



Special Education Discipline Procedural Framework and Authority of School Personnel

(See 34 CFR §300.530)

1. Case-by-Case Determination

Technology Leadership High School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a Technology Leadership High School code of conduct.

2. General Discipline

To the extent that they also take such action for typically developing students and students not having disabilities, Technology Leadership High School staff may, for not more than ten (10) consecutive school days, remove a child with a disability who violates a code of conduct from their current educational placement to an appropriate interim alternative educational setting, conduct a change of placement to another setting that may better meet their needs, or proceed with provision of a suspension.

Technology Leadership High School staff may also impose additional removals of the child of not more than ten (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. Please refer to the "Change of Placement Because of Disciplinary Removals" section of this disciplinary procedural framework for more information.

Once a child with a disability has been removed from his/her current placement for a total of ten (10) school days in the same school year, Technology Leadership High School shall, during any subsequent days of removal in that school year, provide services to the extent described below in this disciplinary procedural framework.

3. Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability and the disciplinary change of placement would exceed ten (10) consecutive school days, Technology Leadership High School staff may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described in the "Services" section of this framework. The student's IEP Team shall determine the interim alternative educational setting for such services.

4. Services

When Technology Leadership High School provides services to a child without a disability who has been removed from their current placement for ten (10) school days or less in that school year, Technology Leadership High School also shall provide services to a child with a disability. These services may be provided in an interim alternative educational setting

However, when Technology Leadership High School does not provide services to a child without a disability who has been removed from his/her current placement for ten (10) school days or less in that school year, Technology Leadership High School shall not be required to provide services to a child with a disability.

A child with a disability who is removed from the student's current placement for more than ten (10) school days and the behavior is not a manifestation of the student's disability or who is removed under special circumstances shall:

- Continue to receive educational services (FAPE), so as to enable the student to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child’s IEP; and
 - Receive, as appropriate, a Functional Behavioral Assessment, and behavioral intervention services and modifications, which are designed to address the targeted behavior so that it does not happen again.
- Please refer to the “Manifestation Determination” and “Special Circumstances” section of this procedural framework for additional information.

After a student with a disability has been removed from his/her current placement for ten (10) school days in that same school year, and if the current removal is for ten (10) consecutive school days or less and if the removal is not a change of placement, then school personnel, in consultation with the student’s teachers, shall determine the extent to which services are needed to 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 student’s IEP.

If the removal is a change of placement, the student’s IEP Team shall determine the appropriate services to enable the student to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the student’s IEP. Please refer to the “Change of Placement Because of Disciplinary Removals” section of this procedural framework for additional information.

Continuum of Services

All eligible students who require specialized educational services in order to access and benefit from the general education curriculum and standards will be afforded the opportunity to receive such services. Special education and related services to be provided by Technology Leadership High School will be designed by school staff and Multi-Disciplinary/Ancillary personnel to meet the unique needs of each student while also including them with their typically developing peers to the maximum extent appropriate. For example, while some students having disabilities may require only special education consultation and collaboration services, others may require direct instruction from a special education instructor and/or instruction from highly qualified general education staff members within a general education setting, or may even require instruction from a special education instructor and/or a general education instructor within an environment specially tailored to meet the needs of the student. All placements within Technology Leadership High School will be made with full family/guardian involvement in order to provide a student with instruction in their least restrictive environment, such as that they may receive a free appropriate public education with fidelity to high academic and professional standards. All instruction provided will target student IEP goal criterion for mastery, the CCSS content standards, and student interests and will either be provided by a NM licensed special education instructor or a highly qualified NM licensed general education instructor depending upon the level of service needed.

5. Manifestation Determination

Within ten (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 (except for a removal that is for ten (10) consecutive school days or less and not a change of placement), Technology Leadership High School, the parent, and other relevant members of the IEP Team (as determined by the parent and district) shall review all relevant information in the student’s file, including the student’s IEP, any teacher observations, any outside assessment data provided, and any relevant information provided by the parent to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or
- If the conduct in question was the direct result of the school’s failure to implement the student’s IEP. If Technology Leadership High School, the parent, and other relevant members of the student’s IEP Team determine that either of those conditions was met, the conduct shall be determined to be a manifestation of the child’s disability.
- If Technology Leadership High School, the parent, and other relevant members of the student’s IEP Team determine that the conduct in question was the direct result of the school’s failure to implement the IEP, Technology Leadership High School shall take immediate action to remedy those deficiencies.

