



# **Discipline Guidelines For Students with Disabilities**

- ❖ **Individual Education Plan**
- ❖ **Section 504 Plan**

**2022-2023**

**EVERY SCHOOL. EVERY CLASSROOM. EVERY STUDENT. EVERY DAY.**

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## Introduction

The ***Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) and Section 504 of the Rehabilitation Act of 1973 (§504)*** include elements that impact procedures, policies, and interventions related to the discipline of students with disabilities. Achieving a balance between a student's educational needs and the student's personal accountability is essential to ensure a safe and productive learning environment. This balance may become more difficult to achieve when the student in question has a disability. The right of a student with a disability to a **Free and Appropriate Public Education (FAPE)** may be impacted by suspension and/or expulsion used as a repeated method of discipline for engaging in inappropriate behavior.

Four basic understandings should guide actions related to discipline of students with a disability or students suspected of having a disability:

1. All students deserve safe, well-disciplined schools and orderly learning environments.
2. There must be a balanced approach to discipline that reflects the need for orderly and safe schools, while also protecting the rights of students with a disability to receive FAPE.
3. Implementation of positive behavior intervention strategies within the Individual Education Plan (IEP)/§ 504 Plan or separate Behavior Intervention Plan must be documented.
4. IEP/§504 meetings must be scheduled to review supports and services when the student has received multiple discipline referrals as a result of *Code of Student Conduct* infractions.

The updated ***Discipline Guidelines for Students with Disabilities, 2022-2023*** is designed to assist school personnel in developing appropriate practices to implement the federal and state regulatory requirements for discipline of students with a disability in Duval County Public Schools (includes students with an IEP, §504 Plan and/or students suspected of having a disability).

### **Guidelines for Addressing Behavior Concerns in the IEP**

IEPs are individually designed to meet each student's unique needs. The IEP team should develop a *Positive Behavior Support Plan* for students with a current IEP who demonstrate problematic behaviors, which interfere with the learning process. The *Positive Behavior Support Plan* identifies interventions/strategies that will be used to teach positive replacement behaviors.

If documentation resulting from implementation of the *Positive Behavior Support Plan* indicates a student continues to demonstrate on-going behavioral problems **OR** once the student has been suspended four (4) days, the IEP Team **MUST** meet to review the

current IEP, as well as consider the need and if determined necessary, obtain consent for conducting a *Functional Behavior Assessment (FBA)* and development of a *Behavior Intervention Plan (BIP)*. If the student already has an FBA/BIP it should be reviewed and revised as appropriate or a new FBA/BIP developed.

An *FBA* is a process of identifying the function (purpose) of specific behavior(s) that interfere(s) with a student's learning by assessing the frequency, intensity, duration, and environmental circumstances surrounding the occurrence of the inappropriate behavior(s). Upon completion of an *FBA*, a *BIP* is developed to appropriately identify interventions to reduce the target behavior and increase the likely occurrence of a positive replacement behavior.

1. The IEP Team must meet to review and revise the IEP according to the *Special Programs and Procedures for Exceptional Students* document. Membership on the IEP Team must, at a minimum, include all required participants specified in Rule 6A-6.03028 (3)(c), FAC.
2. If an FBA/BIP is determined necessary by the IEP team, written parent consent must be obtained **prior** to its development.
3. The IEP Team should also develop annual goals and short-term objectives, which align with the target behavior, replacement behavior and interventions identified in the *FBA/BIP*.

## **Guidelines for Addressing Behavior Concerns in the §504 Plan**

§504 Plans are individually designed to meet each student's unique needs. The §504 team should develop a *Positive Behavior Support Plan* for students with a current §504 Plan who demonstrate problematic behaviors, which interfere with the learning process. The *Positive Behavior Support Plan* identifies interventions/strategies that will be used to teach positive replacement behaviors.

If documentation resulting from implementation of the *Positive Behavior Support Plan* indicates a student continues to demonstrate on-going behavioral problems **OR** once the student has been suspended four (4) days, the §504 Team **MUST** meet to review the current §504 Plan, including the *Positive Behavior Support Plan*, as well as consider the need and, if determined necessary, obtain consent for the development of a *Functional Behavior Assessment (FBA)* and *Behavior Intervention Plan (BIP)*. If the student already has an FBA/BIP it should be reviewed and revised as appropriate or a new FBA/BIP developed.

An *FBA* is a process of identifying the function (purpose) of specific behavior(s) that interfere(s) with a student's learning by assessing the frequency, intensity, duration, and environmental circumstances surrounding the occurrence of the inappropriate behavior(s). Upon completion of an *FBA*, a *BIP* is developed to appropriately identify interventions to reduce the target behavior and increase the likely occurrence of a positive replacement behavior.

