

**MINNESOTA'S PUPIL FAIR  
DISMISSAL ACT  
AND OTHER LAWS  
RELATED TO  
STUDENT DISCIPLINE**

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## **CONDENSED SUMMARY**

**Note: For an official version, please contact the Revisor of Statutes.**

### **NOTES:**

- **These laws have been excerpted from the 2006 Minnesota Statutes.**
- **Minor formatting changes have been made to make this summary easier to read.**
- **The Pupil Fair Dismissal Act only encompasses statutes 121A.40 through 121A.56. Additional statutes are included in this publication because they also deal with the discipline and safety of students.**

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# The Pupil Fair Dismissal Act 2005 Revisions

### 121A.40 Citation

Minnesota Statutes Sections 121A.40 to 121A.56 may be cited as "The Pupil Fair Dismissal Act."

### 121A.41 Definitions

Subdivision 1. **Applicability.** As used in sections 121A.40 to 121A.56, the terms defined in this section shall have the meanings assigned them.

Subd. 2. **Dismissal.** "Dismissal" means the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not include removal from class.

Subd. 3. **District.** "District" means any school district.

Subd. 4. **Exclusion.** "Exclusion" means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.

Subd. 5. **Expulsion.** "Expulsion" means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled.

Subd. 6. **Parent.** "Parent" means (a) one of the pupil's parents, (b) in the case of divorce or legal separation, the parent or parents with physical custody of the pupil, including a noncustodial parent with legal custody who has provided the district with a current address and telephone number, or (c) a legally appointed guardian. In the case of a pupil with a disability under the age of 18, parent may include a district-appointed surrogate parent.

Subd. 7. **Pupil.** "Pupil" means any student:

(1) without a disability under 21 years of age; or

(2) with a disability until September 1 after the child with a disability becomes 22 years of age;

(3) and who remains eligible to attend a public elementary or secondary school.

Subd. 8. **School.** "School" means any school defined in section 120A.05, subdivisions 9, 11, 13, and 17.

Subd. 9. **School board.** "School board" means the governing body of any school district.

Subd. 10. **Suspension.** "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. Consistent with section 125A.091, subdivision 5, the readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of readmission. The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 days. In the case of a student with a disability, the student's individual education plan team must meet immediately but not more than ten school days after the date on which the decision to remove the student from the student's current education placement is made. The individual education plan team and other qualified personnel shall at that

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meeting: conduct a review of the relationship between the child's disability and the behavior subject to disciplinary action; and determine the appropriateness of the child's education plan.

The requirements of the individual education plan team meeting apply when:

- (1) the parent requests a meeting;
- (2) the student is removed from the student's current placement for five or more consecutive days; or
- (3) the student's total days of removal from the student's placement during the school year exceed ten cumulative days in a school year.

The school administration shall implement alternative educational services when the suspension exceeds five days. A separate administrative conference is required for each period of suspension.

Subd. 11. **Alternative educational services.** "Alternative educational services" may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center under section 123A.05 selected to allow the pupil to progress toward meeting graduation standards under section 120B.02 although in a different setting.

### **121A.42 Policy**

No public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.

### **121A.43 Exclusion and expulsion of pupils with a disability**

When a pupil who has an individual education plan is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the pupil's disability, the district shall continue to provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's individual education plan and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion.

### **121A.44 Expulsion for possession of firearm**

(a) Notwithstanding the time limitation in section 121A.41, subdivision 5, a school board must expel for a period of at least one year a pupil who is determined to have brought a firearm to school except the board may modify this expulsion requirement for a pupil on a case-by-case basis. For the purposes of this section, firearm is as defined in United States Code, title 18, section 921.

(b) Notwithstanding chapter 13, a student's expulsion or withdrawal or transfer from a school after an expulsion action is initiated against the student for a weapons violation under paragraph (a) may be disclosed by the school district initiating the expulsion proceeding. Unless the information is otherwise public, the disclosure may be made only to another school district in connection with the possible admission of the student to the other district.

### **121A.45 Grounds for dismissal**

Subdivision 1. **Provision of alternative programs.** No school shall dismiss any pupil without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.

Subd. 2. **Grounds for Dismissal.** A pupil may be dismissed on any of the following grounds:

- (a) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;

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(b) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or

(c) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school.

Subd. 3. **Parent Notification and Meeting.** If a pupil's total days of removal from school exceeds 10 cumulative days in a school year, the school district shall make reasonable attempts to convene a meeting with the pupil and the pupil's parent or guardian prior to subsequently removing the pupil from school, and with the permission of the parent or guardian, arrange for a mental health screening for the pupil. The district is not required to pay for the mental health screening. The purpose of this meeting is to attempt to determine the pupil's need for assessment or other services or whether the parent or guardian should have the pupil assessed or diagnosed to determine whether the pupil needs treatment for a mental health disorder.

### **121A.46 Suspension procedures**

Subdivision 1. **Informal administrative conference before suspension.** The school administration shall not suspend a pupil from school without an informal administrative conference with the pupil. The informal administrative conference shall take place before the suspension, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension.

Subd. 2. **Administrator notifies pupil of grounds for suspension.** At the informal administrative conference, a school administrator shall notify the pupil of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the pupil may present the pupil's version of the facts.

Subd. 3. **Written notice of grounds for suspension.** A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of sections 121A.40 to 121A.56, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's parent or guardian by mail within 48 hours of the conference. The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following suspension. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the pupil and the pupil's parent or guardian within 48 hours of the suspension. Service by mail is complete upon mailing.

Subd. 4. **Suspension pending expulsion or exclusion.** Notwithstanding the provisions of subdivisions 1 and 3, the pupil may be suspended pending the school board's decision in the expulsion or exclusion hearing; provided that alternative educational services are implemented to the extent that suspension exceeds five days.

### **121A.47 Exclusion and expulsion procedures**

Subdivision 1. **Requiring a hearing; pupil may waive hearing.** No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent.

Subd. 2. **Written notice.** Written notice of intent to take action shall:

(a) be served upon the pupil and the pupil's parent or guardian personally or by mail;  
(b) contain a complete statement of the facts, a list of the witnesses and a description of their testimony;

(c) state the date, time, and place of the hearing;

(d) be accompanied by a copy of sections 121A.40 to 121A.56;

(e) describe alternative educational services accorded the pupil in an attempt to avoid the expulsion proceedings; and

(f) inform the pupil and parent or guardian of the right to:

(1) have a representative of the pupil's own choosing, including legal counsel, at the hearing.

The district shall advise the pupil's parent or guardian that free or low-cost legal assistance may

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be available and that a legal assistance resource list is available from the department of education;<sup>1</sup>

- (2) examine the pupil's records before the hearing;
- (3) present evidence; and
- (4) confront and cross-examine witnesses.

Subd. 3. **Hearing schedule.** The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed five days, is requested for good cause by the school board, pupil, parent or guardian.

Subd. 4. **Convenient time and place of hearing.** The hearing shall be at a time and place reasonably convenient to pupil, parent or guardian.

Subd. 5. **Closed or open hearing.** The hearing shall be closed unless the pupil, parent or guardian requests an open hearing.

Subd. 6. **Impartial hearer.** The hearing shall take place before:

- (1) an independent hearing officer;
- (2) a member of the school board;
- (3) a committee of the school board; or
- (4) the full school board;

as determined by the school board. The hearing shall be conducted in a fair and impartial manner.

Subd. 7. **Creating hearing record.** The school board shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.

Subd. 8. **Access to pupil's records.** At a reasonable time prior to the hearing, the pupil, parent or guardian, or representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based.

Subd. 9. **Pupil's right to compel testimony.** The pupil, parent or guardian, or representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system.

Subd. 10. **Pupil's right to present evidence and testimony.** The pupil, parent or guardian, or representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.

Subd. 11. **Pupil not compelled to testify.** The pupil cannot be compelled to testify in the dismissal proceedings.

Subd. 12. **Hearer's recommendation limited to evidence at hearing; service within two days.** The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and must be made to the school board and served upon the parties within two days of the end of the hearing.