If Technology Leadership High School, the parent, and other relevant members of the student's IEP Team determine that neither of those conditions was met, the conduct shall be determined to NOT be a manifestation of the child's disability. This means ruling out the conduct being related to the student's disability and ruling out a failure to implement the IEP.

Determination That Behavior was a Manifestation of the Child's Disability

If Technology Leadership High School, the parent, and other relevant members of the student's IEP Team determine that the conduct in question was a manifestation of the student's disability, the IEP Team shall either:

- Conduct a Functional Behavioral Assessment, unless the school 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
 - If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.
- Except as described below in the "Special Circumstances" section of this procedural framework, Technology Leadership High School shall return the student to the placement from which the child was removed, unless the parent and Technology Leadership High School agree to a change of placement as part of the modification of the behavioral intervention plan in a good faith effort to provide support to the student

6. Special Circumstances

Whether or not the behavior was a manifestation of the student's disability, school personnel may remove a student to an interim alternative educational setting (determined by the student's IEP Team) for not more than forty-five (45) school days, if the child:

- Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or Technology Leadership High School;
- Knowingly has 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 New Mexico Public Education Department or Technology Leadership High School; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or Technology Leadership High School.

7. Interim Alternative Educational Setting/Placement

- These services are to be provided such as that there is fidelity to and a continuity of student schedule of services and instruction toward mastery of goals and objectives. In addition, any compensatory services are provided as needed (due to absence from disciplinary procedures, student safety, medical absence, etc.).
- The service provider rotation for such students would include special educator and highly qualified content area instructors. Instruction would take place in a setting within school that is secure, private, and has access to the academic tools for instruction within the school afforded to all other students (internet access, stationary and supplies, furniture, technology, etc.).
- Services for a student having a severe cognitive impairment would be provided based upon the students individualized level of need for specialized instruction and ancillary services as well as a variety of other factors. The individual's prior developmental, functional, medical, and educational history would be reviewed and considered with the family/guardians of the student in order to meet their needs in an encompassing way. Special factors would be considered in order to inform the development of an individualized comprehensive program for the student and ensure availability of the necessary staffing pattern within the school. Special considerations might include linguistic, cultural, economic, or other factors. Students having severe cognitive impairments would be assessed by diagnostic instruments pertinent to the individual student and case in order to determine their instructional level in core academic skills if applicable, or if applicable to be provided with instruction toward continued development of functional or adaptive skill-sets. This could include practicing elements of self-determination, or achieving mastery in requisite activities of daily living to promote an eventual self-directed transition into the community tailored to the ongoing strengths and needs of the individual.
- Such instruction would be provided in the least restrictive environment for the student while also ensuring that all students having severe cognitive impairments are educated alongside their typically developing peers to the

maximum extent appropriate. Student schedules would be determined based upon the students' functional ability, mobility, energy and alertness levels, IEP schedule of services, and medical needs. Students having severe cognitive impairments would participate in the educational opportunities that their peers participate in to the maximum extent appropriate, and would be provided with specialized support in order to do so. This means parallel-skill lesson planning, consultation, ancillary services, one on one support, peer support, provision of accommodations and modifications from the IEP, interagency linkages and supports, alternative learning targets, and alternative learning product outcomes. All service providers working with the student outside of the school and in the community or home setting would be invited to provide technical assistance within the school for the benefit of the student, and their participation in the development of assessment and evaluation data would be sought for each annual review or reevaluation. This instruction would be provided by licensed NM special education instructors and licensed general education instructors, as appropriate.

8. Change of Placement Because of Disciplinary Removals

A removal of a student with a disability from the student's current educational placement is a change of placement if:

- The removal is for more than 10 consecutive school days; or
- The student has been subjected to a series of removals that constitute a pattern because:
 - The series of removals total more than 10 school days in a school year;
 - The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - Of such additional factors 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. (34 CFR §300.536)
 - Whether a pattern of removals constitutes a change of placement shall be determined on a case-by-case basis by Technology Leadership High School and, if challenged, shall be subject to review through due process and judicial proceedings.

