

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

- Related Entries:** ACG-RB, BLC, COB-RA, COE-RA, COF-RA, IGN, IGO-RA, JFA, JFA-RA, JGA, JGA-RA, JGA-RB, JNA-RB
- Responsible Office:** Deputy Superintendent of School Support and Improvement
Chief Operating Officer
Chief Academic Officer
Special Education and Student Services
- Related Sources:** Individuals with Disabilities Education Act (IDEA), 20 U.S.C., §1400, et seq.; Americans with Disabilities Act of 1990 (ADA); Americans with Disabilities Act Amendments Act of 2008 (ADAAA); *Annotated Code of Maryland*, Education Article, §7-304 and §7-305; *Code of Maryland Regulations* (COMAR) 13A.08.03.08-10 and COMAR 13A.05.01.04A(1) Section 504 of the *Rehabilitation Act of 1973*

Suspension and Expulsion of Students with Disabilities

I. PURPOSE

To clarify requirements under the federal law as they pertain to the suspension or expulsion of students with Individualized Education Programs (IEPs) and students who qualify under Section 504 of the *Rehabilitation Act of 1973*

II. DEFINITIONS

- A. A *change in placement* is the removal of a student from his or her educational program for more than 10 consecutive school days or a series of short-term removals that total more than 10 school days in a school year if they constitute a pattern of removals. The following factors determine if there is a pattern of removals:
1. The length of each removal
 2. The proximity of the removals to each other
 3. The total amount of time the child is removed from the school

4. The nature of the behaviors in previous incidents that resulted in the series of removals
- B. A *Section 504 Plan (504 plan)* is a written plan to ensure that a child who has a disability identified under the law receives accommodations that will ensure his or her access to the learning environment.
- C. An *IEP* is a written program for a student with a disability that is developed, reviewed, and revised in accordance with the federal *Individuals with Disabilities Education Act* and applicable Maryland regulations.
- D. An *Interim Alternative Educational Setting (IAES)* is an option for a school, with approval from the Office of Special Education and Student Services (OSESS), where a student is removed and placed in an IAES for up to 45 school days consistent with COMAR 13A.08.03.06 and the *MCPS Code of Conduct*.

III. GUIDELINES FOR STUDENT DISCIPLINE

- A. Federal law establishes procedures that must be followed when suspending and expelling a student with an IEP or a 504 plan. The Montgomery County Board of Education (Board) establishes its framework for disciplinary practices in Board Policy JGA, *Student Discipline*. Specific procedures for suspension and expulsion of students who are not disabled are described in the *MCPS Code of Conduct*, and MCPS Regulation JGA-RB, *Suspension and Expulsion*.
- B. General
 1. Suspension or expulsion from school may be an appropriate disciplinary tool for use with students with disabilities, provided that the circumstances warrant the action and required procedures are followed.
 2. Students with disabilities may be suspended for up to 10 school days per school year by following the same procedures used for students without disabilities in accordance with MCPS Regulation, JGA-RB, *Suspension and Expulsion*, and the *MCPS Code of Conduct*.
 3. On the date a student with a disability is removed from the student's current placement, school personnel shall—
 - a) notify the parents/legal guardians of the decision; and

- b) provide the parents/legal guardians with the procedural safeguards notice in accordance with Maryland law.

IV. DISCIPLINE OF STUDENTS WITH IEPs

A. A student with disabilities may be removed from his/her current educational program for more than 10 school days per school year under the following conditions:

- 1. An IEP team has determined that the conduct that prompted the disciplinary action was not a manifestation of the student's disability provided the same procedures are utilized for students without disabilities in accordance with MCPS Regulation JGA-RB, *Suspension and Expulsion*, and the *MCPS Code of Conduct*; or
- 2. The student may be removed to an IAES for up to 45 school days consistent with COMAR 13A.08.03.06, *MCPS Code of Conduct*, and subject to approval by OSESS.

The IEP team shall determine the IAES upon authorization of OSESS.

- a) The IAES shall enable the student with a disability to: progress in the general curriculum, receive the services and modifications included in the student's IEP, meet the goals of the student's IEP, and receive services and modifications designed to address the behavior to prevent its recurrence.
- b) The IAES may be accessed without regard to whether the disciplinary event was a manifestation of the student's disability.

B. Extended Suspensions or Expulsions

- 1. During any extended suspension or expulsion, as those terms are defined in the *MCPS Code of Conduct* and MCPS Regulation JGA-RB, *Suspension and Expulsion*, the student with an IEP is entitled to receive services so as to enable the student to participate in the general education curriculum and to progress toward meeting his or her IEP goals.
- 2. For any combination of short- or long-term suspensions that total more than 10 school days per school year and constitute a pattern of removal, the student with an IEP is entitled to receive services so as to enable the student to participate in the general education curriculum and to progress toward meeting IEP goals.

C. Determination of Manifestation

As soon as possible, and prior to the 10th day of removal for that school year, a properly constituted IEP team must be convened to determine whether the conduct which prompted the disciplinary action was a manifestation of the student's disability.

