



EDUCATION		
4420.08 Special Education: Discipline	Effective	01/31/2019
	Replaces	4420.08
	Dated	07/02/2008

If a change in educational placement for disciplinary removal occurs for a student with a disability, the Arizona Department of Juvenile Corrections (ADJC) Education Division shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's Individualized Education Program (IEP). [34 CFR §300.530(d)]

AUTHORITY

Arizona Revised Statutes (A.R.S.)	
41-2804	Duties and Powers of Director
13-2514	Promoting Secure Care Facility Contraband; classifications
15-761	Definitions
15-763.01	Surrogate parent; notification; appointment
15-764 (A)(5)	Powers and duties of the school district governing board or county school superintendent
15-765	Special Education in rehabilitation, corrective or other state and county supported institutions, facilities or homes
15-766	Evaluation of child for placement in special education program; due process hearing procedures
15-828 (F-G)	Birth certificate; school records; exception
15-1181	Definitions
Code of Federal Regulations	
34 CFR 300	Education
Arizona Administrative Code (AAC)	
R7-2-401	Special Education Standards for Public Agencies Providing Educational Services
R7-2-405	State Board of Education

PROCEDURES

1. **Authority of school personnel: [34 CFR §300.530]**
 - a. On a case-by-case basis and in consideration of any unique circumstances, the **SCHOOL PERSONNEL** may:
 - i. Remove a student with a disability who violates a student code of conduct from student's current placement;
 - ii. Move the student to an appropriate interim alternative educational setting; and
 - iii. Move the student to another setting or a suspension for not more than 10 consecutive school days (to the extent those alternatives are applied to students without

disabilities) in that same school year for separate incidents of misconduct as long as the removals do not constitute a change of placement under [34 CFR §300.536].

- iv. Any youth with an IEP or 504 Plan who is removed or absent from their placement shall be logged and recorded on the Special Education Attendance Tracking Log.
- b. After a student with a disability has been removed from his/her current placement for ten school days in the same school year, during any subsequent days of removal, the **PEA DESIGNEE** shall provide services to the extent required to:
 - i. Enable the student to continue to participate in the general education curriculum, although in another setting;
 - ii. Progress toward meeting his/her Individual Education Plan (IEP) goals; and
 - iii. Receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

2. Free Appropriate Public Education (FAPE) for students suspended or expelled: [34 CFR §300.536]

- a. The **PEA DESIGNEE** shall only be required to provide services during periods of removal to a student with a disability who has been removed from his/her current placement ten days or less in that school year if it provides services to non-disabled students similarly removed; and
- b. After a student with a disability has been removed from his/her current placement for ten school days, and the current removal is for no more than ten consecutive school days and not a change of placement, the **PEA DESIGNEE** shall, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum and to progress toward meeting IEP goals:
 - i. If the removal is a change in placement, the student's **IEP TEAM** shall determine the appropriate services.

3. Change of placement because of disciplinary removals: [34 CFR §300.536]

- a. If a student with a disability is removed from the student's current educational placement, a change in placement occurs if:
 - i. The removal is for more than ten consecutive school days; or
 - ii. The series of removals constitute a pattern of factors:
 - (1) Totalling more than 10 school days in a school year;
 - (2) The student's behavior is substantially similar to the behavior in previous incidents that resulted in a series of removals; and
 - (3) Additional factors, like 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. The **PEA DESIGNEE** shall determine on a case-by-case basis whether a pattern of removals constitutes a change of placement, and such determinations are subject to review through due process and judicial proceedings;
- c. Within 10 school days of any decision to change the placement of a student with a disability because of violation of a code of student conduct, the PEA, parent and relevant members of the IEP Team shall review all relevant information in the student's file, the IEP, teacher observations and any relevant information to determine:
 - i. If the conduct was caused by, or had a direct and substantial relationship to, the student's disability; or
 - ii. If the conduct in question was the direct result of the public education agency's failure to implement the IEP.
- d. If there is a determination that the student's conduct was a manifestation of the student's disability:
 - i. The **PEA DESIGNEE** shall return the student to the placement from which s/he was removed, **unless** the parent/guardian agrees to a change of placement;
 - ii. The **IEP TEAM** shall either:

