



SECTION: PROGRAMS

POLICY: 113.1

TITLE: DISCIPLINE OF STUDENTS WITH DISABILITIES

ORIGINAL: January 13, 2003

CURRENT REVISION: December 7, 2020

LAST REVIEWED BY THE COMMITTEE:

I. PURPOSE

- A. Behavioral support shall be used with students with disabilities whose behaviors impede their learning or the learning of others to promote and strengthen desirable behaviors and to reduce identified inappropriate behaviors.
- B. Students with disabilities who engage in inappropriate behavior shall be disciplined in accordance with their Individualized Education Program (IEP), behavior support plan, and Board policy.

II. DEFINITIONS

- A. Notwithstanding the requirements in 34 CFR 300.34, 300.324 and 300.530 (relating to related services; development, review, and revision of IEP; and authority of school personnel), incorporated herein by reference, with regard to a child's behavior, the following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:
 - a. Aversive techniques - deliberate activities designed to establish a negative association with a specific behavior.
 - b. Behavior support - the development, change, and maintenance of selected behaviors through the systematic application of behavior change techniques.
 - c. Positive Behavior Support Plan - a plan for students with disabilities and eligible young children who require specific intervention to address behavior that interferes with learning. A Positive Behavior Support Plan shall be developed by the IEP team, be based on a functional behavior assessment, and become part of the individual eligible young child's or student's IEP. These plans must include methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.
 - d. Restraints - the application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body.
 - i. The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him/her, guiding a student or eligible young child to an appropriate activity, or holding a student's or eligible young child's hand to safely escort him/her from one area to another.
 - ii. The term does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for

reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents/guardians and specified in the IEP. Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition, and governed by provisions for mechanical restraints in this policy.

- e. Students with disabilities - school-aged children within the jurisdiction of the district who have been evaluated and found to have one or more disabilities as defined by law, and who require, because of such disabilities, special education and related services.
- f. Suspensions from school - disciplinary exclusions from school for a period of one (1) to ten (10) consecutive school days.
- g. Expulsions from school - disciplinary exclusions from school by the Board for a period exceeding ten (10) consecutive school days and may include permanent exclusion from school.

III. POLICY

A. Suspension From School

- a. A student with a disability may be suspended without parental consent for no more than ten (10) consecutive days or an aggregate of fifteen (15) days of school per year, for the same reasons and duration as a student without a disability. A disabled student may be suspended only to the extent that such suspensions are consistent with discipline that is applied to students without disabilities.

B. Changes in Educational Placement/Manifestation Determinations

- a. For disciplinary exclusions which constitute a change in educational placement, the district shall first determine whether the student's behavior is a manifestation of his/her disability. Expulsion, exclusion from school for more than fifteen (15) cumulative days in a year, or patterns of suspensions for substantially identical behaviors all constitute changes in educational placements requiring a determination of whether the problematic conduct is a manifestation of the student's disability. For students with intellectual disability, any disciplinary suspension or expulsion is a change in educational placement.
- b. A student with a disability whose behavior is found not to be a manifestation of his/her disability may be suspended or expelled pursuant to district procedures. During the period of suspension or expulsion, the student shall continue to receive free appropriate educational services.
- c. If the student's behavior is found to be a manifestation of a disability, the IEP team shall:
 - i. Conduct a functional behavioral assessment and implement a behavior intervention plan if the IEP team had not conducted one before the behavior; or
 - ii. Review and consider revising the behavior intervention plan as necessary to address the behavior. If the behavior is found to be a manifestation of the child's disability, the student shall return to his/her placement from which s/he was removed unless the IEP team, including the parent/guardian, agree that a change in placement is appropriate for the student.
- d. If the student's behavior is a weapons, drugs/controlled substances, or serious bodily injury offense, as described below, the student may be placed in an appropriate interim

alternative educational setting for no more than forty-five (45) days, even if the behavior is found to be a manifestation of the disability.

