Discipline of Students with Disabilities

1. **Short-Term Suspensions**

   A. A short-term suspension is one in which the student is removed from class up to 10 cumulative school days in a school year.

      1. This does not constitute a change in placement and, consequently, the student is subject to normal discipline guidelines whether or not there is a causal connection between the student’s disability and the misconduct.

         a. Exclusions for one or more days must be considered as short-term suspensions.

         b. A suspension of bus privileges resulting in a student's absence from school would be considered a short-term suspension. If the parent elects to provide alternative transportation during the suspension of bus privileges, it would not be considered a short-term suspension.

   B. **Operational guidelines to follow in administering short-term suspensions**

      1. When a student's aggregate short-term suspensions total more than 10 days, the series of suspensions may be considered a change in placement.

      2. If the series of suspensions is considered a change in placement, the student may still be suspended following the operational guidelines described in Subsection II below.

      3. Factors the IEP Committee should consider in determining whether aggregate suspensions of more than 10 days are a change in placement include:

         a. Length of each suspension;
b. Proximity of each suspension; and
c. Total amount of time suspended.

4. When the IEP Committee determines that a series of suspensions do not constitute a change of placement, it is not required to proceed with manifestation determination.

5. The IEP Committee may consider any unique circumstances on a case-by-case basis when deciding to consider a suspension, such as the inappropriateness of the IEP and/or the placement.

II. Long-Term Suspension and Expulsions

A. A long-term suspension or expulsion is one in which the student is removed from class or school for more than 10 consecutive school days.

1. When a disciplinary action involving long-term suspension or expulsion of a student with disabilities is being considered, a determination must be made as to whether or not a direct or substantial relationship (manifestation determination) exists between the student's disability and the misconduct. This determination must be made by the parent, the school division, and a properly constituted Manifestation Determination Committee (IEP Committee) after review of all the relevant information and before the student may be removed from the school setting.

2. Composition of the Manifestation Determination Committee—same as IEP Committee:
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a. Principal or designee;
b. The student's special education teacher;
c. The student's regular education teacher(s);
d. School psychologist;
e. School social worker;
f. Special education representative or designee;
g. Parent, guardian, surrogate parent;
h. Student, if appropriate; and
i. Other individuals at the discretion of the parents or the school division.

Record Keeping Requirement

3. The committee must determine whether there is a direct or substantial relationship between the disability and the conduct before the student may be removed from the school setting.

4. The committee's decision should be based upon the student's records, evaluations, and all relevant information provided by the school and the parents.

IEP/Manifestation Committee Report

5. Written minutes indicating the committee consensus decision, the rationale for the decision and the consensus of the members must be kept on the IEP/Causality Committee Report.
C. Parent Participation

1. Parents (and other committee members) must be given notice of the time, date, and purpose of the manifestation (IEP) committee meeting and must be invited to attend at a mutually agreed upon date and time. If notice is given orally, it must be documented in writing to the parent.

2. The parents may be accompanied during the proceedings by others, such as an attorney, physician, etc.

3. The parents should be advised of all procedural safeguards, including the right to contest the committee's decision through a due process hearing.

D. Manifestation Committee Decisions

1. Manifestation determinations are required if the Division is contemplating a removal that constitutes a change in placement, including removal to an interim alternative educational setting, for a student with a disability who has violated any rule or code of conduct of the Division that applies to all students. The case manager will notify the parent or parents of that decision no later than the date on which the decision to take the action is made.

2. The IEP Team, including the parent(s) and other qualified personnel, shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made. The other qualified personnel may include
individuals who are knowledgeable about how a student's disability can impact behavior, or who understand the impact and consequences of behavior, or who are knowledgeable about the student and the student's disability. The IEP Team and manifestation committee, including the other qualified personnel, shall review the relationship between the student's disability and the behavior subject to the disciplinary action.

a. The manifestation committee may determine the behavior was not a manifestation of the student's disability only if it first considers, in terms of the behavior subject to the disciplinary action, all relevant information, including:

1. Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;

2. Observations of the student; and

3. The student's IEP and placement.

b. The manifestation committee shall then determine that:

(1) There is no direct and substantial relationship between the behavior and the disability; and

(2) The behavior was not a direct result of a failure to implement the IEP.

