

**EXCEPTIONAL CHILD EDUCATION  
PROCEDURES**

**2008**

**JEFFERSON COUNTY PUBLIC SCHOOLS**

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**CHAPTER 8**  
**DISCIPLINE PROCEDURES**  
**707 KAR 1:340, Sections 13-17**

**SECTION I DISCIPLINE PROCEDURES**

The Jefferson County Public Schools (JCPS) superintendent, director of Exceptional Child Education (ECE), and building principals make sure that appropriate procedures are followed in the discipline, suspension, and expulsion of children and youth with disabilities.

As outlined in the procedures below, before suspending a child or youth for more than five (5) cumulative days in the school year, an Admissions and Release Committee (ARC) meeting is required for children and youth who:

- A. Have a disability and are receiving special education and related services; or
- B. Are in the process of being identified, located, evaluated, and possibly placed.

**Student Behavior**

An ARC\* shall, in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive interventions, strategies, and supports to address that behavior.

707 KAR 1:320, Section 5(2)(a)

Expectations for student behavior and consequences for misbehavior/policy violations are the same for all students and are detailed in the JCPS *Student Support and Behavior Intervention Handbook* and the *Student Bill of Rights*. Consequences that are applied for all students may be applied for a student with a disability, as long as the consequence does not conflict with the provisions of the Individual Education Program (IEP) or a Behavior Intervention Plan (BIP). The child or youth must continue to receive the services in the IEP, to have the opportunity to progress in the regular education curriculum, and to participate with nondisabled students to the greatest extent possible. The ARC may modify or adapt the consequences applied for all students to meet the needs of a child or youth with a disability as documented in the IEP or BIP.

Special education includes instruction on appropriate behavior. When the ARC determines that behavioral interventions that are implemented with nondisabled students would be unsuccessful, the ARC should designate appropriate strategies and positive behavioral interventions and supports in the child's or youth's IEP.

Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

KRS 158.150(8)

**Suspensions for Five Days or Less in a School Year**

The due-process procedures for short-term suspension are the same for all students and are outlined

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\* Admissions and Release Committee (ARC)



in the *JCPS Student Support and Behavior Intervention Handbook* and the *Student Bill of Rights*. When suspensions are five (5) days or less in length, do not exceed six (6) cumulative days in a school year and are used as temporary disciplinary measures, then an ARC meeting is not required.

### **Notice Prior to a Disciplinary ARC Meeting**

An LEA<sup>†</sup> shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

707 KAR 1:340, Section 3(2)

If an ARC meeting is requested concerning a safety issue or change in placement due to a violation of a student code of conduct, the parent must be given at least a 24-hour notice regarding the meeting (i.e., written notice of ARC meeting). The normal timeline for the notice of the ARC meeting does not apply in this circumstance.

### **Suspensions of More Than Five Cumulative Days in a School Year**

An ARC is required for suspensions reaching six (6) cumulative days and all suspensions of more than ten (10) cumulative days in a given school year. The ARC is convened within ten (10) school days of the date on which the decision is made regarding the contemplated suspension. The child or youth is not suspended until the ARC convenes and completes the procedures as outlined in this section under “Functional Behavior Assessment” and “Manifestation Determination” of this chapter.

A child or youth who is suspended for more than ten (10) school days in a school year must receive educational services.

An LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

707 KAR 1:340, Section 13(8)

The district need not provide educational services during periods of removal for disciplinary reasons to a child or youth with a disability who has been removed from his or her current placement ten (10) school days or less in the school year if services are not provided to a student without disabilities who has been similarly removed.

### **Functional Behavior Assessment and Behavior Intervention Plan**

When the ARC chairperson/district representative convenes an ARC meeting to consider the suspension of a child or youth reaching six (6) cumulative days and all suspensions of more than ten (10) cumulative days in a school year, the ARC:

- A. Develops a plan for conducting a Functional Behavior Assessment (FBA) if an assessment has not been conducted;
- B. Develops and implements a BIP if an FBA has already been conducted; or
- C. Reviews and modifies the FBA and the BIP, as necessary, to address the behavior if an FBA has been conducted and a BIP has been developed.

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<sup>†</sup> local educational agency (LEA), which means the Jefferson County Public School (JCPS) District

As soon as practicable — after developing the FBA described above and completing the assessments required by the FBA — the district convenes an ARC meeting to develop appropriate behavioral interventions to address the behavior (i.e., BIP) and implements those interventions.

