

15.0 DISCIPLINE

Discipline of students with disabilities may take form in a variety of actions by district personnel, such as dismissal, removal, exclusion, suspension, or expulsion. Each action requires that specific procedures and processes be followed to ensure free appropriate public education (FAPE) remains available to all children with disabilities, including children with disabilities who have been suspended or expelled from school. These procedures include, but are not limited to: informal administrative conference, written notice, IEP meeting, change of educational placement, manifestation determination review, functional behavioral assessment, conciliation conference, mediation, and due process hearing.

The Minnesota Pupil Fair Dismissal Act contains additional provisions that do not involve removal, exclusion, suspension, or expulsion and that apply to all students. Please refer to the Act, at Minn. Stat. 121A.40 to 121A.56 , for more information.

5.0 Discipline of Students with a Disability

Legal Citations

A free appropriate public education must be available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school as provided for in 300.530(d)

34 C.F.R. 300.101(a)

15.01 Definitions

Legal Citations

For purposes of this section, the following definitions apply:

1. **Controlled substances** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
NOTE: Alcohol and tobacco are not included on any of the Controlled Substances Act schedules.
2. **Illegal drug** means a controlled substance; but does not include a controlled 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 that Act or under any other provision of Federal law.
3. **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

The term "**serious bodily injury**" means bodily injury which involves:

- A. a substantial risk of death;
- B. extreme physical pain;

- C. protracted and obvious disfigurement; or
 - D. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
4. **Weapon** has the meaning given in the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code; 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 2 1/2 inches in length.

34 C.F.R. 300.530(i)

Applicability. As used in sections 121A.40 to 121A.56, the terms defined in this section shall have the meanings assigned them.

Dismissal. "Dismissal" means the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not include removal from class.

District. "District" means any school district.

Exclusion. "Exclusion" means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.

Expulsion. "Expulsion" means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled.

Parent. "Parent" means (a) one of the pupil's parents, (b) in the case of divorce or legal separation, the parent or parents with physical custody of the pupil, including a noncustodial parent with legal custody who has provided the district with a current address and telephone number, or (c) a legally appointed guardian. In the case of a pupil with a disability under the age of 18, parent may include a district-appointed surrogate parent.

Pupil. "Pupil" means any student:

1. without a disability under 21 years of age; or
2. with a disability until September 1 after the child with a disability becomes 22 years of age;
3. and who remains eligible to attend a public elementary or secondary school.

School. "School" means any school defined in section 120A.05, subdivisions 9, 11, 13, and 17.

School board. "School board" means the governing body of any school district.

Suspension. "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension.

This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. Consistent with section 125A.091, subdivision 5, the readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of readmission. The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 days. In the case of a student with a disability, the student's individual education plan team must meet immediately but not more than ten school days after the date on which the decision to remove the student from the student's current education placement is made. The individual education plan team and other qualified personnel shall at that meeting: conduct a review of the relationship between the child's disability and the behavior subject to disciplinary action; and determine the appropriateness of the child's education plan. The requirements of the individual education plan team meeting apply when:

1. the parent requests a meeting;
2. the student is removed from the student's current placement for five or more consecutive days; or
3. the student's total days of removal from the student's placement during the school year exceed ten cumulative days in a school year. The school administration shall implement alternative educational services when the suspension exceeds five days. A separate administrative conference is required for each period of suspension.

Alternative educational services. "Alternative educational services" may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center under section 123A.05 selected to allow the pupil to progress toward meeting graduation standards under section 120B.02, although in a different setting.

MN Stat. 121A.60

Removal from class. "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a pupil from attending a class or activity period for a period of time not to exceed five days, pursuant to procedures established in the school district discipline policy adopted by the school board pursuant to section 121A.61.

Class period. "Class period" or "activity period" means a period of time as defined in the district's written discipline policy.

