

## **Disciplinary Action for Exceptional Children/Students with Disabilities**

### **I. Purpose**

The discipline, suspension and expulsion of students with handicaps and disabilities is governed by federal law - the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act and their implementing regulations - as well as state law and the most current version the North Carolina State Board of Education's [Policies Governing Services for Children with Disabilities](#). It is the purpose of this policy to provide guidelines for TCS to use in disciplining students with handicaps, disabilities and special needs as those terms are defined in the federal and state laws and regulations referred to above. All students with disabilities will be accorded all rights as provided by state and federal law.

### **II. Scope**

This policy applies to all students with disabilities and students with disabilities at TCS.

### **III. Student Behavior Policy/Code of Student Conduct**

Prohibited behaviors (Code of Student Conduct (Infractions)), sanctions, and other pertinent information are set forth in TCS's Student Behavior Policy/Code of Student Conduct. The same standards of conduct (Code of Student Conduct) apply to students with disabilities. This policy modifies and provides additional guidelines for appropriate sanctioning of students with disabilities.

### **IV. In-School Suspensions**

As a general rule, a student with a disability may be assigned to in-school suspension as a sanction if that is the sanction that would be applied to non-disabled students and the student is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive IEP services and continue to participate with non-disabled students to the extent they would in their current placement.

### **V. School Bus Suspensions**

For a student with a disability, whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the student's IEP and whether the student's parents are able transport the student to school. If the bus transportation is a part of the student's IEP, a bus suspension would be treated as an out-of-school suspension unless the student is provided transportation service in some other way. If bus service is not a part of the student's IEP, a bus suspension would not be a suspension unless the student's parents do not have the ability to transport the student to school.

### **VI. Short-Term Suspensions**

#### **a. First Ten Days**

As a general rule, students with a disability may be suspended for up ten (10) school days in a school year to the same extent and for the same misconduct that non-disabled students would be suspended under the relevant provisions of the TCS Student Behavior Policy/Code of Student Conduct. These short-term suspensions are not considered a "change of placement" and no special education procedures or services

are required. Regular due process procedures for short-term suspensions apply as described in the Student Behavior Policy/Code of Student Conduct.

- b. Cumulative Short-Term Suspensions Totaling more than 10 Days
  - i. Duty to Assess Behavior and Implement a Behavior Intervention Plan (BIP). If the Principal is considering a short-term suspension of a student with a disability and the total number of days suspended in the school year will exceed 10 school days, the Principal shall notify the EC Administrator and IEP Team.
    1. If the IST/IEP Team has not conducted a functional behavioral assessment and implemented a BIP for the child before the behavior resulting in the proposed suspension, Section 504 and IDEA regulations require the IST/IEP Team to meet within 10 business days to develop a plan to conduct a functional behavioral assessment and develop a BIP to address the student's behavior.
    2. If a BIP exists, the IST/IEP Team members shall review the BIP (not necessarily in a meeting) and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the Team shall meet to consider the request to modify the BIP and its implementation. If not, the Team does not have to meet and should implement the BIP as written.
  - ii. Duty to Determine Whether Cumulative Suspensions is a Change of Placement. If the Principal is considering a short-term suspension of a student with a disability and the total number of days suspended in the school year will exceed 10 school days, the Principal shall determine whether the cumulative effect of the suspensions would be considered a change of placement under the student's IEP based on the factors listed below. If the suspensions change the IEP, that change triggers the procedural safeguards of the Section 504 and the IDEA as well as the [Policies Governing Services for Children with Disabilities](#). During these short-term suspensions following the first ten days of suspension, educational services must be provided, if necessary, for the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP.
    1. Factors for Determining Whether Cumulative Suspensions are a Change of Placement:
      - a. The length of the suspensions - The longer each suspension, the more they should be viewed collectively as a change of placement. If the average length of the suspensions would be more than 5 school days, it should be considered a change of the IEP.
      - b. The total number of days a student is suspended - There is no specific number of cumulative days that defines a change in placement. However, more than 20 days in a school year should be considered a change of the IEP.
      - c. The proximity of the suspensions to each other – If, during a particular time period, a student would spend a significant

amount of time out of school due to a series of short-term suspensions, the suspensions should be viewed collectively as a change of placement. If a student is suspended for more than 25% of the days in a school month, it could be considered a change of the IEP.

