

DEPARTMENT OF EDUCATION

SUBJECT: Guidelines for the Development, Review & Revision of School District Student Discipline & School Safety Policies

DESCRIPTION: The existing rule, last updated in 2007, must undergo substantial revisions due to new laws passed by the 88th General Assembly. The revisions are listed below:

Section 2.0: The regulatory authority section was revised to reflect the applicable statutory references.

Section 3.0: This section remains unchanged.

Section 4.0: This section was amended to reflect the statutory language of Ark. Code Ann. §§ 6-18-502, 6-18-503, 6-18-504, 6-18-505, 6-18-506, 6-18-507, and 6-18-514.

Section 5.0: The former Section 5.00 was deleted in its entirety. The new Section 5.0 was amended to advise school districts of other applicable laws that may impact school district discipline policies.

Section 6.0: This section was deleted because many provisions in the section are now obsolete.

PUBLIC COMMENT: A public hearing was held on October 25, 2011. The public comment period ended on November 17, 2011. The following comments were submitted to the Department:

Debbie Van Dyke, Special Education Solutions

Comment: In A.C.A 6-18-514 pertaining to the Antibullying Act 907 of 2011, there appears to be no specific amount of time required annually for public school employees for professional development on Antbullying. The regulations simply state, employees must receive professional development in the area of reporting and investigating bullying. Will the specific amount of time required for annual professional development be determined by the Arkansas Department of Education Standards and Assurance Department or Professional Development Department? Could the required annual hours for antibullying professional development be included in A.C.A. 6-18-514?

Response: Comment considered. Neither Ark. Code Ann. § 6-18-514 nor Act 907 of 2011 provide the Arkansas Department of Education or the State Board of Education with the statutory authority to promulgate rules concerning antibullying policies. Moreover, the statute requires training, not a specific amount of professional development.

The proposed effective date is tentatively set for January 2012.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Although Arkansas Code Annotated § 6-11-105 gives the department the general authority to promulgate rules and regulations, Ark. Code Ann. § 6-18-502 (a) gives the department the specific authority to “establish guidelines for the development of school district student discipline policies.”

MNH 12-21-2011

ARKANSAS DEPARTMENT OF EDUCATION
GUIDELINES FOR THE DEVELOPMENT,
REVIEW AND REVISION OF SCHOOL DISTRICT STUDENT
DISCIPLINE AND SCHOOL SAFETY POLICIES

Adopted May 14, 2007

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1.00 TITLE

- 1.01 These guidelines shall be known as the Arkansas Department of Education Guidelines for the Development, Review and Revision of School District Student Discipline and School Safety Policies.

2.00 REGULATORY AUTHORITY

- 2.01 The State Board of Education enacts these guidelines pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-18-502, 6-18-503, 6-18-504, 6-18-505, 6-18-506, 6-18-507, 6-18-514 and 25-15-201 et seq.

~~These guidelines are authorized pursuant to the Department of Education's authority under Ark. Code Ann 6-18-502 (Repl. 1993).~~

3.00 PURPOSE

- 3.01 These guidelines are designed to assist local school districts with the development, review and revision of student discipline and school safety policies.

4.00 ~~Development, Review and Revision of Policies~~ GENERAL GUIDELINES AND MINIMUM REQUIREMENTS

- 4.01 Parents, students, and school district personnel, including teachers, shall be involved in the development of school district student discipline policies.

4.01.1 School districts should strive to ensure that those involved with the development of school district student discipline policies come from diverse racial, gender, and socioeconomic backgrounds and that the group consist of a sufficient number of individuals to provide broad representation within the district.

4.01.2 School districts may elect to have separate policies for different organizational levels and may have policy development teams for each organizational level or use one team for all organizational levels.

- 4.02 The student discipline policies shall be reviewed annually by the school district's committee on personnel policies. The committee may recommend changes in the policies to the board of directors of the local school district.