Subd. 13. **Basis of school board decision; opportunity for comment.** The school board shall base its decision upon the recommendation of the hearing officer or school board member or committee and shall render its decision at a meeting held within five days after receiving the recommendation. The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's recommendations provided that neither party presents any evidence not admitted at the hearing. The decision by the school board must be based on the record, must be in writing, and must state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

Subd. 14. **Admission or readmission plan.**

(a) A school administrator shall prepare and enforce an admission or readmission plan for any pupil who is excluded or expelled from school. The plan may include measures to improve

<sup>1</sup> The list may be found electronically at <http://education.state.mn.us>.

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the pupil's behavior, including completing a character education program, consistent with section 120B.225, Sub. 1, and require parental involvement in the admission or readmission process, and may indicate the consequences to the pupil of not improving the pupil's behavior.

(b) The definition of suspension under Minnesota Statute Section 121A.41, subdivision 10, does not apply to a student's dismissal from school for one school day or less, except as provided under federal law for a student with a disability. Each suspension action may include a readmission plan. A readmission plan must provide, where appropriate, alternative educational services, which must not be used to extend the student's current suspension period. Consistent with Minnesota Statute Section 125A.091, subdivision 5, a readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student as a condition of the administration of a psychotropic drug or to consent to a psychiatric evaluation, screening, or examination of the student as a ground, by itself, to prohibit the student from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect or medical or education neglect.

### ***121A.48 Good faith exception***

A violation of the technical provisions of the Pupil Fair Dismissal Act, made in good faith, is not a defense to a disciplinary procedure under the act unless the pupil can demonstrate actual prejudice as a result of the violation.

### ***121A.49 Appeal***

A party to an exclusion or expulsion decision made under sections 121A.40 to 121A.56 may appeal the decision to the commissioner of education within 21 calendar days of school board action. Upon being served with a notice of appeal, the district shall provide the commissioner and the parent or guardian with a complete copy of the hearing record within five days of its receipt of the notice of appeal. All written submissions by the appellant must be submitted and served on the respondent within ten days of its actual receipt of the transcript. All written submissions by the respondent must be submitted and served on the appellant within ten days of its actual receipt of the written submissions of the appellant. The decision of the school board must be implemented during the appeal to the commissioner.

In an appeal under this section, the commissioner may affirm the decision of the agency, may remand the decision for additional findings, or may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the school district;
- (3) made upon unlawful procedure, except as provided in section 121A.48;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record submitted; or
- (6) arbitrary or capricious.

The commissioner or the commissioner's representative shall make a final decision based upon the record. The commissioner shall issue a decision within 30 calendar days of receiving the entire record and the parties' written submission on appeal. The commissioner's decision shall be final and binding upon the parties after the time for appeal expires under section 121A.50.

### ***121A.50 Judicial review***

The decision of the commissioner of education made under sections 121A.40 to 121A.56 is subject to judicial review under sections 14.63 to 14.69. The decision of the commissioner is stayed pending an appeal under this section.

### ***121A.51 Reports to service agency***

The school board shall report any action taken pursuant to sections 121A.40 to 121A.56 to the appropriate public service agency, when the pupil is under the supervision of such agency.

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### ***121A.52 Nonapplication of compulsory attendance law***

The provisions of section 120A.22, subdivision 5, shall not apply to any pupil during a dismissal pursuant to sections 121A.40 to 121A.56.

### ***121A.53 Report to the commissioner of education***

Subdivision 1. **Exclusions and expulsions.** The school board must report through the department electronic reporting system each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report must include a statement of alternative educational services given the pupil and the reason for, the effective date, and the duration of the exclusion or expulsion. The report must also include the student's age, grade, gender, race and special education status.

Subd. 2. **Report.** The school board must include state student identification numbers of affected pupils on all dismissal reports required by the department. The department must report annually to the commissioner summary data on the number of dismissals by age, grade, gender, race, and special education status of the affected pupils. All dismissal reports must be submitted through the department electronic reporting system.

### ***121A.54 Notice of right to be reinstated***

Whenever a pupil fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the pupil and the pupil's parents by mail of the pupil's right to attend and to be reinstated in the public school.

### ***121A.55 Policies to be established***

(a) The commissioner of education shall promulgate guidelines to assist each school board. Each school board shall establish uniform criteria for dismissal and adopt written policies and rules to effectuate the purposes of sections 121A.40 to 121A.56. The policies shall emphasize preventing dismissals through early detection of problems and shall be designed to address students' inappropriate behavior from recurring. The policies shall recognize the continuing responsibility of the school for the education of the pupil during the dismissal period. The alternative educational services, if the pupil wishes to take advantage of them, must be adequate to allow the pupil to make progress towards meeting the graduation standards adopted under section 120B.02 and help prepare the pupil for readmission.

(b) An area learning center under section 123A.05 may not prohibit an expelled or excluded pupil from enrolling solely because a district expelled or excluded the pupil. The board of the area learning center may use the provisions of the Pupil Fair Dismissal Act to exclude a pupil or to require an admission plan.

(c) Each school district shall develop a policy and report it to the commissioner on the appropriate use of peace officers and crisis teams to remove students who have individualized education plans from school grounds.

### ***121A.56 Application***

Subdivision 1. **Prohibition against discrimination remains in effect.** Sections 121A.40 to 121A.56 shall not be deemed to amend or otherwise affect or change section 363.03, subdivision 5, clause (2).

Subd. 2. **Portions of school program for credit.** Sections 121A.40 to 121A.56 shall apply only to those portions of the school program for which credit is granted.

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# Other Minnesota and U. S. Laws & Rules Related to the Discipline of Students

### ***121A.06 Reports of Dangerous Weapon Incidents at School:***

#### **Subdivision. 1. Definitions.**

As used in this section:

- (1) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;
- (2) "school" has the meaning given it in section 120A.22 subdivision 4; and
- (3) "school zone" has the meaning given it in section 152.01 subdivision 14a, clauses (1) and (3).

#### **Subd. 2. Content of Report.**

School districts must electronically report to the commissioner of education incidents involving the use or possession of a dangerous weapon in school zones. The form must include the following information:

- (1) a description of each incident, including a description of the dangerous weapon involved in the incident;
- (2) where, at what time, and under what circumstances the incident occurred;
- (3) information about the offender, other than the offender's name, including the offender's age; whether the offender was a student and, if so, where the offender attended school; and whether the offender was under school expulsion or suspension at the time of the incident;
- (4) information about the victim other than the victim's name, if any, including the victim's age; whether the victim was a student and, if so, where the victim attended school; and if the victim was not a student, whether the victim was employed at the school;
- (5) the cost of the incident to the school and to the victim; and
- (6) the action taken by the school administration to respond to the incident.

The commissioner shall provide an electronic reporting format that allows school districts to provide aggregate data-

#### **Subd. 3. Filing requirements.**

By July 31 of each year, each public school shall report incidents involving the use or possession of a dangerous weapon in school zones to the commissioner. The reports must be submitted using the electronic reporting system developed by the commissioner under subdivision 2. The commissioner shall compile the information it receives from the schools and report it annually to the commissioner of public safety and the legislature.

### ***120A.20 Admission to public school***

Subdivision 1. **Age limitations; pupils.** All schools supported in whole or in part by state funds are public schools. Admission to a public school is free to any person who resides within the district that operates the school, who is under 21 years of age, and who satisfies the minimum age requirements imposed by this section. Notwithstanding the provisions of any law to the contrary, the conduct of all students under 21 years of age attending a public secondary school is governed by a single set of reasonable rules and regulations promulgated by the school board. No person shall be admitted to any public school (1) as a kindergarten pupil, unless the pupil is at least five years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences; or (2) as a 1st grade student, unless the pupil is at least six years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences or has completed kindergarten; except that any school board may establish a policy for admission of selected pupils at an earlier age.

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### **Subd. 2. Education and residence of homeless.**

(a) Notwithstanding subdivision 1, a district must not deny free admission to a homeless person of school age solely because the district cannot determine that the person is a resident of the district.