- d. The similarity of the misconduct - If the student repeatedly engages in the same type of misconduct, the misconduct may be a manifestation of the student's disability and the repeated suspensions may be viewed collectively as a change in the student's IEP.
- iii. Determination that Cumulative Effect is NOT a "Change of IEP." If the Principal determines, based on the criteria listed above, that the cumulative effect of the additional short-term suspension is not a change of the student's IEP, the Principal shall notify the student's parent(s) of that determination at the time the decision is made and give the parent(s) a copy of the [\*Parent's Rights & Responsibilities in Special Education\*](#) handbook which explains their procedural right to appeal that determination. The Principal may implement the suspension unless the parent(s) exercise their right to appeal the determination. The Principal, in consultation with the student's special education teacher and any other appropriate persons, shall determine what educational services are to be provided during the short-term suspension. At a minimum, the student shall be assigned and required to make-up the class work missed during the suspension.
- iv. Determination that Cumulative Effect is a "Change of IEP". If the Principal determines that the cumulative effect of the additional suspension is a change of the student's IEP, within ten (10) school days the IST/IEP Team shall meet to determine whether the conduct is a manifestation of the student's disability.

## VII. Manifestation Determination Criteria and Procedures

### a. Manifestation Determination

- i. Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of the Code of Student Conduct, the IST/IEP Team must conduct a manifestation determination. The IST/IEP Team must review all information relevant to the conduct subject to discipline, including but not limited to, evaluations, diagnostic results, and other relevant information from the parent, observations of the student, and the student's Section 504 Plan or IEP and placement. The conduct is a manifestation of the child's disability if the IST/IEP Team determines either of the following:
  1. The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  2. The conduct in question was the direct result of The Catamount School's failure to implement the IEP.
- b. The misconduct is NOT a manifestation of the student's disability if the IST/IEP Team finds that in relationship to the misconduct subject to discipline:
  - i. The Section 504 Plan or IEP and placement were appropriate;

- ii. Special educational services, supplementary aids and services, and behavior intervention strategies were being provided consistent with the Section 504 Plan or IEP and the student's placement;
  - iii. The disability did not impair the ability of the student to understand the impact and consequences of the misconduct; and
  - iv. The disability did not impair the ability of the student to control the misconduct.
- c. Determination that Behavior is NOT a Manifestation. If the IST/IEP Team determines that the student's behavior is not a manifestation of the student's disability, it shall:
- i. Provide the student, the student's parent and the Principal with a copy of the Manifestation Worksheet and provide the parent(s) with a copy of the [\*Parent's Rights & Responsibilities in Special Education\*](#) handbook which explains their procedural right to appeal that determination;
  - ii. Develop a BIP or modify the existing BIP, if needed;
  - iii. Impose the same discipline for behavior as a child without a disability. The Principal, in consultation with the child's special education teacher and any other appropriate persons, shall determine what educational services are to be provided during the suspension. The student shall be assigned and required to make-up the class work missed during the suspension.
- d. Determination that Behavior IS a Manifestation. If the IST/IEP Team determines that student's behavior is a manifestation of the student's disability, the IEP team shall:
- i. Conduct a functional behavioral assessment, unless TCS had conducted a behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a BIP for the child; or
  - ii. If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior; and
  - iii. Return the child to the placement from which the child was removed.

VIII. Special Circumstances

- a. School personnel may remove a 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 child's disability, if the child does any of the following:
- i. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function;
  - 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; or
  - iii. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

Upon the end of the removal to the interim alternative educational setting for not more than 45 school days for any of the reasons above, the child shall be returned to the placement from which he/she was removed, unless the parent and the school, through the IEP Team process, agree to a change of placement.

