

## **East Mountain High School**

### **DISCIPLINE OF STUDENTS WITH DISABILITIES MANIFESTATION DETERMINATION & ALTERNATIVE EDUCATIONAL SETTING**

The Manifestation Determination Review form is used for conducting a manifestation determination review before a disciplinary change of placement.

In the disciplinary context, the Functional Behavioral Assessment form is used to conduct a functional behavioral assessment (FBA) when the student's misconduct is a manifestation of the child's disability; or as appropriate, when the misconduct is not a manifestation of the child's disability.

In the disciplinary context, the Behavior Intervention Plan form is used to develop a behavior intervention plan (BIP) when the student's misconduct is a manifestation of the child's disability; or if appropriate, when the misconduct is not a manifestation of the child's disability.

Authority of District Personnel

(See 34 CFR §300.530)

#### **Case-by-Case Determination**

District personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

#### **General Discipline**

To the extent that they also take such action for children without disabilities, district personnel may, for not more than ten (10) school days in a row, remove a child with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension.

District personnel may also impose additional removals of the child of not more than ten (10) school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. Please refer to the "Change of Placement Because of Disciplinary Removals" section of this procedural directive for more information.

Once a child with a disability has been removed from his/her current placement for a total of ten (10) school days in the same school year, East Mountain High School shall, during any subsequent days of removal in that school year, provide services to the extent required below in this procedural directive.

### **Additional Authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability and the disciplinary change of placement would exceed ten (10) school days in a row, district personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described in the "Services" section of this procedural directive. The child's IEP Team shall determine the interim alternative educational setting for such services.

### **Services**

When East Mountain High School provides services to a child without a disability who has been removed from his/her current placement for ten (10) school days or less in that school year, East Mountain High School also shall provide services to a child with a disability. These services may be provided in an interim alternative educational setting.

However, when East Mountain High School does not provide services to a child without a disability who has been removed from his/her current placement for ten (10) school days or less in that school year, East Mountain High School shall not be required to provide services to a child with a disability.

A child with a disability who is removed from the child's current placement for more than ten (10) school days and the behavior is not a manifestation of the child's disability or who is removed under special circumstances shall:

- Continue to receive educational services (FAPE), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.
- Please refer to the "Manifestation Determination" and "Special Circumstances" section of this procedural directive for additional information.

After a child with a disability has been removed from his/her current placement for ten (10) school days in that same school year, and if the current removal is for ten (10) school days in a row or less and if the removal is not a change of placement, than school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed 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.

If the removal is a change of placement, the child's IEP Team shall determine the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP. Please refer to the "Change of Placement Because of Disciplinary Removals" section of this procedural directive for additional information.

### **Manifestation Determination**

Within ten (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 (except for a removal that is for ten (10) school days in a row or less and not a change of placement), East Mountain High School, the parent, and other relevant members of the IEP Team (as determined by the parent and district) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the district's failure to implement the child's IEP.

If East Mountain High School, the parent, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct shall be determined to be a manifestation of the child's disability.

If East Mountain High School, the parent, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the district's failure to implement the IEP, East Mountain High School shall take immediate action to remedy those deficiencies.

### **Determination that Behavior was a Manifestation of the Child's Disability**

If East Mountain High School, the parent, and other relevant members of the child's IEP Team determine that the conduct in questions was a manifestation of the child's disability, the IEP Team shall either:

Conduct a functional behavioral assessment, unless East Mountain High School 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

If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below in the “Special Circumstances” section of this procedural directive, East Mountain High School shall return the child to the placement from which the child was removed, unless the parent and East Mountain High School agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special Circumstances**

Whether or not the behavior was a manifestation of the child’s disability, district personnel may remove a student to an interim alternative educational setting (determined by the child’s IEP Team) for not more than forty-five (45) school days, if the child:

Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or East Mountain High School;

Knowingly has 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 New Mexico Public Education Department or East Mountain High School; or

Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the New Mexico Public Education Department or East Mountain High School.

### **Change of Placement Because of Disciplinary Removals**

A removal of a child with a disability from the child’s current educational placement is a change of placement if:

The removal is for more than 10 school days in a row; or

The child has been subjected to a series of removals that constitute a pattern because:

The series of removals total more than 10 school days in a school year;

The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

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.

(34 CFR §300.536)

Whether a pattern of removals constitutes a change of placement shall be determined on a case-by-case basis by East Mountain High School and, if challenged, shall be subject to review through due process and judicial proceedings.

### **Notification of a Change of Placement**

On the date East Mountain High School makes the decision to make a removal that is a change of placement of a child because of a violation of a code of student conduct, East Mountain High School shall notify the parent of that decision, and provide the parent with a procedural safeguards notice.

### **Determination of Setting**

The IEP Team determines the interim alternative educational setting for removals that are changes of placement, and removals in the “Additional Authority” and “Special Circumstances” section of this procedural directive. (34 CFR § 300.531)

### **Appeals of Discipline Decisions**

#### **General**

The parent may file a due process complaint to request a due process hearing if the parent disagrees with:

Any decision regarding an IEP placement made under these discipline provisions; or

The manifestation determination described above.

East Mountain High School may file a due process complaint to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

#### **Placement during Appeals**

When, as described above, the parent or the district files a due process complaint related to disciplinary matters, the child shall (unless the parent and East Mountain High School agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described in “Authority of School Personnel” section of this procedural directive, whichever occurs first. (34 CFR §300.533)

## **Protections for Children Not Yet Eligible for Special Education and Related Services**

### **General**

If the child has not been determined eligible for special education and related services and violates a code of student conduct, but East Mountain High School had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this procedural directive. (34 CFR §300.534)

### **Basis of Knowledge for Disciplinary Matters**

East Mountain High School shall be deemed to have knowledge that the child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

The parent expressed concern in writing to supervisory or administrative personnel of East Mountain High School, or to the child's teacher that the child is in need of special education and related services;

The parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or

The child's teacher or other East Mountain High School personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to East Mountain High School' director of Special Education or to other supervisory personnel of East Mountain High School.

### **Exception**

East Mountain High School shall not be deemed to have such knowledge if:

The parent has not allowed an evaluation of the child or has refused special education services; or

The child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

### **Conditions that apply if there is no Basis of Knowledge**

If prior to taking disciplinary measures against the child, East Mountain High School does not have knowledge that the child is a child with a disability, as described in the "Basis of Knowledge for Disciplinary Matters" and "Exception" subsections of this procedural directive, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by East Mountain High School, and information provided by the parent, East Mountain High School shall provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described in this procedural directive.

### **Referral to and Action by Law Enforcement and Judicial Authorities**

Part B of IDEA and this procedural directive shall not:

Prohibit East Mountain High School from reporting a crime committed by a child with a disability to appropriate authorities; or

Prevent state and local 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.

(34 CFR §300.535)

### **Transmittal of Records**

If East Mountain High School reports a crime committed by a child with a disability, East Mountain High School:

Shall seek consent from the parents to transmit copies of the child's special education and disciplinary records

If consent is granted, shall transmit copies of the child's special education and disciplinary records for consideration by the authorities to whom the agency reports the crime.