

# Regulation JKD-RB

## Las Cruces Public Schools

**Related Entries:** JKD, JI, JI-R, JICK, JICK, JKD-RA, JKA, JICA, JICA-R, EJA, ADC, JHCA, JKA, JKA-R, KLG, KLG-R, JK, JK-RA

**Responsible Office:** Associate Superintendent for Equity, Innovation, and Social Justice

## SUSPENSION AND EXPULSION OF STUDENTS WITH DISABILITIES

### I. PURPOSE

To clarify additional procedural protections afforded to students with disabilities under the federal Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA), and to assure the provision of these protections. These protections are in addition to the protections afforded to all students, including students with disabilities, under JKD-RA. JKD-RB shall be read in conjunction with JKD-RA, and not in place of JKD-RA.

### II. DEFINITIONS

- A. “*Change in Placement*” is the removal of a student from his or her current educational placement for more than ten (10) consecutive school days or when a student is subjected to a series of short-term removals that constitute a pattern because:
1. the series of removals total more than 10 school days in a school year;
  2. the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals; and
  3. such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.
- B. “*Section 504 Plan (504)*” is a written plan that describes the accommodations and services necessary to meet the individual educational needs of a student with a disability under Section 504 as adequately as the needs of non-disabled students are met and is based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards.
- C. “*Individualized Education Program (IEP)*” is a written program for a student with a disability that is developed, reviewed, and revised by an IEP Team of which the parents are members in accordance with the federal Individuals with Disabilities Education Act (IDEA) and New Mexico implementing regulations, and includes a statement of special education, related services and supplementary aids and services necessary for the student to receive a Free Appropriate Public Education (FAPE).
- D. “*Interim Alternative Education Setting (IAES)*” is a setting determined by the IEP

Team for the delivery of services to a student with disabilities who has been removed for disciplinary reasons from his or her current educational placement, so that the student can continue to participate in the general education curriculum although in another setting and progress toward meeting the goals set out in his or her IEP.

- E. “*Special Circumstances*” exist if the student (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 a State Education Agency (SEA) or local education agency/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 LCPS or the New Mexico Public Education Department (NMPED); or (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of LCPS or the New Mexico Public Education Department.
- F. “*Suspension*”: Refer to regulation JKD-RA: *Suspension and Expulsion*
- G. “*Expulsion*”: Refer to regulation JKD-RA: *Suspension and Expulsion*

### **III. PREVENTION AND INTERVENTION**

- A. LCPS recognizes that discipline policies and practices that remove students from engaging instruction, such as suspensions, expulsions, and inappropriate referrals to law enforcement, generally fail to help students improve their behavior and fail to improve school safety.
- B. It is the responsibility of the principal or assistant principal to ensure that, in the case of a student whose behavior impedes the student’s learning or that of others, an IEP Team or Section 504 Committee meeting is held, and the IEP Team or Section 504 Committee considers the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
- C. Functional Behavioral Assessments (FBAs) and Behavior Intervention Plans (BIPs) shall be used proactively in schools if the IEP Team or Section 504 Committee determines that they would be appropriate for a student with disabilities.
- D. The principal or assistant principal is responsible for ensuring that the IEP or Section 504 Plan for registered students on campus is followed, including those provisions related to behavior and discipline.
- E. The principal or assistant principal is responsible to ensure that students with disabilities are afforded the protections of JKD-RA and JKD-RB.

### **IV. SERVICES TO STUDENTS WITH DISABILITIES DURING PERIODS OF REMOVAL**

- A. The school is only required to provide services during periods of removal to a student 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 student without disabilities who is similarly removed.

- B. During periods of short-term removal that are not a change of placement, a student with a disability shall continue to receive educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
- C. During periods of short-term removal that are not a change of placement, no IEP meeting is required. Instead, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed for a Free and Appropriate Public Education (FAPE), so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
- D. The extent to which educational services need to be provided and the type of instruction to be provided will depend on the length of the removal, the extent to which the student has been removed previously, and the student's needs and educational goals. For example, a student with a disability who is removed for only a few days and is performing near grade level would not likely need the same level of educational services as a student with a disability who has significant learning difficulties and is performing well below grade level.
- E. If the removal will result in a disciplinary change of placement either because it is for more than 10 consecutive school days (long-term) or because of a pattern (short-term cumulative):
  - 1. Schedule and hold an IEP meeting before the removal results in a disciplinary change of placement; and
  - 2. For any period of short-term removal before the removal results in a disciplinary change of placement, school personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed for a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

**V. ADDITIONAL REQUIREMENTS FOR A DISCIPLINARY CHANGE OF PLACEMENT FOR IDEA ELIGIBLE STUDENTS ON AN IEP**

- A. A disciplinary change of placement occurs if the removal is for more than 10 consecutive school days (long-term), or the student has been subjected to a series of removals that constitute a pattern (short-term cumulative). See *Change in Placement* (as defined in the DEFINITIONS section of this Regulation).
- B. On the date in which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the principal or assistant principal shall notify the parents of that decision and provide the parents with their IDEA procedural safeguards notice.
- C. The school shall schedule and hold an IEP Team meeting.
- D. The IEP Team shall conduct a Manifestation Determination Review as outlined in

this Regulation.

E. The IEP Team shall address the student's behavior as follows:

1. If the IEP Team makes the determination that the conduct was a manifestation of the student's disability, and there are no special circumstances, the IEP Team must either:
  - a. 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 student; or
  - b. If a Behavioral Intervention Plan already has been developed, review the Behavioral Intervention Plan, and modify it, as necessary, to address the behavior.
2. If the IEP Team makes the determination that the behavior was not a manifestation of the student's disability, or special circumstances exist, the IEP Team shall conduct, 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.

