

Rule 6A-6.03312 is substantially rewritten to read (see Florida Administrative Code for present text).

6A-6.03312 Discipline Procedures for Students with Disabilities. For students with disabilities 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 their individual educational plans (IEPs). School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements and procedures in this rule, is appropriate for a student with a disability who violates a code of student conduct.

(1) Definitions applicable to discipline of students with disabilities. For purposes of this rule, the following definitions apply:

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

1. The removal is for more than ten (10) consecutive school days, or
2. The student has been subjected to a series of removals that constitutes a pattern that is a change of placement because the removals cumulate to more than ten (10) school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of additional factors, such 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. A school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to review through due process and judicial proceedings.

(b) Controlled substance. A controlled substance is a drug or other substance identified under schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. 812(c) and Section 893.02(4), Florida Statutes.

(c) 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.

(d) Serious bodily injury. Serious bodily injury means bodily injury which 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

(e) Weapon. Weapon means a weapon, 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 that is less than two and one half (2½) inches in length.

(f) Manifestation determination. A manifestation determination is a process by which the relationship between the student's disability and a specific behavior that may result in disciplinary action is examined.

(g) 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 this rule.

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

(a) Remove a student with a disability who violates a code of student conduct from the student's current placement for not more than ten (10) consecutive school days.

(b) Further remove a student with a disability for 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 this rule.

(3) Manifestation determination. A manifestation determination, consistent with the following requirements, must be made within ten (10) days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct.

(a) In conducting the review, the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) must:

1. Review all relevant information in the student's file, including any information supplied by the parents of the student, any teacher observations of the student, and the student's current IEP; and

2. Determine whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or whether the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) If the school district, the parent, and relevant members of the IEP Team determine that a condition in subparagraph (a)2. above was met, the conduct must be determined to be a manifestation of the student's disability and the school district must take immediate steps to remedy those deficiencies.

(c) If the school district, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the student's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district 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 student; or

2. If a behavioral intervention plan already has been developed, review it and modify it, as necessary, to address the behavior; and

3. Except as provided in subsection (6) of this rule, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change in placement as part of the modification of the behavior intervention plan.

(d) For disciplinary changes of placement, if the behavior that gave rise to the violation of a code of student conduct is determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities, except that services consistent with subsection (5) of this rule must be provided to the student with a disability.

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

(4) On the date on which a decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, 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 these rules.

(5) Free appropriate public education for students with disabilities who are suspended or expelled or placed in an IAES.

(a) A school district is not required to provide services to a student with a disability during

removals totaling ten (10) school days or less in that school year, if services are not provided to students without disabilities who are similarly removed.

(b) Students with disabilities who are suspended or expelled from school or placed in an IAES must continue to receive educational services, including homework assignments in accordance with Section 1003.01, Florida Statutes, so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

(c) After a student with a disability has been removed from the current placement for ten (10) school days in the school year, if the current removal is not more than ten (10) consecutive school days and is not a change of placement under this rule, school personnel, in consultation with at least one of the student's special education teacher(s), shall determine the extent to which services are needed so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP.

(d) If the removal is a change of placement under this rule, the student's IEP Team determines appropriate services under paragraph (b) of this subsection.

(6) Special Circumstances and Interim Alternative Educational Setting (IAES).

(a) School personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to a school

function under the jurisdiction of a state education agency or a school district;

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 a state education agency or a school district; 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 a state education agency or a school district.

(b) On the date on which a decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct, the school district must notify the parent of that decision and provide the parent with a copy of the notice of procedural safeguards as referenced in Rules 6A-6.03011 through 6A-6.0361, FAC.

(7) Appeal and 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 (ALJ) regarding a change of placement under this rule, or

2. By the school district if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(b) The school district may repeat the procedures for expedited hearings if it believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(c) Expedited due process hearings requested under this subsection shall be conducted by an ALJ 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 Rules 6A-6.03011 through 6A-6.0361, FAC., except that the hearing must occur within twenty (20) school days of the date the request for due process is filed and an ALJ must make a determination within ten (10) school days after the hearing. In addition, unless the parents and the school district agree in writing to waive the resolution meeting described herein or agree to use the mediation process set forth in these rules:

1. A resolution meeting must occur within seven (7) days of receiving notice of the request for expedited due process hearing; and

2. The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the request for expedited due process hearing.

(d) The decision of the ALJ 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.

(8) Authority of an ALJ. An ALJ hears and makes a determination regarding an appeal and request for expedited due process hearing under this subsection and, in making the determination:

(a) An ALJ may return the student with a disability to the placement from which the student was removed if the ALJ determines that the removal was a violation of this rule or that the student's behavior was a manifestation of the student' disability; or

(b) Order a change of placement of the student with a disability to an appropriate IAES for not more than forty-five (45) school days if the ALJ determines that maintaining the current

placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under this subsection may be repeated, if a school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(9) Student's Placement During Appeals/Expedited Due Process Proceedings.

When an appeal under subsection (7) has been made by either the parent or the school district, the student must remain in the IAES determined by the IEP team pending the decision of the ALJ or until the expiration of the time period specified by school personnel, including expulsion for a student where no manifestation was found, unless the parent and the Department of Education or school district agree otherwise.

(10) Protections for Students not Determined Eligible for Special Education and Related Services. A regular education student who has engaged in behavior that violated a code of student conduct may assert any of the protections afforded to a student with a disability under this rule if the school district had knowledge of the student's disability before the behavior that precipitated the disciplinary action occurred.

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

1. The parent has expressed concern in writing to supervisory or administrative personnel of the appropriate school district, or a teacher of the student, that the student needs special education and related services;
2. The parent has requested an evaluation to determine whether the student is in need of special education and related services; or
3. The teacher of the student, or other school district personnel, expressed specific concerns

about a pattern of behavior demonstrated by the student directly to the school district's special education director or to other supervisory school district personnel.

(b) Exception. A school district would not be deemed to have knowledge of a disability under paragraph (a) if:

1. The parent of the student has not allowed an evaluation pursuant to Rules 6A-6.03011 through 6A-6.0361, FAC., or has refused special education and related services under Rules 6A-6.03011 through 6A-6.0361, FAC.; or

2. The school district conducted an evaluation in accordance with Rules 6A-6.03011 through 6A-6.0361, FAC., and determined that the student was not a student with a disability.

(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 who engages in comparable behaviors.

2. If an evaluation request is made for the student during the time period of the disciplinary action, 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, which can 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 and information provided by the parents, the school district shall provide special education and related services consistent with the requirements of this rule.

(11) Nothing in this rule prohibits a school district from reporting a crime committed by a student with a disability to appropriate authorities or prevents state 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.

(12) 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.

(13) 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 IEP and any statement of current or previous disciplinary action that has been taken against the student.

(14) Suspension and expulsion rates.

(a) The Florida Department of Education, will examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

1. Among school districts 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 subsection are occurring, the Department of Education will review and, if appropriate, revise (or require the affected school district to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the IDEA.

Specific Authority 1001.02(1)(2)(n ), 1003.01(3), 1003.57, 1006.09, F.S. Law Implemented 1001.03(8), 1001.42(4)(1), 1003.01(3), 1003.57, 1006.09, F.S. History New 09-20-04, Amended