

**Code of Maryland Regulations**  
**Title 13A State Board of Education**  
**Subtitle 08 Students**  
**Chapter 03 Discipline of Students with Disabilities**

**COMAR T. 13A, Subt. 08, Ch. 03, Refs & Annos**

**Editors' Notes**

Authority: Education Article, §§2-205, 7-305, 8-404, and 8-407, Annotated Code of Maryland

Complete through Maryland Register Vol. 40, Issue 15, dated July 26, 2013.

**.01 General.**

In addition to the procedures set forth in COMAR 13A.08.01.11, the procedures set forth in this chapter apply to students with disabilities identified in accordance with COMAR 13A.05.01.

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" means an impartial hearing officer as defined in COMAR 13A.05.01.03B(31).

(2) "Business day" has the meaning stated in COMAR 13A.05.01.03B(9).

(3) "Controlled substance" means a drug or other substance identified under the Controlled Substance Act, 21 U.S.C. §812(c), section 202(c), schedules I-V.

(4) "FAPE" means a free appropriate public education as defined in COMAR 13A.05.01.03B(27) and implemented in accordance with COMAR 13A.05.01.

(5) "IEP" means an individualized education program as defined in COMAR 13A.05.01.03B(34) and developed in accordance with COMAR 13A.05.01.

(6) "IEP team" has the meaning stated in COMAR 13A.05.01.03B(35).

(7) Illegal Drug.

(a) "Illegal drug" means a controlled substance.

(b) "Illegal drug" does not include:

(i) A substance that is legally possessed or used under the supervision of a licensed health-care professional; or

(ii) A substance that is legally possessed or used under any other authority under the Controlled Substance Act or any other provision of federal law.

(8) “Public agency” has the meaning stated in COMAR 13A.05.01.03B(59).

(9) “School day” has the meaning stated in COMAR 13A.05.01.03B(66).

(10) “Serious bodily injury” means an injury inflicted on another individual that results in:

(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 in accordance with 18 U.S.C. §1365(h)(3).

(11) “Student with a disability” has the meaning stated in COMAR 13A.05.01.03B(78).

(12) “Weapon” means a dangerous weapon as defined under §18 U.S.C. 930(g)(2).

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### **.03 Authority of School Personnel -Removal of a Student with a Disability.**

#### **A. Removal of a Student with a Disability for not More than 10 Consecutive School Days.**

(1) A student with a disability may be removed from the student’s current placement for not more than 10 consecutive school days for any violation of school rules to the same extent that removal is applied to students without disabilities.

(2) Unless it is determined that the removal constitutes a change of placement as described in Regulation .05 of this chapter, a student with a disability may be removed:

(a) To an alternative educational setting;

(b) To another setting; or

(c) By suspension.

(3) A public agency is not required to provide services to a student with a disability if services are not provided to students without disabilities.

## B. Removal of a Student with a Disability for More than 10 School Days.

(1) A student with a disability may be removed from the student's current placement for up to 10 consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change of placement in accordance with Regulation .05 of this chapter.

(2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement as described in Regulation .05 of this chapter is appropriate for a student with a disability who violates a code of student conduct, consistent with 20 U.S.C. §1415(k)(1)(a) and 34 CFR §300.530.

(3) For each period of removal after a student with a disability has been removed for the cumulative equivalent of 10 school days in a school year, school personnel shall consult with at least one of the student's teachers to determine what services to provide to enable the student to appropriately:

(a) Progress in the general curriculum; and

(b) Advance toward achieving the goals of the student's IEP.

(4) A student with a disability may be removed for more than 10 consecutive school days for a violation of school rules to the same extent removal is applied to students without disabilities if the student's IEP teams determines that the behavior subject to the removal is not a manifestation of the student's disability, in accordance with Regulation .08 of this chapter.

(5) A student with a disability removed consistent with §B(4) of this regulation shall:

(a) Continue to receive educational services in another setting, so as to enable the student to continue to participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation to prevent its recurrence.

### **.04 Parental Notification.**

On the date a student with a disability is removed from the student's current placement for a violation of a code of student conduct in accordance with Regulation .03B or .05 of this chapter, school personnel shall:

A. Notify the parents of the decision; and

B. Provide the parents with the procedural safeguards notice in accordance with COMAR 13A.05.01.11A.

### **.05 Change of Placement.**

A. Removal constitutes a change of placement if a student with a disability is:

- (1) Removed from the student's current placement for more than 10 consecutive school days; or
- (2) Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than 10 school days in a school year.

B. To determine if the removal constitutes a pattern of removals, the IEP team shall consider the:

- (1) Length of each removal;
- (2) Total amount of time the student is removed; and
- (3) Proximity of the removals to one another.

C. During any period of removal beyond 10 school days or its cumulative equivalent, the public agency shall provide services to the extent necessary in accordance with Regulation .03B(3) of this chapter.

