**New Mexico Public Education Department**
**Special Education Bureau**

# POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

## Chapter 7. - DISCIPLINE / BEHAVIOR

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# Chapter 7. - DISCIPLINE/BEHAVIOR
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# Chapter 7. - DISCIPLINE/BEHAVIOR

## I. DISCIPLINE/BEHAVIOR

## A. Code of Conduct and General Provisions

Student Code of Conduct. *La Academia de Esperanza Charter School (LADE) will annually provide students and parents with a copy of the Student Code of Conduct. Parents or adult students will sign a receipt for this document, and that receipt will be kept on file in the student's cumulative folder in the school office.*

**Authority: §300.530 Authority of school personnel.**

**(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.** *(for §300.530 in full, see V. FAPE)*

Authority: NMAC §6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. All officials, employees and authorized agents of the *cm whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees and authorized agents of LADE may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, LADE authorities have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law or state board of education regulation.

Authority: NMAC §6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:

B. Regulated activities: Beyond those activities designated as prohibited, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Activities subject to local board regulation within legal limits include, but are not limited to:
   (8) by statute, Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board; the local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D. of 6.11.2.11 NMAC apply to students with disabilities;

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements
B. Search and seizure
C. Basis for disciplinary action
D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.
   (1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.
   (2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment

which is based on race, religion, color, national origin, ancestry, sex or disability, rather than on other differences in individual cases or students.

Authority: NMAC §6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR §300.530(f). *(for §300.530 f, see III. B.2.)*

Authority: NMAC §6.31.2.11 POSITIVE BEHAVIOR SUPPORTS:

F. Behavioral management and discipline.
   (1) Behavioral planning in the IEP. Pursuant to 34 CFR §300.324(a)(2)(i), the IEP Team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

## B. Corporal Punishment

**22-5-4.3. SCHOOL DISCIPLINE POLICIES**

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school suspension, school service, suspension or expulsion. Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.

*LADE's local school board policy does not allow corporal punishment.*

# II. DEFINITIONS

Authority: NMAC §6.11.2.7 DEFINITIONS:

A. "Administrative authority" means the local school district superintendent, a principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.
B. "Criminal acts" are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.
C. "Delinquent acts" are acts so defined in Subsection A of Section 32A-2-3 NMSA 1978 of the Delinquency Act.
D. "Detention" means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school.
E. "Disciplinarian" means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.
F. "Disruptive conduct" means willful conduct which:
   (1) materially and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or
   (2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.
G. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding ten (10) school days or a locally established lesser period.
H. "Gang related activity" is disruptive conduct.
I. "Hearing authority" means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing.

J. "Immediate removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.
K. "In-school suspension" means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.
L. "Legal limits" include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.
M. "Long-term suspension" means the removal of a student from school for a specified time exceeding either ten (10) school days or any lesser period a local school board may set as a limit on temporary suspension.
N. "Parent" means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA 1978, or the student if (s)he is not subject to compulsory attendance.
O. "Public school" means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.
P. "Refusal to cooperate with school personnel" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.
Q. "Refusal to identify self" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.
R. "Review authority" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.
S. "Sexual harassment', regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:
   (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
   (2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;
   (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.
T. "School personnel" means all members of the staff, faculty and administration employed by the local school board. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.
U. "Student" means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.
V. "Temporary suspension" means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.
W. "Weapon" as set forth in Section 22-5-4.7 NMSA 1978 means:
   (1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and
   (2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.
   [08-15-97; 6.11.2.7 NMAC - Rn, 6 NMAC 1.4.7, 11-30-00]

## III. CHANGE OF PLACEMENT DECISIONS – Change of Placement Analysis

*The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for the total number of removals in order to follow New Mexico and federal disciplinary requirements outlined in this chapter.*

***Change of Placement Analysis***

*When a principal or other appropriate administrator recommends disciplinary removal from the student's current IEP placement, conduct a Change of Placement Analysis in order to assure compliance with law.*

*(a) Count the days of disciplinary removal from the student's current educational placement.*

*1. Portions of a school day from which a child had been suspended are included in determining whether the child has been removed for more than 10 cumulative school days or subjected to a change of placement.*

*2. An in-school suspension would not be considered a part of the days of suspension as long as the child is afforded the opportunity to:*

*a. Appropriately progress in the general curriculum,*

*b. Continue to receive the services specified on his or her IEP, and*

*c. Continue to participate with non-disabled children to the extent he or she would have in their current placement*

*3. Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP.*

*a. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension unless LADE provides the bus service in some other way.*

*b. If the bus transportation is not a part of the child's IEP, a bus suspension would not be considered a suspension.*

*(b) Determine whether the disciplinary removal(s) constitute(s) a change of placement. A disciplinary change of placement occurs if:*

*1. The removal is for more than 10 consecutive school days, or*

*2. The student is subject to a series of removals that constitute a pattern because they accumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.*

