



### **Disciplinary Policy For Students With Disabilities**

In addition to the discipline procedures applicable to all students, Cardinal McCloskey Community School (“CMCCS” or the “School”) implements the following disciplinary policy with respect to students with disabilities. The Board of Trustees (the “Board”) recognizes that it may be necessary to suspend, remove, or otherwise discipline students with disabilities who violate School policy and/or to temporarily remove a student with disabilities from their current placement because maintaining the student in that placement is substantially likely to result in injury to the student or to others.

The Board also recognizes that students with disabilities deemed eligible for special education services under the Individual with Disabilities Education Act and Article 89 of New York’s Education Law enjoy certain procedural protections that the School must observe when they decide to suspend or remove them. Under certain conditions those protections extend, as well, to students not currently deemed to be a student with a disability but determined to be a student presumed to have a disability for discipline purposes.

If a student with a disability is being considered for a suspension or removal, the following due process protections will be provided to the student and to the student’s parent/guardian in addition to those set forth in the School’s policy relating to discipline of non-disabled students. CMCCS must provide alternative education to the student during the suspension as set forth below, including any special services required by the student’s Individualized Education Program (“IEP”) prepared by the student’s Committee on Special Education (“CSE”). The final determination on a suspension or removal of a student, following due process, will be made by the Principal.

The Board is committed to ensuring that the School follows suspension and removal procedures that are consistent with State and federal law.

#### **Definitions**

For purposes of this policy, and consistent with applicable law and regulations, the following definitions will apply:

1. **Behavioral intervention plan** (“BIP”) means a plan that is based on the results of a functional behavioral assessment and that, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.



2. **Controlled substance** means a drug or other substance abuse identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)).
3. **Disciplinary change in placement** means a suspension or removal from a student's current educational placement that is either:
  - a. For more than ten (10) consecutive school days; or
  - b. For a period of ten (10) consecutive school days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than ten (10) school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each suspension or removal, the total amount of time the student has been removed and the proximity of the suspensions or removals to one another.
4. **Illegal drug** means a controlled substance, but does not include a controlled substance legally possessed or used under the supervision of a licensed health-care professional, or a substance that is otherwise legally possessed or used under the authority of the Controlled Substances Act or under any other provision of federal law.
5. **Interim alternative educational setting** ("IAES") means a temporary educational placement, other than the student's current placement at the time the behavior precipitating the IAES placement occurred. An IAES must allow a student to continue to receive educational services that enable them to continue to participate in the general curriculum and progress toward meeting the goals set out in the student's IEP; as well as to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.
6. **Manifestation review** means a review of the relationship between the student's disability and the behavior subject to disciplinary action required when the disciplinary action results in a disciplinary change of placement, and conducted in accordance with requirements set forth later in this policy.
7. **Manifestation team.** Community School District 10 or, if the student is not a resident of Community School District 10, the student's district of residence is in charge of manifestation determinations. In accordance with applicable law, the School will request
8. **Removal** means a removal of a student with a disability for disciplinary reasons from their current educational placement, other than a suspension; and a change in the placement of a student with a disability to an IAES.
9. **School day** means any day, including a partial day, that students are in attendance at school for instructional purposes.
10. **Serious bodily injury** means bodily injury which involves a substantial risk of death, extreme physical pain, protracted obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
11. **Student presumed to have a disability for discipline purposes** means a student who, under the conditions set forth later in this policy, the School is deemed to have had knowledge was a student with a disability before the behavior that precipitated the disciplinary action.



12. **Suspension** means a suspension pursuant to §3214 of the New York State Education Law.
13. **Weapon** means the same as the term “dangerous weapon” under 18 USC §930(g)(2) which 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 a pocket knife with a blade of less than two and one-half inches in length.

### **Authority of School Personnel to Suspend or Remove Students with Disabilities**

The Board or the Principal has the authority to suspend students under the New York State Education Law and may order the placement of a student with a disability into an IAES, another setting or suspension for a period not to exceed five (5) consecutive school days.

The Principal may, directly or upon the recommendation of a designated hearing officer, order the placement of a student with a disability into an IAES, another setting or suspension for a period not to exceed ten (10) consecutive school days inclusive of any period in which the student has been suspended or removed for the same behavior pursuant to the above paragraph, if the Principal determines that the student’s behavior warrants the suspension. The Principal also may order additional suspensions of not more than ten (10) consecutive school days in the same school year for separate incidents of misbehavior, as long as the suspensions do not constitute a disciplinary change of placement.

