Rule may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. [34 C.F.R. § 300.535(b)(2)]

(12) CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS.

(a) For purposes of removals of a child with a disability from the child's current educational placement under this Rule, a change in placement occurs if:

1. The removal is for more than 10 consecutive school days, or

2. The child has been subjected to a series of removals that constitute a pattern –

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and;

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. [34 C.F.R. § 300.536(a)]

(b) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. [34 C.F.R. § 300.536(b)(1)]

1. This determination is subject to review through due process hearings and judicial proceedings. [34 C.F.R. § 300.536(b)(2)]

(13) This rule shall become effective July 1, 2007.

Authority O.C.G.A. § 20-2-152; 20-2-240; 20-2-735; 20-2-736; 20-2-738; 20-2-741; 20-2-750 through 20-2-766.1.

Adopted: June 14, 2007

Effective: July 1, 2007