- e. During any period of disciplinary action that constitutes a change in placement for a student, the student shall continue to receive a free and appropriate education, in accordance with federal law.
- C. Parent/Guardian Appeals From Disciplinary Actions/Request for Hearing by District for Students Who Are a Danger to Themselves or Others
- a. A due process hearing may be requested by a parent/guardian of a student with a disability who disagrees with a disciplinary placement or manifestation determination, or by the district if the district believes that the current placement is substantially likely to result in injury to the student or others. On parent/guardian appeal, or when the district requests a due process hearing, the hearing officer may return the student to the placement from which s/he was removed or order his/her removal to an appropriate interim alternative educational setting for up to forty-five (45) school days if the hearing officer determines that maintaining the child's current placement is substantially likely to result in an injury to the student or others.
 - b. A student's placement during an appeal of disciplinary action shall be in the interim alternative educational setting pending the decision of the hearing officer or expiration of the time period set for the disciplinary exclusion from the student's regular placement unless the district and the parent/guardian agree otherwise.
 - c. The district may request that a hearing officer order removal of the disabled student to an alternative setting for forty-five (45) days if the district presents substantial evidence in a hearing that maintaining the disabled student's current placement is substantially likely to result in injury to the student or others.
- D. Students Not Identified as Disabled/Pending Evaluation
- a. Students who have not been identified as disabled may be subject to the same disciplinary measures applied to students without disabilities if the district did not have knowledge of the disability at the time of the disciplinary measure. If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation shall be expedited.
- E. Administrative Removal to Interim Alternative Educational Setting for Certain Infractions
- a. *Weapons Violations*
 - i. A disabled student who carries a weapon to school or a school function may be removed from his/her current placement regardless of whether the weapons offense is a manifestation of a disability. The student may be placed in an appropriate interim alternative educational setting for no more than forty-five (45) school days.
 - ii. **Weapon** is defined as 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 of less than two and one-half (2 ½) inches in length.
 - b. *Drugs/Controlled Substances Violations*
 - i. A disabled student who knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function may be removed from his/her current placement regardless of whether the drug offense is a manifestation of a disability. The student may be placed in an

appropriate interim alternative educational setting for no more than forty-five (45) school days.

c. *Serious Bodily Injury*

- i. A disabled student who knowingly inflicts a serious bodily injury upon another person while at school, on school premises or at a school function may be removed from his/her current placement regardless of whether the offense is a manifestation of a disability. The student may be placed in an appropriate interim alternative educational setting for no more than forty-five (45) school days.

F. Referral to Law Enforcement and Reporting Requirements

- a. For reporting purposes, the term **incident** shall mean an instance involving an act of violence; the possession of a weapon; the possession, use, or sale of a controlled substance or drug paraphernalia as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act; the possession, use, or sale of alcohol or tobacco; or conduct that constitutes an offense listed under the Safe Schools Act.
- b. The Superintendent or designee shall immediately report required incidents and may report discretionary incidents committed on school property, at any school-sponsored activity, or on a conveyance providing transportation to or from a school or school-sponsored activity by a student with a disability, including a student for whom an evaluation is pending, to the local police department that has jurisdiction over the school's property, in accordance with state and federal laws and regulations, the procedures set forth in the memorandum of understanding with local law enforcement, and Board policies. The Superintendent or designee shall respond to such incidents in accordance with the district's Special Education Plan and, if applicable, the procedures, methods, and techniques defined in the student's Behavior Support Plan.
- c. For a student with a disability who does not have a Behavior Support Plan, subsequent to notification to law enforcement, the district shall convene the student's IEP team to consider whether a Behavior Support Plan should be developed to address the student's behavior, in accordance with law, regulations, and Board policies.
- d. When reporting an incident committed by a student with a disability to the appropriate authorities, the district shall ensure that copies of the special education and discipline records of the eligible student(s) are transmitted to the appropriate authorities only to the extent such transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).
- e. The school district may disclose the special education and discipline records of an eligible student to appropriate authorities without prior consent of the student's parents/guardians or the student, if eligible to consent under FERPA, in the following situations:
 - i. To comply with a judicial order or lawfully issued subpoena. Prior to complying with the subpoena, the school district will make a reasonable effort to notify the parents/guardians or eligible student of the order or subpoena so that the parent/guardian or student may seek protective action unless:
 1. the disclosure is in compliance with a federal grand jury subpoena and the court has ordered that the existence of or the contents of the subpoena or the information being requested not be disclosed; or
 2. the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

- ii. If the reporting or disclosure is permitted by a state statute adopted before November 19, 1974, and concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released.
- iii. If the reporting or disclosure is permitted by a state statute adopted after November 19, 1974, including the Pennsylvania Juvenile Act, 42 Pa. C.S. §6301, et seq., and concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released. The officials and authorities receiving the disclosed records must certify in writing to the school district that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent/guardian of the student.