### **Manifestation Determination**

Within ten (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 relevant members of the child's ARC, as determined by the LEA and the parent, shall convene a meeting to review all relevant information in the student's file, including the child's IEP<sup>‡</sup>, and teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

- (a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- (b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

707 KAR 1:340, Section 14(1)

When the ARC convenes to review a suspension of six (6) cumulative days and all suspensions of more than ten (10) cumulative days in a school year, the ARC chairperson/district representative invites relevant members of the youth's ARC to attend the meeting.

The ARC:

- A. Considers all relevant information, including the FBA, the BIP, and any evaluation information that describes the specific behavior(s);
- B. Discusses steps taken by the school to address the problem behavior; and
- C. Reviews the IEP and placement in relation to the behavior in question 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 behavior in question was the direct result of the district's failure to implement the IEP.

If the ARC determines that the condition described in subsection (1)(b) of this section was met [the conduct in question was a direct result of a failure to implement the IEP], the LEA shall take immediate steps to remedy those deficiencies.

707 KAR 1:340, Section 14(3)

### **Behavior Is Not a Manifestation of the Disability**

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 (as described in Section 14 of this administrative regulation), 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 ....

707 KAR 1:340, Section 13(4)

The ARC will determine that the behavior is not a manifestation of the child's or youth's disability if it is determined that the conduct in question was not:

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<sup>‡</sup> Individual Education Program (IEP)



- A. Caused by, or had no direct and substantial relationship, to the youth's disability; or
- B. The direct result of the district's failure to implement the IEP.

If after the manifestation determination review the ARC determines that the behavior **is not** a manifestation of the child's or youth's disability, the relevant disciplinary procedures applicable to all students may be applied to the child or youth with a disability in the same manner in which they are applied to children and youth without disabilities. Beginning on the eleventh (11th) day of suspension within a school year, educational services must be provided. See the subsection titled "Provision of Educational Services" in this section for further information.

#### **Behavior Is a Manifestation of the Disability**

The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of the conditions in subsection (1)(a) or (b) of this section was met. 707 KAR 1:340, Section 14(2)

If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

- (a) 1. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or 2. Review the behavior intervention plan, (if one had already been developed) and modify it, as necessary to address the behavior; and
- (b) Return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section. 707 KAR 1:340, Section 14(4)

The ARC will determine that the behavior is a manifestation of the child's or youth's disability if it is determined that the conduct in question was:

- A. Caused by, or had a direct and substantial relationship to, the youth's disability; or
- B. The direct result of the district's failure to implement the IEP.

If after the manifestation-determination review the ARC determines that the behavior **is** a manifestation of the youth's disability, the child or youth remains in his or her current placement and is not suspended.

If the ARC determines that the condition described in subsection (1)(b) of this section was met [the conduct in question was a direct result of a failure to implement the IEP], the LEA shall take immediate steps to remedy those deficiencies. 707 KAR 1:340, Section 14(3)

If the ARC identified any deficiencies in the child's or youth's IEP or placement or in the implementation of the IEP or placement, the ARC will take immediate steps to remedy those deficiencies. If the behavior had not been previously addressed in the IEP, the ARC should include the development of strategies, including positive behavioral interventions, strategies and supports to address that behavior (i.e., BIP). The ARC revises the IEP, including the BIP, and placement as appropriate.

## Provision of Educational Services

After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as directed in subsection 6(a) and (b) of this section shall be provided during any subsequent days of removal. 707 KAR 1:340, Section 13(5)

A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

- (a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general 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. 707 KAR 1:340, Section 13(6)

The services described in subsection (6) of this section may be provided in an interim alternative educational setting. 707 KAR 1:340, Section 13(7)

After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed. 707 KAR 1:340, Section 13(9)

Beginning on the eleventh (11th) day of suspension in the same school year, services must be provided. The ARC chairperson/district representative will consult with the child's or youth's special education teacher(s) and determine the services that will meet the criteria as stated above.

## Placement in an Alternative Educational School or Program

Placement in a district alternative educational school or program may be considered by the ARC as part of the district's continuum of placement options. For students with serious behavior violations as outlined in the *Student Support and Behavior Intervention Handbook* and the *Student Bill of Rights*, an ARC meeting is convened at the child's school if the child or youth has been suspended six (6) cumulative days or more than ten (10) cumulative days within the school year. The ARC completes the procedures outlined in this section under "Functional Behavior Assessment and Manifestation Determination."

### Behavior Is **Not** a Manifestation

If the ARC determines that the behavior subject to disciplinary action is **not** a manifestation of the child's or youth's disability, then the relevant disciplinary procedures that are applicable to all students may be applied to the child or youth with a disability in the same manner in which they are applied to children and youth without disabilities.

The ARC follows the procedures in the JCPS *Student Support and Behavior Intervention Handbook* and the *Student Bill of Rights*, including a referral to the JCPS Safe and Drug-Free School Department:

- A. For an assessment; and
- B. For a conference with the assistant director of Student Relations.