(b) The school district of residence for a homeless person of school age shall be the school district in which the homeless shelter or other program, center, or facility assisting the homeless person is located. The educational services a school district provides to a homeless person must allow the person to work toward meeting the graduation standards under section 120B.02 .

**Subd. 3. Pupils, at least 21 years of age.** In addition to those admitted under subdivision 1, admission to a public secondary school is free to a person who is eligible under this subdivision. In order to be eligible, a person must be:

- (1) at least 21 years of age;
- (2) a resident of the district where the secondary school is located; and
- (3) eligible under section 124D.68, subdivision 2.

Free admission is limited to two school years or the equivalent, or until the pupil completes the courses required to graduate, whichever is less. A district that admits a person to school under this section must have a reasonable expectation that the person can obtain a diploma within two years.

### ***120A.22 Subd. 3 (e) Process to remove a student suspected of not meeting residency requirements.***

If a district suspects that a student does not meet the residency requirements of the school district in which the student is attending school, the student may be removed from the school only after the district sends the student's parents written notice of the district's suspicion, including the facts upon which the suspicion is based, and an opportunity to provide documentary evidence of residency in person to the superintendent or designee, or, at the option of the parents, by sending the documentary evidence to the superintendent or a designee, who will then make a determination as to the residency status

### ***120A.22, Subdivision 12 Legitimate exemptions from school attendance.***

A parent, guardian, or other person having control of a child may apply to a school district to have the child excused from attendance for the whole or any part of the time school is in session during any school year. Application may be made to any member of the board, a truant officer, a principal, or the superintendent. The school district may state in its school attendance policy that it may ask the student's parent or legal guardian to verify in writing the reason for the child's absence from school. The board of the district in which the child resides may approve the application upon the following being demonstrated to the satisfaction of that board:

(1) that the child's bodily or mental condition is such as to prevent attendance at school or application to study for the period required which includes:

- (i) child illness, medical, dental, orthodontic, or counseling appointments;
- (ii) family emergencies;
- (iii) the death or serious illness or funeral of an immediate family member;
- (iv) active duty in any military branch of the United States; or
- (v) other exemptions included in the district's school attendance policy;

(2) that the child has already completed state and district standards required for graduation from high school; or

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(3) that it is the wish of the parent, guardian, or other person having control of the child, that the child attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction conducted and maintained by some church, or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof. This school for religious instruction must be conducted and maintained in a place other than a public school building, and it must not, in whole or in part, be conducted and maintained at public expense. However, a child may be absent from school on such days as the child attends upon instruction according to the ordinances of some church.

### **121A.22 Administration of drugs and medicine**

Subdivision 5. **Children with a disability.** For drugs or medicine used by children with a disability, administration may be as provided in the individual education plan.<sup>2</sup>

### **125A.091 Subd. 5(b) Procedures for decisions**

A parent, after consulting with health care, education, or other professional providers, may agree or disagree to provide the parent's child with sympathomimetic medications unless section 144.344 applies.

### **121A.575 Alternatives to pupil suspension**

Notwithstanding any law to the contrary and in accordance with sections 121A.40 to 121A.56, after a school administration notifies a pupil of the grounds for suspension, the school administration may, instead of imposing the suspension, do one or more of the following:

- (1) strongly encourage a parent or guardian of the pupil to attend school with the pupil for one day;
- (2) assign the pupil to attend school on Saturday as supervised by the principal or the principal's designee; and
- (3) petition the juvenile court that the student is in need of services under chapter 260C.

### **121A.58 Corporal punishment.**

Subdivision 1. **Definition.** For the purpose of this section, "corporal punishment" means conduct involving:

- (1) hitting or spanking a person with or without an object; or
- (2) unreasonable physical force that causes bodily harm or substantial emotional harm.

Subd. 2. **Corporal punishment not allowed.** An employee or agent of a district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.

Subd. 3. **Violation.** Conduct that violates subdivision 2 is not a crime under section 645.241, but may be a crime under chapter 609 if the conduct violates a provision of chapter 609.

### **121A.582 Student Discipline; Reasonable Force**

#### **Subdivision 1. Reasonable Force Standard.**

(a) A teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

(b) A school employee, school bus driver, or other agent of a district, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

<sup>2</sup> See: Minn. Stat. § 125A.09

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(c) Paragraphs (a) and (b) do not authorize conduct prohibited under sections 121A.58 and 121A.67.

### Subd. 2. **Civil Liability.**

(a) A teacher or school principal who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a civil action for damages under section 123B.25.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a civil action for damages under section 123B.25.

### Subd. 3. **Criminal Prosecution.**

(a) A teacher or school principal who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a criminal prosecution under section 609.06, subdivision 1.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a criminal prosecution under section 609.06, subdivision 1.

Subd. 4. **Supplementary Rights and Defenses.** Any right or defense in this section is supplementary to those specified in section 121A.58, 121A.67, 123B.25, or 609.06, subdivision 1.

### **124D.03 Enrollment Options Program**

#### Subdivision 1. **Establishment.**

(a) An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations in this section.

(b) A district may refuse to allow a pupil who is expelled under section 121A.45 to enroll during the term of the expulsion if the student was expelled for:

(1) possessing a dangerous weapon, as defined by United States Code, title 18, section 930, paragraph (g)(2), at school or a school function;

(2) possessing or using an illegal drug at school or a school function;

(3) selling or soliciting the sale of a controlled substance while at school or a school function;

or

(4) committing a third-degree assault as described in section 609.223, subdivision 1.

### **121A.60 Definitions**

Subdivision 1. **Removal from class.** "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a pupil from attending a class or activity period for a period of time not to exceed five days, pursuant to procedures established in the school district discipline policy adopted by the school board pursuant to section 121A.61.

Subd. 2. **Class period.** "Class period" or "activity period" means a period of time as defined in the district's written discipline policy.

Subd. 3. **School site mediation board.** "School site mediation board" means a board representative of parents of students in the building, staff, and students that shall have the responsibilities as defined in section 121A.62. The principal or other person having general control and supervision of the school, shall serve as an ex officio member of the board.

Subd. 4. **School-based ombudsperson.** "School-based ombudsperson" means an administrator, a teacher, a parent, or a student representative who shall have the responsibilities as outlined in section 121A.63.

### **121A.61 Discipline and removal of students from class**

Subdivision 1. **Required policy.** Each school board must adopt a written districtwide school discipline policy which includes written rules of conduct for students, minimum consequences for violations of the rules, and grounds and procedures for removal of a student from class. The policy must be developed in consultation with administrators, teachers, employees, pupils,

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**Note: For an official version, please contact the Revisor of Statutes.**

parents, community members, law enforcement agencies, county attorney offices, social service agencies, and such other individuals or organizations as the board determines appropriate. A school site council may adopt additional provisions to the policy subject to the approval of the school board.

Subd. 2. **Grounds for removal from class.** The policy must establish the various grounds for which a student may be removed from a class in the district for a period of time under the procedures specified in the policy. The policy must include a procedure for notifying and meeting with a student's parent or guardian to discuss the problem that is causing the student to be removed from class after the student has been removed from class more than ten times in one school year. The grounds in the policy must include at least the following provisions as well as other grounds determined appropriate by the board:

(a) willful conduct that significantly disrupts the rights of others to an education, including conduct that interferes with a teacher's ability to teach or communicate effectively with students in a class or with the ability of other students to learn;

(b) willful conduct that endangers surrounding persons, including school district employees, the student or other students, or the property of the school; and

(c) willful violation of any rule of conduct specified in the discipline policy adopted by the board.