### **.06 Interim Alternative Educational Setting.**

A. A public agency may remove a student with a disability for up to 45 school days to an interim alternative educational setting if, while at school, on school premises, or at a school function under the jurisdiction of the State or a public agency, the student:

- (1) Carries or possesses a weapon;
- (2) Knowingly possesses or uses an illegal drug;
- (3) Sells or solicits the sale of a controlled substance; or
- (4) Inflicts serious bodily injury on another person.

B. The IEP team shall determine the interim alternative educational setting.

C. An interim alternative educational setting shall enable the student with a disability to:

- (1) Progress in the general curriculum;

- (2) Receive the services and modifications included in the student's IEP;
- (3) Meet the goals of the student's IEP; and
- (4) Receive services and modifications designed to address the behavior to prevent its recurrence.

D. A student with a disability removed from the student's current placement consistent with §A of this regulation shall:

- (1) Continue to receive educational services in another setting, so as to enable the student to continue to participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP; and
- (2) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation to prevent its recurrence.

E. If a public agency believes the behavior of a student with a disability is likely to result in injury to the student or others, a public agency may request a due process hearing to seek the removal of the student to an interim alternative educational setting.

F. If a public agency maintains that it is dangerous for the student with a disability to be in the current placement during the pendency of the due process hearing, the public agency may request that the due process hearing be expedited.

G. An administrative law judge may order a change in placement to an interim alternative educational setting for not more than 45 school days if the administrative law judge determines that the public agency has demonstrated, beyond a preponderance of the evidence, that maintaining the current placement of the student with a disability is substantially likely to result in injury to the student or others.

H. In making the determination in accordance with §G of this regulation, an administrative law judge shall consider whether:

- (1) The student's current placement is appropriate;
- (2) The public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- (3) The interim alternative educational setting proposed by the public agency, in consultation with the student's special education teacher, meets the requirements of §C of this regulation.

I. A student with a disability may be removed to an interim alternative educational setting in accordance with §A of this regulation without regard to whether the behavior is determined to

be a manifestation of the student's disability.

### **.07 Responsibilities of the IEP Team.**

A. The IEP team shall meet within 10 business days of the removal of a student with a disability to develop an assessment plan if the IEP team has not:

- (1) Conducted a functional behavioral assessment; and
- (2) Implemented a behavioral intervention plan to address the behavior before the behavior occurred that resulted in the student's removal as set forth in Regulation .03B or .05 of this chapter.

B. As soon as possible after the completion of the assessments determined appropriate by the IEP team as set forth in §A of this regulation, the IEP team shall meet to:

- (1) Develop appropriate behavioral interventions to address the behavior; and
- (2) Implement the behavioral intervention plan.

C. If the student with a disability has a behavioral intervention plan, the IEP team shall meet within 10 business days of the removal to review the plan to address the behavior that resulted in the removal, and determine if:

- (1) The behavioral intervention plan needs to be modified; or
- (2) The implementation of the behavioral intervention plan needs to be modified to address the behavior.

D. For subsequent disciplinary removals of the student beyond the first 10 school days the student is removed during the school year, the IEP team shall meet to review the student's behavioral intervention plan as set forth in §C of this regulation.

E. The IEP team shall modify the behavioral implementation plan and its implementation to the extent the IEP team determines necessary.

F. Meetings of the IEP team as set forth in §A of this regulation and in Regulation .08B of this chapter may be conducted at the same IEP team meeting.

### **.08 Manifestation Determination.**

A. The IEP team shall meet to determine whether a student's behavior that resulted in a disciplinary removal is a manifestation of the student's disability each time the student is subject

to a removal:

- (1) As set forth in Regulation .03B of this chapter;
- (2) That constitutes a change of placement in accordance with Regulation .05 of this chapter; or
- (3) To an interim alternative educational setting in accordance with Regulation .06 of this chapter.

B. The IEP team shall meet within 10 school days of the date when school personnel take disciplinary action for the removal of a student with a disability as set forth in §A of this regulation to determine:

- (1) Whether the student's behavior that resulted in disciplinary removal is a manifestation of the student's disability; and
- (2) The services to be provided during the removal in accordance with Regulation .06C of this chapter to ensure the provision of FAPE.

C. In determining whether the student's behavior was a manifestation of the student's disability, the IEP team shall review:

- (1) All relevant information in the student's file;
- (2) Any teacher observations;
- (3) Any relevant information supplied by the parents; and
- (4) The student's IEP.

D. To determine that the behavior subject to the disciplinary action is a manifestation of the student's disability, the IEP team and other qualified personnel must make the determination that the student's behavior was:

- (1) Caused by or had a direct and substantial relationship to the student's disability; or
- (2) The direct result of the public agency's failure to implement the student's IEP.

E. If the IEP team determines the student's conduct was the direct result of the public agency's failure to implement the student's IEP, the public agency shall take immediate steps to remedy those deficiencies in accordance with 34 CFR §300.530(e)(3).

F. If any of the determinations set forth in §D of this regulation are made, the IEP team shall consider the behavior a manifestation of the student's disability.

