

## Special Needs Discipline Policy

The Foxborough Regional Charter School's Special Education Department will be informed of student's behavior as it occurs. Intervention will be implemented so that the necessary behavior support plan is in place. A manifestation determination will occur when the tenth day of behavior has been recorded. All regulations in the IDEA, 2004 will be implemented. The regulations for this law would supersede the state law in a hearing.

1. **Stay put:** The right of a student with a disability to "stay put" in his/her current educational placement pending an appeal is eliminated for alleged violations of the school code that may result in a removal from the student's current educational placement for more than 10 days. Previously the law only denied "stay put" rights to students with disabilities involved in drugs, weapons or other dangerous manifestations determination or proposed placement is a critical element to ensuring a student's continued free appropriate public education in the least restrictive environment.

Moving back and forth between the current placement and an interim alternative educational setting during an appeal can have a significant negative impact on achievement for children who already have difficulty adjusting to transitions. Parents must remain vigilant and ensure that their children continue to be provided the educational programming and services they need to make progress toward meeting their IEP goals. If this progress is negatively affected, the school, for purposes of reporting Adequate Yearly Progress under the No Child Left Behind Act, individual schools do not have to count children who are transferred to alternative settings and are, therefore, not in the same school for the full academic year. This could create an incentive for disciplinary actions against students with disabilities.

2. **Services to be received in interim alternative educational setting:** A child is entitled to receive programming and services necessary to enable him or her to receive a free appropriate public education consistent with section 612(a)(1) during the period in which he/she is in an interim alternative education setting. Under IDEA 2004, the student must be provided services to enable him or her to continue to participate in the general education curriculum and to progress toward meeting the goals in the IEP. The new provision replaced language requiring that a child in an interim alternative educational setting receive services and modifications, including those described in the student's current IEP which will enable the child to meet the goals in the IEP. The change in language cannot be interpreted as diluting any of these services that are consistent with the definition of FAPE because a student with a disability must continue to receive FAPE during the period of removal from his/her current educational setting.
3. **Manifestation Determination Review:** Before IDEA 2004, the burden was on the school district to show that the behavior resulting in a disciplinary action was not a manifestation of the child's disability before being allowed to apply the same disciplinary procedures as they use for non-disabled children. The burden of proof for the manifestation determination review has now been shifted to the parents who have to prove that the behavior was caused by or had a direct and substantial relationship to the disability. The language requiring the IEP team to consider whether the disability impaired the child's ability to control or to understand the impact and consequences of the behavior has been deleted. The language that gave the school an incentive to address

behavior appropriately by requiring the IEP team to consider whether the IEP was appropriate has also been deleted

Because the amendments to IDEA make it easier for schools to remove children for non-dangerous, non-weapon, non-drug related behaviors, and place the burden on parents to prove the connections between behavior and disability, parents will need to pay careful attention to the behavioral needs of their child in developing the IEP. Even if the child has not previously been subjected to disciplinary exclusion, parents may need to anticipate, to consider and spell out any concerns they may have about their child's possibly emotional and behavioral responses particularly when they are not provided the supports and services they may need.

4. **Special Circumstances:** Since 1997, IDEA had expressly authorized schools to unilaterally remove children to an interim alternative educational setting for as long as 45 days for offenses involving drugs and weapons-even if the behavior was a manifestation of the students' disability. In addition, a hearing officer could make the same decision if it was determined based on a preponderance of the evidence that keeping the child in his/her current placement was substantially likely to result in injury to the child or others. Although school authorities have always had the authority to respond to an emergency and to unilaterally remove any student with or without a disability who is causing serious bodily injury to another, now schools can also unilaterally remove children for 45 days for "inflicting serious bodily injury." This term is defined as involving a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The hearing officer in determining whether to remove a child because maintaining his/her current placement is substantially likely to result in injury to self or others is no longer required to consider whether the school district's proposed change in placement is based on a preponderance of the evidence. In addition, the amended statute no longer requires the hearing officer to consider whether the school has made reasonable efforts to minimize the risk of harm, including the use of supplementary aids and services. These changes, to the degree that have the effect of punishing the child even if proper supports could have prevented the problem, arguably violate Section 504 of the Rehabilitation Act.

5. **45 Day Limit:** The 45 calendar day limit on the removal for these offenses has been changed to 45 school days, which is significantly longer (now 9 instead of 6 weeks of school at a critical time when students with disabilities are being held accountable for meeting high state standards).
6. **Functional Behavioral Assessment:** The requirement for Functional Behavioral Assessments and Behavioral Intervention Plans are maintained in the discipline provisions.
7. **Case-by-case Determination:** A paragraph has been added to the discipline provisions, which states that the school personnel can consider any unique circumstances on a case-by-case basis when determining whether to change the placement of a child with a disability who violates a school code of conduct. This is a good provision for parents to quote when they are having trouble proving that their child's behavior is a manifestation of the disability. It serves to remind the school personnel that common sense should prevail and all circumstances should be considered.