3. If the Manifestation Committee determines that the standards were not met, the behavior must be considered a manifestation of the student's disability. If the behavior is a manifestation of the student's disability:

Operational Guidelines for Managing the Special Education Process
a. The student can be removed from his/her educational placement only through the IEP process or through placement in an interim alternative educational setting; and

b. The IEP Team must develop or modify strategies, including positive behavioral interventions and supports to address the behavior.

c. If appropriate, the eligibility committee may form to make its determination immediately after the IEP meeting (manifestation committee) that found the causal relationship if the IEP committee determines that no additional information is required and proper notice is given to the parents.

d. The review by the manifestation committee to determine manifestation may be conducted at the same IEP meeting to develop or review the student's behavioral intervention plan, as long as the Division notified the parent or parents of the purposes of the meeting.

e. If the IEP Team and other qualified personnel determine deficiencies in the student's IEP or placement, the IEP Committee must take immediate steps to remedy those deficiencies.

4. If the IEP Team determines that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary guidelines applicable to a student without a disability may be applied to the student with a disability in the same manner in which they would be applied to a student without a disability.
Discipline of Students with Disabilities

a. If the Division initiates disciplinary procedures, providing due process rights that are applicable to all students, the Division must ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

b. The IEP Team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

III. Dangerous student with a disability

A. Alternative Educational Settings

1. During the process of manifestation determination, the student who is dangerous to him or herself or to others in the school may receive a more restrictive environment (interim alternative educational setting) through revision of the IEP with signed approval from the parent. During the process of manifestation determination when the parent disagrees with the more restrictive placement, the school division may not unilaterally change the placement of a student with dangerous behavior. Options available to the school are:

a. The use of normal disciplinary measures for the student who exhibits dangerous behaviors to include, for example, timeouts or suspensions for up to 10 days; and/or

b. The school division may request an expedited due process hearing.
B. Authority of School Personnel

School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 school days, if:

1. The student carries a weapon to or possesses a weapon at school, on school premises, or a school function under the jurisdiction of Newport News Public Schools or the Virginia Department of Education; or

2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function under the jurisdiction of Newport News Public Schools or the Virginia Department of Education. For purposes of this part, the following definitions apply:
   a. Controlled substance has meaning given the term as defined in 8VAC20-81-10.
   b. Illegal drug means a controlled substance as defined in 8VAC 20-81-10.
   c. Weapon has the meaning given the term "dangerous weapon" in 8VAC 20-81-10.

3. The student inflicts serious bodily injury upon another person at school, on school premises, or a school event.
   a. Serious bodily injury has meaning as defined in 8VAC20-81-10.
4. The interim alternative educational setting must be determined by an IEP team.

The interim alternative educational setting must be selected so as to enable the student to:

a. Continue to progress in the general curriculum, although in another setting;

b. Continue to receive those services and modifications including those described in the student's current IEP that will enable the student to meet the IEP goals; and

c. Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.

5. The following operational guidelines must be implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year or commencing a removal that constitutes a change in placement under subdivisions 1, 2, or 3 of this subsection, including placements in interim alternative educational settings:

a. The IEP Team shall convene to develop a functional behavioral assessment plan if it did not conduct a functional behavioral assessment and implement a behavioral improvement plan for the student before the behavior that resulted in the removal.

b. The functional behavioral assessment may be a review of existing data that can be completed at the IEP meeting or new testing data or evaluation. Parental consent is not necessary to review existing data.
c. If the IEP team determines that the functional behavioral assessment involves obtaining new testing data, then the parent is entitled to an independent educational evaluation at public expense if the parent disagrees with the evaluation or a component of the evaluation completed by the school division.

d. The IEP Team shall reconvene as soon as practicable after developing the assessment plan and completing any assessments required by the plan. The IEP Team shall develop a behavioral improvement plan and implement appropriate behavioral interventions, goals and services, to address the student’s behavioral needs.

e. If the student had a behavioral intervention plan before engaging in the behavior, the IEP Team shall convene to review the plan and its implementation and modify the plan and its implementation, as necessary, to address the behavior.

6. If the student who has a behavioral intervention plan and has been removed from his/her current educational placement for more than 10 school days in a school year is subjected to a further removal that does not constitute a change in placement, the IEP Team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed in the student's behavioral intervention plan, the IEP Team shall meet and modify the plan and its implementation as necessary.
D. Services during periods of disciplinary removal

1. The local educational agency is not required to provide services during the first 10 school days in a school year that a student with a disability is removed from his/her current educational setting if services are not provided to a student without a disability who has been similarly removed.

