

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

DECEMBER 10, 2007

TO: BURL OLIVER, COMPLIANCE COORDINATOR
SCHOOL PRINCIPALS, SPECIAL EDUCATION AND RELATED
SERVICES ADMINISTRATORS, STAFF AND TEACHERS,
SECTION 504 COORDINATORS, SCHOOL COUNSELORS,

FROM: 
JERRY SJÖLANDER, EXECUTIVE DIRECTOR
SPECIAL EDUCATION

SUBJECT: Guidance in the Discipline of Students Eligible for 504 Plans

Discipline Safeguards

Appendix A-1

Statement of Rights and Responsibilities for Students with Disabilities

It is School Board Policy to comply with state and federal laws and regulations. This Appendix is prepared by the Administration at the request of the Board to describe protections and procedures relating to students with disabilities under state and federal laws and regulations. These protections and procedures under the Individuals with Disabilities Education Act (IDEA) are described in the "Notice of Procedural Safeguards," and under Section 504, in the "§504/ADA Administrative Procedures and Guidelines." Both of these documents can be obtained at any ASD school, from the ASD Special Education Department, or online at the ASD website:

www.asdk12.org/forms/uploads/Procedural_Safeguards.pdf; and,

www.asdk12.org/forms/uploads/504_ParentsRightsBooklet.pdf.

Not later than the date on which the decision to take disciplinary action is made by ASD, it must notify the student's parents of that decision and provide the parents with a copy of the Notice of Procedural Safeguards or §504/ADA Administrative Procedures & Guidelines (as the case may be).

NOTE: This Statement of Rights and Responsibilities for Students with Disabilities is intended to merely summarize the protections and procedures provided to students with disabilities under

IDEA and Section 504 and not replace the "Notice of Procedural Safeguards" or "§504/ADA Administrative Procedures & Guidelines." Accordingly, to be fully advised of the rights of a student with disabilities, parents must obtain (if ASD has not already provided a copy to them) and carefully review the "Notice of Procedural Safeguards" or the "§504/ADA Administrative Procedures & Guidelines" (if their child is under Section 504).

Students with Disabilities

NOTE: Students with disabilities refers to both students with identified disabilities and students with suspected disabilities. A student with suspected disabilities may assert the rights and protections of a student with identified disabilities. The circumstances under which a student will be deemed to be a student with suspected disabilities and the additional rights and protections under state and federal law provided to a student with disabilities are summarized below.

Students Identified as Having a Disability: A student may be identified as a student with disabilities under either IDEA or Section 504. If a student has an individualized education program (IEP), the student has been identified as a student with disabilities under IDEA, and therefore has rights and protections provided by IDEA explained in the "Notice of Procedural Safeguards." If a student has a 504 plan, the student has been identified as a student with disabilities under Section 504, and therefore has the rights and protections provided by Section 504, explained in the "§504/ADA Administrative Procedures & Guidelines.

Students Suspected of Having a Disability: A student who has not been identified as a student with disabilities under IDEA who has engaged in behavior that violates the ASD's Code of Student Conduct may assert any of the rights and protections provided for under IDEA if ASD had knowledge that the student was a student suspected of having a disability before the behavior that precipitated the disciplinary action occurred.

The ASD shall be deemed to have knowledge that a student is a student suspected of having a disability, before the behavior that precipitated the disciplinary action occurred:

The parent of the student has expressed concern in writing to supervisory administrative personnel at ASD, or a teacher of the student, that the student is in need of special education and related services;

The parent of the student has requested an evaluation of the student as provided under IDEA; or,

The teacher of the student, or other personnel at ASD, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the Director of Special Education at ASD or to other ASD supervisory personnel.

ASD shall not be deemed to have knowledge that the student is a student suspected of having a disability if the parent of the student has not allowed an evaluation of the student as provided under IDEA or has refused services under IDEA or the student has been evaluated under IDEA and ASD determined that the student was not a student suspected of having a disability.

If ASD does not have knowledge that a student is a student suspected of having a disability as described above prior to taking disciplinary measures against the student, the

student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors consistent with the following limitations.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by ASD, which can include suspension or expulsion without educational services. If the student is determined to be a student with an identified disability, taking into consideration information from the evaluation conducted by ASD and information provided by the parents, ASD shall provide special education and related services, except that, until the results of the evaluation, the student shall remain in the educational placement determined by ASD.

Types of Hearings

When the ASD has determined that a student with a disability has violated the Code of Student Conduct, and the student's placement is changed by being suspended for more than ten (10) school days within a school year, expelled or removed to an interim alternative educational setting for not more than 45 school days, the student may request two (2) separate, but related, hearings.

First, the student may request a hearing as provided in the Code of Student Conduct, to dispute whether the student violated the Code of Student Conduct, and if so, whether the discipline recommended by the ASD administration is appropriate.

Second, when a student with disability's placement is changed, the ASD is required under IDEA and Section 504, within ten (10) days of the decision, to hold a meeting with the parent and relevant members of the student's IEP team to determine whether the student's conduct was a manifestation of the student's disability. This group is commonly referred to as a manifestation determination review (MDR) team. The determination is made by the MDR team after reviewing all relevant information, including that provided by the student's parents, and answering the questions:

Was the conduct in question caused by, or have a direct and substantial relationship to, the student's disability?; or

Was the conduct in question the direct result of the ASD's failure to implement the student's IEP/504 plan (including any behavior intervention plan)?