School site mediation board. "School site mediation board" means a board representative of parents of students in the building, staff, and students that shall have the responsibilities as defined in section 121A.62. The principal or other person having general control and supervision of the school, shall serve as an ex officio member of the board.

School-based ombudsperson. "School-based ombudsperson" means an administrator, a teacher, a parent, or a student representative who shall have the responsibilities under section 121A.63.

MN Stat. 121A.60

15.02 Removal of Children with Disabilities

Legal Citations

School personnel may consider any unique circumstances on a case-by- case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates of code of student conduct.

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for **not more than 10 consecutive school days** (to the extent those alternatives are applied to children without disabilities, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school must provide services as outlined in below (15.02.01).

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined **not to be a manifestation of the child's disability**, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities except as addressed below (15.02.01).

34 C.F.R. 300.530(a)

15.02.01 Services for Child with Disability Removed from Current Placement

Legal Citations

1. A child with a disability who is removed from the child's current placement must:

- A. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - B. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
2. The services required may be provided in an interim alternative educational setting.
3. A school is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who is similarly removed.
4. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
5. If the removal is a change of placement, the child's IEP Team determines appropriate services.

34 C.F.R. 300.530(d)

15.02.02 Change of Placement for Disciplinary Removals

The district must determine on a case-by-case basis whether a pattern of removals constitutes a change of placement.

Legal Citations

A change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. The child is subjected to a series of removals that constitute a pattern:
 - A. Because the series of removals totals more than 10 school days in a school year;
 - B. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - C. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

34 C.F.R. 300.536(a)

15.02.03 Special Circumstances for Disciplinary Removals

School personnel may remove a student to an interim alternative educational setting for not more than 45 days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the 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 the district;
3. Has inflicted a serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the district.

34 C.F.R. 300.530(g)

15.02.04 Determination of Setting

Legal Citations

The child's IEP team determines the interim alternative education setting for services.³⁴

C.F.R. 300.531

15.02.05 Parental Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the district must notify the parents of that decision and provide the parents with the procedural safeguards notice.

34 C.F.R. 300.530(h)

15.03 Manifestation Determination

15.03.01 Making the Determination

Legal Citations

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the district, the parent and relevant members of the child's IEP Team must review all relevant information in the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the district, the parent, and the relevant members of the child's IEP team determined that a condition listed above was met. If the conduct in question was the direct result of the

district's failure to implement the IEP, the district must take immediate steps to remedy those deficiencies.

34 C.F.R. 300.530(e)

15.03.02 Functional Behavioral Assessment and Behavioral Intervention Plan

Legal Citations

If the district, the parent and the relevant members of the IEP Team made the determination that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment unless the 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 child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
3. Return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan (Except as provided in 15.02.03 Special Circumstances).

34 C.F.R. 300.530(f)

15.03.03 Services When Behavior is Not a Manifestation of Disability

Legal Citations

When a pupil who has an IEP is excluded or expelled for misbehavior that is **not** a manifestation of the student's disability, the district shall continue to provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's IEP and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion.

Minn. Stat. 121A.43

15.04 Placement and Determination Appeals

Legal Citations

The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination, or the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

34 C.F.R. 300.532(a)

Best practice would suggest that the Special Education Director for the district has been involved prior to any disagreement however the Director **must** be notified immediately when a parent of a child with a disability disagrees with the placement or manifestation determination proposed by the district so that due process procedures may be followed.

15.04.01 Placement Pending Appeal

Legal Citations

When an appeal has been requested by either the parent or the district, the child must remain in the interim educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 300.530(c) or (g), whichever occurs first, unless the parent and the district agree otherwise.

34 C.F.R. 300.533

15.04.02 Authority of Hearing Officer

Legal Citations

A hearing officer hears, and makes a determination regarding an appeal. In making the determination the hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 300.530 or that the child's behavior was a manifestation of the child's disability; or
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

34 C.F.R. 300.532(c)

15.04.03 Expedited Hearing

Whenever a hearing is requested, the parents or the district involved in the dispute must have an opportunity for an impartial due process hearing:

1. The district is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
2. Unless the parents and the district agree in writing to waive the resolution meeting or agree to use the mediation process described in 300.506:
 - A. A resolution meeting must occur within seven days of receiving notice of the due process complaint, and
 - B. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.