4.03 Student discipline policies shall include, but not be limited to, the following offenses:

4.03.1 Willfully and intentionally assaulting or threatening to assault or abuse any student or teacher, principal, superintendent, or other employee of a school system;

4.03.2 Possession by students of any firearm or other weapon prohibited upon the school campus by law or by policies adopted by the school board of directors;

4.03.3 Using, offering for sale, or selling beer, alcoholic beverages, or other illicit drugs by students on school property;

4.03.4 Possession by a student of any paging device, beeper, or similar electronic communication device on the school campus, however:

4.03.4.1 The policy may provide an exemption for possession of such a device by a student who is required to use such a device for health or other compelling reasons; and

4.03.4.2 The policy may exempt possession of such a device after normal school hours for extracurricular activities.

4.03.5 Willfully or intentionally damaging, destroying, or stealing school property by students.

4.04 The school discipline policies shall:

4.04.1 Prescribe minimum and maximum penalties, including students' suspension or dismissal from school, for violations of each of the aforementioned offenses and for violations of other practices prohibited by school discipline policies;

4.04.2 Prescribe expulsion from school for a period of not less than one (1) year for possession of any firearm or other weapon prohibited upon the school campus by law, provided, however, that the superintendent shall have discretion to modify such expulsion requirement for a student on a case-by-case basis.

4.04.3 Establish procedures for notice to students and parents of charges, hearings, and other due process proceedings to be applicable in the enforcement and administration of such policies by the school administrator and by the school board of directors;

- 4.04.4 Include prevention, intervention, and conflict resolution provisions; and
- 4.04.5 Set forth the role and authority of public school employees and volunteers.
- 4.05 Student discipline policies shall provide that parents and students will be advised of the rules and regulations by which the school is governed and will be made aware of the behavior that will call for disciplinary action and the types of corrective actions that may be imposed.
- 4.06 Each school district shall develop a procedure for written notification to all parents and students of the district's student discipline policies and for documentation of the receipt of the policies by all parents and students.
- 4.07 Teachers and administrators, classified school employees, and volunteers shall be provided with appropriate student discipline training.
- 4.08 If a school employee believes that any action taken by the school district to discipline a student referred by that employee does not follow school district discipline policies, the school employee may appeal under the district's grievance procedure as provided under § 6-17-208.
- 4.09 Each school district in this state shall develop written student discipline policies in compliance with these guidelines and shall file such policies with the Department of Education.
- 4.10 School district discipline policies shall include provisions for placement of a student with disciplinary, socially dysfunctional, or behavioral problems not associated with a handicapping condition in an alternative learning environment provided by the district. Behavioral problems shall include those at risk of not satisfactorily completing a high school education.
- 4.11 A school district that authorizes the use of corporal punishment in its discipline policy shall include provisions for administration of the punishment, including that it be administered only for cause, be reasonable, follow warnings that the misbehavior will not be tolerated, and be administered by a teacher or a school administrator and only in the presence of a school administrator or his or her designee, who shall be a teacher or an administrator employed by the school district.
- 4.11.1 "Teachers and administrators" means those persons employed by a school district and required to have a state-issued license as a condition of their employment.
- 4.11.2 Any teacher or school administrator in a school district that authorizes use of corporal punishment in the district's written student discipline policy may use corporal punishment, provided only that the punishment is administered in accord with the

district's written student discipline policy, against any pupil in order to maintain discipline and order within the public schools.