## **Guidelines in the Application of the Code of Student Conduct**

Students with disabilities have the right to a free and appropriate education (FAPE) without excessive interruptions in their educational program. They also have the responsibility to work cooperatively with parents and school personnel in acquiring and maintaining appropriate school behavior. **All students with a disability** (students with an IEP or §504 Plan) **or students who are suspected of having a disability\* are subject to the rules and regulations of the Duval County Public Schools Code of Student Conduct.**

There are procedural safeguards that **must** be guaranteed to each student with a disability when applying disciplinary actions within the *Code of Student Conduct*. It is the principal/designee's responsibility to determine if extenuating circumstances exist with any infraction a student commits, in order to ensure that the disciplinary action is in the best educational interest of the student and that accurate records are kept regarding all infractions.

### **Students Suspected of Having a Disability**

The *Discipline Guidelines for Students with Disabilities* (IEP/§504) apply if the district "had knowledge" **before** the student's misconduct that the student was disabled.

The district is presumed to "have knowledge" if, prior to the misconduct:

- Parent expressed concern (written/verbal) to supervisory/administrative personnel that the student is in need of special education services
- Parent has requested an evaluation (written/verbal)
- Teacher or other personnel have expressed (written/verbal) to supervisory/administrative personnel specific concerns about a pattern of behavior demonstrated by the student
- Student is or has been referred to the MRT/504 Team (including if the meeting has not yet been held)

The district is deemed NOT to have knowledge if:

- The parent has not allowed (refused) an evaluation for consideration of the need for special education and related services
- The parent has refused the special education and related services for which the student is eligible
- The student has been evaluated and determined to not be eligible for special education and related services
- The parent revokes consent for all special education and related services

Please refer specific questions and concerns regarding discipline of students with disabilities to the appropriate EE/SS Office.

## **Guidelines for Suspension of Students with Disabilities (IEP/§504 Plan) from the School/Bus**

Behavior of a student with a disability (IEP/§504 Plan) **or** a student suspected of having a disability that is disruptive to his/her own educational program and/or that of other students, may warrant removal from the educational environment or bus for a period of time for the benefit of the student(s) and in order to re-establish a positive learning climate.

Based on individualized circumstances, consequences for an infraction of the rules may result in a discipline referral to the principal/designee. A student must be given notice of the infraction(s) against him/her by the principal/designee and must be provided an opportunity to present his/her explanation of the situation before any disciplinary action is taken. **Parent/guardian/educational surrogate\*** contact, either written or verbal, should be made each time a student is disciplined by an administrator. The length of time the student is suspended is subject to the *Discipline Guidelines for Students with Disabilities*.

**Documenting the implementation of behavioral plans associated with the IEP, §504 Plan and/or FBA/BIP is essential.** Prior to utilizing suspension as a disciplinary action for a *Code of Student Conduct* infraction, the principal/designee **MUST** inquire with the teacher/staff involved to provide documentation of the implementation of the *Positive Behavior Support Plan* and *FBA/BIP* or *Section 504 Behavioral Plan* (if one has been developed). Refer to section – Suspension if the IEP or §504 Plan does not include a *Positive Behavior Support Plan* – page 10.

- Comments by the U.S. Dept. of Education, accompanying the IDEA 1999 regulations stated: “[I]f a child’s IEP includes behavioral strategies to address a particular behavior of the child, the appropriate response to that behavior almost always [emphasis added] would be to use the behavioral strategies specified in the IEP rather than to implement a disciplinary suspension.” 64 Fed. Reg. 12,626 (1999).

**In preparation for the return of the student to the educational setting, school personnel should consider the positive supports necessary to assist the student with being successful. An IEP or §504 meeting should be scheduled to review the *Positive Behavior Support Plan* and/or separate *FBA/BIP*, including implementation documentation, in order to make changes as appropriate.**

### **In-School Suspension Program (ISSP)/Class Suspension (CS)**

The repeated use of ISSP, and/or CS, (if an available option), which establishes a pattern of removals, is considered a change in placement and triggers IDEA procedural protections; however, the time in ISSP/CS is not considered part of the 10 cumulative out-of-school suspension days and is not considered a change in placement **IF** while in ISSP/CS the student:

- receives services as specified in the IEP

- *Positive Behavior Support Plan* is implemented and documented
- FBA/BIP, if developed, is implemented, and documented
- Accommodations are provided and documented
- ESE and Related Services are provided and documented
- receives accommodations/services as specified in the §504 Plan and the *Positive Behavior Support Plan* has been implemented and documented
- is afforded the opportunity to continue to appropriately progress in the general curriculum
- has the opportunity to continue to participate with non-disabled peers to the same extent as s/he does in his/her current placement



If ATOSS is an available option and the ATOSS site to which the student is assigned/attends does **NOT** have a teacher and/or Related Service provider with the appropriate ESE certification providing the services in the IEP, the day(s) **WILL** count toward the 10 cumulative out-of-school suspension days. **Coding MUST be correct in the Student Information System.**