34 C.F.R. 300.532(c)

15.05 Suspension Procedures

Legal Citations

The school administrator shall not suspend a pupil from school without an informal administrative conference with the pupil. The informal administrative conference shall take place before the suspension, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension. At the informal administrative conference, a school administrator shall notify the student of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the student may present the student's version of the facts.

A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the Pupil Fair Dismissal Act shall be personally served upon the student at or before the time the suspension is to take effect, and upon the student's parent or guardian by mail within 48 hours of the conference. The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following the suspension. In the event a pupil is suspended without an informal administrative conference on the ground that the student will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the student and the student's parent or guardian within 48 hours of the suspension. Service by mail is complete upon mailing. If the district intends to move to expulsion or exclusion, the student may be suspended pending the school board's decision in the expulsion or exclusion hearing; provided that alternative educational services are implemented to the extent that suspension **exceeds five days**.

Minn. Stat. 121A.46

Whenever a student fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the student and the student's parents by mail of the student's right to attend and to be reinstated in the public school.

Minn. Stat. 121A.54

15.06 Exclusion and Expulsion

15.06.01 Exclusion and Expulsion of Student's with a Disability


Legal Citations

When a pupil who has an IEP is excluded or expelled for misbehavior that is **not** a manifestation of the student's disability, the district shall continue to provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's IEP and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and

determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion.

Minn. Stat. 121A.43

MANIFESTATION DETERMINATION

 Date: _____	MANIFESTATION DETERMINATION
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Student Name: _____

School: _____ Grade: _____ DCB: _____

Description and date of behavior/incident subject to review:

Step 1: The IEP team must review

- All relevant information in the student's file, including the student's IEP
- Any teacher observations
- Any relevant information provided by the parents

Step 2: The IEP team must determine whether the IEP is appropriate Yes No

If it is not, the team must revise it and provide the parent a notice of proposed changes.

Step 3: The IEP team must determine Yes No

(a) If the conduct in question was caused by, or had a direct substantial relationship to, the student's disability; or Yes No

(b) If the conduct in question was the direct result of the school's failure to implement the IEP. Yes No

Step 4: The behavior is considered a manifestation of the student's disability if the team answered 'yes' to either (a) or (b).

Therefore: The behavior is a manifestation of the student's disability.

The behavior is not a manifestation of the student's disability.

IEP team members present:

Name	Title	Name	Title
_____	: Parent	_____	: Special Education Teacher
_____	: Parent	_____	: Regular Education Teacher
_____	: Student	_____	: School District Representative
_____	:	_____	:
_____	:	_____	:

Note to Parent(s): If you do not agree with the team's manifestation determination, you may request an expedited due process hearing, mediation, or a conciliation conference. Please advise the district of your decision.

Resources you may contact for further information about parent rights and procedural safeguards:
 ARC MN (Advocacy for Persons with Developmental Disabilities): 651-522-0823, 1-800-892-8256
www.thearc.org/minnesota.org
 MN Department of Education: 651-582-8699, TTY: 651-582-8201 <http://education.state.mn.us>
 MN Disability Law Center: 612-332-1441, 1-800-292-4150, TTY: 612-332-4638 www.mndlc.org
 PACER (Parent Advocacy Coalition for Educational Rights): 952-938-9000, 1-800-63-PACER, TTY: 952-838-0190
www.pacer.org

This form may be available in other formats. Contact the IEP manager for an alternate format.

15.06.02 Expulsion for Possession of Firearm

Legal Citations

A school board must expel for a period of at least one year a student who is determined to have brought a firearm to school except the board may modify this expulsion requirement for a student on a case-by-case basis. For the purposes of this section, firearm is as defined in United State Code, title 18, section 921.