Subd. 3. **Policy components.** The policy must include at least the following components:

(a) rules governing student conduct and procedures for informing students of the rules;

(b) the grounds for removal of a student from a class;

(c) the authority of the classroom teacher to remove students from the classroom pursuant to procedures and rules established in the district's policy;

(d) the procedures for removal of a student from a class by a teacher, school administrator, or other school district employee;

(e) the period of time for which a student may be removed from a class, which may not exceed five class periods for a violation of a rule of conduct;

(f) provisions relating to the responsibility for and custody of a student removed from a class;

(g) the procedures for return of a student to the specified class from which the student has been removed;

(h) the procedures for notifying a student and the student's parents or guardian of violations of the rules of conduct and of resulting disciplinary actions;

(i) any procedures determined appropriate for encouraging early involvement of parents or guardians in attempts to improve a student's behavior;

(j) any procedures determined appropriate for encouraging early detection of behavioral problems;

(k) any procedures determined appropriate for referring a student in need of special education services to those services;

(l) the procedures for consideration of whether there is a need for a further assessment or of whether there is a need for a review of the adequacy of a current individual education plan of a student with a disability who is removed from class;

(m) procedures for detecting and addressing chemical abuse problems of a student while on the school premises;

(n) the minimum consequences for violations of the code of conduct;

(o) procedures for immediate and appropriate interventions tied to violations of the code;

(p) a provision that states that a teacher, school employee, school bus driver, or other agent of a district may use reasonable force in compliance with section 121A.582 and other laws; and

(q) an agreement regarding procedures to coordinate crisis services to the extent funds are available with the county board responsible for implementing sections 245.487 to 245.4888 for students with a serious emotional disturbance or other students who have an individualized educational plan whose behavior may be addressed by crisis intervention.

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### **121A.62 School site mediation board**

Subdivision 1. **Board allowed.** A school district or school site council may establish a school site mediation board. The board must consist of equal numbers of staff and parents and, in the case of secondary schools, student representatives. Members shall be representative of the school community and must be selected by a method as determined in the district's discipline policy.

Subd. 2. **Purposes and duties.** The board must mediate issues in dispute at the school site related to the implementation of district and school site codes of conduct under sections 121A.60 to 121A.64, and the application of the codes to a student.

### **121A.63 Ombudsperson service**

A school district or school site council may establish an ombudsperson service for students, parents, and staff. The service must consist of an administrator, a student, a parent, and a teacher. The school site must notify students, parents, and staff of the availability of the service. The service must provide advocacy for enforcement of the codes of conduct and the procedures to remediate disputes related to implementation of the code of conduct and the goals of the school in maintaining an orderly learning environment for all students.

### **121A.64 Notification; teachers' legitimate educational interest**

(a) A classroom teacher has a legitimate educational interest in knowing which students placed in the teacher's classroom have a history of violent behavior and must be notified before such students are placed in the teacher's classroom.

(b) Representatives of the school board and the exclusive representative of the teachers shall discuss issues related to the model policy on student records adopted under Laws 1999, chapter 241, article 9, section 50, and any modifications adopted under this act for notifying classroom teachers and other school district employees having a legitimate educational interest in knowing about students with a history of violent behavior placed in classrooms. The representatives of the school board and the exclusive representative of the teachers also may discuss the need for intervention services or conflict resolution or training for staff related to placing students with a history of violent behavior in teachers' classrooms.

### **121A.65 Review of policy**

The principal or other person having general control and supervision of the school, and representatives of parents, students, and staff in a school building shall confer at least annually to review the discipline policy and to assess whether the policy has been enforced. A school board must conduct an annual review of the districtwide discipline policy.

### **121A.66 Definitions**

Subdivision 1. **Application.** For the purposes of providing instruction to children with a disability under sections 125A.03 to 125A.24, 125A.26 to 125A.48, 125A.65, this section, and section 121A.67, the following terms have the meanings given them.

Subd. 2. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus.

Subd. 3. **Aversive stimulus.** "Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

Subd. 4. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the person would otherwise receive.

Subd. 5. **Emergency.** "Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury or to prevent serious property damage.

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**Note: For an official version, please contact the Revisor of Statutes.**

Subd. 6 **Positive behavioral interventions and supports.** "Positive behavioral interventions and supports" means those strategies used to improve the school environment and teach pupils skills likely to increase pupil ability to exhibit appropriate behaviors.

Subd. 7. **Time-out.** "Time-out" means:

(1) a contingent observation, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate for a period of time, but to observe the activity and listen to the discussion from a time-out area within the same setting;

(2) an exclusionary time-out, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate in or observe the classroom activity, but to go to another area from which the pupil may leave; or

(3) a locked time-out, which is a regulated intervention, and involves involuntarily removing the pupil from the school activity during the school day and placing the pupil in a specially designed and continuously supervised isolation room that the pupil is prevented from leaving.

### **121A.67 Aversive and deprivation procedures.**

Subdivision 1. The commissioner, after consultation with interested parent organizations and advocacy groups, the Minnesota Administrators for Special Education, the Minnesota Association of School Administrators, Education Minnesota, the Minnesota School Boards Association, the Minnesota Police Officers Association, a representative of a bargaining unit that represents paraprofessionals, the Elementary School Principals Association, and the Secondary School Principals Association, must amend rules governing the use of aversive and deprivation procedures by school district employees or persons under contract with a school district. The rules must:

(1) promote the use of positive behavioral interventions and supports and must not encourage or require the use of aversive or deprivation procedures;

(2) require that planned application of aversive and deprivation procedures only be instituted after completing a functional behavior assessment and developing a behavior intervention plan that is included in or maintained with the individual education plan;

(3) require educational personnel to notify a parent or guardian of a pupil with an individual education plan on the same day aversive or deprivation procedures are used in an emergency or in writing within two school days if district personnel are unable to provide same-day notice;

(4) establish health and safety standards for the use of locked time-out procedures that require a safe environment, continuous monitoring of the child, ventilation, adequate space, a locking mechanism that disengages automatically when not continuously engaged by school personnel, and full compliance with state and local fire and building codes, including state rules on time-out rooms;

(5) contain a list of prohibited procedures;

(6) consolidate and clarify provisions related to behavior intervention plans;

(7) require school districts to register with the commissioner any room used for locked time-out, which the commissioner must monitor by making announced and unannounced on-site visits;

(8) place a student in locked time-out only if the intervention is:

(i) part of the comprehensive behavior intervention plan that is included in or maintained with the student's individual education plan, and the plan uses positive behavioral interventions and supports, and data support its continued use;

or

(ii) used in an emergency for the duration of the emergency only; and

(9) require a providing school district or cooperative to establish an oversight committee composed of at least one member with training in behavioral analysis and other appropriate education personnel to annually review aggregate data regarding the use of aversive and deprivation procedures.

Subd. 2. **Removal by peace officer.**

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**Note: For an official version, please contact the Revisor of Statutes.**

If a pupil who has an individual education plan is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the pupil's individual education program team must meet to determine if the pupil's individual education plan is adequate or if additional evaluation is needed.

### **3525.2900 Development and Content of Individual Education Plan**

(Note: This section has been condensed to make it more readable. Please consult the original text of Minnesota Rule 3525.2900 for a complete version.)

#### **Subp. 5. A. Regulated Interventions.**

(1) **Conditional Procedures.** Conditional procedures may only be included as part of a pupil's IEP or in an emergency situation according to part 3525.0200. In order to utilize a conditional procedure, the IEP team must:

(a) identify the frequency and severity of target behaviors for which the conditional procedure is being considered;

(b) identify at least two positive interventions implemented and the effectiveness of each; and

(c) design and implement regulated regulated interventions based on present levels of performance, needs, goals and objectives, and document in the IEP.

(2) **Prohibited Procedures.** Prohibited procedures are interventions that are prohibited from use in schools by school district employees, contracted personnel, and volunteers. The procedures or actions listed in subitems (a) to (i) are prohibited:

(a) corporal punishment as defined in Minnesota Statutes, section 121A.58;

(b) requiring a pupil to assume and maintain a specified physical position, activity, or posture that induces physical pain as an aversive procedure;

(c) presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus;

(d) use of noxious smell, taste, substance, or spray as an aversive stimulus;

(e) denying or restricting a pupil's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning except temporarily when the pupil is perceived to be destroying or damaging equipment or devices;

(f) faradic skin shock;

(g) totally or partially restricting a pupil's auditory or visual sense not to include study carrels when used as an academic intervention;

(h) withholding regularly scheduled meals or water; and

(i) denying a pupil access to toilet facilities.