## A. Less than 10 School Day Removals

*(a) LADE is not required to provide services for removal of a student with a disability who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.*

*(b) LADE may choose to provide the IEP services to the student with disabilities during any short term removal to ISS in order to prevent counting those days of removal toward the 10 cumulative days.*

*(c) In the case of a student whose behavior impedes his or her learning or that of others, convene an IEP Team meeting, if appropriate, to consider completing an FBA/BIP, including positive behavior interventions, strategies, and supports to address that behavior.*

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Behavioral management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR §300.324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

## B. More than 10 School Day Removals

## 1. Consecutive or Cumulative Days – "Pattern"

**§300.536 Change of placement because of disciplinary removals.**

**(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--**

**(1) The removal is for more than 10 consecutive school days; or**
**(2) The child has been subjected to a series of removals that constitute a pattern--**
**(i) Because the series of removals total more than 10 school days in a school year;**
**(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and**
**(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.**

**(b) (1) The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.**
**(2) This determination is subject to review through due process and judicial proceedings.**

*Beyond 10 cumulative days in a school year, additional short-term removals of 10 consecutive days or less, for separate incidents of misconduct, are permitted to the extent such removals would be applied to nondisabled students and as long as those additional removals do not constitute a Change of Placement pattern described in §300.536, above.*

*An IEP Team will:*
(a.) *consider special education and disciplinary records of the student with a disability prior to the final determination regarding the disciplinary action;*
(b.) *review the student's BIP and its implementation to determine if accommodations / modifications are necessary;*
(c.) *consult with one or more of the child's teachers to determine the extent to which services are needed and the location necessary to enable the student to progress in the general curriculum and advance toward achieving the goals set out in the student's IEP.*
(d.) *If LADE initiates disciplinary procedures applicable to all students, the special education and disciplinary records of the student with a disability are transmitted for consideration to the person or persons making the final determination regarding disciplinary action.*

## 2. Manifestation Determination

*If a disciplinary removal constitutes a change in placement, within 10 school days of any decision to change the placement because of a violation of a code of student conduct, LADE must convene an IEP meeting to conduct a manifestation determination and address the two questions in §300.530(e)(1) below.*

**§300.530 Authority of school personnel.**
**(e) Manifestation determination.**
**(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--**
**(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**
**(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.**
**(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**

- *Previously, any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In IDEA 2004, the House Committee FAQ stated that to be determined a manifestation, "it is the intention that the conduct in question [is] caused by, or has a direct and substantial relationship to the child's disability, and is not an attenuated association or mere correlation, such as low self-esteem, to the child's disability."*
- *Relevant Members of the IEP Team: depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be needed in the discussion of*

*the discipline event. Nonetheless, in each instance, the relevant members should be determined in collaboration by the parents and LADE.*

**(3) If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the [district] must take immediate steps to remedy those deficiencies.**

**(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--**

**(1) Either--**

**(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or**

**(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and**

**(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.**

**(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--**

**(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the LEA;**

**(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 jurisdiction of the NMPED or the [district]; or**

**(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA.**

Authority: NMAC §6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES: Until this §6.11.2.11 NMAC is further revised, the provisions of the Individuals with Disabilities Education Improvement Act of 2004 at 20 USC Section 1415(k) and the federal regulations implementing those provisions shall govern disciplinary removals of students with disabilities from their current educational placements. All other federal and state laws and rules governing student discipline, including §6.11.2.12 NMAC governing detention, suspension or expulsion of any student, remain in effect.

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:
   (1) long-term suspension or expulsion; or
   (2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR §§300.530 through 300.536 and these or other department rules and standards.

B. When behavior **is not** a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

C. Manifestation determination.
   (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.

(3) If the administrative authority, the parent and relevant members of the child's IEP Team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

D. Determination that behavior **is a manifestation** of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR §300.530(f).

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR §300.530(g). For purposes of this subsection, the definitions provided in 34 CFR §300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the **interim alternative educational** setting for services under Subsections B and E of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR §300.536 are met. *(see page 7 of this Chapter)*

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR §300.530(d).

J. see Appeals in this Chapter.

## 3. Functional Behavioral Assessment (FBA)/Behavior Intervention Plan (BIP)

**§300.324 Development, review, and revision of IEP**

**(a) (2) Consideration of special factors. The IEP Team must--**

**(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.**

**§300.530 Authority of school personnel.**

**(d) Services.**

**(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--**

**(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and**

**(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.**

**(2)** [for all of (d) Services. - 2,3,4,5 - *See V.- FAPE for Removed Students*]

Authority: NMAC Sec. 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Behavioral management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR §300.324(a)(2)(i), the IEP Team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and

objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

(2) See suspensions, expulsions page 12 of this Chapter.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.