A student's expulsion or withdrawal or transfer from a school after an expulsion action is initiated against the student for a weapons violation may be disclosed by the school district initiating the expulsion proceeding. Unless the information is otherwise public, the disclosure may be made only to another school district in connection with the possible admission of the student to the other district.

Minn. Stat. 121A.44

15.06.03 Grounds for Dismissal

Legal Citations

No school shall dismiss any pupil without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.

A pupil may be dismissed on any of the following grounds:

1. willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
2. willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
3. willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school.

If a pupil's total days of removal from school exceeds ten cumulative days in a school years, the school district shall make reasonable attempts to convene a meeting with the pupil and the pupil's parent or guardian before subsequently removing the pupil from school and, with the permission of the parent or guardian, arrange for a mental health screening for the pupil. The district is not required to pay for the mental health screening. Contact your special education director or school social worker for options for obtaining a mental health screening. The purpose of this meeting is to attempt to determine the pupil's need for assessment or other services or whether the parent or guardian should have the pupil assessed or diagnosed to determine whether the pupil needs treatment for a mental health disorder.

Minn. Stat. 121A.45

15.06.04 Exclusion and Expulsion Procedure

Legal Citations

No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent.

Written notice of intent to take action shall:

- A. be served upon the pupil and the pupil's parent or guardian personally or by mail;
- B. contain a complete statement of the facts, a list of the witnesses and a description of their testimony;
- C. state the date, time, and place of the hearing;
- D. be accompanied by a copy of the Pupil Fair Dismissal Act
- E. describe alternative educational services (contact your special education director for alternatives) accorded the pupil in an attempt to avoid the expulsion proceedings; and
- F. inform the pupil and parent or guardian of the right to:
 1. have a representative of the pupil's own choosing, including legal counsel, at the hearing. The district shall advise the pupil's parent or guardian that free or low-cost legal assistance may be available and that a legal assistance resource list is available from the Department of Education;
 2. examine the pupil's records before the hearing;
 3. present evidence; and
 4. confront and cross-examine witnesses.

The hearing shall be scheduled within **ten days** of the service of the written notice unless an extension, not to exceed **five days**, is requested for good cause by the school board, pupil, parent or guardian. The time and place of the hearing shall be reasonably convenient to the pupil, parent or guardian. The hearing shall be closed unless the pupil, parent or guardian requests an open hearing. The hearing shall be conducted in a fair and impartial manner.

The school board shall determine that the hearing shall take place before:

1. an independent hearing officer;
2. a member of the school board;
3. a committee of the school board; or
4. the full school board

The school board shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.

At a reasonable time prior to the hearing, the pupil, parent or guardian, or representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based.

The pupil, parent or guardian, or representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system. The pupil, parent or guardian, or representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.

The pupil cannot be required to testify in the dismissal proceedings.

The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and must be made to the school board and served upon the parties within **two days** of the end of the hearing.

The school board shall base its decision upon the recommendation of the hearing officer or school board member or committee and shall render its decision at a meeting held within **five days** after receiving the recommendation. The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's recommendations provided that neither party presents any evidence not admitted at the hearing. The decision by the school board must be based on the record, must be in writing, and must state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

A school administrator shall prepare and enforce an admission or readmission plan for any pupil who is excluded or expelled from school. The plan may include measures to improve the pupil's behavior and require parental involvement in the admission or readmission process, and may indicate the consequences to the pupil of not improving the pupil's behavior.

MN. Stat. 121A.47

A violation of the technical provisions of the Pupil Fair Dismissal Act, made in good faith, is not a defense to a disciplinary procedure under the act unless the pupil can demonstrate actual prejudice as a result of the violation.

MN Stat. 121A.47

Whenever a pupil fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the pupil and the pupil's parents by mail of the pupil's right to attend and to be reinstated in the public school.

