

DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES

Purpose and Intent

The Berlin Board of Education (the "Board") is committed to providing an effective educational program for students who have disabilities in accordance with Federal and State laws and regulations. It is the policy of the Board that no student with a disability shall be disciplined for more than 10 days for conduct that is related to the student's disability, unless the conduct created a dangerous situation or involved illegal drugs/controlled substances or weapons.

The Board hereby establishes the following rules and procedures for disciplining students with disabilities.

General Principles and Definitions

A disciplinary change in placement shall mean a suspension or removal from a student's current educational placement that is either:

- (1) for more than 10 consecutive school days; or
- (2) for a period of 10 consecutive school days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because: (1) they cumulate to more than 10 school days in a school year and (2) the length of each suspension or removal, the total amount of time the student is removed and the proximity of the suspensions or removals to one another, as well as other factors, create a pattern.

Placement in an interim alternative educational setting shall mean a temporary educational placement for a period of up to forty-five days that is different from the student's current placement at the time the behavior occurred. An interim alternative educational setting shall enable the student to continue to progress in the general curriculum and to continue to receive those special education services and modifications, including those described in the student's current IEP that will enable the student to meet the goals set out in his or her IEP. At the same time, the interim alternative educational setting shall include services and modifications to address the behavior that precipitated such placement, which are designed to prevent the behavior from recurring.

- The duration of any suspension or removal will not exceed the amount of time that a nondisabled student would be suspended or removed for the same behavior

- Removal shall mean a removal from the student's current educational placement for disciplinary reasons other than a suspension, a removal to an interim alternative educational setting, or a change in placement due to a drugs or weapons violation or expedited proceeding because of dangerous situation.
- For purposes of this policy, rules and procedures, "studentf" refers to a student with a disability, unless otherwise noted.
- When required by law and the terms of this policy, CSE manifestation determinations shall be conducted to review the relationship between the student's disability and the behavior subject to disciplinary action to determine if there is a nexus between the two. Manifestation determinations shall be conducted according Federal and State laws and regulations. Where a nexus is found, a disciplinary change in placement shall not be imposed.

Suspension or Removal for 5 Days or Less

Authority to Suspend or Remove. Each building principal is hereby delegated the authority to order a student to be placed into an appropriate interim alternative educational setting or another setting or to be suspended for a period not to exceed 5 consecutive school days.

Procedures for Suspensions (5 days or less). Where a principal has imposed a suspension, the student's parents shall have the opportunity for an informal conference with the principal. At such conference, the parents may ask questions of complaining witnesses, and the principal will follow the Board's policy and procedures for suspending nondisabled students for 5 days or less.

Procedures for Removals. A student may be removed for 5 days or less and such removal shall be conducted in accordance with the due process procedures applicable to such removals of non-disabled students.

Suspensions or Removals for More Than 5 Days

Authority to Impose Suspension or Removal (more than 5 days). A superintendent of schools, either directly or upon the recommendation of a hearing officer designated to conduct a §3214 hearing, may order the placement of a student with a disability into an interim alternative educational setting, another setting, or suspension for up to 10 consecutive school days without a manifestation determination conducted by the CSE.

Any suspension for more than 5 consecutive school days will not be imposed unless a §3214 hearing has been conducted.

Additional Suspensions or Removals. The superintendent may order additional suspensions or removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct, so long as a disciplinary change in placement does not result.

Procedures for §3214 Hearings (suspensions of more than 5 days). For suspensions of more than 5 consecutive school days, a §3214 hearing will be conducted. Similar to §3214 hearings for nondisabled students, this hearing shall be bifurcated and conducted by the superintendent or a designated hearing officer, and the same notification procedures for parents shall apply.

In addition, the following procedures will be followed:

- As soon as notice is given to the student's parents, the CSE will be requested to make a manifestation determination. This request will be withdrawn if the student is found to be not guilty or if a suspension of more than 10 days is not considered.
- If the student is found guilty, the superintendent/hearing officer will determine if a suspension or removal in excess of 10 consecutive school days (i.e., a disciplinary change in placement) should be considered.
 - I. If the superintendent/hearing officer determines that a suspension or removal in excess of 10 days should be considered, the §3214 hearing will be adjourned until the manifestation determination is completed by the CSE.
 - a. If the CSE determines that the student's behavior was not a manifestation of his or her disability, such student may be disciplined in the same manner as a non-disabled student.
 - b. If the CSE determines that the student's behavior was a manifestation of his or her disability, the superintendent/hearing officer shall dismiss the §3214 hearing (except where the superintendent/hearing officer determines that the student should be placed in an interim alternative educational setting).
 - II. If it is determined that a suspension or removal in excess of 10 days should not be considered, the hearing shall proceed to the penalty phase, and referral to the CSE for a manifestation determination will be withdrawn. The penalty phase of the hearing will follow the procedures for §3214 hearings for non-disabled students, including the admission of anecdotal evidence of past instances of misconduct.