- (1) Conduct a functional behavioral assessment, unless already done, and implement a behavioral intervention plan; or
 - (2) If a behavior plan has already been developed, review the plan and modify it as necessary to address the behavior.
 - iii. If the IEP was not implemented, the **PEA DESIGNEE** shall take immediate steps to remedy the deficiency;
 - e. The **PEA DESIGNEE** may remove a student to an interim alternative educational setting for not more than 45 school days without regard to manifestation of disability, if the student:
 - i. Carries a weapon to or possesses a weapon at a school, on school premises, to or at a school function under the jurisdiction of a state or public education agency; [§13-2514, (A)1,2,3 and)C]]
 - ii. 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 a state or public education agency; [§13-2514, Section C] or
 - iii. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or public education agency.
 - f. The **PEA DESIGNEE** shall notify parent/guardian and provide notice of procedural safeguards on the day the agency determines the student has violated the code of conduct, and the violation constitutes a change in placement (i.e., interim alternative education setting).
4. **Determination of setting: [34 CFR §300.531]**
- a. The student's **IEP TEAM** shall determine the interim alternative educational setting for services.
5. **Appeal: [34 CFR §300.532]**
- a. The parent/guardian of a student with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 531 or the manifestation determination **may** appeal the decision by requesting an expedited due process hearing in accordance with 34, CFR, §§300.310-314 and AAC R7-2-405.1; and
 - b. If the PEA designee disagrees with any decision regarding placement and believes that maintaining the current placement of the student is substantially likely to cause injury to the student or other, the PEA may appeal the decision by requesting an expedited due process hearing in accordance with 34 CFR, §§300.310-314, and AAC R7-2-405.1.
6. **Placement during appeals: [34 CFR §300.533]**
- a. The student shall remain in the interim alternative educational setting pending the decision of the Youth Hearing Officer (YHO) or expiration of the interim setting, whichever comes first, unless the parent/guardian and the PEA designee agree otherwise.
7. **Protections for students not determined eligible for special education and related services: [34 CFR §300.534]**
- a. The **PEA DESIGNEE** shall ensure:
 - i. A non-eligible student who engaged in a behavior that violated a code of student conduct may assert protections if the designee had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.
 - b. The **PEA DESIGNEE** shall be deemed to have such knowledge if:
 - i. The parent/guardians of a student expressed concern in writing to the school personnel or a teacher of the student that the student is in need of special education and related services;
 - ii. The parent/guardian of the student requested an evaluation of the student pursuant to 34 CFR and §§300.300-311; or

- iii. The teacher of the student, or other ADJC personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the school Administration.
 - c. The **SCHOOL ADMINISTRATION** would not be deemed to have prior knowledge if the parent/guardian of the student:
 - i. Has not allowed an IDEA evaluation of the student;
 - ii. Has refused special education services for the student; or
 - iii. The student has been evaluated and determined to not be a student with a disability under IDEA.
 - d. If the **SCHOOL ADMINISTRATION PERSONNEL** are deemed not having prior knowledge that a student is a student with a disability before taking disciplinary measures against the student, **THEY** may discipline the student as other students without disabilities who engage in similar behaviors;
 - e. If an evaluation is requested during the time in which a student is subjected to disciplinary measures:
 - i. The **SCHOOL PSYCHOLOGIST** shall conduct the evaluation in an expedited manner; and
 - ii. The **PEA DESIGNEE** shall:
 - (1) Maintain the student in the educational placement until the evaluation is completed that can include the suspension or expulsion without educational services; or
 - (2) Ensure if the student is determined to be a student with a disability, the **school personnel** provide special education and related services in accordance with this part, including the requirements of 34 CFR and §300.530-536.
8. **Referral to and action by law enforcement and judicial authorities: [34 CFR §300.535]**
- a. The **PEA DESIGNEE** shall:
 - i. Report a crime committed by a student with a disability by filling out Form 1190.01A Incident Report in accordance with Procedure 1190.01 Incident, Misconduct, and Positive Behavior Recording ;
 - ii. When reporting a crime committed by a student with a disability, ensure copies of the special education and disciplinary records of the student are transmitted to the designated school personnel.
 - b. The **PEA DESIGNEE** shall ensure that the records are completed to the extent permitted by FERPA, before being turned over to the ADJC Inspector General for investigation.

Signature Date

01/29/2019

Approved by

Original Signature on File

Dr. Kim Eger, Education Superintendent

Signature Date

01/30/2019

Approved by

Original Signature on File

Jeff Hood, Director

Effective Date

01/31/2019