- b. Definitions – for purposes of this Section, the following definitions apply:

- i. Controlled substances means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- ii. 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.
- iii. Serious bodily injury is defined as:
  - 1. 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 function of a bodily member, organ, or mental faculty. (20 U.S.C. 1415(k)(7)(D) and 18 U.S.C. 1365(h)(3)).
- iv. 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 and includes 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 a term does not include a pocketknife with a blade of less than 2 ½ inches in length.

IX. Long-Term Alternative School Assignments, Suspensions, and Expulsions

- a. In the event a student is alleged to have committed an offense under TCS's Policy on Student Behavior/Code of Student Conduct for which a long-term suspension, 365-day suspension, or expulsion is a potential disciplinary consequence, the Principal shall notify the student and the student's parents of this sanction and of their rights to a hearing as provided under TCS's Student Discipline Procedures, as well as provide the parents with a copy of the [Parent's Rights & Responsibilities in Special Education](#) handbook.
- b. Functional Behavioral Assessment and Behavior Intervention Plan
  - i. If the IST/IEP Team has not conducted a functional behavioral assessment and implemented a BIP for the child before the behavior resulting in the proposed disciplinary action, Section 504 and IDEA regulations require the IST/IEP Team to meet within 10 business days to conduct a functional behavioral assessment and develop a BIP to address the student's behavior.
- c. Manifestation Determination
  - i. A child with a disability who is removed from the child's current placement for more than 10 consecutive school days must have a Manifestation Determination within ten (10) school days of the decision in accordance with Section VII of this Policy. However, the 45-day interim alternative placement may be implemented for Special Circumstances described in Section VIII of this Policy even if the IST/IEP Team determines the misconduct was a manifestation of the disability.
- d. Determination that Behavior IS NOT a Manifestation of the Child's Disability

- i. If the behavior is not a manifestation of the child's disability, the child shall:
    - 1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum in an interim alternative educational setting and to progress toward meeting the goals set out in the child's IEP; and
    - 2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.
  - ii. If the behavior is not a manifestation of the child's disability, the IST/IEP Team shall:
    - 1. Complete a Manifestation Determination Worksheet and submit it with all relevant data and information to the Principal, Dean, and hearing panel, if a hearing is requested by the parent under TCS's Student Discipline Procedures; and
    - 2. Provide the student's parents with a copy of the IEP Team's determination and notify them of their procedural rights to request mediation and/or a hearing before an administrative law judge to appeal the manifestation determination.
  - iii. The student may be given an alternative school assignment for the remainder of the school year (or for up to 365 days), suspended for the remainder of the school year (or for up to 365 days) or expelled in accordance with this Policy.
  - iv. If the student is identified as a student with a disability under the IDEA, TCS must continue to provide a free appropriate public education (FAPE) including special education and related services but in an alternative setting as determined by the IEP Team. Notwithstanding the sanction, the student must continue to be provided services that enable the student to progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. The IEP Team will determine what services are necessary to meet this standard.
  - v. If the student is identified as a student with a handicap under Section 504, TCS is not required to continue to provide a FAPE for the student during an out-of-school suspension or expulsion.
- e. Determination that Behavior IS a Manifestation of the Child's Disability
- i. If the behavior is a manifestation of the child's disability, the child shall be permitted to return to school unless any of the following occur:
    - 1. the parent and the school agree to a change of placement as part of the modification of the BIP;
    - 2. an interim alternative placement was approved by the hearing panel for a Special Circumstance as outlined in Section VIII of this Policy; or
    - 3. a judge or Administrative Law Judge so orders.
  - ii. If the student is in an interim alternative setting as provided in paragraph e.i.2. above, the student may remain in that setting pending the decision of the IEP Team regarding a change in the student's placement and any appeals, subject to

the 45-day limitation, unless the student's parent agrees to an extension of the interim alternative placement. If the parent(s) do not appeal the decision of the IEP Team, the student should be returned to the current or agreed upon placement as soon as possible.

