

LEXINGTON SCHOOL COMMITTEE POLICY

DISCIPLINING STUDENTS WITH SPECIAL NEEDS POLICY

Date Approved by
School Committee:

ON FILE

Signature of Chair:

On File

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I. BACKGROUND

One of the most difficult issues relating to student conduct in schools is the disciplining of students with special needs. School authorities have frequently requested guidance from the Department of Education regarding the protections that federal and state law affords these students. Parents and legal advocates have also sought clarification in cases where students with special needs are excluded from school for extended periods of time.

An underlying principle of Chapter 766 is that students with special needs must be treated in a manner that most closely resembles their peers in regular education, while at the same time considering their unique programming needs. In considering this policy, we have sought a balance between the overall maintenance of discipline and the assurance that students with special needs are not denied access to their educational programs due to suspension for behavior that is directly related to their identified special needs or the result of an inappropriate special education program.

For example, rather than excluding from school a student who is diagnosed as having emotional problems which lead to acting out behavior, the student's Individualized Educational Plan (IEP) should include appropriate programs and strategies for addressing potentially disruptive behavior. Continuation of these behaviors may indicate that the student's needs are not being met and a new I.E.P. may need to be developed. This notion is supported by numerous federal court decisions interpreting the requirements of the federal special education law (the Education for all Handicapped Children Act, "the EHA") and the federal law prohibiting discrimination based on handicap (Section 504 of the Rehabilitation Act of 1973).

II. PURPOSE AND SCOPE

The attached policy puts in place procedures which assure that: students receive the procedural protections to which they are entitled when suspension is proposed; special educators are involved in the decision to suspend students; the student's special education program is reviewed for implementation and appropriateness; an alternative form of education is provided whenever suspension is allowed; and the Department of Education assumes its approval responsibility in a consistent and sound manner. It does not prohibit school administrators from suspending students in all cases. However, where it is permitted, the policy requires that suspension be preceded by a more deliberate review of the causes for the proposed suspension and the development of an alternative program, consistent with federal and state law.

This policy supersedes the Policy on Disciplining Students with Special Needs that was adopted by the Board of Education on August 27, 1985 and effective January 1, 1986. It was necessary to revise the 1985 policy to reflect the U.S. Supreme Court decision, Honig v. Doe, 108 S.Ct. 592 (1988) (discussed in Section II). We also have used the opportunity to address some ambiguities that were revealed in implementation of the 1985 policy.

THE LEGAL FRAMEWORK

Honig v. Doe

On January 20, 1988, the U.S. Supreme Court issued a decision in Honig v. Doe, supra, the first U.S. Supreme Court case to interpret the EHA as it applies to the suspension or exclusion of students with special needs. The facts of the case involved two students with special needs who were suspended indefinitely from school for violent and disruptive conduct related to their disabilities and who challenged their exclusion. The Supreme Court held that the "stay-put" provision of the EHA, 20 U.S.C. &1415 (e) (3), protects students with special needs from being excluded from the classroom for more than ten school days for dangerous or disruptive conduct unless school officials obtain parental consent to the exclusion or, where the parent does not consent, secure judicial approval.

The statutory "stay-put" provision provides that where a party has initiated administrative or judicial proceedings under the EHA, during the pendency of the proceedings "the child shall remain in the then current educational placement" unless the school district and the parent or guardian of the child agree on a different placement. In addressing the issue of school official's authority to exclude special education students, the Supreme Court also established the following principles under the EHA:

1. Suspension or exclusion for more than ten days constitutes a change of placement. School officials may not change any student's special education placement without providing his or her parent or guardian the procedural safeguards provided by the EHA. Among other things, the EHA requires school officials to give the parent or guardian advance written notice of the suspension or exclusion and of the parent's right to challenge the action in administrative hearing or in court. If the parent requests a hearing, the "stay-put" provision applies.

2. The "stay-put" provision is unequivocal; school officials do not have a unilateral authority to exclude special education students from school. However, school officials may suspend a special education student for up to ten days if the student's presence "poses an immediate threat to the safety of others." School officials may not suspend a special education student for more than ten days unless they obtain a court order authorizing the exclusion based on proof that the student's continued presence in school presents a "substantial likelihood of injury" to the student or to others.

In deciding Honig, the U.S. Supreme Court ruled consistently with along line of federal court decisions which held that a long-term suspension or expulsion of a student with special needs from a public school constitutes a change of placement, which may be accomplished only through the team evaluation and placement process specified in the law.