*The Functional Behavioral Assessment (FBA) must be completed when:*

- *removal is more than 10 school days due to any other violation of code (FBA to prevent recurrence)*
- *removals due to drugs, weapons or serious bodily injury*
- *if behavior is a manifestation (unless FBA/BIP is already in place, then review and revise, as needed)*

*Ensure that relevant members of the IEP Team, including the general education teacher, participate in providing information for the FBA and in developing the BIP:*

1. *target the specific behavior that is impeding learning by clearly defining and describing the observable behavior(s).*
2. *obtain information from a variety of sources, including but not limited to: discussions, interviews, records, and direct observation. Also, use any standardized instruments, if available. Determine duration, frequency, and intensity of any patterns of behavior.*
3. *identify and describe any antecedents - events that logically served as the stimulus for the behavior.*
4. *identify and describe any consequences - this is the action that is following and causes the student to maintain specific behavior - determine effectiveness of each.*
5. *determine the purpose of the student's behavior - usually to get something, avoid or escape something, or to control the antecedent event.*
6. *describe the relationship of the behavior to the event and provide possible variables that can be changed in the setting or the situation.*
7. *develop the behavioral intervention plan and accommodations (BIP). Teach alternatives to the behavior and include positive reinforcement along with consequences.*
8. *Implement consistently, allow enough time for the behavioral intervention plan and accommodations to work, and review as needed.*

## C. Placement made by IEP Committee

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

F. Determination of setting. The student's IEP Team determines the interim alternative educational setting for services under Subsections B and E of this section. (*Subsections B and E are found in manifestation section).*

# IV. REMOVALS OF STUDENTS WITH DISABILITIES

## A. ISS – In School Suspension or Detention

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

F. Detention, suspension and expulsion: Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC.

Authority: NMAC §6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

E. In-school suspension.
   (1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.
   (2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.
   (1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.
   (2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

- *The local campus administrator is responsible for maintaining records on student discipline. Students with disabilities must be monitored by the local campus for total number of removals in order to follow state and federal disciplinary requirements outlined in this section.*
- *Follow section III. Change of Placement requirements.*

## B. IAES - (Interim Alternative Educational Setting) Removals for Drugs, Weapons, Serious Bodily Injury

### 45 School Day Rule

*(In three specific situations listed below §300.530 (g), the administrator may remove to IAES regardless of the Manifestation Determination decision.)*

**§300.530 Authority of school personnel.**

**(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--**

**(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the LEA;**

**(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 jurisdiction of the NMPED or the LEA; or**

**(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA.**

**(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.**

**(i) Definitions. For purposes of this section, the following definitions apply:**

**(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).**

**(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.**

**(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.**

**(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 USC 1415(k)(1) and (7))**

**§300.531 Determination of setting.**
**The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5) and (g) .**

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services, as provided in 34 CFR §300.530(d).

*The principal or the principal's designee may order the immediate placement of a student in a IAES (Interim Alternative Education Setting) if he or she reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with the ability of a teacher to communicate effectively with students in a classroom, with the ability of the student's classmates to learn, or with the operation of the school or a school-sponsored activity.*

*The principal or the principal's designee may order the immediate expulsion of a student if he or she reasonably believes that such action is necessary to protect persons or property from imminent harm. At the time of an emergency placement or expulsion, the principal or principal's designee will give the student verbal notice of the reason for the action and immediately contact the student's parent/guardian. LADE must also provide a copy of the procedural safeguards notice to parents.*

*Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student will be accorded the appropriate due process as required. The emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply to a student without a disability.*

## C. Immediate Removal

Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.
   (1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.
   (2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).
   (3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.
   (1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.
   (2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.
      (a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.
      (b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.

(c) A student who denies a charge of misconduct shall be told what act(s) he or she is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrator should not withhold such information without good cause. The administrator is required to disclose the substance of all evidence on which he or she proposes to base a decision in the matter.

(d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.

(e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

## D. Suspension - Expulsion

**§300.101 Free appropriate public education (FAPE).**

**(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).**

**§300.170 Suspension and expulsion rates.** *(as compared to general education population)*

**(a) General. The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--**

**(1) Among LEAs in the State; or**

**(2) Compared to the rates for nondisabled children within those agencies.**

**(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.**

*The *cm will follow the IDEA and NMAC requirements for suspension and expulsion of students with disabilities.*

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

F. Behavioral management and discipline

(2) Suspensions, expulsions and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR §§300.530-300.536, and these or other department rules and standards, including particularly §6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR §300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR §300.536.

(4) LADE must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.
*The LADE campus principal is ultimately responsible for an accurate accounting. The principal may collaborate with the assigned special education lead teacher or diagnostician to keep records.*

Authority: NMAC §6.11.2.10 ENFORCING RULES OF CONDUCT:

F. Detention, suspension and expulsion: Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in §6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC, below.