- f. Standard Due Process Procedures
  - i. Students with disabilities have a right to a hearing in the same manner as non-disabled students under the provisions of The Catamount School Policy 4370, Student Discipline Hearing Procedures, to determine, by the preponderance of the evidence, whether the student violated the Student Code of Conduct and, if so, whether the recommended disciplinary action is consistent with this policy and appropriate to the student's misconduct.
  - ii. If the student or the student's parents allege that the student's misconduct is a manifestation of his/her handicap/disability, the hearing officer must review and consider the IST/IEP Team's manifestation determination.
  - iii. If the hearing panel finds that the student did not violate the student Code of Conduct, the student shall be readmitted to school immediately.
  - iv. If the hearing panel finds that the student violated the Code of Student Conduct, the hearing panel shall apply this policy to impose an appropriate disciplinary action. The hearing panel also must consider the IST/IEP Team's manifestation determination before determining the disciplinary action.
  - v. If the student does not request a hearing, the hearing panel shall review the Principal's recommendation, apply this policy, consider the manifestation determination of the IST/IEP Team, and make a decision regarding the Principal's recommendation.
- X. Appeals
  - a. Due Process Hearing
    - i. If the parent of a child with a disability disagrees with any decision regarding a change of placement under Section VI.b.ii. of this Policy, or the manifestation determination under Section VII of this Policy, or if TCS believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the decision may be appealed by requesting a due process hearing. The hearing is requested by filing a petition pursuant to NC 1504-1.8 and NC 1504-1.9(a) and (b), which can be found in the [Policies Governing Services for Children with Disabilities](#) manual.
    - ii. When a due process complaint is filed, the child must (unless the parent and TCS agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time of the suspension, whichever occurs first.
- XI. Protections for Students Not Yet Eligible for Special Education
  - a. Under the IDEA and its implementing regulations, a student who has not been identified as a child with a disability must be provided the procedural rights and safeguards of the IDEA if TCS had knowledge of the child's disability prior to an incident that precipitated the disciplinary action. Knowledge of the disability is presumed if:

- i. The parent(s) notified the Principal in writing (unless the parent is illiterate) that the child is in need of special education;
  - ii. The parent has requested an evaluation;
  - iii. The child's behavior or performance demonstrates the need for special education; or
  - iv. The child's teacher or other TCS personnel have expressed concern about the child's behavior or performance to the Principal in accordance with the procedures for the referral of a student.
- b. If TCS had no knowledge of the student's disability at the time it initiated a disciplinary action and the parent requests an evaluation after the incident, the student shall be subject to discipline as a non-disabled student. However, TCS must provide the evaluation as requested by the parent, and if it is determined that the child has a disability and needs special education, the IEP Team shall then determine whether or not the student's misconduct was a manifestation of the student's disability. Once that determination is made, the same rules apply as if the manifestation determination was made at the time of the incident.

Legal References: Americans with Disabilities Act, [42 U.S.C. 12101](#) *et seq.*, [28 C.F.R. pt. 35](#); Rehabilitation Act of 1973, [29 U.S.C. 705\(20\)](#), [794](#), [34 C.F.R. pt. 104](#); Individuals with Disabilities Education Act, [20 U.S.C. 1400](#) *et seq.*; [Policies Governing Services for Children with Disabilities](#), State Board of Education Policy EXCP-000.

Other Resources: [Parent Rights & Responsibilities in Special Education](#)

Cross References: Special Education Programs/Rights of Students with Disabilities Policy; Nondiscrimination on the Basis of Disabilities Policy; Policy 4353 Policy Regarding Long-Term Suspension, 365-Day Suspension, Expulsion; Policy 4370 Student Discipline Hearing Procedures; Policy 4351 Short-Term Suspension; Code of Student Conduct and Behavior Policy

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