G. If the IEP team determines that the student's behavior is a manifestation of the student's

disability, the IEP team shall, as appropriate:

- (1) Conduct a functional behavioral assessment and implement a behavioral intervention plan if the public agency had not conducted such assessments prior to a disciplinary removal in accordance with Regulation .03B or .05 of this chapter;
- (2) Review the student's behavioral intervention plan and modify it, if necessary, to address the behavior; and
- (3) Return the student to the student's placement from which the student was removed unless the parent and the public agency agree to a change of placement as part of a modification of the student's behavioral intervention plan.

H. If the IEP team determines that the behavior is not a manifestation of the student's disability:

- (1) The student may be disciplined in the same manner as students without disabilities, including a period of suspension or expulsion, as set forth in COMAR 13A.08.01.11C; and
- (2) The IEP team shall determine the extent to which services are necessary during the period of suspension or expulsion to enable the student to appropriately:
  - (a) Progress in the general curriculum; and
  - (b) Advance toward achieving the goals of the student's IEP.

I. On initiation of disciplinary actions as set forth in §H of this regulation, the principal shall transmit the student's special education and disciplinary records to the local school superintendent.

### **.09 Parents' Right to Appeal and Student Placement.**

A. The parents of the student may file a due process complaint as set forth in COMAR 13A.05.01.15C if the parents disagree with the public agency regarding:

- (1) Disciplinary removals, as set forth in Regulation .03B and Regulation .05 of this chapter;
- (2) The determination of whether the student's behavior is a manifestation of the student's disability, as set forth in Regulation .08 of this chapter; or
- (3) The interim alternative educational setting, as set forth in Regulation .06 of this chapter.

B. If the parents file a due process complaint in accordance with §A of this regulation, the Office of Administrative Hearings shall schedule an expedited due process hearing as set forth in Education Article, §8-413, Annotated Code of Maryland.



C. The student shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the interim alternative educational setting, whichever occurs first, unless the parents and the public agency agree on another course of action.

D. If the public agency proposes to change the student's current educational placement after the expiration of the student's placement in an interim alternative educational setting, and the parents file a due process complaint to challenge the proposed change of placement, the student shall return to the student's educational placement before removal to an interim alternative educational setting.

E. At an expedited due process hearing on disciplinary actions as set forth in §B of this regulation, the administrative law judge may:

(1) Return the student with a disability to the placement from which the student was removed; or

(2) Order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement is substantially likely to result in injury to the student or others.

F. The public agency may repeat the procedures set forth in Regulation .06D of this chapter as necessary if a public agency believes that:

(1) The student continues to be dangerous;

(2) Returning the student to the student's placement before placement in an interim alternative educational setting is substantially likely to result in injury to the student or others; and

(3) The student should remain in an interim alternative educational setting as set forth in Regulation .06A and F of this chapter.

## **.10 Students Not Yet Eligible for Special Education and Related Services.**

A. If a student who has not been identified as a student with a disability engages in behavior that violates any rule or code of conduct of the public agency, the student may assert protection under this chapter if the public agency had knowledge that the student was a student with a disability before the student engaged in the behavior that precipitated the disciplinary action.

B. A public agency shall be deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student expressed concern in writing to supervisory or administrative

personnel of the public agency or a teacher of the student that the student is in need of special education and related services;

(2) The parents have requested an evaluation as set forth in COMAR 13A.05.01.04A(1); or

(3) The student's teacher or other personnel of the public agency have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the public agency director of special education or other public agency supervisory personnel in accordance with COMAR 13A.05.01.04A(1) or local child-find procedures.

C. A public agency is not deemed to have knowledge in accordance with §B of this regulation if:

(1) The parent of the student:

(a) Did not allow the public agency to conduct assessments in accordance with COMAR 13A.05.01.05; or

(b) Refused or revoked consent for services in accordance with COMAR 13A.05.13; or

(2) The public agency:

(a) Conducted an evaluation in accordance with COMAR 13A.05.01.06B and determined that the student was not a student with a disability, or determined that an evaluation was not necessary in accordance with COMAR 13A.05.01.04B(4); and

(b) Provided the student's parents with a written notice of the decision in accordance with COMAR 13A.05.01.12.

D. If a public agency does not have knowledge that a student is a student with a disability before taking disciplinary action, the student may be subject to the same disciplinary measures applied to students without disabilities who engage in comparable behavior.

E. If the public agency receives a written referral, in accordance with COMAR 13A.05.01.04A, during the time period that the student is subject to disciplinary measures, the public agency shall evaluate the student in accordance with COMAR 13A.05.01.04-.06, in an expedited manner.

F. The student shall remain in the educational placement determined appropriate by public agency personnel, including suspension or expulsion without educational services, until the evaluation is completed.

G. If, as a result of the evaluation, as set forth in COMAR 13A.05.01.06B, the IEP team determines that the student is a student with a disability, the public agency shall provide special education and related services.

**.11 Referral to Law Enforcement.**

A. A public agency may report a crime committed by a student with a disability to appropriate law enforcement authorities consistent with State law and 34 CFR §300.535.

B. The public agency shall ensure that copies of the student's special education and disciplinary records are transmitted to the appropriate authorities to whom the public agency reported the crime, to the extent permitted, in accordance with COMAR 13A.08.02.