- 4.12 A school district shall include in its student discipline policies a provision prohibiting students from wearing, while on the grounds of a public school during the regular school day and school-sponsored activities and events, clothing that exposes underwear, buttocks, or the breast of a female. This policy shall not apply to a costume or uniform worn by a student while participating in a school-sponsored activity or event.
- 4.12.1 A school district shall specify in its student discipline policies the disciplinary actions that will be taken against a student for a violation of Section 4.12 of these rules.
- 4.12.2 Section 4.12 of these rules shall not be enforced in a manner than discriminates against a student on the basis of his or her race, color, religion, sex, disability, or national origin.
- 4.13 Any amendments or revisions to a school district's student discipline policies shall be developed and adopted in the same manner as the original policies as required by law and shall be submitted to the Department of Education within thirty (30) days after the adoption of such amendment or revision.
- 4.14 The Department of Education shall monitor compliance with the requirements of these rules and of Ark. Code Ann. §§ 6-18-502 and 6-18-503. Any school district failing to file the disciplinary policies required by Ark. Code Ann. § 6-15-503 and Section 4.09 of these rules with the Department of Education shall have all state aid funds withheld until such disciplinary policy is filed with the Department of Education.
- 4.15 Every school district board of directors shall adopt and file with the Department of Education written policies concerning the violation of school standards such as disrespect for teachers and classified school employees, vandalism, and other undesirable behavioral patterns. Such written policies may be a part of the school district's student discipline policies. These policies may be revised at any time by filing an updated policy with the Department of Education.
- 4.16 Every school district board of directors shall hold its pupils strictly accountable for any disorderly conduct in school, on the school grounds, in a school bus, or at any school function.
- 4.17 The principal of each school shall report within a week to the Department of Education the name, current address, and social security number of any student who is expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence.
- 4.17.1 The expulsion shall be noted on the student's permanent school record.

4.17.2 Nothing in Section 4.17 of these rules shall be construed to limit a superintendent's discretion to modify the expulsion requirement for a student on a case-by-case basis.

4.17.3 The Department of Education shall establish and maintain a registry of students who are expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence. The names, addresses, and social security numbers of all students listed in the registry shall be available by phone, facsimile, or mail to any school principal in the state, so long as the provision of such information does not otherwise violate state or federal law.

4.18 The board of directors of every school district shall adopt policies to prevent bullying and file such policies with the Department of Education. Such policies may be a part of the school district's student discipline policies. The State Board of Education shall review the policies provided by the school districts and may recommend changes or improvements to the districts if the State Board of Education determines that the policies need improvement.

~~4.01~~ All school districts should complete the initial development of school district student discipline and school safety policies consistent with legal guidelines set forth in these regulations during the 1995-96 school year.

~~4.01.01~~ Districts may elect to have a single policy encompassing all organizational levels or may develop separate policies for each organizational level.

~~4.02~~ All school districts shall include in the above referenced policies, a procedure for annually reviewing the policies to ensure that they are consistent with state and federal law, developing case law and Department of Education guidelines.

~~4.03~~ All school districts shall include in the above referenced policies a procedure by which parents, teachers or students may request and receive a hearing to consider revision of the policies or particular provisions of the policies

5.00 OTHER STATUTORY REQUIREMENTS

5.01 School district leaders are advised of the following statutory requirements pertaining to school district discipline policies:

5.01.1 Ark. Code Ann. §§ 6-18-209 and 6-18-222 concerning student attendance policies;

5.01.2 Ark. Code Ann. § 6-5-201 et seq. concerning the prohibition of hazing;

- 5.01.3 Ark. Code Ann. § 6-18-507 concerning suspension and expulsion procedures;
- 5.01.4 Ark. Code Ann. § 6-18-511 concerning the removal of students from the classroom by teachers;
- 5.01.5 Ark. Code Ann. § 6-18-512 concerning policies pertaining to the seizure of hand-held laser pointers;
- 5.01.6 Ark. Code Ann. § 6-18-513 concerning parental notification of certain incidents involving law enforcement personnel; and
- 5.01.7 Ark. Code Ann. § 6-18-514 concerning the requirement to adopt anti-bullying policies.

5.02 The above list is non-exhaustive in nature and is provided for informational purposes only. School district leaders are advised to consult with locally-retained legal counsel concerning other applicable state and federal laws as well as developments in case law pertaining to student discipline.

5.00 PERSONS PARTICIPATING IN POLICY DEVELOPMENT, REVIEW AND REVISION

- ~~5.01 Parents, teachers, students, school district administrative personnel, community representatives, and at least one school counselor shall be involved initial development and an annual review and revision of school district student discipline and school safety policies.~~
- ~~5.01.01 The development team shall be equitably balanced by race, gender, social economic level and shall be sufficient number to provide broad representation within the district.~~
- ~~5.01.02 Districts may elect to have separate policies for different organizational levels and may have development teams for each level or may use one team for all levels.~~