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the LADE is required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. LADE personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with the other requirements of §6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct, as provided in 34 CFR §300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in §6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC, below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with [the regulation] this rule. However, the IEP [committee] team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP [committee] team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this [regulation] rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR §300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed 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.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

**Authority: NMAC 6.11.2.11 -** Change of Placement Decisions: more than 10 days; long term suspension or expulsion.

Authority: NMAC 6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS: The authority of the state and the local school board to prescribe and enforce standards of conduct for [district] students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. It is a property right which may only be denied where school authorities have adhered to the minimum procedural

safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in school suspension and temporary, long-term or permanent removal of students from the *cm. The local school board may adopt procedures which afford students more protection than this [regulation] rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.
B. Students with disabilities. This Section 6.11.2.12 **does not apply to long-term suspension or expulsion** of students who are disabled pursuant to the IDEA or Section 504 [except as provided for in Subsection C, Paragraph (1) of Section 6.11.2.11 NMAC above]. **The procedures for long-term suspension or expulsion of disabled students are set forth in §6.11.2.11 NMAC above.** School personnel under this section may remove a student with a disability, who violates a rule of student conduct, from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC, above).

## E. Detention and Correctional Facilities

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

K. Children in detention and correctional facilities.
   (1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.
   (2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.
      (a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.
      (b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.
   (3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.
   (4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR §300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.
   (5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.
   (6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible

children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.

(7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR §300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.

(8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR §300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

(9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

## V. SERVICES REQUIRED FOR REMOVED STUDENTS

**§300.530 Authority of school personnel.**

**(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.**

**(b) General.**

**(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).**

**(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.**

**(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.**

**(d) Services.**

**(1) A child with a disability who is removed from the child's current placement pursuant to paragraph (c) or (g) of this section must--**

**(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and**

**(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.**

**(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5), of this section may be provided in an interim alternative educational setting.**

**(3) LADE is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.**

**(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.**

**(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.**

**(e) Manifestation determination.**

**(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--**

**(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or**

**(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.**

**(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**

**(3) If the LEA, the parent and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.**

**(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--**

**(1) Either--**

**(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or**

**(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and**

**(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.**

**(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--**

**(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the LEA;**

**(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 jurisdiction of the NMPED or the LEA; or**

**(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the LEA.**

**(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.**

**(i) Definitions. For purposes of this section, the following definitions apply:**

**(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC §812(c)).**

**(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.**

**(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.**

**(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 USC §1415(k)(1) and (7))**

## VI. RESTRAINT - TIME-OUT

### A. Use of Restraint

The use of physical restraint as a behavioral intervention for students with disabilities in the LEA may be justified in certain instances, but this type of intervention can pose a serious risk to the student, as well as to the person(s) applying the restraint. Therefore, the *cm provides the following detailed guidance for the appropriate use of physical restraint for students with disabilities in the public agency schools.

**Regulatory Requirements**
In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. §1414(d)(3)(B)(i) requires the student's Individualized Education Program (IEP) team to consider positive behavioral interventions, strategies, and supports to address that behavior.

In a case where the student's problematic behavior is severe, persistent, and frequent, the IEP team will develop a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment (FBA) as part of the IEP for that student.

The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors. However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to:

- protect the student and others from serious injury; or
- safeguard physical property; and
- will be used only in an emergency.

**Types of Physical Restraint**
The most common forms of physical restraint are **mechanical** restraints and **manual** restraints.

- **Mechanical** restraint involves the use of any device such as a blanket, tape, straps, blindfolds, or tie downs as a method of restricting a student's movement or activity.
- **Manual** restraint (also known as "therapeutic holding") involves one or more people using their bodies to restrict the student's body movement. The purpose of this type of restraint is to allow the student to reestablish self-control and/or maintain safety for others in the environment. The NMPED does not condone the use of **mechanical** restraint of students. However, we recognize that there may be certain instances where **manual** restraint of a student may be necessary, so the remainder of this guidance addresses its appropriate use for students with disabilities.
- We note that escorting a student (touching and/or holding a student without the use of force) is **not** considered a form of physical restraint. Similarly, the use of "time out" is **not** considered a form of physical restraint and guidance on time-out is provided further in this section. We also emphasize that nothing in this procedure would preclude a teacher or other staff member from using reasonable force to protect themselves, students, or other persons from assault or imminent, serious physical harm.

*See the State's Technical Assistance Manual: Addressing Student Behavior—A Guide for Educators. This manual is available on the Special Education/Publications link at the NMPED's website at:*
http://www.ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf

### B. Restraint Procedures

**Authorization for Physical Restraint**

- **In all cases**, the use of physical restraint must be approved by the student's IEP Team, documented in the student's BIP, have the expressed written agreement of the parent or legal guardian, and be addressed in the Lea's Prior Written Notice of Actions Proposed (PWN) provided to parents following an IEP meeting. The IEP Team approves the type of restraint to be used, who is authorized to apply it, the specific setting or conditions under which the use of restraint shall apply, how it will be monitored by other staff, as well as reporting requirements for when restraint is used.