MN Stat. 121A.54

15.06.05 Appeal to an Exclusion and Expulsion Decision

Legal Citations

A party to an exclusion or expulsion decision may appeal the decision to the commissioner of education within 21 calendar days of the school board action. Upon being served with a notice of appeal, the district shall provide the commissioner and the

parent or guardian with a complete copy of the hearing record within five days of its receipt of the notice of appeal. All written submissions by the appellant must be submitted and served on the respondent within ten days of its actual receipt of the transcript. All written submissions by the respondent must be submitted and served on the appellant within ten days of its actual receipt of the written submissions of the appellant. The decision of the school board must be implemented during the appeal to the commissioner.

In an appeal under this section, the commissioner may affirm the decision of the agency, may remand the decision for additional findings, or may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional provisions;
2. in excess of the statutory authority or jurisdiction of the school district';
3. made upon unlawful procedure, except as provided in section 121A.48;
4. affected by other error of law;
5. unsupported by substantial evidence in view of the entire record submitted; or
6. arbitrary or capricious.

The commissioner or the commissioner's representative shall make a final decision based upon the record. The commissioner shall issue a decision within 30 calendar days of receiving the entire record and the parties' written submission on appeal.

MN Stat. 121A.49

The district should consult with their attorney regarding the required school district responsibilities.

15.06.05 Enrollment Options Program

Legal Citations

An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations below:

- A. A district may refuse to allow a pupil who is expelled under section 121A.45 to enroll during the term of the expulsion if the student was expelled for:
 1. possessing a dangerous weapon, as defined by United States Code, title 18, section 930, paragraph (g)(2), at school or a school function;
 2. possessing or using an illegal drug at school or a school function;
 3. selling or soliciting the sale of a controlled substance while at school or a school function; or
 4. committing a third-degree assault as described in section 609.223, subdivision 1.

Minn. Stat. 124D.03, subd.1

15.07 Referral to an Action by Law Enforcement and Judicial Authorities

Legal Citations

Nothing in this part prohibits an agency from reporting a crime committed by a child 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 child with a disability.

34 C.F.R. 300.535(a)

15.08 Transmission of Disciplinary Information

15.08.01 Transmission of Disciplinary Action with the Student Record

Legal Citations

The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

34 C.F.R. 300.229

15.08.02 Transmission to Law Enforcement Authorities

Legal Citations

An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

Copies of the child's special education and disciplinary records may be transmitted only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

34 C.F.R. 300.535(b)(1 & 2)

15.09 Basis of Knowledge-Protections for Children Not Yet Eligible

Legal Citations

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the district had knowledge that the child was a child with a disability before that behavior that precipitated the disciplinary action occurred.

34 C.F.R. 300.534(a)

15.09.01 When there is Basis of Knowledge

Legal Citations

A district must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the district, or a teacher of the child, that the child is in need of special education and related services;
2. The parent of the child requested an evaluation of the child: or
3. The teacher of the child, or other personnel of the district, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the district or to other supervisory personnel of the district.

34 C.F.R. 300.534(b)

Exceptions

A district would not be deemed to have knowledge if:

1. The parent of the child has not allowed an evaluation of the child or has refused services under this part; or
2. The child has been evaluated and determined to not be a child with a disability under this part.

34 C.F.R. 300.534(c)

15.09.02 When there is No Basis of Knowledge

Legal Citations

If the district does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 300.530, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district must provide special education and related services.

34 C.F.R. 300.534 (d)(1) & (2)

15.10 Suspension and Expulsion Rates

Legal Citations

The school board shall report each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report shall include a statement of alternative educational services given the pupil and the reason for, the effective date, and the duration of the exclusion or expulsion.

The school board must include the state student identification numbers (MARSS) of affected pupils on all dismissal reports required by the department. The department must report annually to the commissioner summary data on the number of dismissals by age, grade, gender, race, and special education status of the affected pupils.

Minn. Stat. 121A.53