6.00 POLICY CONTENT

- ~~6.01 Student discipline and school safety policies shall include provisions, which cover required areas of Arkansas Code Annotated 6-18-502 while other areas shall be optional with the local school district. All policies shall include provisions, which cover the required areas in a form consistent with legal commentary. If optional issues are included in the district's policies, they shall be in a form consistent with the legal commentary. However, a school district may change its policy if new laws or new case law dictate such a change.~~
- ~~6.02 Required Areas: Students discipline policies shall include, but are not limited to Ark. Code Ann. 6-18-502~~

~~6.02.01 — Willfully and intentionally assaulting or threatening to assault or abuse any teacher, principal, superintendent, or other employee of a school system;~~

~~6.02.02 — Possession by students of any firearm or other weapon prohibited upon the school campus by law or by policies adopted by the school board.~~

~~COMMENTARY: Act 567 of 1995 requires expulsion for a period of not less than one year for possession of any firearm or other weapon prohibited upon the school campus by law; however, the superintendent shall have discretion to modify such expulsion requirement for a student on a case case basis.~~

~~6.02.03 — Using offering for sale, or selling beer, alcoholic beverages, or other illicit drugs by students on school property;~~

~~COMMENTARY: Recipients of federal grant funds distributed through the Arkansas Department of Education must ensure a drug free workplace. District policies should be consistent with this guarantee.~~

~~6.02.04 — Possession by a student of any paging device, beeper, or similar Electronic communication device on the school campus; however, The policy may provide an exemption for possession of such a device by a student who is required to use such a device for health or other compelling reasons;~~

~~COMMENTARY: Ark. Code Ann. 6-18-502 (b) (2) (D) (Repl. 1993) prohibits the possession by students of pagers or beepers on school campuses except when they are required for health or another compelling reason.~~

~~6.02.05 — Willfully or intentionally damaging, destroying, or stealing of school property by students.~~

~~6.02.06 — The school discipline policies shall: Prescribe minimum and maximum penalties, including students' suspension or dismissal from school, for violations of each of the aforementioned offenses and for violations of other practices prohibited by school discipline policies.~~

~~COMMENTARY: Notice in writing of the district's discipline policies, specific enough to put students on notice of proscribed behavior, is a necessary component of due process. Failure to adequately provide notice may render a policy unenforceable in a specific instance.~~

~~6.02.07 — The school discipline policies shall establish procedures for notice to students and parents of charges, hearings, and other due process proceedings to be applicable in the enforcement and administration of such policies by the school administrator and by the school board.~~

~~COMMENTARY: Due process is at a minimum, (1) notice of charge; (2) opportunity for denial; (3) evidence against him/her (if denies) (4) opportunity to tell his/her side; (5) decision, and timely notice and an opportunity for a fair hearing. The degree of due process required is directly proportional to the degree of loss to the student. Any penalty which effectively denies a student's education will require the greatest degree of due process. This means notice in writing at a time sufficient for the student to prepare for a full hearing before the local school board.~~

~~6.02.08 — The school discipline policies shall include prevention, intervention and conflict resolution provisions.~~

~~6.02.09 — Student discipline policies shall provide that parents and students will be advised of the rules and regulations by which the school is governed and will be made aware of the behavior that will call for disciplinary action and types of corrective actions that may be imposed.~~

~~6.02.10 — Each school district shall develop a procedure for written notification to all parents and students of the district's student discipline policies and documentation of the receipt of the policies by all parents and students.~~

~~6.02.11 — Teachers and administrators shall be provided with training as needed in classroom management and in other skills relevant to student discipline.~~

~~6.02.12 — District's policy regarding student attendance, required by Ark. Code Ann. 6-18-209 and 6-18-222 (Repl.1993), as amended by Act 572 of 1995.~~

~~COMMENTARY: Each school district's attendance policy must state a certain number of unexcused absences, which the district considers excessive. Excessive absences may be used as a basis for denial of course credit, promotion or graduation by law although the Department of Education does not recommend this and urges districts to devise ways in which students can regain credits lost through nonattendance. Excessive absences may not be used as a basis for expulsion or dismissal of a student. State law requires that students who miss school because of illness, accident, or other unavoidable reasons should be given assistance in obtaining credit for their courses. Ark. Code Ann. 6-18-222 (Repl. 1993), as amended by Act 572 of 1995.~~

