

This policy has been revised to further clarify a school district's obligations and the manifestation determination review when considering disciplining a student with disabilities under Section 504. It further added the definition of a student who is a current user of illegal drugs or alcohol, and clarified that a student with a disability under Section 504 who is identified as a current user may be disciplined for the use or possession of drugs or alcohol in the same manner as students without disabilities are disciplined; no manifestation determination review is required.

This policy addresses disciplining students with disabilities, as defined by Section 504 of the 1973 Rehabilitation Act (Section 504). For those students with disabilities under the Individuals with Disabilities Education Act (IDEA), the disciplinary procedures required by the IDEA will be followed. In the event a student has disabilities under both Section 504 and the IDEA, the IDEA policy shall be followed in determining appropriate disciplinary actions.

SUSPENSION

A student with a disability, as defined by Section 504, may be suspended for not more than ten (10) consecutive school days per incident.

Whenever a school considers suspending a student with a disability for more than ten (10) cumulative school days in a school year, a 504 team meeting will be convened to determine if the cumulative suspensions constitute a significant change in placement by reviewing the following factors on a case-by-case basis:

1. Whether the misconduct for which the student was suspended on the last occasion was substantially similar to the previous occasions;
2. The length of each suspension;
3. The proximity of the suspension to one another; and
4. The total amount of time the student is excluded from school.

The 504 team will consist of individuals who are knowledgeable about the student, the evaluation data, and the placement options.

If the 504 team determines that the exclusion would constitute a significant change in placement, the school will conduct a manifestation determination as set forth below.

EXPULSION

Prior to submitting an expulsion recommendation to the board of trustees for any student with a disability as defined by Section 504, a 504 team will conduct a "manifestation determination" review. **Only in those instances where it is determined by the 504 team that the student's**

misconduct was not a manifestation of the student's disability may the student be referred for an expulsion.

MANIFESTATION DETERMINATION

A manifestation determination (also called a reevaluation) must occur before a disciplinary change in placement may occur for a student determined to have a disability under Section 504. The manifestation determination review must be conducted whether or not the student with a disability has a 504 plan.

In conducting a manifestation determination review, the 504 team will review information regarding the student's disability that is recent enough to afford an understanding of the student's current behavior. In the absence of reasonably current information about the student's disability, the school district will conduct or cause to be conducted additional evaluation(s) regarding the student's disability before making the manifestation determination. The parent/guardian will be given a meaningful opportunity to provide input. After reviewing current information, the 504 team will review the student's misconduct, the student's disability and the services provided to determine:

1. Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?
2. Was the conduct in question the direct result of the district's failure to implement the student's 504 plan?

If either manifestation determination question is answered "yes," a significant change in placement for disciplinary reasons will not occur, and an evaluation will be conducted to determine whether the student's current educational placement is appropriate.

If the answers to both questions set forth above are "no," the school may proceed with the recommendation of expulsion to the board in the same manner as for similarly-situated students who do not have disabilities.

If the student's parent/guardian disagree with the 504 team's determination of the manifestation determination, a hearing may be requested. The hearing will be held in accordance with *Policy No. 671PI, Section 504: Hearing Procedures*.

Although the parent/guardian may disagree with the manifestation determination findings, the student may be expelled after following the proper procedures. Educational services may cease after expulsion, to the same extent education services cease for non-disabled peers.

CURRENT USER

In the event a student on a 504 plan is determined to be a current user of illegal drugs or alcohol, disciplinary actions pertaining to the use or possession of drugs or alcohol may be taken against

the student to the same extent disciplinary actions are taken against a student without disabilities. A manifestation determination review is not required.

For the purposes of this policy, “current user” is defined as use of illegal drugs or alcohol by a student that occurred recently enough to justify a reasonable belief that a student’s drug use is current or that continuing use is a real and ongoing problem.

NONDISCRIMINATION

In no event will a student with a disability be disciplined more harshly than a nondisabled peer for the same infraction based solely on the student’s disability.



LEGAL REFERENCE:

Section 504 of the 1973 Rehabilitation Act
29 U.S.C. Ch. 16 Sections 706(8) and 794-794b
34 CFR Part 104
Idaho Code Section 33-205
Akron (OH) City School Distr., OCR Letter, 19 IDELR 542 (1992)
Discipline of Students with Disabilities in Elementary and Secondary Schools, OCR, October 1996
Portsmouth (VA) Pub. Sch., 48 IDELR 229 (OCR 2006)
OCR Senior Staff Memorandum, 19 IDELR 859 (OCR 1992).

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