**Assignment to ISSP/CS as a disciplinary action shall be limited to NO MORE THAN 3 CONSECUTIVE DAYS AT ONE TIME, regardless of the number of infractions in one day.**

- **Additional days may NOT be assigned as disciplinary action for the same infractions if the days originally assigned (1 – 3) have been served.**

\* In the case of a student for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

## **Out-of-School Suspension of Students with Disabilities (IEP/§504)**

The IEP/§504 Plan of a student with disabilities may include a *Positive Behavior Support Plan*. **The administrator or designee MUST refer to the student's current IEP/§504 Plan prior to any disciplinary action. Documentation of the implementation of the Behavior Support Plan and FBA/BIP, if appropriate, or Section 504 Behavioral Plan MUST be requested, from the teacher/staff initiating the discipline referral, PRIOR to utilizing suspension as a disciplinary action.**

Students with disabilities (IEP/§504) or students suspected of having a disability may only be suspended for up to three (3) days at one time. **A student may NOT be suspended for more than 10 cumulative school days in a single school year without approval by the appropriate Regional Superintendent AND the EE/SS Executive Director/Designee.** OSS exceeding 10 days, including as a result of the outcome of a threat assessment, is a change in placement and **requires** a manifestation determination meeting to be scheduled. A partial day of suspension is considered one (1) full day of suspension.

**Documentation of a discipline referral and formal notice of suspension is REQUIRED PRIOR TO contacting the parent/guardian/educational surrogate\* to remove the student from school prior to the end of the day and/or the following day(s).**


For suspensions totaling ten (10) days or less in one school year, it is the responsibility of

the student/parent to request makeup work that may be required as a result of the student's suspension. Students who are absent shall receive a grade of zero (0) for work missed for the day(s) in which the absence(s) occur. Students shall receive appropriate grades for the make-up work to replace the zero (0). The make-up work should be made up within a specific time period, as determined by the current IEP/§504 Plan and the instructor(s) as appropriate.

School personnel should prepare for the return of the student to the classroom or other appropriate placement by reviewing the current IEP/§504 Plan and *Positive Behavior Support Plan* and/or, as appropriate, schedule a meeting to revise the current plan. School personnel may counsel with the student and parent/guardian/educational surrogate\* to assist in a positive return to school.

\* In the case of a student in foster care for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

**NOTE:**

- The period of suspension **cannot** be extended pending a parent conference.
-  Refer to page 5 regarding the use of ATOSS as it relates to # of OSS days.

## **Out of School Suspension Procedures (IEP/§504)**

### **Days 1 – 3 of suspension:**

- Administrator responsible for discipline **MUST** review the current IEP/§504 Plan - including the documentation of the implementation of the student's *Positive Behavior Support Plan* associated with the IEP/§504 Plan, **prior to utilizing suspension as a disciplinary action.**
  - **If no documentation, meet with teacher(s) to discuss and may want to reconsider use of suspension.**
- If a *Positive Behavior Support Plan* has **NOT** been developed, conduct an IEP meeting to develop a plan aligned with a corresponding Social/Emotional PLOP, goal(s)/objectives and service(s), as required.
- If a §504 *Positive Behavior Support Plan* has **NOT** been developed, conduct a §504 meeting to develop the plan.
- If a student has committed a Level 2, 3 or 4 *Code of Student Conduct* infraction, for which the *Code of Student Conduct* indicates the disciplinary action of referral to the Hearing Office **AND is the option principal/designee is seeking to pursue**, a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).
- If a student in grades 4 – 12 obtains the minimum threshold of 12 points based on a pattern of behavior specific to the Discipline Rubric of the *Code of Student Conduct* **OR** a student in grades 6 – 12 incurs a third code infraction from the group of Multiple Aggressive Infractions indicated in the *Code of Student Conduct* **AND the principal/designee is seeking to pursue referral to the Hearing Office**, a



manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).

- Contact the EE/SS Support Team Office for additional assistance, if needed.

