

This is a new rule.

6A-6.03312 Discipline Procedures for Students with Disabilities.

For students whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior must be considered in the development of the students' individual educational plans (IEPs). Procedures for providing discipline for students with disabilities must be consistent with the requirements of this rule.

(1) Definitions.

(a) Change of placement. For the purpose of removing a student with a disability from the student's current educational placement as specified in the student's individual educational plan (IEP) under this rule, a change of placement occurs when:

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

2. A series of removals constitutes a pattern because the removals cumulate to more than ten (10) school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

(b) Positive behavioral support. Positive behavioral support is a process for designing and implementing individualized behavioral intervention plans based on

understanding relationships between the student's behavior and his or her environment as determined through a functional behavioral assessment.

(c) Functional behavioral assessment. A functional behavioral assessment (FBA) is a process for developing a useful understanding of how behavior relates to the environment and may include any or all of the following: review of records, interviews, observations, and the collection of data using formal or informal measurement procedures.

(d) Controlled substance. A controlled substance is a drug or other substance identified through the Controlled Substances Act, 21 U.S.C. 812(c), and Section 893.02(4), Florida Statutes.

(e) Illegal Drug. An illegal drug means a controlled substance but does not include a 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 the Controlled Substances Act, 21 U.S.C. 812(c) or under any other provision of federal law.

(f) Weapon. A weapon is defined in Section 790.001(13), Florida Statutes, and includes a dangerous weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.

(g) Firearm. A firearm is defined in Section 790.001(6),

Florida Statutes.

(h) Individual Educational Plan (IEP) Team. An IEP team must meet the requirements specified in subsection (4) of Rule 6A-6.03028, FAC.

(i) Manifestation Determination. A manifestation determination examines the relationship between the student's disability and a specific behavior that may result in disciplinary action.

(j) Interim Alternative Educational Setting. An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons and that meets the requirements of paragraph (6)(a) of this rule.

(k) Expedited Due Process Hearings. Expedited due process hearings shall be conducted by an administrative law judge for the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education, and shall be held at the request of either the parent or the school district regarding disciplinary actions. These hearings must meet the requirements prescribed in subsection (11) of Rule 6A-6.03311, FAC., except that the written decision must be mailed to the parties within forty-five (45) calendar days of the school district's receipt of the parent's request for the hearing or the filing of the district's request for the hearing without

exceptions or extensions.

(l) Short Term Removals. A short term removal is the removal of a student with a disability from the student's current placement for a total of ten (10) school days or less in a school year that does not constitute a change in placement as defined in paragraph (1)(a) of this rule.

(m) Long Term Removals. A long term removal is the removal of a student with a disability from the student's current placement for more than ten (10) school days in a school year which may or may not constitute a change in placement as defined in paragraph (1)(a) of this rule.

(n) Substantial evidence. Substantial evidence shall be defined to mean beyond a preponderance of the evidence.

(2) Authority of School Personnel. Consistent with the school board's Code of Student Conduct and to the extent that removal would be applied to students without disabilities, school personnel may order:

(a) The removal of a student with a disability from the student's current placement for not more than ten (10) consecutive school days.

(b) Additional removals of a student with a disability 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 in placement as defined in

paragraph (1)(a) of this rule.

(3) Manifestation Determination. A manifestation determination, consistent with the following requirements, must be made any time disciplinary procedures result in a change of placement.

(a) In conducting the review, the IEP team and other qualified personnel shall:

1. Consider all relevant evaluation and diagnostic information including information supplied by the parents of the student, observations of the student, the student's current IEP and placement, and any other relevant information, then

2. Determine that, in relationship to the behavior subject to disciplinary action:

a. The student's IEP and placement were appropriate and whether the special education services, supplementary aids and services, accommodations and modifications as defined in paragraphs (2)(e) and (f) of Rule 6A-6.03028, FAC., and positive behavior intervention strategies were provided consistent with the student's IEP and placement;

b. The student's disability impaired the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

c. The student's disability impaired the student's ability to control the behavior subject to disciplinary action.

(b) If the IEP team and other qualified personnel determine that the student's behavior was not related to the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities. However, services consistent with subsection (5) of this rule must be provided.

(c) With the exception of placement in an interim alternative educational setting, as described in paragraphs (1)(j) and (6)(b) of this rule, if the IEP team determines that the student's behavior was a manifestation of the disability, the student's placement cannot be changed by school personnel as a disciplinary intervention. However, the IEP team may determine that a change of placement is necessary to provide the student a free, appropriate public education in the least restrictive environment.

(d) If the IEP team and other qualified personnel determine that any of the requirements of subparagraph (3)(a)2. of this rule were not met, the behavior subject to disciplinary action must be considered a manifestation of the student's disability.