~~Districts should ensure that any student who a run afoul of the district's attendance policy because of illness or health problems has been evaluated Under Section 504 of the Rehabilitation Act of 1974.~~

~~All children, ages 5 through 17 on October 1, must attend school unless an appropriate exception applies under Ark. Code Ann. 6-18-201 (Repl. 1993). All children admitted to the public schools must show proof of age by either a birth~~

~~certificate, a statement by the local registrar or a county recorder certifying the child's date of birth, an attested baptismal certificate, a passport, an affidavit of the date and place of birth by the child's parent or guardian or previous school records. Each Child shall either furnish his social security number or request the district to assign him a nine digit number. Ark. Code Ann.6 18 208 (Repl. 1993).~~

~~Prior to a child's admission to an Arkansas public school, the parent, guardian, or other responsible person shall indicate on school registration forms whether the child has been expelled from school in any other school district or is a party to an expulsion proceeding. Ark. Code Ann. 6 18 208 (Repl. 1993), as amended by Act 574 of 1995.~~

~~A copy of the school district's attendance policy should be provided to the student's parents, guardians or persons in loco parentis at the beginning of the school year. Ark. Code Ann. 6 18 222.~~

~~Whenever a student exceeds the number unexcused absences provided for in the district's attendance policy, the district shall notify the prosecuting authority. Ark Code Ann. 6 18 222.~~

~~Each local school district must notify the Department of Finance and Administration whenever a student 14 years or older is no longer in school. Ark. Code Ann. 65 18 222, as amended by Act 572 of 1995.~~

~~6.02.13 — Crisis Intervention Plans~~

~~**COMMENTARY:** School districts should formulate crisis intervention plans for the following situations: fire, tornado, earthquake, death, suicide, and intruder(s) on the school campus. These plans should name a coordinator, consider demographics and designate a response team.~~

~~6.02.14 — Distribution of Literature~~

~~Each school board shall adopt rules and regulations in the form of a written student publications policy developed in conjunction with the student publication advisor (s) and the appropriate school administrator (s), which shall include reasonable provision for the time, place, and manner of distributing student publications.~~

~~**COMMENTARY:** Act 1109 of 1995 allows students to exercise their right of expression within the district's regulations regardless of whether such publications are supported financially by the school or by use of school facilities or are produced in conjunction with a class. However, the following publications are not authorized:~~

- ~~(1) — publications that are obscene as to minors, as defined by state law;~~
- ~~(2) — publications that are libelous or slanderous, as defined by state law;~~

- (3) ~~publications that constitute an unwarranted invasion of privacy, as defined by state law;~~
- (4) ~~publications that so incite students as to create a clear and present danger of the commission of unlawful acts on school premises or the violations of lawful school regulations or the material and substantial disruption of the orderly operation of the school.~~

~~Publications that are a product of the school curriculum should have printed in the published material a statement like: "This publication is published as a part of the curriculum and is a non public forum under the supervision of the District Board of Directors."~~

6.03—Optional Areas

6.03.01—Appearance and Dress Code

~~**COMMENTARY:** Districts may adopt rules regarding personal appearance and grooming if they are required to prevent disruption or interference in the educational process and if such rules do not reflect mere taste or fashion. See Tinker v. Des Moines Indep. Comm. School Dist. 393 U.S. 503 (1969)~~

6.03.02—School Organizations

~~**COMMENTARY:** No state or federal law prohibits student organizations at the elementary or secondary level. Students have the right to join an existing club and should not be restricted from membership on the basis of race, sex, national origin or other arbitrary criteria.~~

~~School fraternities and secret societies are banned in Arkansas public schools. See Ark. Code Ann. 6-18-603 (Repl. 1993). (This could be a good "gang" related policy.)~~

6.03.03—Search and Seizure

~~**COMMENTARY:** School personnel may legally search lockers, automobiles, and students using the following guidelines:~~

~~**A. Student Lockers:** School policy on the search of student lockers by school personnel should be set within the following legal framework:~~

