

This is an amendment to Section 6.11.2.11 NMAC (RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS), effective September 15, 2005. The amendment deletes Section 6.11.2.11 NMAC in its entirety and replaces it with a temporary rule that incorporates by reference 20 U.S.C. 1415(k) of the Individuals with Disabilities Education Improvement Act of 2004. The temporary rule explains that 20 U.S.C. 1415(k) and the federal regulations implementing that provision, which address disciplinary removals for students with disabilities from their current educational placements, shall govern until Section 6.11.2.11 NMAC is further revised. The temporary rule also clarifies that all other federal and state laws and rules governing student discipline, including 6.11.2.12 NMAC, remain in effect.

6.11.2.11 [PROCEDURES FOR LONG-TERM SUSPENSION OR EXPULSION OF STUDENTS WITH DISABILITIES:

- ~~_____ A. _____ Initial determination(s)~~
- ~~_____ (1) _____ The following rules shall apply when a student with a disability violates a rule of conduct as set forth in this regulation which may result in:~~
- ~~_____ (a) _____ long term suspension or expulsion; or~~
- ~~_____ (b) _____ any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 CFR Secs. 300.519 through 300.529.~~
- ~~_____ (2) _____ The following rules shall also apply when a disciplinary change of placement is contemplated for a child as to whom the school district had knowledge, as provided in 34 CFR Sec. 300.527, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.~~
- ~~_____ (3) _____ The administrative authority shall conduct an informal administrative conference to determine if disciplinary action is warranted. The purpose of the conference shall be to:~~
- ~~_____ (a) _____ conduct interviews;~~
- ~~_____ (b) _____ afford the child an opportunity to explain the alleged misconduct;~~
- ~~_____ (c) _____ determine whether the child has an individualized education program (IEP) in accordance with the IDEA or a plan in accordance with Section 504 of the Rehabilitation Act of 1973 (hereinafter "504") in effect, and if so whether the IEP or 504 plan contains alternative disciplinary strategies; and~~
- ~~_____ (d) _____ determine whether a referral for formal evaluation should be made if an IEP or 504 plan is not in effect and a disability is suspected.~~
- ~~_____ (4) _____ The administrative authority shall make a determination as to whether the conduct warrants long-term suspension or expulsion.~~
- ~~_____ (5) _____ Nothing herein shall preclude the administrative authority from imposing a short term suspension subject to the further provisions of 34 CFR Secs. 300.519-300.520 and/or seeking an injunction from a court of competent jurisdiction or an order from an IDEA hearing officer pursuant to 34 CFR Sec. 300.521 and Paragraph 4 of Subsection I of 6.31.2.13 NMAC to exclude or change the placement of a student when the administrative authority believes that maintaining the current placement is substantially likely to result in injury to the child or others.~~
- ~~_____ B. _____ Parent notification~~
- ~~_____ (1) _____ Upon a determination by the administrative authority that long term suspension or expulsion will not be pursued, the administrative authority shall notify the parent(s) of the incident.~~
- ~~_____ (2) _____ Upon a determination by the administrative authority that the student's IEP or 504 plan sets forth alternative discipline strategies for the behavior, the administrative authority shall implement the alternative strategies and notify the parent(s) accordingly.~~
- ~~_____ (3) _____ Upon a determination by the administrative authority that an IEP or 504 plan is not in effect for the student and that a referral for formal evaluation should be made, the administrative authority shall refer the student for formal evaluation and shall notify the parent(s) in accordance with applicable requirements.~~
- ~~_____ (4) _____ Upon a determination by the administrative authority that long term suspension or expulsion will be pursued and that an IEP or 504 plan is in effect for the student, the administrative authority shall notify the parent(s) as follows:~~
- ~~_____ (a) _____ Scheduling of the IEP meeting in accordance with the requirements of the IDEA Part B and 34 CFR Part 300, or Section 504, and 34 CFR Part 104, as applicable; and~~
- ~~_____ (b) _____ Contemplated disciplinary action.~~
- ~~_____ C. _____ Manifestation inquiry~~
- ~~_____ (1) _____ The administrative authority shall convene the IEP or 504 meeting to determine if the student's behavior is a manifestation of the disability and whether the student's IEP or 504 plan is appropriate.~~

_____ (2) ~~An IDEA manifestation inquiry shall be conducted by the IEP team and other qualified personnel pursuant to all applicable requirements of 34 CFR Sec. 300.523.~~

_____ (3) ~~If the determination is made that the behavior is a manifestation of the disability, the IEP Team or 504 Committee shall revise the IEP or 504 plan as needed to address the needs of the student. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.~~