If the MDR team determined that the answer to either of the above questions is yes, the student's conduct must be determined to be a manifestation of the student's disability. In such case, the student's IEP/504 team must address the status of the assessment of the student's functional behaviors and behavior intervention plan, if any, and the student must be returned to the student's prior placement unless the parent and ASD agree to a change in the student's placement as part of a modification of the student's behavior intervention plan. However, the student may remain removed to an interim alternative education setting (1) for up to a total of 45 school days for a violation of the Code of Student Conduct involving weapons, drugs or serious bodily injury or (2) if the ASD obtains an order from a hearing officer or court that maintaining the student's current placement is substantially likely to result in injury to the student or others.

On the other hand, if the MDR team determines that the conduct that gave rise to the violation of the Code of Student Conduct was not a manifestation of the student's disability, the disciplinary procedures applicable to students without disabilities may be applied to the student with a disability in the same manner and for the same duration as the procedures would be applied to students without disabilities, except the student must continue to receive special education and related services under the student's IEP/504 plan but in an alternative educational setting as determined by the student's IEP/504 team.

A student with a disability may request a second hearing under IDEA or Section 504 (as the case may be) to dispute the determination of the MDR team that the conduct that gave rise to the violation of the Code of Student Conduct was not a manifestation of the student's disability. If a student with a disability requests this second hearing under IDEA or Section 504 to dispute a manifestation determination review, discipline cannot be imposed until this hearing and any subsequent appeal takes place.

Placement and Services

ASD personnel may consider any unique circumstances on a case-by-case basis when determining whether discipline resulting in a change in placement, consistent with IDEA, is appropriate for a student with a disability who violates the Code of Student Conduct.

Out of school suspension(s) of a student with disabilities may be without provision of any educational services for up to a cumulative total of ten (10) school days per school year. If, however, the suspension is to be longer than ten school days for a violation of the Code of Student Conduct involving weapons, drugs or serious bodily injury, or based on an order by a hearing officer or court that there is a substantial likelihood of injury to the student or others, identification and commencement of appropriate interim alternative educational services should not be delayed.

When a change of educational placement occurs for a student with disabilities, various procedural safeguards are triggered under IDEA and Section 504. A change in educational placement occurs if a student is:

- Suspended out of school eleven (11) or more days during any one school year;
- Removed from school for not more than 45 school days for a violation of the Code of Student Conduct involving weapons, drugs, or serious bodily injury; or
- The ASD obtains an order from a hearing officer or court that maintaining the student's current placement is substantially likely to result in injury to the student or to others.

The procedural safeguards under IDEA and Section 504 which will be triggered when a change of placement occurs in any of these ways are that the parents will be provided a Notice of Procedural Safeguards or §504/ADA Administrative Procedures & Guidelines (as the case may be), the status of the assessment of the student's functional behavior and behavior intervention plan will be reviewed, an MDR team will be convened and an IEP/504 team will be convened to make a determination regarding the interim alternative educational services to be provided the student. The interim alternative educational services provided must enable the student to continue to participate in the general

education curriculum (although in another setting), to progress toward meeting the student's IEP goals, and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, that are designed to address the behavior violations so that it does not recur. These services need not duplicate every aspect of the programs and services the student currently receives.

Unless ASD has removed a student with disabilities for not more than 45 school days due to conduct involving weapons, drugs, or serious bodily injury, if an MDR team determines that the student's conduct was a manifestation of the student's disability, the student must be returned to the placement from which the student was removed unless the parent and the ASD agree to a change of placement. On the other hand, where the MDR team determines that the student's conduct was not a manifestation of the student's disability, the student is removed by the ASD for not more than 45 school days for violations of the Code of Student Conduct involving weapons, drugs, or serious bodily injury or the ASD has obtained an order that maintaining the student's current placement is substantially likely to result in injury to the student or others, an IEP/504 team must determine the interim alternative educational services to be provided to the student.

The parents of a student with a disability, in addition to requesting a hearing to dispute the determination of an MDR team that a student's conduct was not a manifestation of the student's disability, may also request a hearing disputing the appropriateness of the IEP/504 team's determination regarding interim alternative educational services, the ASD's removal of the student for not more than 45 school days for violations of the Code of Student Conduct involving weapons, drugs, serious bodily injury or an order that the ASD has obtained from a hearing officer or court that maintaining the student's current placement is substantially likely to result in injury to the student or others, or any decision regarding the student's placement. While the hearing appealing any of these actions is pending, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time the student was removed for violations of the Code of Student Conduct involving weapons, drugs, or serious bodily injury or other violations of the Code of Student Conduct determined not to be a manifestation of the student's disability.

Hearings

Any hearing requested either by a parent or the ASD under IDEA is an expedited hearing which shall occur within twenty (20) school days of the date the hearing is requested and shall result in a determination of within ten (10) school days after the hearing. A hearing officer shall hear and make a determination regarding an appeal. In doing so, the hearing officer may order a change in the placement of a student with a disability, including returning a student with a disability to the placement from which the student was removed or order a change in placement of a student 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 student is substantially likely to result in injury to the student or to others.