- **In all cases**, a mental health professional (i.e., social worker, counselor, and psychologist) needs to be member of the IEP team if physical restraint is being considered as an intervention. The mental health professional reviews all information about the student and observes the student prior to making recommendations at the IEP meeting about the use of physical restraint in the BIP. A recommendation could include the need for additional evaluative or other information before imposing physical restraint in the student's BIP.
- **In some cases,** the IEP Team may also need to seek approval from the student's medical provider if the use of physical restraint might adversely impact or be in conflict with any medical/physical/mental condition that the student may have or be suspected of having.

**Procedures**

- **Physical restraint procedures must be performed by trained personnel only.** (See "Staff Training" below.)
- **Restraint may not used as a form of punishment.** Restraint will not be used to force compliance from a student.
- **The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior.** In other words, positive interventions are the first methods for addressing unacceptable behavior. A variety of such interventions designed to de-escalate a crisis should be listed in the student's BIP, as well a provision to warn the student that restraint will be used if the target behavior does not stop. Verbal threats or refusal to comply with a staff directive or school rule would not warrant physical restraint unless this is agreed upon in the BIP. Physical restraint is the last resort to protect the student and others from harm. However, its immediate use may be justified if there is imminent, serious danger only.
- **The IEP team needs to establish that other less restrictive interventions have not been effective**. The provision for physical restraint that is in the BIP is only appropriate if less restrictive behavioral management techniques have been tried and documented as not working for the behaviors for which physical restraint will apply.
- **The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** The use of physical restraint is restricted the same way the law restricts the use of other teaching or behavioral interventions methods in general. That is, it is a denial of a Free Appropriate Public Education (FAPE) if the use of physical restraint is inconsistent with the student's IEP and BIP.
- **No form of physical restraint may be used that restricts a student from speaking or breathing.** The restraint must be applied in such a way that it is safe and only reasonable force is used. A responsible third party should monitor the student's status during the restraint procedure to check respiration and skin color, and to see that limbs are not moved out of the normal range of motion. The restraint should be immediately discontinued if the student exhibits any signs of undue physical distress or injury. In addition, the restraint must not be applied any longer than is necessary to protect the student from causing harm to himself or others.
- **Do not restrain the student in front of other students.** If possible, move to another location or clear the setting of other students.

**Staff Training**

- **Any staff or staff team designated to apply physical restraint must be professionally trained and/or certified in the particular technique being used.** This must happen ***prior to*** any such procedures being used on a student. Staff chosen to be trained to apply physical restraint should be individuals who are physically able to do so and can handle a crisis in a calm manner.
- **The professional training needs to emphasize the use of positive interventions, including verbal de-escalation techniques and other strategies to be attempted prior to using physical restraint.** Resources for this kind of training include, but are not limited to, Positive Behavioral Intervention and Supports (www.pbis.org); Crisis Prevention Institute (www.crisisprevention.com); and The Mandt System (www.manmdtsystem.com).

*The public agency provides training on the proper techniques and use of restraints using the following system: _____ _____. This training is provided at least annually to new staff and refresher courses are offered to existing trained staff.*

**Recommended Documentation and Reporting**

- **Any incident of physical restraint should be immediately reported to the building administrator and be documented.** Include the following in a written report:

- Name of the student
- Date and description of the incident that led to the restraints
- Names and titles of staff member(s) who applied the restraints and monitored it
- Other interventions tried
- Type of restraints used
- Length of time the restraints was applied
- Any injuries sustained by the student or staff
- Information about the student's behavior after the restraints and any further action taken by school staff including disciplinary action

- **The student's parents should be informed about the use of the restraint.** Provide a verbal report to parents the same day. This should be followed up by a written report 1–2 days later.

*Local policies for physical restraint of students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan. Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5).*

## C. Use of Time-out Strategies *(excluding Time-out Rooms)*

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA requires the IEP team to consider positive behavioral interventions, strategies, and supports to address that behavior.

IEP teams may consider the use of a time-out **as a positive intervention** and design time-out strategies to assist students in correcting the attitude and/or behaviors that interfere with their ability to remain in the classroom. **A time-out will not be used as a punishment for negative student behavior or as a means of removing the student indefinitely from the classroom setting, as it does not meet the intent of the IDEA.** The use of a time-out must have positive implications, including enabling the student to return to the classroom setting.

**The Definition of Time-out**
The New Mexico PED defines the term *time-out* as a continuum of behavior management techniques that are designed to address inappropriate or negative student behavior resulting from over-stimulating or challenging classroom situations. This continuum begins with minimally intrusive or restrictive strategies that can be implemented within the classroom setting. The continuum then progresses to more restrictive strategies that may involve the physical separation of a student from his or her classmates, for a brief amount of time, in order to enable the student to calm down and return to the classroom setting.