10. Notification of a Change of Placement

On the date Technology Leadership High School makes the decision to make a removal that is a change of placement of a student because of a violation of a code of student conduct, Technology Leadership High School shall notify the family/guardian of that decision, and provide the family/guardian with a procedural safeguards notice.

11. Determination of Setting

The IEP Team determines the interim alternative educational setting for removals that are changes of placement, and removals in the "Additional Authority" and "Special Circumstances" section of this procedural framework. (34 CFR § 300.531)

Appeals of Discipline Decisions

1. General

The parent may file a due process complaint to request a due process hearing if the parent disagrees with:

- Any decision regarding an IEP placement made under these discipline provisions; or
- The manifestation determination described above.

Technology Leadership High School may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of the student is substantially likely to result in injury to the child or to others.

2. Placement During Appeals

When, as described above, the parent or the district files a due process complaint related to disciplinary matters, the student shall (unless the parent and Technology Leadership High School agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described in “Authority of School Personnel” section of this procedural framework, whichever occurs first. (34 CFR §300.533)

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

1. General

If the student has not been determined eligible for special education and related services and violates a code of student conduct, but Technology Leadership High School had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the student was a student with a disability, then the student may assert any of the protections described in this procedural framework. (34 CFR §300.534)

2. Basis of Knowledge for Disciplinary Matters

Technology Leadership High School shall be deemed to have knowledge that the student is a student with a disability if, before the behavior that brought about the disciplinary action occurred:

- The parent expressed concern in writing to supervisory or administrative personnel of Technology Leadership High School, or to the student’s teacher that the student is in need of special education and related services.
- The parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
- The student’s teacher or other Technology Leadership High School personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to Technology Leadership High School director of Special Education or to other supervisory personnel of Technology Leadership High School.

3. Exception

Technology Leadership High School shall not be deemed to have such knowledge if:

- The parent has not allowed an evaluation of the student or has refused special education services; or
- The student has been evaluated and determined to not be a student with a disability under Part B of IDEA.

4. Conditions That Apply if There is no Basis of Knowledge

If prior to taking disciplinary measures against the student Technology Leadership High School does not have knowledge that the student is a student with a disability, as described in the “Basis of Knowledge for Disciplinary Matters” and “Exception” subsections of this procedural framework, the student may be subjected to the disciplinary measures that are applied to students without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of the student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.

Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by Technology Leadership High School, and information provided by the parent, Technology Leadership High School shall provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described in this procedural framework.

Referral to and Action by Law Enforcement and Judicial Authorities

Part B of IDEA and this procedural framework shall not:

- Prohibit Technology Leadership High School from reporting a crime committed by a student with a disability to appropriate authorities; or
- Prevent state and local law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. (34 CFR §300.535)

Transmittal of Records

If Technology Leadership High School reports a crime committed by a student with a disability Technology Leadership High School:

- Shall seek consent from the parents to transmit copies of the student’s special education and disciplinary records. If consent is granted, shall transmit copies of the student’s special education and disciplinary records for consideration by the authorities to whom the agency reports the crime.

Note on related/applicable forms:

- 1) Manifestation Determination Review form is used for conducting a manifestation determination review before a disciplinary change of placement.
- 2) In the disciplinary context, the Functional Behavioral Assessment Form is used to conduct a Functional Behavioral Assessment (FBA) when the student’s misconduct is a manifestation of the child’s disability; or as appropriate, when the misconduct is not a manifestation of the child’s disability. The FBA may be used to develop individualized educational programs, to support a re-evaluation or deliberation about a change in placement, and will be supported with documented family/guardian consent as appropriate.
- 3) In the disciplinary context, the Behavior Intervention Plan Form is used to develop a Behavior Intervention Plan (BIP) when the student’s misconduct is a manifestation of the child’s disability; or if appropriate, when the misconduct is not a manifestation of the child’s disability. Outside of the disciplinary context, the Behavior Intervention Plan may be used to provide students with instruction in replacement behaviors if they exhibit a behavior which poses significant negative impacts on their learning and/or the learning of others, or for extinguishing student behaviors which pose a significant risk of harming others or themselves.

References:

- 34 CFR § 300.531
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