#### **Days 4 - 7 of suspension:**

- Administrator responsible for discipline **MUST** review the current IEP/§504 Plan - including the documentation of the implementation of the student's *Positive Behavior Support Plan* associated with the IEP/§504 Plan, **prior to utilizing suspension as a disciplinary action.**
  - **If no documentation, meet with teacher(s) to discuss and may want to reconsider use of suspension.**
- Upon the **4th** day of suspension, an IEP or §504 meeting **MUST** be scheduled (including support personnel, as appropriate) to:
  - Review and update, as appropriate, the §504 or IEP to include necessary strategies, goals and supports for the student.
  - Obtain consent for and begin the process of developing an FBA/BIP. If an FBA/BIP has already been developed and implemented, it should be reviewed and revised as appropriate.
- IEP Only: On the **7th** day of suspension, a plan must be developed in preparation for the provision of services should suspensions, **if approved by the appropriate Regional Superintendent AND EE/SS Executive Director/Designee**, exceed ten (10) days. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to provide FAPE [34 CFR 300.530 (d)(4)], if suspensions exceed ten (10) days in a school year.
  - Complete the **Plan for the Continued Provision of Services** form. (See sample in the Appendix)
  - File original in the student's cumulative folder, and a copy in the discipline file.
- If a student has committed a Level 2, 3 or 4 *Code of Student Conduct* infraction, for which the *Code of Student Conduct* indicates the disciplinary action of referral to the Hearing Office **AND is the option the principal/designee is seeking to pursue**, a manifestation determination meeting **MUST** be scheduled **PRIOR** to referral to the Hearing Office (Refer to pages 11-14).
- If a student in grades 4 – 12 obtains the minimum threshold of 12 points based on a pattern of behavior specific to the Discipline Rubric of the *Code of Student Conduct* **OR** a student in grades 6 – 12 incurs a third code infraction from the group of Multiple Aggressive Infractions indicated in the *Code of Student Conduct* **AND the principal/designee is seeking to pursue referral to the Hearing Office**, a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).
- Contact the EE/SS Support Team Office for additional assistance

## Days 8 – 10 of suspension:

- Administrator responsible for discipline **MUST** review the current IEP/§504 Plan - including the documentation of the implementation of the student's *Positive Behavior Support Plan* associated with the IEP/§504 Plan, **prior to utilizing suspension as a disciplinary action.**
  - **If still no documentation, meet with Principal to discuss and may want to reconsider use of suspension.**
- If a student has committed a Level 2, 3 or 4 *Code of Student Conduct* infraction, for which the *Code of Student Conduct* indicates the disciplinary action of referral to the Hearing Office **AND is the option the principal/designee is seeking to pursue**, a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).
- If a student in grades 4 – 12 obtains the minimum threshold of 12 points based on a pattern of behavior specific to the Discipline Rubric of the *Code of Student Conduct* **OR** a student in grades 6 – 12 incurs a third code infraction from the group of Multiple Aggressive Infractions indicated in the *Code of Student Conduct* **AND the principal/designee is seeking to pursue referral to the Hearing Office**, a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).
- Note that if the suspension exceeds 10 days (cumulatively) for the year it will constitute a **change of placement and trigger IDEA or §504 procedural protections, including as a result of the outcome of a threat assessment. (see next section)**
- IF the total number of days will exceed 10 days for the year, see the next section for required forms that **must** be provided to the parent/guardian/educational surrogate\*.
- **IF the total number of days will exceed 10 days for the year, the Principal/Designee MUST first have the approval of the appropriate Regional Superintendent AND EE/SS Executive Director/Designee.**

## Suspensions exceeding ten days (11+ days) & Additional Requirements:

Each suspension **MUST** first be approved by the appropriate Regional Superintendent AND EE/SS Executive Director/Designee. Suspensions that exceed ten (10) days in one school year constitute a **change in placement, including as a result of the outcome of a threat assessment**. A Manifestation Determination meeting **MUST** be scheduled and held (Refer to pages 11 – 14).

- **If still no documentation, meet with Principal to discuss and may want to reconsider use of suspension.**

**For a student with an IEP**, school personnel **MUST**, on the day that exceeds ten (10) days:

1. Notify the parent/guardian/educational surrogate\*, as appropriate, and provide

the *Notice of Procedural Safeguards* as specified by 6A-6.03011 – 6A-6.0361, FAC.

2. Provide the parent/guardian/educational surrogate\* with the *Informed Notice of Change in Placement and/or Free Appropriate Public Education (FAPE)* form.
  - a. Indicate that services will be provided as stated on the *Plan for the Continued Provision of Services* form.
  - b. Attach the completed *Plan for the Continued Provision of Services* (refer to page 18) to the *Informed Notice of Change in Placement and/or Free Appropriate Public Education (FAPE)* form.

NOTE: Provision of the required forms may be done via U.S. mail, if direct contact with the parent/guardian/educational surrogate\*, as appropriate, is not possible on the 11<sup>th</sup> day of suspension.

3. Implement the *Plan for the Continued Provision of Services* and provide a copy to appropriate school personnel. **Document the provision of services as indicated on the form.**

\* In the case of a student in foster care for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

