

CODE OF D.C. MUNICIPAL REGULATIONS

TITLE 5. BOARD OF EDUCATION
CHAPTER 25. STUDENT DISCIPLINE

CDCR 5-2510 (2007)

5-2510. Proposed Discipline of a Student with Disability.

2510.1 Nothing herein shall exempt a student with a disability from disciplinary action. Exclusion from class of a student with a disability, for more than ten (10) school days, shall require that a determination be made as to whether the subject behavior is related to the student's disability.

2510.2 DCPS may order a change in the placement of a child with a disability:

(a) To an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) school days (to the extent such alternatives would be applied to children without disabilities); and

(b) To an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) school days if:

(1) The student carries or possesses a weapon on school grounds or to a school function; or

(2) The student knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school or at a school function; or

(3) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. "Serious bodily injury" is defined as substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of bodily function.

2510.3 Either before or not later than ten (10) days after taking a disciplinary action described in § 2510.2:

(a) If DCPS did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described above, DCPS must convene an IEP meeting to develop an assessment plan to address that behavior; or

(b) If the child already has a behavioral intervention plan, the IEP Team must review the plan and modify it, as necessary, to address the behavior.

2510.4 A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer:

(a) Determines that DCPS has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether DCPS has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting meets the requirements described in § 2510.6 below.

2510.5 The alternative educational setting must be determined by the student's IEP Team.

2510.6 Any interim alternative educational setting in which a child is placed must:

(a) Be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(b) Include services and modifications designed to address the behavior described in § 2510.2 or § 2510.3 so that it does not recur.

2510.7 If a disciplinary action is contemplated as described in § 2510.2 or § 2510.3 for a behavior of a child with a disability described in either of those subsections, or if a disciplinary action involving a change of placement for more than ten (10) days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of DCPS that applies to all children:

(a) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and of all procedural safeguards accorded under this; and

(b) Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

2510.8 A review described above must be conducted by the student's IEP Team and other qualified personnel.

2510.9 In carrying out a review, the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team:

(a) First considers, in terms of the behavior subject to disciplinary action, all relevant information, including:

(1) Evaluation and diagnostic and results, or other relevant information supplied by the parents of the child;

(2) Observations of the child; and

(3) The child's IEP and placement; and

(b) Then determines that:

(1) In relationship to the behavior subject to disciplinary action, the child's IEP, and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(3) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

2510.10 If the result of the review is a determination that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except DCPS must make a free appropriate public education available to all eligible children with disabilities, including children with disabilities who have been suspended or expelled from school.

2510.11 If DCPS initiates disciplinary procedures applicable to all children, DCPS must ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

2510.12 If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

2510.13 DCPS must arrange for an expedited hearing in any case described in this section when requested by a parent.

2510.14 In reviewing a decision with respect to the manifestation determination, the hearing officer must determine whether DCPS has demonstrated that the child's behavior was not a manifestation of such child's disability.

2510.15 In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer must apply the standards set out in § 2510.4 above.

2510.16 When a parent requests a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 2510.2 (i.e., 45 days), whichever occurs first, unless the parent and DCPS agree otherwise.

2510.17 If a child is placed in an interim alternative educational placement and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in § 2510.18, below.

2510.18 If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting)

during the pendency of the due process proceedings, DCPS may request an expedited hearing.

2510.19 In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer must apply the standards set out in § 2510.4, above.

2510.20 A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of DCPS, including any behavior described in this chapter, may assert any of the applicable protections provided for in the Individuals with Disabilities Education Act, as amended, if DCPS had knowledge (as determined in accordance with § 2510.21 below), that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2510.21 DCPS is deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to appropriate DCPS personnel that the child is in need of special education and related services;

(b) The behavior or performance of the child demonstrates the need for such services;

(c) The parent of the child has requested an evaluation of the child; or

(d) The teacher of the child or other personnel of DCPS has expressed concern about the behavior or performance of the child to the Director of Special Education or to other DCPS personnel.

2510.22 If DCPS does not have knowledge that a child is a child with a disability in accordance with § 2510.21 prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

2510.23 If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by DCPS and information provided by parents, DCPS must provide special education and related services in accordance with the relevant provisions of the Individuals with Disabilities Education Act, as amended, except that, pending the results of the evaluation, the child must remain in the educational placement determined by school authorities.

2510.24 Nothing in the Individuals with Disabilities Education Act, as amended, shall be construed to prohibit DCPS from reporting a crime committed by a child with a disability to appropriate authorities or to prevent D.C. law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

2510.25 In reporting a crime committed by a child with a disability to appropriate authorities, DCPS must ensure that copies of the special education and disciplinary records

of the child are transmitted for consideration by the appropriate authorities to which it reports the crime.