**Time-out Continuum of Strategies – Non-exclusionary:**
- **planned ignoring** of the behavior,
- **discussing** the behavior with the student immediately ,
- **in-class strategies** that require the student to cease classroom activity for a short period of time. However, the student is not removed from the classroom setting. May include placing the student in a time-out corner of the classroom for a specified period of time in order to enable him or her to regain composure and resume classroom activity. Classroom teachers may designate a specific location within the classroom to use for this purpose.

**Time-out Continuum of Strategies – Exclusionary:**
- **student's removal** from the classroom setting altogether for a brief amount of time in order for the student to regroup in private prior to returning to the classroom setting. May include relocating the student to another classroom or the office.
- **student's removal** from the classroom setting to a time-out room is described in detail in E. and F. below.

## D. Time-out Procedures *(excluding Time-Out Rooms)*

*The staff of the LEA will be trained, and all procedures will be followed. The IEP Team will complete the following activities to determine which non-exclusionary and/or exclusionary time-out is appropriate for the student.*

1. **Evaluation.** Complete an evaluation and review existing data to determine if use of time-out is in direct conflict with the student's psychological or physical health status.
2. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).
3. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out strategies will be utilized and the projected outcome or purpose of the use of time-out as a positive intervention strategy.
4. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out as a part of a student's BIP and IEP will provide authorization to the LEA to implement the IEP.
5. **Amount of time. The duration of a time-out must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.**
   - The IEP Team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in time-out.
   - Best practice dictates that in most cases, the number of minutes a student spends in time-out should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
   - Do not use timeout as a punishment for disruptive behavior.
6. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a teacher places the student in the time-out situation?
7. **Criteria for returning to participation.** Identify and list the specific criteria for returning the student to the routine activities of the classroom. As a matter of best practice, a student will remain in a time-out only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed in such case the IEP Team will list other strategies.
8. **Staff must directly supervise or monitor the student while he or she is in time-out**. Some students are agitated in these circumstances. Do not discount the possibility of behavior escalating and have a plan.
9. **The LEA will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure.
10. **Location of the time-out.** Determine where the time-out will be located in relation to the student's seating area.

*Time-Out is outlined as either Non-exclusionary, which is the least restrictive, or Exclusionary time-out, which results from more serious behaviors that are described in the BIP. Exclusionary time-out should be used when Non-exclusionary attempts are documented and have been unsuccessful.*

*1. Non-exclusionary time-out:*

- *Planned Ignoring: This is the simplest form of Non-exclusionary time-out. Planned ignoring involves the systematic removal of social reinforcement (attention) by the teacher for a specific amount of time. When the student misbehaves, the teacher breaks eye contact, turns away, and stops all social interaction with the student. Planned ignoring assumes that the teacher's social attention is reinforcing. If it is not, then this will not work to decrease the behavior. If planned ignoring is the appropriate response, the teacher should prepare initially for an increase in the behavior before the behavior will decrease.*
- *Head down on desk: This has been used by teachers for a long time. The student is simply told to put his head down on his desk for a short period of time. (timer may be used)*
- *Observation time-out: The student is removed from his/her desk for misbehaving and is usually placed in a desk away from the main classroom activities for a short period of time. The student is allowed/required to observe the classroom discussion/activities, but is not allowed to actively participate. (Use of timer recommended – 5 minutes and may reset once.)*
- *Non-observation time-out (instructional isolation): This is basically the same as observation time-out, except the student is not allowed to observe the classroom activities. Usually, the student is placed in a*

*particular part of the classroom that does not provide for viewing other students. (use of timer recommended – 10 minutes and may reset once)*

2. *Exclusionary time-out: The student is removed from the classroom and placed in a separate environment for cooling down and resumption of instructional activities. Clearly, this is more restrictive and other types of time-out should be attempted first.*
   - *Isolated instruction: This is extended time-out from the classroom. The student is required to complete class work in an isolated area, another classroom, or the office. Caution using the hallway as this could result in a social reward depending on the individual student.*
   - *Time-out room described below.*

## E. Use of Time-out Rooms

(*If LADE does not allow use of time-out rooms, please state this in writing below and delete all other procedures listed in this section.)*

The *cm has a continuum of time-out strategies available for use with students. The LEA will not resort to student isolation (time-out rooms) as a means of eliminating negative behavior in all instances. Not all behaviors require the student's immediate removal from the classroom and the IEP Team will make careful, well documented individualized decisions.

The *cm staff decision to remove a student from regular activity and place him or her in an isolated setting, such as a time-out room, can have significant implications. The following section discusses criteria pertaining to the use of time-out rooms for students with disabilities.

**Case Law Related to the Use of Time-out Rooms**

The LEA will not remove a student if that removal is not justified before or at the time of placement and is not within reason given the student's age, sex, disability, and the nature of the infraction. An "unreasonable seizure" of a student occurs when he or she is not properly informed of the purpose of the time-out area or the reason for his or her removal from the classroom. Therefore, a student with a disability and his or her parent will be made aware, through the IEP process, of how the time-out room will be utilized and the projected outcome or purpose of the time-out strategies.