The assistant director of Student Relations consults with school personnel regarding the findings from the assessment and/or conference. If appropriate, an ARC meeting is convened with the required members to consider placement options, including an alternative school or program.

#### **Behavior Is a Manifestation**

If the ARC determines that the behavior subject to disciplinary action is a manifestation of the child's or youth's disability, then the ARC revises the IEP, including the BIP, and revises placement as appropriate in accordance with the procedures in this section.

Additionally, the ARC may consider as an intervention a referral to the JCPS Safe and Drug-Free School Department:

- A. For an assessment; and
- B. For a conference with the assistant director of Student Relations.

If a school-based ARC considers an alternative school or program as a placement option, then the assistant director of Student Relations is invited to the ARC meeting, along with appropriate ARC members including staff from the alternative school.

#### **Changes in Placement to an Interim Alternative Educational Setting for Violations Involving Weapons, Illegal Drugs, Controlled Substances, and Bodily Injury**

School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, if the child:

- (a) 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 Kentucky Department of Education or the LEA;
- (b) 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 Kentucky Department of Education or the LEA; or
- (c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

707 KAR 1:340, Section 14(5)

In the event of a determination of violation under this section (weapons, drugs, or serious bodily injury), the ARC chairperson/district representative informs the parents and immediately schedules an ARC meeting, including staff from the interim alternative setting. The parent must receive a twenty-four (24) hour written notice of this meeting. The procedures for an FBA and a BIP are followed. (See previous information in this section.) A manifestation determination is conducted. However, a disciplinary change in placement may occur for up to forty-five (45) school days, even if the behavior is determined to be a manifestation of the disability. If the behavior is determined not to be a manifestation of the disability, then the child may be disciplined as a nondisabled child would be disciplined, with the requirement that services must be continued in accordance with the IEP.

For disciplinary reasons, the ARC may order a change in placement to an interim alternative educational setting (IAES) for not more than 45 school days, even if the parent is not in agreement with the proposed placement. The ARC selects the IAES. Within forty-five (45) school days, another ARC is convened to consider all placement options, including alternative schools and programs.

## SECTION II

## APPEALS FROM PLACEMENT DECISION

The parent of a child with a disability who disagrees with any decision regarding placement under Section 13 or 14 of this administrative regulation or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 8 and 11.

A hearing officer shall hear and make a determination regarding an appeal requested pursuant to subsection (1) of this section.

In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

- (a) Return the child to the placement from which the child was removed; or
- (b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

When an appeal has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

An appeal under this section shall:

- (a) Be conducted in an expedited manner;
- (b) Shall occur within twenty (20) school days from the date the request is filed; and
- (c) Shall result in a determination within ten (10) school days after the hearing.

707 KAR 1:340, Section 15(1-5)

In instances of extremely serious misconduct in which it appears that maintaining a child or youth in his or her current educational placement is substantially likely to result in serious injury to self or others, the district holds an ARC to review the appropriateness of the present educational program and conducts a manifestation determination to assist the ARC in determining whether the placement for the child or youth needs to be changed.

If the parents refuse a change of placement as determined by the ARC, the district may choose to request an expedited due-process hearing.

The JCPS superintendent and the director of ECE review all documentation, and make the determination to file an expedited due-process hearing request. The same process is followed for this expedited hearing request as is followed for other due-process hearing requests, except that the information prepared specifically addresses the considerations listed above for an expedited hearing and determination of placement in an IAES.

A change in placement may occur as ordered by a hearing officer, even if the behavior is determined to be a manifestation of the disability. The procedures for an FBA and a BIP will be followed. (See previous information in this section.)



### **SECTION III            BASIS OF KNOWLEDGE REGARDING STUDENTS NOT YET ELIGIBLE**

A child who has not been identified as having a disability according to the procedures for evaluation and eligibility in this manual and who is facing disciplinary procedures may assert protection under IDEA if the district had knowledge that the child should have been identified as a child with a disability.

An LEA shall be deemed to have knowledge that a child is a child with a disability if:

- (a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;
- (b) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or
- (c) The teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of behavior or performance of the child directly to the director of special education or to other supervisory personnel of the LEA.

707 KAR 1:340 Section 16(1)

The district is deemed to have knowledge that a child is a child with a disability when concerns are expressed in accordance with procedures for Child Find and/or the referral system in Chapter 3, "Child Find, Evaluation, and Reevaluation." The district has knowledge under one or more of the following circumstances:

- A. The parent expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative staff that the child needs special education and related services.
- B. The behavior or performance of the child demonstrates the need for services.
- C. The parent requested an evaluation.
- D. The teacher or other school staff expressed concern about the behavior or performance of the child to the ARC chairperson/district representative or other district supervisory staff.