### **Additional Requirements:**

1. **Upon the 11<sup>th</sup> day of suspension**, for a student with an IEP, the Administrator **MUST** contact the district Conduct Review office (858-6365) to schedule a manifestation determination (conduct review) meeting. For a student with a §504 Plan, the Administrator must notify the school based 504 Team Liaison to schedule a manifestation determination meeting. The manifestation determination meeting **MUST** be held within ten (10) school days of the date of suspension, unless there are scheduling conflicts with the family and/or family's advocate/attorney and the district's legal counsel. (See pages 11 – 14 for procedures for a manifestation determination and requirements for school staff before and after the meeting.)
  - a. If the outcome of the manifestation determination meeting was that the infraction(s) was/were a manifestation of the student's disability, suspension may not be considered as a result of the same *Code of Student Conduct* infraction(s).
  - b. If the outcome of the manifestation determination meeting was that the infraction(s) was/were not a manifestation of the student's disability, suspension may be considered. Approval from the appropriate Regional Superintendent **AND** EE/SS Executive Director would be required prior to any additional days of suspension being assigned.
2. Within three (3) days of the date of the 11<sup>th</sup> day of suspension complete a *Meeting Participation* form and send to the parent/guardian/educational surrogate\* in order to schedule an IEP or §504 meeting within 7 – 10 days.
  - a. **The purpose of the meeting is to review/revise the §504 Plan or IEP, FBA/BIP and Plan for the Continued Provision of Services to reflect appropriate services as needed.**

- b. If not already involved, contact the EE/SS Support Team Office for additional assistance.

\* In the case of a student for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

## **Suspension - If the IEP or §504 Plan Does Not Include a Behavior Plan**

A student with disabilities whose IEP/§504 Plan does not include a *Positive Behavior Support Plan* may be suspended for up to **three (3)** days in-school, from the Bus or out-of-school, **provided an IEP/§504 meeting is scheduled within seven (7) to ten (10) days to include a Positive Behavior Support Plan.**

**In accordance with the Code of Student Conduct, the principal/designee will provide written notice of the suspension and alleged infractions to the parent/guardian/educational surrogate\* and student.**

The purpose of the IEP/§504 meeting is to:

- assess the student behavior(s)
- develop a behavior plan to effectively address the behavior(s) that lead to suspension
- determine the need for or revision of current FBA/BIP
- update the §504 Plan or IEP PLOP, Goals, Objectives, and Services to align with the behavior plan

\* In the case of a student for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

## **Bus Suspension**

- Students with disabilities (IEP/§ 504) or students suspected of having a disability **may be suspended from the bus for up to three (3) days at one time.**
- Administrator responsible for discipline **MUST** review the current IEP/§504 Plan - including the documentation of the implementation of the student's behavior plan associated with the IEP/§504 Plan.
- If a student has committed a Level 2, 3 or 4 infraction for which the *Code of Student Conduct* indicates the disciplinary action of:
  - **removal of bus privileges** - a manifestation determination meeting MUST be scheduled PRIOR to removal of bus privileges (Refer to pages 11-14).

OR

- **referral to the Hearing Office** (AND is the option the Principal/designee is seeking to pursue) - a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).

- If the district Conduct Review Committee/§504 Team determines that the infraction was **not** a manifestation of the student's disability, the student may be disciplined in the same manner as a student without a disability; however, it **cannot** result in a complete cessation of services. A student with a disability is guaranteed a right to FAPE. **School staff MUST contact the EE/SS Support Team Office for assistance.**
  - **If Transportation IS identified in the IEP or §504 Plan as a related service**, bus privileges **cannot** be revoked without **FIRST** conducting an IEP or §504 meeting to review the need for the bus service and determine, if appropriate, an alternate mode of transportation that will be provided to the student in order to provide FAPE. **School staff MUST contact the EE/SS Support Team Office for assistance.**
- A bus suspension is separate from a school suspension and applies only to the loss of bus riding privileges unless subject to other disciplinary actions, such as out of school suspensions.
  - **If Transportation is identified in the IEP/§504 Plan as a related service, the days of bus suspension(s) ARE considered as days of out-of-school suspension IF, as a result, the student with disabilities is unable to attend school and therefore would be denied a FAPE. School staff MUST contact the EE/SS Support Team Office for assistance.**
  - Bus suspension does not excuse a student from attending school.

Refer to section – Following the Manifestation Determination Meeting - pages 13-14 for **required** actions.

## **Manifestation Determination for Suspensions Over 10 Days, Level 2/3/4 Infractions and Points/Multiple Aggressive Infractions**

### **Students with an IEP or §504 Plan:**

A manifestation determination meeting **MUST** be held if:

- previously approved by the appropriate Regional Superintendent **AND** EE/SS Executive Director, suspensions exceed ten (10) **cumulative** school days within a school year, including as a result of a threat assessment
- a student has committed a Level 2, 3 or 4 infraction **for which the Code of Student Conduct indicates the disciplinary action of:**
  - **referral to the Hearing Office AND is the option the Principal/designee is seeking to pursue**

**AND/OR**

  - **removal of bus privileges** (Refer to page 10)
  - If a student in grades 4 – 12 obtains the minimum threshold of 12 points based on a pattern of behavior specific to the Discipline Rubric of the

*Code of Student Conduct* **OR** a student in grades 6 – 12 incurs a third code infraction from the group of Multiple Aggressive Infractions indicated in the *Code of Student Conduct* **AND the principal/designee is seeking to pursue referral to the Hearing Office**, a manifestation determination meeting MUST be scheduled PRIOR to referral to the Hearing Office (Refer to pages 11-14).