(e) The review described in paragraph (3)(a) of this rule may be conducted at the same IEP meeting that is required by paragraph (4)(b) of this rule.

(f) Immediate steps must be taken to remedy any

deficiencies in the student's IEP or placement or in their implementation that were identified during the manifestation determination.

(g) If a parent disagrees with the manifestation determination decision made by the IEP team pursuant to this rule, the parent may request an expedited due process hearing as described in subsection (7) of this rule.

(4) Long Term Removals. For all such removals contemplated:

(a) The school district must notify the parent of the removal decision and provide the parent with a copy of the notice of procedural safeguards as referenced in Rule 6A-6.03311, FAC., on the same day as the date of the removal decision;

(b) An IEP meeting must be held immediately if possible but in no case later than ten (10) school days after the removal decision to conduct a manifestation determination review as described in subsection (3) of this rule;

(c) Services consistent with subsection (5) of this rule must be provided;

(d) Either before or not later than ten (10) business days after either first removing the student for more than ten (10) school days in a school year or beginning with a removal that constitutes a change in placement:

1. If the school district did not conduct a functional

behavioral assessment (FBA) and implement a positive behavior intervention plan (PBIP) for the student before the behavior that resulted in the removal, the IEP team must meet to develop an assessment plan.

2. As soon as practicable after developing the assessment plan and completing the FBA, as prescribed in subparagraph (4)(d)1., of this rule, the IEP team must meet to develop an appropriate PBIP to address the behavior and shall implement the PBIP.

3. If the student has a PBIP, the IEP team shall meet to review the plan and its implementation and revise the plan and its implementation as necessary to address the behavior.

(e) If subsequently, a student with a disability who has a PBIP and who has been removed from the student's current placement for more than ten (10) school days in a school year is subjected to a removal that does not constitute a change in placement as described in paragraph (1)(a) of this rule:

1. The IEP team shall review the PBIP and its implementation to determine if revisions are necessary.

2. If one or more of the IEP team members believe that revisions are needed, the IEP team shall revise the plan and its implementation to the extent that the IEP team determines is necessary.

(5) Free Appropriate Public Education for Students with

Disabilities who are Suspended or Expelled.

(a) A school district is not required to provide services to a student with a disability during short-term removals totaling ten (10) school days or less in a school year, if services are not provided to students without disabilities during such removals.

(b) Beginning on the eleventh cumulative school day of removal in a school year, a school district must provide a free appropriate public education (FAPE) to a student with a disability, consistent with the requirements of this rule and the following:

1. A school district must provide services to such a student to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the student's IEP.

2. If the removal is not for more than ten (10) consecutive school days in a school year and is not considered a change in placement, consistent with paragraph (1)(a) of this rule, school personnel, in consultation with the student's special education teacher(s), shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the student's IEP goals.

(c) If the removal is due to behavior that was determined not to be a manifestation of the student's disability, the IEP team shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the student's IEP goals.

(6) Interim Alternative Educational Setting (IAES).

(a) The IEP team must determine the IAES, unless it is determined by an administrative law judge in accordance with paragraph (8)(a) of this rule.

1. The IAES must be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive these services, accommodations, and modifications, including those described in the student's current IEP, that will enable the student to meet the IEP goals.

2. The IAES must include services, accommodations, and modifications to address the behavior that resulted in the change of placement and that are designed to prevent the misconduct from recurring.

(b) School personnel may place a student in an IAES without the consent of the parent for the same amount of time a student without a disability would be placed, but for not more than forty-five (45) calendar days. Such a placement can only occur if the student:

1. Carries a weapon or firearm to school or to a school function, or

2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

(c) School personnel must notify the parent of any IAES placement contemplated and provide the parent with a copy of the notice of procedural safeguards, referenced in Rule 6A-6.03311, FAC., on the day the placement decision is made.

(7) Expedited Hearings.

(a) An expedited hearing may be requested:

1. By the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge regarding a change in placement under this rule.

2. By the school district if school personnel maintain that the current placement of the student is substantially likely to result in injury to the student or to others (prior to removal to an interim alternative education setting) during the pendency of a due process hearing or an appeal as prescribed in subsection (11) of Rule 6A-6.03311, FAC.

(b) School district personnel may request subsequent expedited hearings for alternative placements if a forty-five (45) day term has expired, the district maintains that the

student's behavior continues to be and is dangerous and still likely to result in injury to the student or others.

(c) The decision of the administrative law judge rendered in an expedited hearing may be appealed by bringing a civil action in a federal district or state circuit court, as provided in Section 1003.57(5), Florida Statutes or by requesting an impartial review by the appropriate district court of appeal as provided by Sections 120.68 and 1003.57(5), Florida Statutes.