G. Behavior Support Plans

- a. Positive rather than negative measures must form the basis of behavior support programs to ensure that all students and eligible young children shall be free from demeaning treatment, the use of aversive techniques and the unreasonable use of restraints. Behavior support programs must include research-based practices and techniques to develop and maintain skills that will enhance an individual student's or eligible young child's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with this policy.
- b. *Restraints*
 - i. Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to him/herself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.
 - ii. The use of restraints to control the aggressive behavior of an individual student or eligible young child shall cause the school entity to notify the parent/guardian of the use of restraint and shall cause a meeting of the IEP team within ten (10) school days of the inappropriate behavior causing the use of restraints, unless the parent/guardian, after written notice, agrees in writing to waive the meeting. At this meeting, the IEP team shall consider whether the student or eligible young child needs a functional behavioral assessment, re-evaluation, a new or revised positive behavior support plan, or a change of placement to address the inappropriate behavior.
 - iii. The use of restraints may only be included in a student's or eligible young child's IEP when the following conditions apply:
 - 1. The restraint is utilized with specific component elements of positive behavior support.
 - 2. The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.
 - 3. Staff are authorized to use the procedure and have received the staff training required.

4. There is a plan in place for eliminating the use of restraint through the application of positive behavior support.
 - iv. The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor.
 - v. The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.
 - vi. School entities shall maintain and report data on the use of restraints as prescribed by the Secretary. The report shall be reviewed during cyclical compliance monitoring conducted by the Department.
- c. *Mechanical Restraints*
- i. Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents/guardians. Mechanical restraints shall prevent a student from injuring him/herself or others or promote normative body positioning and physical functioning.
- d. *Aversive Techniques*
- i. The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs:
 1. Corporal punishment.
 2. Punishment for a manifestation of a student's disability.
 3. Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.
 4. Noxious substances.
 5. Deprivation of basic human rights, such as withholding meals, water or fresh air.
 6. Suspensions constituting a pattern under § 14.143(a) (relating to disciplinary placement).
 7. Treatment of a demeaning nature.
 8. Electric shock.

H. Training and Reporting

- a. School entities have the primary responsibility for ensuring that positive behavior support programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and techniques, and for having a written policy and procedures on the use of positive behavior support techniques and obtaining parental consent prior to the use of restraints or intrusive procedures as provided in this policy.
- b. In accordance with their plans, agencies may convene a review, including the use of human rights committees, to oversee the use of restrictive or intrusive procedures or restraints.
- c. Subsequent to a referral to law enforcement, for students with disabilities who have positive behavior support plans, an updated functional behavior assessment and positive behavior support plan shall be required.
- d. Any restraint that results in an injury to a student and/or staff person will be reported via an e-mail to the Bureau of Special Education within three (3) days of the occurrence. This

information will be communicated to the Director of the Bureau of Special Education who will notify Departmental staff based on the severity of the injury.

IV. DELEGATION OF AUTHORITY

The Board directs that the District shall comply with provisions of the Individuals With Disabilities Education Act (IDEA) and federal and state regulations when disciplining students with disabilities for violations of District policy or school rules and regulations. No student with a disability shall be subjected to a disciplinary change in placement if the student's particular misconduct is a manifestation of his/her disability. However, under certain circumstances a student with a disability may be placed in an interim alternative educational setting by school personnel or the IEP team could, if appropriate, change the student's educational placement to one which is more restrictive than the placement where the misconduct occurred.

V. REFERENCES

22 PA Code 10.2
22 PA Code 10.21
22 PA Code 10.223
22 PA Code 10.23
22 PA Code 10.25
22 PA Code 12.6
22 PA Code 14.104
22 PA Code 14.133
22 PA Code 14.143
22 PA Code 14.145
34 CFR Part 99
34 CFR 99.31
34 CFR Part 300
34 CFR 300.34
34 CFR 300.114
34 CFR 300.530
34 CFR 300.532
34 CFR 300.533
34 CFR 300.534
34 CFR 300.535
34 CFR 300.536
18 U.S.C. 930
18 U.S.C. 1365
20 U.S.C. 1232g
20 U.S.C. 1400 et seq
20 U.S.C. 1412
20 U.S.C. 1414
20 U.S.C. 1415
21 U.S.C. 812
24 P.S. 1302.1-A
24 P.S. 1303-A
35 P.S. 780-102
24 P.S. 510

Pol. 103.1
Pol. 113
Pol. 113.5
Pol. 216.1
Pol. 216.2
Pol. 218
Pol. 218.1
Pol. 218.2
Pol. 223
Pol. 227
Pol. 805.1