_____ (4) ~~If the determination is made that the behavior is not a manifestation of the disability but that the student's program is inappropriate, the IEP team or 504 committee shall revise the IEP/504 plan. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 CFR Sec. 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.~~

_____ (5) ~~If the determination is made that the misbehavior is not a manifestation of the disability and the child's program is appropriate, the administrative authority may proceed to initiate long term suspension or expulsion proceedings in accordance with Subsection G of 6.11.2.12 NMAC.~~

_____ D. ~~Special rule~~

_____ (1) ~~This rule shall apply, pursuant to 34 CFR Sec. 300.520(a)(2), when a child with a disability is determined to have:~~

_____ (a) ~~brought a weapon to school or a school function; or~~

_____ (b) ~~knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function.~~

_____ (2) ~~A student who has a disability in accordance with Part B of the IDEA and who is determined to have engaged in any conduct described in Paragraph 1 above may be immediately placed in an interim alternative educational setting for not more than forty five (45) calendar days during the manifestation inquiry. The interim alternative educational setting shall be determined by the IEP Team, which includes the student's parent(s), in compliance with all applicable requirements of 34 CFR Sec. 300.522. Parental consent to the alternative placement is not required.~~

_____ (3) ~~If the parent(s) of a student placed in an alternative educational setting pursuant to this special rule request(s) a due process hearing pursuant to Part B of the IDEA, the hearing shall be expedited pursuant to 34 CFR Sec. 300.528 and Paragraph 11 of Subsection I of 6.31.2.13 NMAC and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and administrative authority agree otherwise or the IDEA hearing officer orders otherwise pursuant to 34 CFR Sec. 300.526 and Paragraph 20 of Subsection I of 6.31.2.13 NMAC.~~

_____ (4) ~~If, upon final determination, it is decided that the offense involving the weapon or drug was not a manifestation of the student's disability, the administrative authority may proceed to initiate long term suspension or expulsion proceedings.~~

_____ E. ~~Functional behavioral assessments and behavioral intervention plans. The administrative authority shall ensure that a functional behavioral assessment is conducted and a behavioral intervention plan for each student with a disability under the IDEA is developed or reviewed and revised by the IEP team in compliance with 34 CFR Sec. 300.520(b) and (c) not later than 10 business days after first removing the child from his or her current educational placement for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under 34 CFR Sec. 300.519, including an action described in Subsection D of 6.11.2.11 NMAC.~~

_____ F. ~~Alternative educational services during the period of long term suspension or expulsion~~

_____ (1) ~~Alternative educational services for a student with a disability upon whom a long term suspension or expulsion has been imposed for behavior that was not a manifestation of the disability shall be provided as follows:~~

_____ (a) ~~During the period of disciplinary exclusion from school, each student who is disabled pursuant to the IDEA must continue to be offered a program of appropriate educational services that is individually designed to meet his or her unique learning needs and provides a free appropriate public education (FAPE) pursuant to 34 CFR Sec. 300.121(d). Such services may be provided in the home, in an alternative school, or in another setting.~~

_____ (b) ~~School districts may cease educational services to students who are disabled pursuant to Section 504 during periods of disciplinary exclusion from school that exceed ten (10) school days if students who are not disabled do not continue to receive educational services in similar circumstances.~~

_____ (2) ~~Provision of alternative educational services~~

- ~~_____ (a) The parent(s) shall be notified of the IEP/504 meeting.~~
- ~~_____ (b) An IEP is developed to reflect the alternative educational services and placement to be provided to the student during the period of the long term suspension or expulsion, pursuant to 34 CFR Sec. 300.121.(d).~~
- ~~_____ (c) If the parent(s) of an IDEA student request a due process hearing, the hearing shall be expedited pursuant to 34 CFR Sec. 300.528 and Paragraph 11 of Subsection I of 6.31.2.13 NMAC and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and administrative authority agree otherwise or the IDEA hearing officer orders otherwise pursuant to 34 CFR Sec. 300.526 and Paragraph 20 of Subsection I of 6.31.2.13 NMAC.~~
- ~~_____ (3) Local school boards shall adopt policies stating whether a student will receive grades and/or credit during the period of long term suspension or expulsion, subject to the requirement of 34 CFR Sec. 300.121 that an IDEA student must receive services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.]~~

DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES: Temporary rule. Until this Section 6.11.2.11 NMAC is further revised, the provisions of the Individuals with Disabilities Education Improvement Act of 2004 at 20 U.S.C. Section 1415(k) and the federal regulations implementing those provisions shall govern disciplinary removals of students with disabilities from their current educational placements. All other federal and state laws and rules governing student discipline, including 6.11.2.12 NMAC governing detention, suspension or expulsion of any student, remain in effect.

[08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05]