In addition, the Principal may order the placement of a student with a disability into an IAES, another setting or suspension for a period in excess of ten (10) consecutive school days if the manifestation team determines that the student’s behavior was not a manifestation of the student’s disability. In such an instance, the Principal may discipline the student in the same manner and for the same duration as a non-disabled student.

Furthermore, the Principal may, directly or upon the recommendation of a designated hearing officer, order the placement of a student with a disability to an IAES to be determined by the committee on special education for a period of up to forty-five (45) school days if the student either:

1. Carries or possesses a weapon to or at School, on School premises or to a School function, or
2. 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 under the School’s jurisdiction, or
3. Has inflicted serious bodily injury upon another person while at School, on School premises or at a School function under the School’s jurisdiction.



The Principal may order the placement of a student with a disability to an IAES under such circumstances, whether or not the student's behavior is a manifestation of the student's disability. However, the committee on special education will determine the IAES.

### **Procedures for the Suspension or Removal of Students with Disabilities by School Personnel**

In cases involving the suspension or removal of a student with a disability for a period of five (5) consecutive school days or less, the student's parent/guardian or persons in parental relation to the student will be notified of the suspension and given an opportunity for an informal conference in accordance with the same procedures that apply to such short term suspensions of non-disabled students.

The suspension of students with disabilities for a period in excess of five (5) school days will be subject to the same due process procedures applicable to non-disabled students, except that the student disciplinary hearing conducted by the Principal or a designated hearing officer shall be bifurcated into a guilt phase and a penalty phase. Upon a finding of guilt, the Principal or the designated hearing officer will await notification of the determination by the manifestation team as to whether the student's behavior was a manifestation of their disability. The penalty phase of the hearing may proceed after receipt of that notification. If the manifestation team determined that the behavior was not a manifestation of the student's disability, the student may be disciplined in the same manner as a non-disabled student, except that they will continue to receive services as set forth below. However, if the behavior was deemed a manifestation of the student's disability, the hearing will be dismissed, unless the behavior involved concerned weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury, in which case the student may still be placed in an IAES.

Students with disabilities for whom their IEP includes a BIP will be disciplined in accordance with their BIP. If the BIP appears not to be effective or if there is a concern for the health and safety of the student or others if the BIP is followed with respect to the infraction, the matter will be immediately referred to the student's CSE for consideration of a change in the BIP as appropriate.

### **Limitation on Authority of School Personnel to Suspend or Remove Students with Disabilities**

The imposition of a suspension or removal by authorized School personnel may not result in a disciplinary change of placement of a student with a disability that is based on a pattern of suspensions or removals as set forth above in the definitions section of this policy, unless:

1. The manifestation team determines that the student's behavior was not a manifestation of the student's disability, or



2. The student is removed to an IAES for behavior involving weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury as set forth above.

School personnel will consider any unique circumstances on a case-by-case basis when determining whether a disciplinary change in placement is appropriate for a student with a disability who violates School policy. In addition, School personnel may not suspend or remove a student with a disability in excess of the amount of time that a non-disabled student would be suspended for the same behavior.

### **CSE Meetings**

Meetings of the CSE to either develop a behavioral assessment plan or, if the child has one, to review such plan, and review the implementation of the IEP by the school, are required when: (1) the student is first removed from their current placement for more than ten (10) school days in a school year; and (2) when commencing a removal which constitutes a disciplinary change in placement. The student's Special Education teacher (or coordinator) and the general classroom teacher will attend all meetings regarding the student initiated by the CSE.

Subsequently, if other removals occur which do not constitute a disciplinary change in placement, CMCCS will work with the CSE to review the child's assessment plan and its implementation to determine if modifications are necessary. If one or more members of the CSE believe that modifications are needed, then the CSE is expected to meet to modify the plan and/or its implementation.

### **Due Process**

If discipline which would constitute a disciplinary change in placement is contemplated for any student, the following steps will be taken: (1) not later than the date on which the decision to take such action is made, the parent/guardian of the student with a disability will be notified of that decision and provided the procedural safeguards notice in accordance with applicable law; and (2) immediately, if possible, but in no case later than ten (10) school days after the date on which such decision is made, the CSE and other qualified personnel will meet and review the relationship between the student's disability and the behavior subject to the disciplinary action.

If, upon review, it is determined that the student's behavior was not a manifestation of their disability, then the student may be disciplined in the same manner as a non-disabled student, except as otherwise provided under applicable law.