**B. Behavioral Interventions not covered in an IEP.** All behavioral interventions not covered in the IEP must be consistent with the district's discipline policy. Continued and repeated use of any element of a district's discipline policy must be reviewed in the development of the individual pupil's IEP.

**C. Emergency Intervention.** If an emergency intervention is used twice in a month or a pupil's pattern of behavior is emerging that interferes with the achievement of the pupil's educational goals and objectives, a team meeting must be called to determine if the pupil's IEP is adequate, if additional assessment is needed, and, if necessary, to amend the IEP. Districts may use conditional procedures in emergencies until the IEP team meets, provided the emergency measures are deemed necessary by the district to protect the individual pupil or others from harm. The IEP team shall meet as soon as possible, but no later than five school days after emergency procedures have commenced. District administration and parents must be notified immediately when a regulated procedure is used in an emergency situation.

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**Note: For an official version, please contact the Revisor of Statutes.**

D. **Time-out.** Time-out procedures that seclude a student in a specially designated isolation room or similar space must meet the following conditions:

- (1) specific criteria for returning the pupil to the routine activities and regular education environment;
- (2) an evaluation to determine whether seclusion is contraindicated by psychological or physical health reasons;
- (3) provisions for the pupil to be continuously monitored by trained staff;
- (4) adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes;
- (5) documentation of the length of time spent in each time-out procedure and the number of occurrences each day;
- (6) a safe environment for the pupil where all fixtures are tamper proof, walls and floors are properly covered, and control switches are located immediately outside the room;
- (7) an observation window or other device to permit continuous monitoring of the pupil;
- (8) a space that is at least five feet by six feet or substantially equivalent to these dimensions and be large enough to allow the pupil to stand, to stretch the pupil's arms, and to lie down;
- (9) be well-lighted, well-ventilated, adequately heated, and clean; and
- (10) all applicable fire and safety codes.

E. **Withdrawal of Consent.** A parent has the right to withdraw consent for a behavior intervention plan at any time by notifying the program administrator or designee and the district must stop the procedure immediately. After parental consent is withdrawn and the procedure is stopped, the school must send written acknowledgment to the parent and request parental signature. If a parent's signature to withdraw consent cannot be obtained, the district must document its efforts to communicate and obtain the signature. Parents must be contacted within three school days to determine the need to convene the IEP team to consider a change in program or placement.

### **121A.72 School locker policy**

Subdivision 1. **Policy.** It is the policy of the state of Minnesota that:

School lockers are the property of the school district. At no time does the school district relinquish its exclusive control of lockers provided for the convenience of students. Inspection of the interior of lockers may be conducted by school authorities for any reason at any time, without notice, without student consent, and without a search warrant. The personal possessions of students within a school locker may be searched only when school authorities have a reasonable suspicion that the search will uncover evidence of a violation of law or school rules. As soon as practicable after the search of a student's personal possessions, the school authorities must provide notice of the search to students whose lockers were searched unless disclosure would impede an ongoing investigation by police or school officials.

Subd. 2. **Dissemination.** The locker policy must be disseminated to parents and students in the way that other policies of general application to students are disseminated. A copy of the policy must be provided to a student the first time that the student is given the use of a locker.

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# No Child Left Behind Act 2001 (NCLB)

## No Child Left Behind Act 2001 (NCLB)

### Title IV – 21<sup>st</sup> Century Schools

#### Part A – Safe and Drug-free Schools and Communities

##### Subp. 4 General Provisions

###### SEC. 4155. TRANSFER OF SCHOOL DISCIPLINARY RECORDS.

(a) NONAPPLICATION OF PROVISIONS- This section shall not apply to any disciplinary records with respect to a suspension or expulsion that are transferred from a private, parochial or other nonpublic school, person, institution, or other entity, that provides education below the college level.

(b) DISCIPLINARY RECORDS- In accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), not later than 2 years after the date of enactment of this part, each State receiving Federal funds under this Act shall provide an assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.

##### *Applicable state statutes:*

###### **Minn. Stat. § 120A.22 Compulsory Instruction**

Subd. 7. **Education records.** (a) A district from which a student is transferring must transmit the student's educational records, within ten business days of a request, to the district in which the student is enrolling. Districts must make reasonable efforts to determine the district in which a transferring student is next enrolling in order to comply with this subdivision.

(b) A school district that transmits a student's educational records to another school district or other educational entity to which the student is transferring must include in the transmitted records information about disciplinary action taken as a result of any incident in which the student possessed or used a dangerous weapon.

(c) Notwithstanding section 138.17, a principal or chief administrative officer must remove from a student's educational record and destroy a probable cause notice received under section 260B.171, subdivision 5, or paragraph (d), if one year has elapsed since the date of the notice and the principal or chief administrative officer has not received a disposition or court order related to the offense described in the notice. This paragraph does not apply if the student no longer attends the school when this one-year period expires.

(d) A principal or chief administrative officer who receives a probable cause notice under section 260B.171, subdivision 5, or a disposition or court order, must include a copy of that data in the student's educational records if they are transmitted to another school, unless the data are required to be destroyed under paragraph (c) or section 121A.75.

##### **NCLB Title IX – General Provisions**

##### **Part E<sup>3</sup> - Uniform Provisions**

<sup>3</sup> This provision will be codified at 20 U.S.C. § 7912.

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**Note: For an official version, please contact the Revisor of Statutes.**

### Subpart 2 – Other Provisions

#### SEC. 9532. UNSAFE SCHOOL CHOICE OPTION.

(a) UNSAFE SCHOOL CHOICE POLICY- Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) CERTIFICATION- As a condition of receiving funds under this Act, a State shall certify in writing to the Secretary that the State is in compliance with this section.

#### ***Additional state statutes:***

#### **Minn. Stat. § 609.02 Definitions.**

Subd. 6. **Dangerous weapon.** "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.

As used in this subdivision, "flammable liquid" means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit but does not include intoxicating liquor as defined in section 340A.101. As used in this subdivision, "combustible liquid" is a liquid having a flash point at or above 100 degrees Fahrenheit.

#### **Minn. Stat. § 609.223 Assault in the third degree.**

Subdivision 1. **Substantial bodily harm.** Whoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

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# Minnesota Laws Related to Harassment and Violence

### ***121A.03 Model policy***

Subdivision 1. **Model policy.** The commissioner shall maintain and make available to school boards a model sexual, religious, and racial harassment and violence policy. The model policy shall address the requirements of subdivision 2, and may encourage violence prevention and character development education programs, consistent with Minnesota Statute § 120B.225, Subd. 1, to prevent and reduce policy violations.

Subd. 2. **Sexual, religious, and racial harassment and violence policy.** A school board must adopt a written sexual, religious, and racial harassment and sexual, religious, and racial violence policy that conforms with sections 363.01 to 363.15. The policy shall apply to pupils, teachers, administrators, and other school personnel, include reporting procedures, and set forth disciplinary actions that will be taken for violation of the policy. Disciplinary actions must conform with collective bargaining agreements and sections 121A.41 to 121A.56. The policy must be conspicuously posted throughout each school building, given to each district employee and independent contractor at the time of entering into the person's employment contract, and included in each school's student handbook on school policies. Each school must develop a process for discussing the school's sexual, religious, and racial harassment and violence policy with students and school employees.

### ***121A.0695 School board policy, prohibiting intimidation and bullying.***

Each school board shall adopt a written policy prohibiting intimidation and bullying of any student.

[EFFECTIVE DATE.] This section is effective for the 2005-06 school year and later.

### ***121A.05 Policy to refer firearms possessor***

Each school board must have a policy requiring the appropriate school official to, as soon as practicable, refer to the criminal justice or juvenile delinquency system, as appropriate, any pupil who brings a firearm to school unlawfully.

### ***121A.035 Crisis Management Policy***

Subdivision 1. **Model policy.** The commissioner shall maintain and make available to school boards and charter schools a model crisis management policy that includes, among other items, school lock-down and tornado drills, consistent with subdivision 2, and school fire drills under section 299F.30.