1. In determining whether the student's behavior was a manifestation of the student's disability, the IEP team shall review—
 - a) all relevant information in the student's file;
 - b) any teacher observations;
 - c) any relevant information supplied by the parents/legal guardians; and
 - d) the student's IEP.
2. The IEP team will then determine—
 - a) if the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b) if the conduct was the direct result of the school's failure to implement the IEP.
3. If the IEP team determines that the student's conduct was not a manifestation of his/her disability, the discipline procedures applicable to students without disabilities in MCPS Regulation JGA-RB, *Suspension and Expulsion*; Section 7-305, *Education Article, Annotated Code of Maryland*; and the *MCPS Code of Conduct* apply, and the disciplinary process may continue.
4. The IEP team shall determine the extent to which services are necessary during the period of suspension or expulsion to enable the student to appropriately—
 - a) progress in the general curriculum; and
 - b) advance toward achieving the goals of the student's IEP.

5. If the IEP team determines that the conduct which prompted the disciplinary action was a manifestation of the student's disability—
 - a) the student must be returned to his/her current educational placement immediately thereafter unless the parents/legal guardians and the IEP team agree to a change in placement as part of a modification of the student's Behavioral Intervention Plan (BIP); and
 - b) the IEP team must conduct a functional behavioral assessment and implement a BIP if MCPS had not conducted such assessments prior to the disciplinary removal; or review the student's current BIP and modify it, if necessary, to address the behavior.
6. If the IEP team determines that the conduct was a direct result of the school's failure to implement the child's IEP, the student must be returned to his/her current educational program immediately and the school must take immediate steps to ensure that all services set forth in the child's IEP are provided, consistent with the child's needs as identified in the IEP.
7. If the student's parents/legal guardians request a due process hearing to contest the manifestation determination of the IEP team, the following apply:
 - a) The student remains in the disciplinary setting or the IAES setting pending the outcome of the due process hearing or until the expiration of the disciplinary event or IAES, whichever comes first, unless the parents/legal guardians and MCPS agree on another course of action.
 - b) Procedures in Board Policy BLC, *Procedures for Review and Resolution of Special Education Disputes*, will be followed.
8. If the IEP team has not convened a manifestation determination meeting by the 10th day of removal in the school year, the student must be returned immediately thereafter to his/her current educational placement unless the parents/legal guardians agree otherwise.

D. Students Not Previously Identified as Disabled

1. If a student not previously identified as disabled is suspended for more than 10 school days per school year or expelled, and the school system had

knowledge or suspected that the student was a child with a disability before the behavior occurred, then the student may invoke the procedures available to special education students. MCPS shall be deemed to have knowledge that a student is a student with a disability if—

- a) the parents/legal guardians of the student expressed concern in writing to MCPS supervisory or administrative personnel or a teacher of the student that the student is in need of special education and related services; or
- b) the parents/legal guardians have requested an evaluation as set forth in Maryland law; or
- c) the student's teacher or other MCPS personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the MCPS director of special education or other supervisory personnel in accordance with Maryland law or local child-find procedures.

2. MCPS is not deemed to have knowledge that a student is a student with a disability if—

- a) the parents/legal guardians of the student—
 - (1) did not allow the public agency to conduct assessments in accordance with Maryland law; or
 - (2) refused or revoked consent for services in accordance with Maryland Law; or
- b) MCPS—
 - (1) conducted an evaluation in accordance with Maryland law and determined that the student was not a student with a disability, or determined that an evaluation was not necessary in accordance with Maryland law; and
 - (2) provided the student's parents/legal guardians with a written notice of the decision in accordance with Maryland law.

3. If a student not previously identified as disabled is suspended for more than 10 school days per school year or expelled, and the school system had no knowledge that the student is a child with a disability, but during the disciplinary period there is a request to evaluate the student, then it shall be done expeditiously while the child remains in an educational placement determined by school authorities.

V. DISCIPLINE OF A STUDENT QUALIFIED UNDER SECTION 504

- A. Any student qualified under Section 504 may be suspended for up to 10 school days per school year by following the procedures used for student without disabilities in MCPS Regulation JGA-RB, *Suspension and Expulsion*, and the *MCPS Code of Conduct*.
- B. Any student qualified under Section 504 may be disciplined to the same extent that such disciplinary action is taken against students without disabilities if—
 1. the student is under the influence of illegal drugs or alcohol at the time of the infraction for actions pertaining to the use or possession of illegal drugs or alcohol; or
 2. the student possessed or carried a weapon on MCPS property or to an MCPS-sponsored activity; knowingly possessed or used an illegal drug, or sold or solicited a controlled substance while on MCPS property or at an MCPS-sponsored activity; or inflicted serious bodily injury to another person while on MCPS property or at an MCPS-sponsored activity.
- C. Circumstances in which the student receives disciplinary removal for more than 10 school days per school year may constitute a change in placement.
 1. The determination of whether a series of suspensions creates a change in placement is made on a case-by-case basis by the school-based Section 504 team before the 10th day of removal for the school year.
 2. If the team determines that a change in placement has occurred, it must conduct a causation meeting to determine whether the student's behavior is caused by his or her disability.
 3. If the behavior is determined to be caused by the student's disability, the student must be permitted to return to his/her current school program immediately thereafter.

4. If the behavior is determined not to be caused by the student's disability, the student may be removed from school in the same manner as similarly situated students who do not have disabilities. Disciplinary proceedings should be handled in accordance with law and MCPS Regulation JGA-RB, *Suspension and Expulsion*, and the *MCPS Code of Conduct*.

MCPS Regulation History: Formerly MCPS Regulation JGA-RA, *Classroom Management and Student Behavior Interventions*, and MCPS Regulation ACG-RB, *Reasonable Accommodations and Modifications for Students Eligible under the Rehabilitation Act of 1973*; revised August 7, 2014.