The manifestation determination meeting **MUST** be held **PRIOR** to referral to the Hearing Office.

**A manifestation of the disability** is defined as the **determination** that there exists a causal relationship between the student's disability and specific behavior that may result in disciplinary action.

**A manifestation determination must address whether the:**

- conduct in question was caused by, or had a direct and substantial relationship to the student's disability, **or**
- conduct was the direct result of the school district's failure to implement the student's IEP/§504 Plan

A manifestation determination:

- Must be made on a case-by-case basis and not solely on the basis of the disability category or label
- Is separate and distinct from a decision made by the Hearing Officer and does not include the Hearing Officer as a part of the team

## **Procedures for Manifestation Determinations**

A student with a **§504 Plan** must be referred to the school-based §504 Team and a manifestation determination meeting **MUST** be held **within 10 school days**, unless there are scheduling conflicts with the family and/or family's advocate/attorney and the district's legal counsel. (Refer to page 18, *Checklist for School Personnel*)

- **School personnel are responsible for:**
  - Ensuring the parent/guardian and surrogate\*, as appropriate, are aware of the infraction(s) for which the student has been suspended **PRIOR** to the manifestation determination meeting
  - Coordinating with the appropriate school psychologist – a **required participant** for §504
  - Providing the parent/guardian/educational surrogate\* with a written invitation(s) to the manifestation determination meeting. **Document all attempts to schedule the meeting.**
    - Purpose of the meeting must be indicated on the invitation – “Manifestation Determination”

A student with an **IEP or a student suspected of having a disability**, the principal/designee should contact the district Conduct Review office at 858-6365, **within twenty-four hours**

**of the student being charged with the infraction**, to schedule a manifestation determination (conduct review) meeting. The manifestation determination (conduct review) meeting **MUST** be scheduled **within 10 school days**, unless there are scheduling conflicts with the family and/or family's advocate/attorney and the district's legal counsel. (Refer to page 18, *Checklist for School Personnel*)

- The **district Conduct Review office is responsible** for informing the appropriate EE/SS staff of the meeting time and place.
- **School personnel are responsible for:**
  - Ensuring the parent/guardian/educational surrogate\* is aware of the infraction(s) for which the student has been suspended **PRIOR** to the manifestation determination meeting
  - Providing the parent/guardian/educational surrogate\* with a written invitation(s) to the Conduct Review Committee or §504 Team manifestation determination meeting. **Document all attempts to schedule the meeting.**
    - Purpose of the meeting must be indicated on the invitation – “Manifestation Determination”
- The principal/designee should be prepared to attend the meeting and present all required documentation for review.

\* In the case of a student in foster care for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

If there is insufficient information available, or the student, at the time the violation occurred, is in the process of initial evaluation or re-evaluation under IDEA/Section 504, the committee may recommend deferring the decision and request additional information or the evaluation/re-evaluation results. After the requested information is obtained, a second manifestation determination meeting will be held to determine whether the behavior is/is not a manifestation of the student's disability.

The Conduct Review Committee may also recommend as appropriate:

- return to assigned school and request assistance from the EE/SS District staff
- consideration of referral to the school CPST/MTSS team
- IEP/§504 meeting to be held to review and update the plan, as appropriate
- IEP/§504 meeting to obtain consent for or revise a comprehensive *FBA/BIP*

### **Following the manifestation determination meeting**

The school administrator may refer the student to the DCPS Hearing Office, as a disciplinary action/intervention referenced in the *Code of Student Conduct*, ONLY if the infraction was determined **not to be a manifestation** of the student's disability. The Hearing Officer may consider, as appropriate, an alternative school placement. The student must receive appropriate educational services as outlined in the IEP or §504 Plan while in attendance at the alternative school.

As indicated in 6A-6.03312(3)(c) FAC, 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**:

- \*Obtain consent for and conduct an FBA and implement a BIP, unless one had been completed and implemented prior to the behavior that resulted in the change in placement **OR**
- \*Review the current FBA/BIP and modify, as necessary, to address the behavior; **AND**
- \*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.

**\* The same requirements above apply to a student under §504.** An IEP or §504 Team meeting **MUST** be scheduled **within 10 days of the manifestation determination meeting** for which it was determined the behavior **was a manifestation** of the student's disability.

#### **NOTES:**

1. **A manifestation determination does NOT negate the total number of days suspended (does not return to zero).**
2. School staff should implement and document positive behavior interventions, strategies, and services necessary to address the frequency and severity of the student's problem behavior upon their return to the school.
3. Within three (3) school days of the **eleventh** (11<sup>th</sup>) day of suspension, complete an invitation and send to the parent/guardian/educational surrogate (if appointed) scheduling an IEP/§504 meeting within 7 – 10 days. The team will review/revise the IEP/504 Plan, current FBA/BIP, and as appropriate the *Plan for the Continued Provision of Services* (refer to page 18) to reflect appropriate services. If a current FBA/BIP is not in place, then consent should be obtained to conduct the FBA and develop the BIP to address the on-going behavioral issue.