(8) Authority of an administrative law judge.

(a) An administrative law judge may order a change in the placement of a student with a disability to an appropriate interim alternative or another educational setting for not more than forty-five (45) calendar days if the administrative law judge, in an expedited due process hearing:

1. Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

2. Considers the appropriateness of the student's current placement;

3. Considers whether the school district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

4. Determines that the interim alternative educational setting (IAES) that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of subparagraphs (6)(a)1-2 of this rule.

(b) In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of subsection (3) of this rule.

(c) In reviewing a decision to place a student in an IAES, the administrative law judge shall apply the requirements of subsection (6) and paragraph (8)(a) of this rule.

(9) Student's Placement During Proceedings.

(a) If a parent requests a hearing or an appeal to challenge an IAES placement, a manifestation determination or disciplinary action resulting from the student's involvement with a weapon, illegal drugs, or a controlled substance, the student must remain in the IAES pending the decision of the administrative law judge or until the expiration of the forty-five (45) day time period, whichever occurs first, unless the parent and the school district agree otherwise.

(b) If the school district proposes to change the student's placement after the expiration of the forty-five day period of

the IAES placement, and the parent challenges that proposed change of placement, the student must return to his or her placement prior to the IAES, except as provided in paragraph (7)(b) of this rule.

(c) In accordance with Rule 6A-6.03311(11)(d), FAC., and Section 1003.57(5), Florida Statutes, except as specified in paragraphs (9)(a)- (b) of this rule, if a parent requests for a hearing to challenge a manifestation determination, the student must remain in the current educational placement, unless the parent of the student and the district agree otherwise.

(10) Protections for Students not Yet Eligible for Special Education. A regular education student who is the subject of disciplinary actions may assert any of the protections afforded to a student with a disability if the school district had knowledge of the student's disability before the misbehavior occurred for which the disciplinary action is being taken.

(a) Basis of knowledge. A school district is determined to have knowledge that a student may have a disability if:

1. The parent has expressed concerns in writing or orally, if the parent does not know how to write or has a disability that prevents a written statement, to school district personnel that the student needs special education and related services;

2. The behavior or performance of the student demonstrates the need for special education;

3. The parent has requested an evaluation to determine a need for possible special education; or

4. The teacher of the student or other school district personnel have expressed concern about the student's behavior or performance to the special education director or to other appropriate school district personnel in accordance with the school district's child find or special education referral system.

(b) Exception. A school district would not be deemed to have knowledge if, as a result of receiving the information specified in paragraph (10)(a) of this rule, the school district:

1. Conducted an evaluation and determined that the student was not a student with a disability; or

2. Determined that an evaluation was not necessary; and

3. Provided notice to the student's parents of the determination that the student was not a student with a disability as required by Rule 6A-6.03311, FAC.

(c) Conditions that Apply if No Basis of Knowledge.

1. If the school district has no knowledge that the student is a student with a disability prior to disciplinary action, the student may be disciplined in the same manner as a student without a disability.

2. If an evaluation request is made for the student during the time period of the disciplinary action, 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 can include suspension or expulsion without educational services. After considering the evaluation results and information provided by the parents, if the student is determined to be a student with a disability, the school district shall provide special education and related services consistent with the requirements of this rule.

(11) Student Records in Disciplinary Procedures. School districts shall ensure that the special education and disciplinary records of students with disabilities are transmitted, consistent with the provisions of Section 1002.22, Florida Statutes, and Rule 6A-1.0955, FAC:

(a) For consideration by the person making the final determination regarding the disciplinary action, and

(b) For consideration by the appropriate authorities to whom school districts report crimes.

(12) Disciplinary Records of Students with Disabilities. School districts shall include in the records of students with disabilities a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with the student records of nondisabled students.

(a) The statement may be a description of any behavior engaged in by the student that required disciplinary action, a

description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student.

(b) If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current individual educational plan (IEP) and any statement of current or previous disciplinary action that has been taken against the student.

(13) Suspension and expulsion rates.

(a) The state education agency (SEA), the Florida Department of Education, will examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities.

1. Among local education agencies (LEA's) in the state; or
2. Compared to the rates for non-disabled children within the school districts.

(b) If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act (IDEA) in accordance with 300.146 of Title 34 Code of Federal Regulations.

Specific Authority 1001.02(1)(2)(n), 1003.01(3)(a)(b),
1003.57(5), and 1006.09, FS. Law Implemented 1001.03(8),
1001.42(4)(1), 1003.01(3)(a)(b), 1003.57(5), 1006.09, FS. P.L.
105-17, 20 USC 1401, 1414, and 1415. History - New