F. The IEP Team shall determine services as follows:

1. Unless Special Circumstances exist, if the IEP Team determines that the conduct was a manifestation of the student's disability, the IEP Team shall return the student to the placement from which the student was removed, unless the parent and the District agree to a change of placement as part of the modification of the Behavioral Intervention Plan.
2. If the IEP Team determines that the conduct was a manifestation of the student's disability, or if Special Circumstances exist, the student shall continue to receive educational services, and the IEP team determines those services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

G. If the behavior is not a manifestation of the disability or Special Circumstances exist, the IEP Team shall determine the Interim Alternative Educational Setting (IAES) for the delivery of services.

**VI. MANIFESTATION DETERMINATION REVIEW (MDR) FOR IDEA ELIGIBLE STUDENTS ON AN IEP**

- A. The MDR shall be conducted by the school, the parent, and relevant members of the student's IEP Team (as determined by the parent and school).
- B. The MDR shall take place within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, and before any change of placement occurs.

- C. In conducting the MDR, the IEP team shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents.
- D. The team will then answer the following manifestation determination questions:
  - 1. Was the conduct in question the direct result of the school's failure to implement the IEP?
  - 2. Was the conduct in question caused by, or did it have a direct and substantial relationship to the student's disability?
- E. If the IEP Team answers "Yes" to either of the above two manifestation questions, the conduct shall be determined to be a manifestation of the student's disability.
- F. If the IEP Team determines that student's misconduct is not a manifestation of his or her disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except that the services and safeguards set out in JK-RB shall be provided to the student with disabilities.

## **VII. SPECIAL CIRCUMSTANCES**

- A. See *Special Circumstances* (as defined in the DEFINITIONS section of this Regulation). Other definitions for determining whether Special Circumstances exist are as follows:
  - 1. "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.
  - 2. "Dangerous weapon" means 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.
  - 3. "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.
  - 4. "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section (21 U.S.C. 812(c)).
  - 5. "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.
  - 6. 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.

- B. If the IEP Team determines that the student's misconduct is a manifestation of his or her disability, but special circumstances exist, school personnel may remove the student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability.
- C. If the IEP Team determines that student's misconduct is not a manifestation of his or her disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except that the services and safeguards set out in JK-RB shall be provided to the student with disabilities.

**VIII. PROTECTIONS FOR STUDENTS WHO HAVE NOT YET BEEN DETERMINED ELIGIBLE FOR IEP SPECIAL EDUCATION AND RELATED SERVICES UNDER THE IDEA**

- A. A student who has not been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Regulation JK-RB if LCPS had knowledge (as outlined below in VIII.B.) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- B. The following circumstances create a basis of knowledge, if one of these three circumstances were present before the disciplinary incident occurred:
  - 1. The parent of the student expressed concern in writing to supervisory or administrative personnel of LCPS, or a teacher of the student, that the student is in need of special education and related services;
  - 2. The parent of the student requested an evaluation of the student for special education under the IDEA; or
  - 3. The teacher of the student, or other personnel of LCPS, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of LCPS or to other supervisory personnel of LCPS.
- C. LCPS would not be deemed to have knowledge of this section if:
  - 1. The parent of the student has not allowed an evaluation of the student pursuant to §§ 300.300 through 300.311;
  - 2. The parent of the student has refused services under the IDEA; or
  - 3. The student has been evaluated for special education services under the IDEA and determined to not be eligible for IDEA services.
- D. Even if there is no basis of knowledge, 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.

**IX. PROTECTIONS FOR STUDENTS WITH DISABILITIES UNDER SECTION 504 ON A SECTION 504 PLAN**

- A. Student with disabilities under Section 504, who are on a Section 504 plan because of a physical or mental impairment that substantially limits a major life activity, but are not considered eligible for special education and related services under the IDEA (hereinafter, “Section 504-only students”) shall be afforded the protections of Section 504 in the context of discipline.
- B. Schools shall comply with the *Additional Requirements for a Disciplinary Change of Placement* under this Regulation, and conduct a *Manifestation Determination Review* under this Regulation, paragraphs A-E, prior to any disciplinary change of placement of a Section 504-only student, except as otherwise indicated in this Section. When doing so, the Section 504 Committee shall perform the functions designated as IEP Team functions.
- C. If the misconduct that is the subject of the disciplinary action is not a manifestation of the student’s disability, the Section 504-only student is subject to the same discipline procedures applicable to nondisabled students. LCPS can cease providing educational services to a Section 504-only student for behavior that is not a manifestation of the student’s disability only if nondisabled students would also be denied educational services under similar circumstances. If LCPS provides alternative arrangements to nondisabled students, Section 504-only students shall be afforded alternative arrangements for the delivery of educational services during periods of long-term suspension or expulsion.
- D. If the school disciplines a Section 504-only student for alcohol use or possession, the school may do so to the same extent as it would with a nondisabled student. The Section 504-only student is not excluded from the definition of a student with a disability, but the law specifically permits disciplinary action to the same degree as with nondisabled students.
- E. If the school disciplines a Section 504-only student based on the student’s use of illegal drugs, the student loses the protection that Section 504 would normally provide. In other words, even if the student is disabled under Section 504 and recognized as such by the school, the student can be disciplined for illegal drug use to the same extent as any other student without the procedural protections of Section 504. The definition of a student with a disability excludes illegal drug users when the school acts on the basis of such use.



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*Approved, Associate Superintendent for Equity,  
Innovation, & Social Justice*

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*Date Approved*

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**Legal Reference:** Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Americans with Disabilities Act (ADA)