Subdivision 2. **School district and charter school policy.** A school board and a charter school must adopt a crisis management policy to address potential violent crisis situations in the district or charter school. The policy must be developed cooperatively with administrators, teachers, employees, students, parents, community members, law enforcement agencies, other emergency management officials, county attorney offices, social service agencies, emergency medical responders, and any other appropriate individuals or organizations. The policy must include at least five school lock-down drills, five school fire drills consistent with section 299F.30, and one tornado drill.

**EFFECTIVE DATE.** This section is effective for the 2006-2007 school year and later.

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### **121A.037 School Safety Drills**

Private schools and educational institutions not subject to section 121A.035 must have at least five school lock-down drills, five school fire drills consistent with section 299F.30, and one tornado drill.

**EFFECTIVE DATE.** This section is effective for the 2006-2007 school year.

### **121A.69 Hazing policy**

#### Subdivision 1. **Definitions.**

(a) "Hazing" means committing an act against a student, or coercing a student into committing an act, that creates a substantial risk of harm to a person in order for the student to be initiated into or affiliated with a student organization.

(b) "Student organization" means a group, club, or organization having students as its primary members or participants.

Subd. 2 **Model policy.** The commissioner of education shall maintain and make available to school boards a model policy on student or staff hazing that addresses the requirements of subdivision 3.

Subd. 3 **School board policy.** Each school board shall adopt a written policy governing student or staff hazing. The policy must apply to student behavior that occurs on or off school property and during and after school hours. The policy must include reporting procedures and disciplinary consequences for violating the policy. Disciplinary consequences must be sufficiently severe to deter violations and appropriately discipline prohibited behavior. Disciplinary consequences must conform with section 121A.41 to 121A.56. Each school must include the policy in the student handbook on school policies.

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# Federal Register Final Regulations Pertaining to Students with Disabilities and Discipline

**NOTE: The Federal Regulations for IDEA 2004 are not final.  
The following regulations are from 1999.**

### ***300.121 Free appropriate public education (FAPE).***

(a) *General.* Each State must have on file with the Secretary information that shows that, subject to 34 C.F.R. § 300.122, the State has in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school.

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(d) *FAPE for children suspended or expelled from school.*

(1) A public agency need not provide services during periods of removal under § 34 C.F.R. 300.520(a)(1) 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 services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must -

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is -

(A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under 34 C.F.R. § 300.519(b) (34 C.F.R. § 300.520 ((a)(1))); or

(B) For behavior that is not a manifestation of the child's disability, consistent with 34 C.F.R. § 300.524; and

(ii) Provide services consistent with 34 C.F.R. § 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is -

(A) For drug or weapons offenses under 34 C.F.R. § 300.520(a)(2); or

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with 34 C.F.R. § 300.521.

(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under 34 C.F.R. § 300.519 (34 C.F.R. § 300.520(a)(1)).

(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with 34 C.F.R. § 300.524.

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### ***300.504(a) Procedural safeguards notice.***

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents at a minimum:

- (1) Upon initial referral for evaluation;
- (2) Upon each notification of an IEP meeting;
- (3) Upon reevaluation of the child; and
- (4) Upon receipt of a request for due process under 34 C.F.R. § 300.507.

### ***300.514 Child's status during proceedings.***

(a) Except as provided in 34 C.F.R. § 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under 34 C.F.R. § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section

### ***300.519 Change of placement for disciplinary removals.***

For purposes of removals of a child with a disability from the child's current educational placement under 34 C.F.R. §§ 300.520-.529, a change of placement occurs if-

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child is subjected to a series of removals that constitute a pattern because they cumulate 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 child is removed, and the proximity of the removals to one another. (Authority: 20 U.S.C. §1415(k))

### ***300.520 Authority of school personnel.***

(a) School personnel may order-

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and 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 34 C.F.R. § 300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 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 34 C.F.R. § 300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if-

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency<sup>4</sup>; or

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<sup>4</sup> 64 Fed. Reg. 12619. "The [Federal] Department's opinion is that this language also covers instances in which the child is found to have a weapon at school that he or she obtained while at school."

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(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under 34 C.F.R. §300.519, including the action described in paragraph (a)(2) of this section-

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under 34 C.F.R. § 300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) 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 U.S.C. § 812(c)).

(2) *Illegal drug*-

(i) Means a controlled substance; but

(ii) Does not include a 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) *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 U.S.C. §1415(k)(1), (10))

### **300.521 Authority of hearing officer.**

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing-

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

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

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

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of 34 C.F.R. § 300.522(b).

(e) As used in this section, the term *substantial evidence* means beyond a preponderance of the evidence. (Authority: 20 U.S.C. §1415(k)(2), (10))

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### **300.522 Determination of setting.**

(a) *General.* The interim alternative educational setting referred to in 34 C.F.R. § 300.520(a)(2) must be determined by the IEP team.

(b) *Additional requirements.* Any interim alternative educational setting in which a child is placed under 34 C.F.R. § 300.520(a)(2) or § 300.521 must-

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

(2) Include services and modifications to address the behavior described in 34 C.F.R. § 300.520(a)(2) or § 300.521, that are designed to prevent the behavior from recurring. (Authority: 20 U.S.C. §1415(k)(3))

### **300.523 Manifestation determination review.**

(a) *General.* If an action is contemplated regarding behavior described in 34 C.F.R. § 300.520(a)(2) or § 300.521, or involving a removal that constitutes a change of placement under 34 C.F.R. § 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children-

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in 34 C.F.R. § 300.504; and

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

(b) *Individual's to carry out review.* A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) *Conduct of review.* In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel-

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including -

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

(ii) Observations of the child; and

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

(2) Then determine that -

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

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

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

(d) *Decision.* If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under 34 C.F.R. § 300.520(b).

(f) *Deficiencies in IEP or placement.* If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. (Authority: 20 U.S.C. §1415(k)(4))

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### ***300.524 Determination that behavior was not manifestation of disability.***

(a) *General.* If the result of the review described in 34 C.F.R. § 300.523 is a determination, consistent with 34 C.F.R. § 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in 34 C.F.R. § 300.121(d).

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Except as provided in 34 C.F.R. § 300.526, 34 C.F.R. § 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in 34 C.F.R. § 300.523, that the behavior of the child was not a manifestation of the child's disability. (Authority: 20 U.S.C. §1415(k)(5))

### ***300.525 Parent appeal.***

(a) *General.*

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under 34 C.F.R. §§ 300.520-528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) *Review of decision.*

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of 34 C.F.R. § 300.523(d).

(2) In reviewing a decision under 34 C.F.R. § 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in 34 C.F.R. § 300.521. (Authority: 20 U.S.C. §1415(k)(6))

### ***300.526 Placement during appeals.***

(a) *General.* If a parent requests a hearing or an appeal regarding a disciplinary action described in 34 C.F.R. § 300.520(a)(2) or § 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 34 C.F.R. § 300.520(a)(2) or § 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) *Current placement.* If a child is placed in an interim alternative educational setting pursuant to 34 C.F.R. § 300.520(a)(2) or § 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) *Expedited hearing.*

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in 34 C.F.R. § 300.521.

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(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary. (Authority: 20 U.S.C. §1415(k)(7))

### **300.527 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 any rule or code of conduct of the local educational agency, including any behavior described in 34 C.F.R. § 300.520 or § 300.521, may assert any of the protections provided for in this part if the LEA 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.* An LEA must be deemed to have knowledge that a child is a child with a disability if-

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with 34 C.F.R. § 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to 34 C.F.R. §§ 300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency-

(1) Either-

(i) Conducted an evaluation under 34 C.F.R. §§ 300.530-.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with 34 C.F.R. § 300.503.

(d) *Conditions that apply if no basis of knowledge.* (1) *General.* If an LEA 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 same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) *Limitations.*

(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 34 C.F.R. § 300.520 or § 300.521, 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 shall provide special education and related services in accordance with the provisions of this part, including the requirements of 34 C.F.R. §§ 300.520-.529 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. §1415(k)(8))

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### ***300.528 Expedited due process hearings.***

(a) Expedited due process hearings under 34 C.F.R. §§ 300.521-.526 must-

(1) Meet the requirements of 34 C.F.R. § 300.509, except that a State may provide that the time periods identified in 34 C.F.R. § 300.509(a)(3) and 34 C.F.R. § 300.509(b) for purposes of expedited due process hearings under 34 C.F.R. §§ 300.521-.526 are not less than two business days; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of 34 C.F.R. § 300.508.