Placement in Interim Alternative Education Setting for Not More Than 45 Days.

Weapons or Illegal Drugs/Controlled Substances. A superintendent may order the change in placement of a student with a disability to an appropriate interim alternative educational setting for up to 45 days, but not to exceed the period of suspension ordered pursuant to a §3214 hearing, where the student (1) carries or possesses a weapon at school, on school premises, or at a school function; or (2) possesses, uses, sells, or solicits the sale of an illegal drug/controlled substance while at school, on school premises, or at a school function.

Upon a determination that a student is guilty of the alleged misconduct at the §3214 hearing, the superintendent or hearing officer may order a change in placement to an interim alternative educational setting for up to 45 days. Such placement must be determined by the CSE and cannot exceed the length of time that a non-disabled student would be suspended for the same misconduct under the school district's student discipline policy. The superintendent may order such change in placement, even where the CSE determines that the student's behavior is a manifestation of the student's disability.

Dangerous Conduct. An impartial hearing officer in an expedited due process hearing may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days, if the hearing officer: (1) determines that the district has demonstrated by substantial evidence that the student's current placement is substantially likely to result in injury to the student or to others; (2) considers the appropriateness of the student's current placement; (3) determines that the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and (4) determines that the proposed interim alternative educational setting is appropriate. The impartial hearing officer may order such change in placement, even where the CSE determines that the student's behavior is a manifestation of the student's disability.

Expedited Due Process Hearings

Expedited due process hearings shall be conducted by an impartial hearing officer under the following circumstances: (1) the district requests one in order to place the student in an interim alternative educational setting because the district feels that it is dangerous to keep the student in his or her current educational setting in general or during the pendency of a §3214 hearing; (2) the parent requests one to appeal a determination that the student's behavior was not a manifestation of his or her disability; or (3) the parent requests one due to any decision related to the student's placement. Such expedited due process hearings shall follow the procedures required by law.

CSE Functional Behavioral Assessments and Behavioral Intervention Plans

No later than 10 business days after first suspending or removing a student with a disability for more than 10 school days in a school year or imposing a suspension or removal that constitutes a disciplinary change in placement, including a change in placement to an interim alternative educational setting, the CSE shall meet to review, develop and/or implement a functional behavioral assessment and behavioral intervention plan in order to address the behavior that the student is being disciplined for.

Provision of Services During Suspensions

Initial suspension or removal for up to 10 days . If a suspension or removal for up to 10 school days does not constitute a disciplinary change in placement, the following will occur:

- Students of compulsory attendance age will be provided with alternative instruction on the same basis as non-disabled students.

Students not of compulsory attendance age will be entitled to receive alternative instruction during such suspension or removal only to the extent that alternative instruction is provided to non-disabled students of the same age who have been similarly suspended or removed.

Subsequent suspensions or removals for up to 10 days. If subsequent suspensions or removals for periods of 10 consecutive school days or less, which in aggregate total more than 10 school days in a school year (but do not constitute a disciplinary change in placement), the following will occur:

- Students will be provided with alternative instruction and special education services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP; and
- The building principal or superintendent shall determine, in consultation with the student's special education teacher, the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

Disciplinary Chance in Placement. During any period of suspension for more than 10 consecutive school days, and/or during any other disciplinary change in placement, the following will occur:

- The student will be provided with alternative instruction and special education services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP; and
- The CSE shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

Placement in interim alternative educational setting. If the student has been placed in an interim alternative educational setting for up to 45 days because he or she has engaged in conduct that involves a weapon or illegal drugs/controlled substances, the CSE will determine the services to be provided.

If the student has been placed in an interim alternative educational setting for up to 45 days because an impartial hearing officer has determined in an expedited due process hearing that the student presents a threat of dangerous conduct, the impartial hearing officer will determine the services to be provided after reviewing a proposed setting determined by school personnel and the student's special education teacher. Such setting will:

- Enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those modifications, including those described in the student's current IEP, that will enable the child to meet the goals set out in that IEP; and
- Include services and modifications to address the behavior that is subject to disciplinary action, which are designed to prevent the behavior from recurring.