An LEA shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability:

- (a) The LEA conducted an evaluation and determined the child was not a child with a disability;
- (b) The LEA determined an evaluation was not necessary and provided notice to the parents of these determinations; or
- (c) The parents refused to consent to an evaluation or refused initial services.

If an LEA 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 same disciplinary measures as measures applied to children without disabilities.

707 KAR 1:340 Section 16(2-3)

The district is deemed to not have knowledge that a child is a child with a disability if:

- A. The district had conducted an evaluation and the child was found not eligible for special education and related services; or
- B. The ARC previously had determined that an evaluation was not necessary according to procedures in Chapter 3, "Child Find, Evaluation, and Reevaluation."

If an LEA 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 same disciplinary measures as measures applied to children without disabilities. 707 KAR 1:340 Section 16(3)

If the principal/designee determines that the district does not have knowledge that the child has a disability, then the child is subjected to the same disciplinary procedures applied to children who do not have disabilities.

### **Evaluation Request During Disciplinary Proceedings**

If a request is made for an evaluation of the child during the period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services. 707 KAR 1:340, Section 16(4)

If a request is made for an evaluation of the child during the period in which the child is subjected to disciplinary measures, the ARC chairperson/district representative schedules an ARC meeting to review the referral and discuss the need for an evaluation. The district conducts the evaluation in an expedited manner. No specific timeline for an expedited evaluation is included in regulations. However, the evaluation should be conducted in a shorter time period than a normal evaluation.

Pending the results of the evaluation, the child or youth remains in the setting determined by school authorities. This setting may be the out-of-school suspension or expulsion without educational services, unless educational services are provided to students without disabilities under similar circumstances.

The school is not required to put disciplinary proceedings on hold until the evaluation is completed. If the student is determined to be a child or youth with a disability, based on the evaluation and review of information supplied by the parents, the school must then provide special education and related services.

## **SECTION IV REPORTING TO LAW ENFORCEMENT AGENCIES**

### **Reporting a Crime**

Notwithstanding any provisions of 707 KAR Chapter 1 an agency may report a crime committed by a child with a disability to appropriate authorities. 707 KAR 1:340, Section 17(1)

The building principal/designee is responsible for reporting a crime to appropriate authorities in the same manner as for students without disabilities as outlined in the *Student Support and Behavior Intervention Handbook* and the *Student Bill of Rights*. Reporting a crime is to be distinguished from the filing of charges against the student.

The definition of *crime* is the same for students with or without disabilities.



## Transmission of Records

If the LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g.

707 KAR 1:340, Section 17(2)

When records are provided to law-enforcement or judicial authorities, the disclosure must be on the condition that the record will not be further disclosed without the written consent of the child's or youth's parents or of the youth if he or she is emancipated.

When reporting a crime, the building principal/designee contacts the parents of the student in accordance with district procedures. The building principal/designee explains the circumstances of the report and that special education information may be released to the appropriate authorities. The parent is asked to sign a release of records form.

This regulation cited above makes it clear that the school can transmit records to appropriate law-enforcement and judicial authorities only if the Family Educational Rights and Privacy Act (FERPA) will allow the disclosure. In accordance with FERPA and KRS 160.720, in most circumstances the district must obtain parental consent to transmit a child's or youth's special education records to the authorities.

FERPA and state law allow disclosure if the parent consents to the disclosure. If the parent refuses to sign for release of the above records, the building principal immediately contacts the executive director of ECE. Records will be released only if the building principal, the executive director of ECE, and the director of Pupil Personnel agree that this release of records falls under a FERPA exemption as stated below.

Under FERPA, exceptions to the parental consent requirement allow for disclosure in other specific circumstances:

- A. Student records may be disclosed in compliance with a lawfully issued subpoena; however, parents must be notified in writing that the records have been subpoenaed before they are forwarded.
- B. Student records may be disclosed in emergency situations where the disclosure is necessary for the protection of the health or safety of the student or others.
- C. The definition of *education records* in FERPA (Section 99.3) does not include records of the law-enforcement unit of an educational agency, subject to provisions in Section 99.3. Files created and maintained by a school resource office for law-enforcement purposes may not be governed by FERPA and may, under some circumstances, be released without parental consent. (Refer to Jefferson County Board of Education (JCBE) procedures for guidance on this issue.)

Unless the authority to release the records under FERPA is clear (parental consent or application of a specific exception), the district will not release student records. (See also Chapter 9, "Confidentiality of Information.")