

SUBJECT: **Discipline of Students with Disabilities**

Supersedes: New

Effective: Immediately

Page: 1 of 1

Approved by: Emergency Manager, Jack Martin

I. Purpose

The Detroit Public Schools (the District) is committed to ensuring that the discipline of students with disabilities is administered fairly and in compliance with local, state and federal laws, including but not limited to, the Individual with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act of 1973, the Michigan Administrative Rules for Special Education and Title II of the Americans with Disabilities Act.

II. Definitions

A. Students with Disabilities

1. IDEA Student

An IDEA student is a person who is determined by an individualized education program team (IEPT) or by a hearing officer to have one or more of the impairments that necessitates special education or related services, or both, who is not more than 25 years of age as of September 1 of the school year of enrollment, who has not completed a normal course of study, and who has not graduated from high school. An IDEA student who reaches the age of 26 years after September 1 is entitled to continue a special education program or service until the end of that school year.¹

2. Section 504 Student

A Section 504 student is a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment This designation refers to Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of a disability in any program or activity receiving federal financial assistance.² The school has an obligation to identify and evaluate student who may have a disability under Section 504 and to protect all disabled students from discrimination due to their disability, regardless to whether or not they have a Section 504 Plan. Those students who

¹ Michigan Administrative Rules for Special Education, Rule 340.1702.

² 34 C.F.R. §104.1

have a disability under Section 504 will have an Evaluation and Educational Plan developed by a 504 team. For further information regarding Section 504 student identification, evaluation and placement please contact the District Section 504 Coordinator.

III. Policy

It is the policy of the District that the standards of conduct contained within the Student Code of Conduct apply to all students, including those students with disabilities that are identified under IDEA or Section 504 of the Rehabilitation Act and those suspected of having a disability. However, due to the unique needs of students with disabilities, appropriate disciplinary action and implementation of the Student Code of Conduct will vary in accordance with applicable local, state and federal laws.

IV. Procedural Guidelines

A. Disciplinary Actions for IDEA and Section 504 Students

When an administrator is considering disciplinary action involving removal of an IDEA or 504 student, the student's records shall be reviewed to determine the total number of days during the current school year that the student has missed due to disciplinary action. Once this determination has been made, the following procedures must be followed:

1. If the student has not accumulated more than 10 (ten) days of disciplinary removal for the school year, then utilize procedures as outlined for non-disabled students.
2. If the pending suspension is in excess of 10 (ten) consecutive days (including proposed expulsions) **OR** if the suspension is less than (10) days but would result in 10 cumulative days during a school year and creates a pattern of exclusion, this constitutes a significant change in placement. Before implementing a suspension or expulsion that constitutes a significant change in placement, the student must have an IEP/504 meeting to determine whether the behavior at issue is a manifestation of the student's disability (a "manifestation determination" review) or if the student's current educational placement is appropriate. The manifestation determination meeting must take place within ten (10) school days of the student's removal from school.

EXCEPTION: In cases where the offense pertains to the use or possession of alcohol or illegal drugs by a Section 504 student who currently is engaging in the illegal use of drugs or the use of alcohol, the manifestation determination is not necessary. The student may be disciplined in the same manner as students without disabilities. Note, if the offense is centered on possession alone, not use, a manifestation hearing is still required unless the student currently is engaging in the illegal use of drugs or the use of

alcohol.³

3. If the IEP/504 team determines that the behavior is a manifestation of the student's disability, the student is NOT subject to further disciplinary action. However, the evaluation continues to determine whether the student's current educational placement is appropriate. The student MUST return to his/her original placement UNLESS the parent agrees otherwise through the IEP/504 process.

EXCEPTION:

If the offense involves any of the following, school personnel may remove the student to an interim alternative educational setting for not more than forty-five (45) days:

- Carrying or possessing a weapon at school or at a school function
 - Knowingly possessing or using illegal drugs
 - Selling or soliciting the sale of a controlled substance while at school or at a school function
 - Inflicting serious bodily injury upon another person.
4. If the IEP/504 team determines that the behavior is NOT a manifestation of the student's disability, the student may be removed in the same manner as any non-disabled student.
 5. The school must continue to provide IDEA student's services so that the student progresses towards IEP goals, even if the child is no longer served in the same school environment. Section 504 students are not entitled to a continuation of specialized services.
 6. The IEP team decides what services the child needs and where those services will be provided.
 7. When a change in placement occurs, the student is entitled to the procedural protections of Section 504/IDEA, including, an expedited due process hearing (appeal). When an appeal is pending, the student's placement will remain in the disciplinary removal setting until a decision is reached or the expiration of the removal issued by DPS, whichever comes first.

Students with disabilities, even if expelled, must be provided with an appropriate education in an alternative educational setting.

³ A student with a disability who is not currently engaged in the illegal use of drugs or alcohol who commits a Drug/alcohol offense, such as possession, sale, or distribution of drugs or alcohol, is afforded Section 504 protection, including the right to an evaluation of whether the behavior is related to the disability and the right to due process. OCR defines "current use of drugs" as illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem" OCR Staff Memorandum, 19 EDELR 859 (OCR 1992).

B. Students Suspected Of Having A Disability

Students suspected of having a disability have the right to assert any of the disciplinary protections available to students with disabilities, if prior to the behavior subject to disciplinary action, one or more of the following exist:

1. The parent/guardian(s) have expressed specific concerns in writing to supervisory or administrative personnel of the DPS, or a teacher of the student, that the student is in need of special education and related services.
2. The parent/guardians(s) have formally requested/consented to a special education evaluation.
3. The student's teacher, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the appropriate supervisor or director of special education for DPS.
4. DPS shall not be deemed to have knowledge that the student is a student with a disability if the parent of the student has previously refused to consent to an evaluation of the student, or has refused special education and related services, or the student was found ineligible for special education.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the student remains in the disciplinary removal setting and the evaluation shall be conducted in an expedited manner. If the student is found to be a student with a disability, DPS shall provide special education and related services as appropriate.

Where a student presents an immediate threat to the safety of others, school officials may promptly adjust the placement or suspend the child for up to 10 school days, in accordance with procedures applied to non-disabled students.

Attachments to Policy: None

Cross-References: Student Code of Conduct

Legal References: Individual with Disabilities Education Act ("IDEA"), Section 504 of the Rehabilitation Act of 1973, the Michigan Administrative Rules for Special Education and Title II of the Americans with Disabilities Act.