**Technical Assistance from New Mexico State Fire Marshall's Office**

In addition technical assistance from the New Mexico State Fire Marshall's Office. Subsection 5-2.1.5, Chapter 5, Means of Egress of the Life Safety Code (1997 Edition), provides as follows:

**Locks, Latches, and Alarm Devices**

- Doors shall be arranged to be opened readily from the egress side whenever the building is occupied.
- Locks, if provided, shall not require the use of a key, a tool, or special knowledge or effort for operation from the inside of the building.

Further, the New Mexico State Fire Marshall's Office explicitly stated that all doors (including those to time-out rooms) are to "remain open and accessible at all times." The doors should remain "free and clear of all obstructions in the event of fire or other emergency." Students placed in a time-out room should be able to self evacuate or be assisted in evacuation without delay.

## F. Procedures for Use of Time-out Rooms

As a part of the FBA and BIP process, the IEP teams will document the following in order to include time-out rooms as an intervention in a student's IEP:

1. **Evaluation.** Complete an evaluation and review existing data to determine if the student's placement in a time-out room is in direct conflict with the student's psychological or physical health status.
2. **Nature of the misconduct.** The IEP Team will determine if the student's behavior can be addressed through a less intrusive time-out strategy within the classroom setting. The previous section lists time-out strategies that are less restrictive.
3. **Documentation.** Documentation of possible positive interventions will occur through the IEP process, which

includes conducting a Functional Behavior Assessment (FBA) and developing a Behavior Intervention Plan (BIP).

4. **Adequate Notice.** The IEP Team will inform the parent/student how the time-out room will be utilized and the projected outcome or purpose of the use of time-out room as a positive intervention strategy.
5. **Written permission.** Parent participation in the IEP Team meeting and signing agreement with the use of time-out rooms as a part of a student's BIP and IEP will provide authorization to the LEA to implement the IEP. In addition, the LEA will obtain parental consent in order to utilize the more restrictive form of time-out which is the time-out rooms.
6. **Amount of time spent out of the classroom in isolation.** The duration of placement in a time-out room must be reasonable in light of factors such as student's age, sex, disability, cognitive functioning, and the nature of the student's misbehavior.
    a. The IEP Team will consider the student's age, sex, disability, and the nature of his or her behavior in determining the maximum amount of time the student can spend in the time-out room.
    b. Best practice dictates that in most cases, the number of minutes a student spends in a time-out room should typically equal the student's age, but will not exceed a maximum of 10-15 minutes. The maximum amount of time will be listed in the IEP. A time-out is an opportunity for a student to regain his or her composure.
    c. Do not use timeout as a punishment for disruptive behavior.
7. **How time was spent during time-out.** The IEP will include a written plan that outlines what to do once a teacher places the student in the time-out room.
8. **A student placed in a time-out room must be permitted to use the bathroom.** Staff will consider events that preceded the student's behavior (lunch, medications) that may result in the student needing to relieve him or herself.
9. **Criteria for returning to class.** Identify and list the specific criteria for returning the student to the routine activities and the classroom environment. As a matter of best practice, a student will remain in a time-out room only until he or she becomes sufficiently self-controlled to rejoin classmates, unless that time exceeds the maximum time allowed. The IEP Team will list other strategies.
10. **Do not lock a time-out room**. The time-out rooms will remain unlocked and free and clear of obstructions. In the event of a fire or other emergency, occupants will be able to self evacuate or be assisted without delay.
11. **Staff must directly supervise or monitor the student while he or she is in a time-out room or other time-out area**. Some students are agitated in these circumstances. Do not discount the possibility of self-injury even when there is no obvious instrument for inflicting injury in time-out rooms.
12. **The LEA will keep accurate records on students placed in time-out.** The records will include the date, time, length of placement, the basis for the placement, and the teacher who made the placement determination. In addition, the records will also indicate the assistance provided to help the student regain composure. This data collection will enable the school to determine the effectiveness of the more restrictive time-out strategies on improving student behavior.
13. **Location of the time-out room.** Determine where the time-out room is located in relation to the student's classroom? The IEP Team will assure the student's behavior justifies the time it takes to transfer the student to and from the time-out room.
14. **Size of the time-out room.** The LEA assures the time-out room is of adequate size to accommodate the student and the school staff person who is responsible for supervising the student for the duration of his or her placement in the time-out room.
15. **Interior of the time-out room.** The interior of the time-out room will not be indicative of a punitive setting. The environment will enable the student to de-escalate and thereby return to and participate in the classroom setting.
16. **Time out rooms must be designed and constructed in compliance with all SDE, local, and fire code regulations.** The time-out room is a safe setting for both the student and the staff person supervising him or her. The LEA assures the time-out room meets all state, local, and fire code requirements. Time-out rooms will have adequate heating, lighting, and ventilation and be free of any dangerous objects.