#### **Special Circumstances (6A-6.03312(6)(a)(1-3) FAC:**

A student may be placed in an interim alternative educational setting for **not** more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of his/her 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.

**NOTE:** \*A district Conduct Review Committee or §504 Team manifestation determination



meeting **MUST** be held **PRIOR** to referral to the Hearing Office. The student may not return to his/her attending school pending a hearing with the District Hearing Officer. **Contact the EE/SS Support Team Office for guidance regarding the provision of services as indicated in the IEP/§504 Plan, so as not to deny the provision of FAPE.**

## Appeals

If the parent/guardian/educational surrogate disagrees with the outcome of the manifestation determination meeting, s/he has the right to:

- request a district administrative review
- file a state complaint
- request a due process hearing

Procedures for appealing the disciplinary action of the *Code of Student Conduct* infraction or placement at an alternative school is addressed in the *Code of Student Conduct*. The disciplinary action appeal process is separate and distinct from the process for appeal of a manifestation determination.

## Threat Assessments

A student with a disability or suspected of having a disability may be entitled to procedural protections under IDEA, Section 504 and Title II that are not generally available to students without disabilities. To accurately determine the severity of a potential threat by a student with a disability, the threat assessment team must consider the student's individual circumstances, including how his/her disability affects the student's behaviors. Consideration should be given to including the student's IEP case manager or a representative from Section 504 Team to take part in the assessment.

**NOTE:** If a threat assessment team fails to appropriately consider the student's disability during the threat assessment process, any safety precautions or interventions implemented by the district/school, based on the results of the assessment, may result in a denial of FAPE under IDEA or disability discrimination under Section 504 and Title II.

## Child Find Implications

Even if the student has not previously presented academic/behavioral troubles in school, his/her dangerous behaviors or conduct may put the district on notice of a suspected disability or potential disability. This is especially true if as a result of a threat assessment the interventions include counseling or other mental health services for the student to safely attend school or access his/her educational program. If the student is **not** currently identified as a student with a disability or has **not** been referred for evaluation under IDEA or Section 504, the school should consider referral for evaluation.

## **Need for Manifestation Determination**

If suspension, as a result of the outcome of a threat assessment, would exceed 10 days cumulatively for the school year, it would constitute a change in placement. Approval from the Regional Superintendent AND EE/SS Executive Director/Designee is required **PRIOR** to the removal for any days beyond 10 days cumulatively. A manifestation determination, for a student with an IEP, §504 Plan or a student suspected of having a disability, is required. (Refer to pages 11 – 14)

## **Referral to Mental Health Services**

In accordance with Duval County School Board Policy 8.21, a student referred for mental health screening must be assessed within 15 calendar days of the referral. Prior written notice and written parent consent for screening **MUST** be obtained for a student with an IEP, §504 Plan, or a student suspected of having a disability **PRIOR** to conducting the assessment/screening. The Consent for Individual Screening form is available in Focus SSS. If as a result of the assessment/screening, mental health services are recommended an IEP or §504 meeting must be scheduled within 7 – 10 days and held to review the result and if determined the service is required for FAPE, incorporate the mental health services into the plan as appropriate. Additionally, any other individualized strategies and/or supports to mitigate the student's risk of engaging in violence in the school setting would be determined by the IEP or §504 Team and integrated into the student's individual plan.

## **Expulsion of Students with an IEP or §504 Plan**

Acceptable behavior, as defined in the *Code of Student Conduct*, is the expectation for every student in Duval County Public Schools. When a student with disabilities (IEP/§504) engages in conduct that warrants expulsion action, procedures must be followed which will assure that the student is afforded all of the procedural safeguards provided in the *Individuals with Disabilities Education Improvement Act of 2004 (IDEIA '04)* or *Section 504 of the Rehabilitation Act of 1973*, respectively.

A student with a disability (IEP/§504) or a student suspected of having a disability may be expelled from a current school placement when it is established that the student committed a *Code of Student Conduct* infraction, which could warrant expulsion action.

If the misconduct **is a manifestation** of the student's disability, then the student **may not be expelled**. However, a review and revision of the §504 Plan or IEP **MUST** be conducted, and other alternatives considered including a Functional Behavioral Assessment and a Behavior Intervention Plan that are designed to address the behavioral infraction so that it does not recur.

If the misconduct **is not a manifestation** of the student's disability, then the student **may be expelled**; however, for a student with a disability (IEP/§504), this constitutes a change in placement and CANNOT result in a complete cessation of services/accommodations.