- ~~1. A search shall be conducted upon receipt of information that the search would produce evidence indicating the student has violated the law or school rules.~~
- ~~2. Students should be informed at the beginning of school each year school authorities have equal access to lockers and may inspect them at any time.~~

~~B. Personal Search~~

~~A search of a student's person should be limited to a situation in which the administration has reasonable suspicion that the search would produce evidence indicating that the student has violated the law or school rules.~~

~~School districts are encouraged to develop written guidelines indicating how personal searches of students will be conducted. These written guidelines should be given to students and parents prior to each school year. The following minimum guidelines should be incorporated into a district's search policy:~~

- ~~1. An adult witness should be present when a personal search is conducted.~~
- ~~2. A pat down search of a student's person should be done by a school official of the same sex.~~
- ~~3. A search must be based on a reasonable suspicion that the student has violated the law or school rules, and the scope of the search must be "reasonably related to the objective of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." New Jersey v. T.L.O. 469 U. S. 325, 342 (1985)~~

~~C. Automobiles~~

- ~~1. Warrantless searches of student automobiles by school personnel are generally valid if there is reasonable suspicion that the search would produce evidence indicating the student has violated the law or school rules.~~

~~D. Sniff Dogs~~

- ~~1. No Arkansas case has been litigated in federal district court, the Eight Circuit Court of Appeals, or United States Supreme Court on "sniff dog" searches.~~
- ~~2. "Sniffing" by trained dogs in public hallways or autos in public lots is not a search. (The Fourth Amendment requirements do not apply.)~~
- ~~3. "Sniffing" of a student's person is a search and the legality of such sniffing can only be defended if there is reasonable suspicion that the search will produce evidence that the student is violating the law or school rules.~~

~~E. The school district may elect to use a metal detector at the entrance of all schools.~~

~~COMMENTARY: School districts have broad authority to control student conduct and adopt all rules reasonably necessary to maintain proper discipline among their students. Each district should define both permissible and impermissible conduct and describe appropriate punishment for impermissible conduct. These definitions should be distributed to district personnel, students and parents at the beginning of the school year.~~

~~6.04 Administrative Responses~~

~~Each school district should clearly define all possible administrative responses to impermissible student behavior. In drafting these guidelines, districts should remember that every student is entitled to due process in every instance of response. However, the amount of due process to which the student is entitled is directly proportional to the nature of the student's right, which is affected. The following categories represent disciplinary actions by the administration for which a student is entitled to due process and, roughly speaking, what kind of due process is required.~~

~~A. Corporal Punishment: Any teacher or school administrator in a school district that authorizes use of corporal punishment in the district's written student discipline policy may use corporal punishment in the presence of an administrator or his designee, provided only that the punishment is administered in accord with the district's written student discipline policy, against any pupil in order to maintain discipline and order within the public schools.~~

~~See Ark. Code Ann. 6-18-503 (Repl. 1993), as amended by Act 333 of 1995. The following guidelines are recommended:~~

~~1. Before corporal punishment is administered, the student should be advised of the rule and infraction for which the student may be punished. The student should be allowed time to respond, and then the school administrator should take the action it deems is most appropriate. A formal hearing is not required prior to administering corporal punishment.~~

~~2. Parents may choose an option whether their child is given corporal punishment.~~

~~B. Suspension: Schools may suspend students from school. A suspension is defined as dismissing the student from school for any time period not exceeding 10 days. For a suspension, the United States Supreme Court in Goss v. Lopez required that a student be accorded the minimum due process requirements under the United States Constitution. Districts should only use suspension and/or expulsion from school when all other alternatives fail. Districts should afford suspended students the following rights:~~

~~1. Prior to any suspension, the school principal or his/her designee, shall advise the student in question of the particular misconduct of which he/she is accused, as well as the basis for the accusation.~~

~~2. The pupil shall be given an opportunity at that time to explain his/her version of the facts to the school principal or his/her designee.~~