It is important to note that Section 504 governs the imposition of time-out for students with disabilities. A district's time-out policy should follow the same guidelines and procedures for both disabled and non-disabled students.

# VII. DUE PROCESS REQUIREMENTS

## A. Procedural Safeguards

*All procedural safeguards, including required notice and consents, will be followed throughout the process of disciplinary action for students with disabilities. Procedural Safeguards are located in Chapter 2. – Procedural Safeguards.*

## B. "Stay Put"/IAES

- *Previously during appeals, a child with a disability remained in the original placement, "stay-put". The new IDEA eliminates the "stay-put" requirement in the case of discipline. The "stay-put" rule still applies to the non-disciplinary dispute. Now, during the time that an appeal is pending, the child will remain in the interim alternative educational setting (IAES) until the appeal is resolved or until the expiration of the suspension, whichever occurs first.(see D. and E. below)*
- *As described below in §300.532, the hearing officer is required to make a decision within 30 school days from the date the hearing is requested. Therefore, if the student is assigned to an IAES for 45 school days, the hearing officer's decision will come first.*
- *The IEP Team will pick the appropriate IAES. The timeframe for expiration of the IAES is determined by school personnel applying the "relevant disciplinary procedures applicable to children without disabilities" referred to in the Student Code of Conduct.*

## C. Appeal

**§300.532 Appeal.**

**(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §300.507 and §300.508(a) and (b).**

**(b) Authority of hearing officer.**

**(1) A hearing officer under §300.511 hears, and makes a determination regarding, an appeal requested under paragraph (a) of this section.**

**(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—**

**(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or**

**(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.**

**(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.**

**(c) Expedited due process hearing.**

**(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.**

**(2) The NMPED or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.**

**(3) Unless the parents and the LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506--**

**(i) A resolution meeting must occur within seven days of receiving notice, and**
**(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.**

**(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the NMPED ensures that the requirements in §§300.510 through 300.514 are met.**

**(5) The decisions on expedited due process hearings are appealable consistent with §300.514.**

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer, who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR §300.532(b).

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, 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 specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

## D. Placement During Appeals

**§300.533 Placement during appeals.**

**When an appeal under §300.532 has been requested by either the parent or the LEA, 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 specified in §300.530 (c) or (g), whichever occurs first, unless the parent and the NMPED or LEA agree otherwise.**

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

J. Appeal.

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, 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 specified in Subsections B or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise. [08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

## F. Notice of Disciplinary Actions (Student Moves to another District)

*If the LEA takes disciplinary action against a student and the student subsequently enrolls in another district or school before the expiration of the period of disciplinary action, the governing body of the LEA shall provide to the district or school in which the student enrolls, at the same time other records of the student are provided, a copy of the order of disciplinary action. It is the decision of the receiving district or school in which the student enrolls to continue the disciplinary action under the terms of the order or to allow the student to attend regular classes without completing the period of disciplinary action.*

**§300.229 Disciplinary information.**

## G. Protection for Students not yet Eligible for Special Education

**§300.534 Protections for children not yet eligible for special education and related services.**

**(a) General. 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 a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.**

**(b) Basis of knowledge. The public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—**

**(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;**

**(2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or**

**(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.**

**(c) Exception. The public agency would not be deemed to have knowledge under paragraph (b) of this section if—**

**(1) The parent of the child—**

**(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or**

**(ii) Has refused services under this part; or**

**(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.**

**(d) Conditions that apply if no basis of knowledge.**

**(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.**

**(2) (i) 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 §300.530, the evaluation must be conducted in an expedited manner.**

**(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.**

**(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.**

## H. Noncustodial Parent

*A noncustodial parent may request in writing that the LEA or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct that is generally provided by LADE to a student's custodial parent or guardian. LADE may not unreasonably deny this request. LADE will comply with any applicable court order of which LADE has knowledge.*

# VIII. LAW ENFORCEMENT

**§300.535 Referral to and action by law enforcement and judicial authorities.**

**(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child 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 child with a disability.**

**(b) Transmittal of records.**

**(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.**

**(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).**

## VIII. DISCIPLINARY RECORDS

**§300.229 Disciplinary information.**

**(a) The NMPED may require that the LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.**

**(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.**

**(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.**

**§300.535 Referral to and action by law enforcement and judicial authorities.**

**(b) Transmittal of records.**

**(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.**

**(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.**

## DISCLAIMER

*LADE will follow local district Board Policy regarding required laws for discipline of students with disabilities. These Special Education Policies and Procedures do not include all of the numerous regulations regarding New Mexico student discipline; however, they do include the specific requirements pertaining to special education students with disabilities.*

For additional information regarding discipline for students with disabilities see:
New Mexico Public Education Department Technical Assistance Manual: Addressing Student Behavior
http://www.ped.state.nm.us/SEB/technical/StudentDiscipline.pdf