The *Notice of Procedural Safeguards for Parents of Students with Disabilities* must be provided to the parent/guardian/educational surrogate\* when a student with an IEP is recommended for expulsion. An IEP meeting must be scheduled to update the IEP to reflect the change in placement and FAPE as a result of the expulsion.

The *Notification of Student Rights & Procedural Safeguards* and *Section 504 Due Process Procedures* must be provided to the parent/guardian/educational surrogate\* when a student with a §504 Plan is recommended for expulsion. For a student with a §504 Plan, a §504 Team meeting must be scheduled to update the §504 Plan, as appropriate.

\* In the case of a student in foster care for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.

# CHECKLIST FOR SCHOOL PERSONNEL SUSPENSIONS EXCEEDING 10 DAYS, LEVEL 2/3/4 INFRACTIONS, AND POINTS/MULTIPLE AGGRESSIVE INFRACTIONS

All required documentation, as listed below, must be provided for review in order to conduct the manifestation determination meeting for a student with a §504 Plan, IEP or a student suspected of having a disability. Refer to pages 11 – 14.

## **Prior to the Manifestation Determination Meeting:**

- Contact district Conduct Review Office (858-6365) to schedule manifestation determination meeting **OR** schedule school based §504 Team manifestation determination meeting
- Inform the parent(s)/guardian(s)/educational surrogate\* in writing of the date, time, and location of the manifestation determination meeting. Document all attempts.
- Prepare documentation to be reviewed by the Manifestation Determination Review Team (see below)

## **Documentation required for the Manifestation Determination Meeting:**

- Written invitation(s) to parent/guardian/educational surrogate\* regarding the manifestation determination meeting
- Individual Education Plan (IEP) or §504 Plan
- Positive Behavior Support Plan* with IEP or §504 Plan, current FBA/BIP (if developed) **and documentation of implementation for the behavioral plan(s)**
- Cumulative Folder
- Disciplinary Record (all referrals for the current school year)
- Written Teacher Statement(s) regarding student's behavior (if the teacher cannot attend the manifestation determination meeting)
- Copy of *Informed Notice of Change in Placement and/or Free Appropriate Public Education (FAPE)* form provided to parent(s) on the 11<sup>th</sup>+ day of suspension (*Students with an IEP only*)
- Copy of *Plan for the Continued Provision of Services (Students with an IEP only)* – if over 10 days of suspension
- Written invitation(s) to parent/guardian/educational surrogate\* regarding IEP meeting to review and update the IEP, FBA/BIP and as appropriate, the *Plan for the Continued Provision of Services* **OR** invitation to review/update §504 Plan
- Most current psychological evaluation(s)
- Other related documentation or evaluations

\* In the case of a student in foster care for whom an educational surrogate has been appointed, notice **MUST** be provided to the surrogate and the foster parent.


# APPENDIX

## NOTE:

The form shown below is available in *FOCUS SSS – Initiate Event: Plan for Continued Provision of Services*

All required steps (forms) for a manifestation determination, FBA/BIP and/or IEP/§504 Positive Behavior Support Plan Event are available within *FOCUS SSS*.

## Plan for Continued Provision of Services



Student Name: \_\_\_\_\_ Student ID: \_\_\_\_\_ Gender: \_\_\_\_\_

Grade: \_\_\_\_\_ Campus: \_\_\_\_\_ DOB: \_\_\_\_\_

Parent: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

### Plan for Continued Provision of Services

> This form is to be completed on the 7th day of out-of-school suspension and filed in the student's cumulative folder and discipline folder.

> The plan will be implemented upon the 11th day of out-of-school suspension.

> One day of make-up work will be allowed for each day of absence due to suspension. All accommodations identified in the IEP must also be provided. Each student shall receive full credit for such work.

School personnel, in consultation with at least one of the student's special education teachers, 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 towards meeting the goals in the student's IEP [8A-6.03312(5)(c) FAC].

Class/Homework assignments will be provided for the following courses:

<input type="checkbox"/> English/Language Arts	<input type="checkbox"/> Mathematics	<input type="checkbox"/> _____
<input type="checkbox"/> Reading	<input type="checkbox"/> Intensive Math	<input type="checkbox"/> _____
<input type="checkbox"/> Intensive Reading	<input type="checkbox"/> Science	
<input type="checkbox"/> History/Social Studies	<input type="checkbox"/> Foreign Language	

School staff responsible for gathering assignments to provide to the student: \_\_\_\_\_

Indicate how assignments will be made available to the parent/student on the student's 11th day of suspension and each day thereafter:

Indicate how the student's general education and ESE teacher(s) will provide assistance/support/services (beyond providing the assigned classwork/homework) to the student on the 11th day of suspension and each day thereafter of the suspension period:

DCPS.042.01/19      DISTRIBUTION: Original: Cumulative Folder      Copies: Parent/Guardian/Surrogate/Adult Student, Discipline Folder