Parents/guardians may request a due process hearing to challenge the manifestation determination. Except as provided below, the student will remain in their current educational placement pending the determination of the hearing.



If a parent/guardian requests a due process hearing to challenge the IAES or the manifestation determination resulting from a disciplinary action relating to weapons or drugs, the student will remain in any IAES pending the decision of the hearing officer or until the expiration of the time period provided for in the disciplinary action, whichever occurs first, unless the parent/guardian and the School agree otherwise.

### **Provision of Services for Students with Disabilities During Periods of Suspension or Removal**

Students with disabilities who are suspended or removed from their current educational setting in accordance with this policy and applicable law and regulation will continue to receive services as follows:

1. During suspensions or removals of up to ten (10) school days during the school year that do not constitute a disciplinary change in placement, the School will provide alternative instruction services to students with disabilities of compulsory attendance age on the same basis as non-disabled students. Students with disabilities who are not of compulsory attendance age will receive services during such periods of suspension or removal only to the same extent as non-disabled students of the same age would if similarly suspended.
2. During subsequent suspensions or removals of up to ten (10) school days that in the aggregate total more than ten (10) school days in a school year but do not constitute a disciplinary change in placement, the School will provide students with disabilities services necessary to enable them to continue to participate in the general education curriculum and to progress toward meeting goals set out in their respective IEP. School personnel, in consultation with a least one (1) of the student's teachers, will determine the extent to which services are needed to comply with this requirement. In addition, during such periods of suspension or removal, the student may be referred to their CSE for them to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.
3. During suspensions or removals in excess of ten (10) school days in a school year that constitute a disciplinary change in placement, including placement in an IAES for behavior involving weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury, the School will provide students with disabilities services necessary to enable the to continue to participate in the general curriculum, to progress toward meeting goals set out in their IEP, and to receive, as appropriate, an FBA, and behavioral intervention services and modifications designed to address the behavior so it does not recur.



### **Students Presumed to Have a Disability for Discipline Purposes**

The parent/guardian of a student who is facing disciplinary action but who was not identified as a student with a disability at the time of misbehaviors has the right to invoke any of the protections set forth in this policy in accordance with applicable law and regulations, if the School is deemed to have had knowledge that the student was a student with a disability before the behavior precipitating disciplinary action occurred and the student is therefore a student presumed to have a disability for discipline purposes.

If it is claimed that the School had such knowledge, it will be the responsibility of the Principal or other authorized School official imposing the suspension or removal in question for determining whether the student is a student presumed to have a disability for discipline purposes. The School will be deemed to have had such knowledge if:

- The student's parent/guardian expressed concern in writing to supervisory or administrative personnel, or to a teacher of the student that the student is in need of special education. Such expression may be oral if the parent/guardian does not know how to write or has a disability that prevents a written statement; or
- The student's parent/guardian has requested an evaluation of the student; or
- A teacher of the student or other School personnel has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the School's special education or other supervisory personnel.

Nonetheless, a student will not be considered a student presumed to have a disability for discipline purposes if notwithstanding the School's receipt of information supporting a claim that it had knowledge the student has a disability:

- The student's parent/guardian has not allowed an evaluation of the student; or
- The student's parent/guardian has refused services; or
- The School or the student's district of residence conducted an evaluation of the student and determined that the student is not a student with a disability.

If there is no basis for knowledge that the 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 as any other non-disabled student who engaged in comparable behaviors. However, if the School receives a request for an individual evaluation while the student is subjected to a disciplinary removal, an expedited evaluation of the student will be conducted in accordance with applicable law and regulations. Until the expedited evaluation is completed, the student shall remain in the educational placement determined by the School which can include suspension.



**Recordkeeping**

CMCCS will maintain written records of all suspensions and expulsions of students with disabilities including the name of the student, a description of the behavior engaged in, the disciplinary action taken, and a record of the number of days a student has been suspended or removed for disciplinary reasons. The School will keep such records confidential in accordance with applicable law and will not disclose such records unless required by applicable law.

**Referral to Law Enforcement and Judicial Authorities**

Consistent with its authority under applicable law and regulations, the School will report a crime committed by a student with a disability to appropriate law enforcement and judicial authorities. In such an instance, the Principal will ensure that copies of the special education and disciplinary records of the student are transmitted for consideration to the appropriate authorities to whom the crime is reported, to the extent that the transmission is permitted by applicable State and federal law.

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