- ~~3. Written notice of suspension and the reason(s) for the suspension shall be given to the pupil.~~
 - ~~4. Any parent, legal guardian, or person acting as a parent shall have the right to appeal to the superintendent or his/her designee.~~
- ~~C. Expulsion: School districts may expel students from school using the following guidelines. An expulsion is defined as dismissing the student from school for the remainder of the current semester or for one year where the infraction involves a weapon. Expulsion should only be used in those instances in which serious bodily harm occurred or reasonably could have occurred to another person or where the student possesses drugs or weapons. Expulsion should only be used in rare cases. Prior to expulsion, the following must occur:~~
- ~~1. The student should immediately be advised of the particular conduct in question.~~
 - ~~2. The district should immediately notify in writing the student's parents, legal guardian or person acting as a parent and state the charges against the student and the district's intended action.~~
 - ~~3. The district shall hold a full evidentiary hearing before the school board to consider whether or not the student should be expelled.~~
 - ~~4. At the hearing, the student may represent himself/herself or he/she may select a representative.~~
 - ~~5. The student/representative may hear all testimony, and the student and /or representative may cross-examine all witnesses.~~
 - ~~6. The student/representative is entitled to offer evidence in his/her favor.~~
- ~~D. Discipline for Eligible Students with Disabilities Under the Individuals with Disabilities Education Improvement Act (IDEA), Public Law (PL) 108-466 and implementing regulations found at 34 Code of Federal Regulations Part 300~~
- ~~1. Students with disabilities who engage in misconduct are subject to normal school disciplinary rules and procedures so long as such treatment does not abridge the right to a free appropriate public education (FAPE).~~
 - ~~2. For students whose disabilities have behavioral aspects, preventive measures, such as behavioral intervention plans, should be considered and can be facilitated through the individualized education program (IEP) and placement processes required by IDEA. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.~~
 - ~~3. Where a child with a disability who violates a code of student conduct is removed by school personnel from his or her current placement to an~~

~~appropriate interim alternative education setting, another setting, or suspension for ten (10) consecutive school days or less, to the extent those alternatives are applied to children without disabilities, no change of placement is considered to have occurred, and IDEA's parent notification provisions would not apply. Also, there is no requirement for a prior determination of whether the student's misconduct was a manifestation of the student's disability.~~

~~Schools may remove any student with disabilities for a disciplinary infraction for up to ten (10) school days per offense during the same school year as long as those removals do not constitute a change of placement. During a period of short-term exclusion, schools are not required to provide any educational services to the student until such time as the student has been suspended or removed for a total of more than ten (10) school days in the same school year.~~

~~A district is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if it provides services to a child without disabilities who is similarly removed in accordance with provisions of the IDEA.~~

- ~~4. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other discipline requirements is appropriate for a child with a disability who violates a code of student conduct.~~
- ~~5. For a student with disabilities, an exclusion from school for more than 10 consecutive school days (long-term exclusion) constitutes a change in placement and is subject to procedural safeguards. IDEA requires, among other things, that parents be given written notice before a change in placement can be implemented. Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, it must be determined:
 - ~~(i) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or~~
 - ~~(ii) If the conduct in question was the direct result of the District's failure to implement the IEP.~~~~

~~The conduct must be determined to be a manifestation of the child's disability if the district, parent and relevant members of the child's IEP Team determine the condition described above was met. If so, the district must take immediate steps to remedy those deficiencies. If the district, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan, and modify it in accordance with the provisions of the IDEA.~~

- ~~6. A series of short term suspensions totaling more than ten (10) school days in the same school year could constitute a change in placement. Factors such as the length of each suspension, the total amount of time that the student is excluded from school, the proximity of the suspensions to each other, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals should be considered in determining whether the student has been excluded from school to such an extent that there has been a change in placement. This determination must be made on a case by case basis.~~

- ~~7. For a student with disabilities, a suspension or other disciplinary removal for more than 10 consecutive school days may not be considered without the school district first determining whether the student's misconduct was a manifestation of the student's disability or direct failure to implement the student's IEP. This determination must be made by a group of persons knowledgeable about the student (such as his/her IEP committee), and may not be made unilaterally by one individual.~~
 - ~~(i) If the student's misconduct WAS NOT caused by, or did not have a direct and substantial relationship to the child's disability nor was the direct result of the district's failure to implement the IEP, the school district may expel or suspend the student from school for more than ten school days, in the same manner and for the same duration as the procedures would be applied to children without disabilities, subject to conditions set forth in the procedural safeguards of IDEA.~~