(b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under 34 C.F.R. §§ 300.521-.526 than it has established for due process hearings under 34 C.F.R. § 300.507.

(d) The decisions on expedited due process hearings are appealable consistent with 34 C.F.R. § 300.510. (Authority: 20 U.S.C. §1415 (K)(2), (6), (7))

### ***300.529 Referral to and action by law enforcement and judicial authorities.***

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent 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)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it 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. (Authority: 20 U.S.C. §1415 (k)(9))

### **Relevant Guidance from the U.S. Office of Special Education Programs (OSEP) regarding in-school suspensions.**

**In-school suspension.** An in-school suspension would not be considered part of the days of suspension addressed in paragraph (a) of this section as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified on his or her IEP and continue to participate with nondisabled children to the extent they would have in their current placement. Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement under §300.519. IDEA See 64 Fed. Reg. 12619 (March 12, 1999)(discussion section for 34 C.F.R. § 300.520).

**Bus suspension.** 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. If the bus transportation is a part of the child's IEP, a bus suspension would be treated as a suspension under §300.520(below) unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where all other services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension would not be a suspension under §300.520. In those cases, the child and his or her parents would have the same obligation to get to and from school as a nondisabled child who had been suspended from the bus. However, public agencies should attend to whether the behavior on the bus is similar to the behavior in a classroom that is addressed by an IEP and whether bus behavior should be addressed in the IEP or behavioral intervention plan for the child. IDEA. See **64 Fed. Reg. 12619 (March 12, 1999)** (discussion section for 34 C.F.R. § 300.520).

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### ***United States Code, title 18, section 921***

"Firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

Such term does not include an antique firearm.

"Destructive device" means (A) any explosive, incendiary, or poison gas- (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses; (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter, and; (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

### ***United States Code, title 18, section 930, subsection (g), paragraph (2)***

(2) The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

### ***United States Code, title 21, section 812: Schedules of controlled substances***

#### **(a) Establishment**

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

#### **(b) Placement on schedules; findings required**

Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

##### **(1) Schedule I. -**

- (A) The drug or other substance has a high potential for abuse.**
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.**
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.**

##### **(2) Schedule II. -**

- (A) The drug or other substance has a high potential for abuse.**
- (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.**

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- (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.
- (3) Schedule III. -
  - (A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
  - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
  - (C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
- (4) Schedule IV. -
  - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.
  - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
  - (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.
- (5) Schedule V. -
  - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.
  - (B) The drug or other substance has a currently accepted medical use in treatment in the United States.
  - (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.
- (c) Initial schedules of controlled substances

### SCHEDULE I

- (a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation: (1) Acetylmethadol. (2) Allylprodine. (3) Alphacetylmethadol. (4) Alphameprodine. (5) Alphamethadol. (6) Benzethidine. (7) Betacetylmethadol. (8) Betameprodine. (9) Betamethadol. (10) Betaprodine. (11) Clonitazene. (12) Dextromoramide. (13) Dextrorphan. (14) Diampromide. (15) Diethylthiambutene. (16) Dimenoxadol. (17) Dimepheptanol. (18) Dimethylthiambutene. (19) Dioxaphetyl butyrate. (20) Dipipanone. (21) Ethylmethylthiambutene. (22) Etonitazene. (23) Etoxeridine. (24) Furethidine. (25) Hydroxypethidine. (26) Ketobemidone. (27) Levomoramide. (28) Levophenacymorphan. (29) Morpheridine. (30) Noracymethadol. (31) Norlevorphanol. (32) Normethadone. (33) Norpipanone. (34) Phenadoxone. (35) Phenampromide. (36) Phenomorphan. (37) Phenoperidine. (38) Piritramide. (39) Propheptazine. (40) Properidine. (41) Racemoramide. (42) Trimeperidine.
- (b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salt of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Acetorphine. (2) Acetyldihydrocodeine. (3) Benzylmorphine. (4) Codeine methylbromide. (5) Codeine-N-Oxide. (6) Cyprenorphine. (7) Desomorphine. (8) Dihydromorphine. (9) Etorphine. (10) Heroin. (11) Hydromorphenol. (12) Methyl-desorphine. (13) Methylhydromorphine. (14) Morphine methylbromide. (15) Morphine methylsulfonate. (16) Morphine-N-Oxide. (17) Myrophine. (18) Nicocodeine. (19) Nicomorphine. (20) Normorphine. (21) Pholcodine. (22) Thebacon.
- (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) 3,4-methylenedioxy amphetamine. (2) 5-methoxy-3,4-methylenedioxy amphetamine. (3) 3,4,5-trimethoxy amphetamine. (4) Bufotenine. (5) Diethyltryptamine.

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(6) Dimethyltryptamine. (7) 4-methyl-2,5-dimethoxyamphetamine. (8) Ibogaine. (9) Lysergic acid diethylamide. (10) Marihuana. (11) Mescaline. (12) Peyote. (13) N-ethyl-3-piperidyl benzilate. (14) N-methyl-3-piperidyl benzilate. (15) Psilocybin. (16) Psilocyn. (17) Tetrahydrocannabinols.

### SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate. (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium. (3) Opium poppy and poppy straw. (4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation: (1) Alphaprodine. (2) Anileridine. (3) Bezitramide. (4) Dihydrocodeine. (5) Diphenoxylate. (6) Fentanyl. (7) Isomethadone. (8) Levomethorphan. (9) Levorphanol. (10) Metazocine. (11) Methadone. (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane. (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid. (14) Pethidine. (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine. (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate. (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid. (18) Phenazocine. (19) Piminodine. (20) Racemethorphan. (21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

### SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers. (2) Phenmetrazine and its salts. (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers. (4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system: (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid. (2) Chorhexadol. (3) Glutehimide. (4) Lysergic acid. (5) Lysergic acid amide. (6) Methyprylon. (7) Phencyclidine. (8) Sulfondiethylmethane. (9) Sulfonethylmethane. (10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof: (1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium. (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts. (3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium. (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more

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than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

### SCHEDULE IV

(1) Barbital. (2) Chloral betaine. (3) Chloral hydrate. (4) Ethchlorvynol. (5) Ethinamate. (6) Methohexital. (7) Meprobamate. (8) Methylphenobarbital. (9) Paraldehyde. (10) Petrichloral. (11) Phenobarbital.

### SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone: (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams. (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams. (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams. (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit. (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

## Frequently Asked Questions

**The Question Section will be updated when the Federal Regulations for IDEA 2004 are completed.**

### 1. When must a manifestation determination be conducted?

A manifestation determination must be performed in five situations:

1. At a parent's request following a disciplinary incident;<sup>5</sup>
2. If a student is suspended for five or more consecutive days for a single offense;<sup>6</sup>
3. If a student is suspended for more than ten cumulative days in a school year;<sup>7</sup>
4. When a removal for disciplinary reasons constitutes a change in placement;<sup>8</sup> or
5. Before an exclusion or expulsion.<sup>9</sup>

<sup>5</sup> See: Minn. Stat. § 121A.41, Subd. 10.

<sup>6</sup> See: Minn. Stat. § 121A.41, Subd. 10.

<sup>7</sup> See: Minn. Stat. § 121A.41, Subd. 10.

<sup>8</sup> See: 34 C.F.R. § 300.523.

<sup>9</sup> See: Minn. Stat. § 121A.43.

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### **2. When must a Functional Behavior Assessment (FBA) be developed?**

An IEP team must be convened to develop an FBA plan in two situations, not later than 10 business days after:

1. removing a student for more than 10 cumulative school days in a school year; or
2. removing a student in a manner that constitutes a change of placement as defined by 34 C.F.R. § 300.519.<sup>10</sup>

[Unless an FBA is already completed and a behavioral intervention plan (BIP) is in place. See Question number 4].