STATE LAW AND REGULATIONS

With respect to removal of students with special needs from public school, Massachusetts General Laws Chapter 71B, section 3 states:

No school committee shall refuse a school age child with special needs admission to or continued attendance in public school without the prior written approval of the department (of education). No child who is so refused shall be denied an alternative form of education approved by the department . . .

To reconcile this and other provisions of state law with the EHA as interpreted by the U.S. Supreme Court in Honig, the Department of Education has developed procedures which protect students with special needs from suspensions of more than ten (10) cumulative days in a school year. Nothing in these procedures is intended to limit Section 331 of the Chapter 766 Regulations which provides for emergency evaluation and placement in "instances of dangerously assaultive or self-abusive behavior . . ." subject to parental consent.

III. APPLICATION

PROCEDURES APPLICABLE WHEN SUSPENSION(S) WILL ACCUMULATE TO MORE THAN TEN DAYS IN A SCHOOL YEAR

A. DEFINITION OF SUSPENSION

Suspension shall be defined as any action, which results in the removal of a student from the program, which is prescribed in his/her IEP. This includes in-school suspensions as well as any exclusion from transportation services, which prohibits the student's participation in his/her prescribed program.

B. GENERAL REQUIREMENTS

Each school committee and educational collaborative^{1/} shall ensure that:

1. its Code of Conduct is on file with the Department of Education. The Code and all student handbooks must contain the specific procedures noted herein for the suspension of a student with special needs;
2. it has an appropriate procedure to notify the Administrator of Special Education or designee of the misconduct for which suspension of a student with special needs is proposed so that the required procedures under this policy can be implemented consistently;
3. the number and duration of suspensions of students with special needs is recorded and maintained by school officials; (Principal or Asst. Principal.
4. the IEP of every student with special needs indicates whether the student can be expected to meet the regular discipline code or if a modification is required. If a modified discipline code is required, it is written into the IEP; and
5. No student with special needs is suspended for more than ten cumulative days in the school year except as provided in this policy or court order (see paragraph G).

C. INDIVIDUALIZED EDUCATIONAL PLAN REVIEW

When it is known that the suspension(s) of a student with special needs will accumulate to ten days in a school year, a review of the IEP, as provided in Section 333 or the Chapter 766 Regulations, will be held. Participants in the meeting shall include, but not be limited to, individuals who are trained in the area of the student's special needs. At that review, the review TEAM will determine whether the student's misconduct is related to the student's special needs, or results from an inappropriate special education program/placement or an IEP that was not fully implemented. Depending on the result of that determination, suspension may or may not be implemented as provided in paragraphs D and E.

If the student has demonstrated repeated instances of dangerously assaultive or self-abusive behavior, an emergency evaluation and placement may be made with parental approval pursuant to Section 331.0 of the Chapter 766 Regulations. No such evaluation and placement may be made without parental consent.

^{1/} Wherever used in this policy, the term "school" shall include "educational collaborative."

D. CIRCUMSTANCES UNDER WHICH THE STUDENT MAY NOT BE SUSPENDED FOR MORE THAN TEN CUMULATIVE DAYS IN THE SCHOOL YEAR

1. If the TEAM concludes that the student's misconduct is related to the student's handicapping condition or results from an inappropriate special education program/placement or an IEP that was not fully implemented, the student may not be suspended. Instead, the student's IEP must be amended to reflect a new program designed to meet the student's needs more effectively, or, if the misconduct resulted from an appropriate IEP that was not fully implemented, all necessary steps must be taken by the school to ensure that the IEP is fully implemented.
2. If a new program is designed for the student as a result of the review, the new program must be implemented immediately following parental approval of the IEP. If the parent refuses consent to the IEP, the school committee or parent may request a hearing before the BSEA to determine the appropriateness of the program, pursuant to Section 401.0 of the Chapter 766 Regulations. Alternatively, the parties may seek mediation to resolve the dispute.

If a hearing is requested, during the pendency of the hearing, the student must remain in the last agreed upon educational placement (the placement in effect when the dispute arose), unless another placement is agreed to by the school district and the student's parent or guardian, or a court order permits the school district to change the student's placement based on proof that the student's continued presence in school presents a substantial likelihood of injury to the student or to others (see paragraph G).

E. CIRCUMSTANCES UNDER WHICH SUSPENSION MAY BE IMPOSED

1. If the school wishes to impose a suspension which will result in more than ten days suspension in the school year and the TEAM concludes that the student's misconduct is not related to the student's special needs and is not the result of an inappropriate special education program/placement and that the current IEP was fully implemented, the school must:
 - a. amend the student's IEP to provide for the delivery of special education services to the student during the period of suspension ("the alternative plan");
 - b. secure the approval of the alternative plan by the Division of Special Education through the appropriate Regional Education Center.

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