2. For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement, the Division shall provide services to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP.

3. The operational guidelines for determining services for periods of removals are as follows:
   a. For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the student's special education teacher, make the service determinations.
   b. For removals that constitute a change in placement, the IEP Team determines what services are needed.

E. Authority of the hearing officer

1. Newport News Public Schools may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a student with a disability for not more than 45 school days if the local educational agency believes that the student's
behavior is substantially likely to result in injury to self or others. This procedure may be repeated as necessary.

2. The hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the Division has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the student is substantially likely to result in injury to the student or others. The hearing officer must:
   a. Consider the appropriateness of the student’s current placement;
   b. Consider whether the Division 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
   c. Determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student’s special education teacher meets the requirements.

3. The Division may ask the hearing officer for an extension of 45 school days for the interim alternative educational setting of a student with a disability when school personnel believe that the student’s return to the regular placement would be dangerous to the student or others.

4. The hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this section or that the behavior was a manifestation of the student’s disability.
IV. **Parent appeal**

A. If the student's parent or parents disagree with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent or parents may request an expedited due process hearing.

B. In accordance with the Virginia Department of Education's due process hearing procedures, an expedited hearing shall be scheduled in response to the parent's or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the local educational agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of II. D. of this section (p. 4). In reviewing the decision to place a student in an interim alternative educational setting, the hearing officer shall apply the standards of E. 2. of this section (p. 12).

V. **Placement during appeals**

A. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period, not to exceed 45 school days, unless the parent or parents and Newport News Public Schools agree otherwise.
B. If the student is placed in an interim alternative educational setting and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of the due process proceedings, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting).

C. If school personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of the due process proceedings, the Division may request an expedited due process hearing.

D. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards of III. E. 2. of this section (p. 12).

E. A hearing ordered by the hearing officer under the operational guidelines for an expedited due process hearing must be held within 20 school days from the request for the hearing. The determination must be made within 10 school days following the hearing. If the Division believes that it is dangerous for the student to return to the current placement, the local educational agency may request the hearing officer to extend the placement for longer than 45 school days.
VI. **Protection for students not yet eligible for special education and related services**

A. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the Division, may assert any of the protections provided in this section if the Division had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

B. The Division shall be deemed to have knowledge that a student is a student with a disability if:

1. The parent or parents of the student have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the student is in need of special education and related services;

2. The parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or

3. A teacher of the student or school personnel have expressed concern about the behavior or performance of the student to the Director of Special Education and Assessment Services or the Supervisor of Referrals and Assessments of Newport News Public Schools or to other personnel in accordance with the Division's child find or special education referral system.

C. Newport News Public Schools would not be deemed to have knowledge that a student is a student with a disability if:
1. The Division conducted an evaluation in accordance with 8VAC 20-81-70 and 
   8VAC 20-81-80 and determined that the student was ineligible for special 
   education and related services; or

2. The parent has not allowed a previous evaluation of the student; or

3. The parent has refused special education and related services.

D. If the Division does not have knowledge that a student is a student with a disability 
   prior to taking disciplinary measures against the student, the student may be 
   subjected to the same disciplinary measures applied to a student without a disability 
   who engages in comparable behaviors.

E. If a request is made for an evaluation of a student during the time period in which 
   the student is subjected to disciplinary measures, the evaluation must be conducted 
   in an expedited manner.

1. Until the evaluation is completed, the student remains in the educational 
   placement determined by the school personnel, which can include suspension 
   or expulsion without educational services.

2. If the student is ultimately determined to be a student with a disability, taking 
   into consideration information from the evaluations conducted by the local 
   educational agency and information provided by the parent or parents, the 
   Division shall provide special education and related services as required for a 
   student with a disability who is disciplined.
VII. **Referral to and action by law enforcement and judicial authorities**

A. Nothing in this section prohibits the Division from reporting a crime by a student with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability to the extent such action applies to a student without a disability.

B. In reporting the crime, the Division must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student’s Scholastic Record in the Public Schools of Virginia.

VIII. Information on Disciplinary Actions

A. The Virginia Department of Education requires that school divisions include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the student.

B. Newport News Public Schools will transmit the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in and transmitted with, the records of non-disabled students.

C. The statement may include:

1. A description of any behavior engaged in by the student who required disciplinary action;

2. A description of the disciplinary action; and
3. Any other information that is relevant to the safety of the student and other individuals involved with the student.