### **3. What is the timeline for completing a FBA?**

After securing consent to proceed with the FBA, the district must complete the FBA and convene an IEP team meeting to develop a BIP as soon as practicable but not more than 30 school days after receiving consent.

### **4. What is the district's responsibility when a FBA is already in place?**

An IEP team must be convened to review the FBA plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior, in two situations not later than 10 days after:

1. removing a student for more than 10 cumulative school days in a school year; or
2. removing a student in a manner that constitutes a change of placement as defined by 34 C.F.R. § 300.519.<sup>11</sup>

### **5. What is the district's responsibility once the FBA is completed?**

As soon as practicable after developing the FBA and completing the assessments required by the plan, the district shall convene an IEP meeting to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.<sup>12</sup>

### **6. What must happen when a student is removed for more than ten cumulative school days in a school year?**

Three things must occur:

1. A manifestation determination must be made.<sup>13</sup>
2. The school must provide the services deemed necessary by school personnel in consultation with the student's special education teacher to enable the student to appropriately progress in the general curriculum and advance toward achieving the goals set out in the student's IEP.<sup>14</sup>
3. If an FBA has not been completed, the IEP team must convene and develop an FBA plan.<sup>15</sup> If an FBA has been completed, the IEP team must review the plan and modify it as necessary.<sup>16</sup>

### **7. Does suspension from the bus count against the 10 cumulative days of removal? Yes,** if the bus transportation is a part of the student's IEP and the transportation is necessary for the student to obtain access to the location where all other services will be delivered. A bus suspension would be treated as a suspension under 34 C.F.R. § 300.520 unless the school provides the bus service in some other way. If the bus transportation is not a part of the student's IEP, a bus suspension would typically not be a suspension under 34 C.F.R. § 300.520 and would therefore not be included in the 10 day count.<sup>17</sup>

<sup>10</sup> See: 34 C.F.R. § 300.520 (b)(1)(i).

<sup>11</sup> See: 34 C.F.R. § 300.520 (b)(1)(ii).

<sup>12</sup> See: 34 C.F.R. § 300.520 (b)(2).

<sup>13</sup> See: 34 C.F.R. § 300.523 (a)

<sup>14</sup> See: 34 C.F.R. § 300.121 (d)(3)(i).

<sup>15</sup> See: 34 C.F.R. § 300.520 (b)(1)(i).

<sup>16</sup> See: 34 C.F.R. § 300.520 (b)(1)(ii); 34 C.F.R. 300.520 § (c)(1)

<sup>17</sup> See: 34 C.F.R. § 300.520, discussion on page 12619.

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- 8. Does in-school suspension count against the 10 cumulative days of removal?**  
No. An in-school suspension would not be considered a part of the days of removal addressed in paragraph (a) of 34 C.F.R. § 300.520 as long as the student is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified on his or her IEP, and continue to participate with nondisabled students to the extent they would have in their current placement.<sup>18</sup>
- 9. If a student's placement is changed, do we get a new 10 days of removal?**  
No. The ten-day 'clock' is based on the school year, not on the placement of the student. The language of the federal regulations clearly refers to days of removal in a school year.
- 10. If a student changes schools or districts, do we get a new 10 days of removal?**  
No. The ten-day 'clock' is based on the school year, not school of attendance. The federal regulations do not have a provision to reset the ten days because a student moves to a different school or district.
- 11. May a student with a disability be removed from school for one school day or less like a nondisabled student?**  
Yes.
- 12. Do removals or suspensions for part of a school day count as one full day of removal for purposes of the 10 day count?**  
Yes. Portions of a school day that a student had been removed would be included in determining whether the student had been removed for more than 10 cumulative school days or subjected to a change of placement under 34 C.F.R. § 300.519.<sup>19</sup>
- 13. If a student's IEP team determines that his or her conduct was related to his or her disability, may the student still be expelled or excluded?**  
No.
- 14. Do districts have to provide alternative educational services for regular education students that are suspended in excess of five days or expelled?**  
Yes. The school administration shall implement alternative educational services when the suspension exceeds five days, or when the student is expelled.<sup>20</sup>
- 15. Must a district provide alternative educational services to a student over the age of 16 who has been suspended or expelled/excluded from school?**  
Yes, when the suspension is more than five consecutive days or for any expulsion/exclusion.<sup>21</sup>
- 16. May a student who waives his/her right to an expulsion hearing appeal his/her expulsion to the state?**  
Yes. If a student waives his or her right to a hearing, he or she still has the right to appeal the district's subsequent actions to the Commissioner of Education based on the record of the district's action.<sup>22</sup>
- 17. When is the District required to provide a student with a copy of the Pupil Fair Dismissal Act (PFDA)?**  
When a student is facing disciplinary action, for example a suspension or expulsion.<sup>23</sup>

<sup>18</sup> See: 34 C.F.R. § 300.520, discussion on page 12619.

<sup>19</sup> See: 34 C.F.R. § 300.520, discussion on page 12619.

<sup>20</sup> See Minn. Stat. § 121A.41, Subd. 10, and Minn. Stat. § 121A.46, Subd. 4.

<sup>21</sup> See: Minn. Stat. § 121A.41, Subd. 10; and Minn. Stat. § 121A.46, Subd. 4.

<sup>22</sup> See: Minn. Stat. § 121A.49.

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**18. Does the Pupil Fair Dismissal Act apply to private school students?**

No. Under the PFDA, pupil is defined as any student who attends a public elementary or secondary school.<sup>24</sup>

**19. Does the Pupil Fair Dismissal Act apply to pre-kindergarten students?**

Yes, under certain circumstances. The PFDA applies to pupils who are eligible to attend public elementary schools.<sup>25</sup> Under Minnesota law, an elementary school includes pupils ordinarily in pre-kindergarten through grade 6.<sup>26</sup> As a result, it is possible for a pre-kindergarten student enrolled in a public elementary school to be protected by the provisions of the PFDA. In addition, federal regulations protecting students with disabilities extend to a child with a disability receiving services prior to attending kindergarten (for example, a child receiving early childhood special education services.)

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<sup>23</sup> See: Minn. Stat. § 121A.47, Subd. 2(d), and Minn. Stat. § 121A.46, Subd. 3.

<sup>24</sup> See: Minn. Stat. § 121A.41, Subd. 7.

<sup>25</sup> See: Minn. Stat. § 121A.41, Subd. 7.

<sup>26</sup> See: Minn. Stat. § 120A.05, Subd. 9.

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The following table summarizes district obligations under current state law<sup>27</sup> and federal regulation<sup>28</sup>:

	IEP Team Meeting Required	Manifestation Determination Required	Functional Behavioral Assessment Plan Required
Student removed for 1 school day or less (but not suspended)	No*	No*	No*
Student suspended for less than 5 consecutive school days	No*	No*	No*
Student suspended for 5 to 10 consecutive school days	Yes	Yes	No*
Student removed for 10 cumulative school days in a school year or less	No	No	No
Student removed for 11 cumulative school days in a school year or more	Yes	Yes	Yes
Student placed on in-school suspension	No**	No**	No**
Parent requests a manifestation determination following any removal for disciplinary reasons	Yes	Yes	No*
Student suspended from the bus	Depends***	Depends***	Depends***

\*Unless the removal brings the total number of cumulative days this school year that the student has been removed to more than 10, or unless the parent requests a meeting under Minn. Stat. § 121A.41, Subd. 10.

\*\* An in-school suspension would not be considered a part of the days of removal as long as the student is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified on his or her IEP, and continue to participate with non-disabled children to the extent they would have in their current placement.

\*\*\*If bus transportation is a part of the student's IEP, a bus suspension would be treated as a removal unless the school provides transportation in some other way, because that transportation is necessary for the student to obtain access to the location where all other services will be delivered. If bus transportation is not a part of the student's IEP, a bus suspension typically would not be a removal.

<sup>27</sup> See: Minn. Stat. §§ 121A.40 to 121A.56.

<sup>28</sup> See: 34 C.F.R. §§ 300.519 to 300.529.