 - ~~(ii) If the student's misconduct WAS a manifestation of his/her disability or was the direct result of the district's failure to implement the IEP, the student may not be expelled or suspended from school for more than ten school days for the misconduct. However, other procedures may be used to address the student's misconduct. A change in placement, if determined appropriate, could be implemented subject to applicable procedural safeguards. The school district would also have the option of suspending the student from school for ten days or less, or seeking a court order at any time to remove the student from school or to change the student's placement if it believes that maintaining the student in the current placement is substantially likely to result in injury to the student or to others.~~

- ~~8. If the suspension or other disciplinary removal of the student is for more than 10 school days, within the first 10 days of suspension the district must convene the student's IEP committee to review: (1) the relationship between the student's disability and the student's misconduct; (2) the relationship between the student's IEP and the misconduct; and (3) the student's IEP and determine whether implementation of a behavioral intervention plan and/or a change in the educational placement of the student is appropriate. The district should seek to obtain parental agreement to a change in the student's IEP and/or educational placement. The student's parents must be provided with written prior notice a reasonable time before the school implements any changes in the student's IEP and corresponding placement, including their right to a due process hearing.~~

- ~~9. If the student's parents request a due process hearing on the proposal to change the student's IEP or placement or the manifestation determination, the school district may seek to persuade the parents to agree to an interim placement for the student while expedited due process proceedings are pending. If the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the district may appeal the decision of the IEP team by requesting an expedited hearing in accordance with provisions of the IDEA.~~
- ~~10. If a student's parents initiate an impartial due process hearing in connection with a proposed disciplinary exclusion or other change in placement, and the misconduct does not involve the bringing of a firearm to school, the "pendency" or "stay put" provision of IDEA requires that the student must remain in his or her current educational placement until the completion of all proceedings. If the parents and school district can agree on an interim placement, the student would be entitled to remain in that placement until the completion of all proceedings.~~
- ~~11. For a student not previously identified by the school district as a student potentially in need of special education, a parental request for evaluation or a request for a due process hearing or other appeal AFTER disciplinary suspension or expulsion has commenced DOES NOT obligate the school district to reinstate the student's prior in school status. This is because in accordance with the "stay put" provision of IDEA, the student's "then current placement" is the out-of-school place. After the disciplinary sanction is completed, if the resolution of the due process hearing is still pending, the student must be returned to school as would a nondisabled student in similar circumstances.~~

~~COMMENTARY: It should be noted that, pending the resolution of the due process hearing or other appeal, a court could enjoin the suspension or expulsion and direct the school district to reinstate the student if the court determines that the school district knew or reasonably should have known that the student is a student in need of special education.~~

- ~~12. A school district may seek a court order at any time to remove any student with disabilities from school or to change the student's current educational placement if the school district believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or to others.~~
- ~~13. Under IDEA, school districts must ensure that FAPE is made available when a student is suspended for more than ten school days or expelled for misconduct that was not a manifestation of his/her disability therefore, educational services must continue for these students during periods of disciplinary removal that exceed 10 school days.~~

~~COMMENTARY: IDEA does not specify the particular setting in which continued educational services must be provided to these students. During the period of disciplinary exclusion from school, each disabled student must continue to be offered a program of appropriate educational services that is individually designed to meet his/her~~

~~unique learning needs. Such services may be provided in the home, in an alternative school, or in another setting.~~

~~Special Provisions of IDEA applicable to students with disabilities who bring a “weapon” to school as defined in federal and state statutes [The Gun-Free Schools Act (GFSA), enacted as Title XIV (Part F) of Title I of the Improving America’s Schools Act, and Arkansas Act 567 of 1995 (Arkansas Code Annotated 6-15-502)]~~

~~**COMMENTARY: The Gun-Free Schools Act (GFSA) applies to students with disabilities. However, this Act must be implemented consistent with IDEA and Section 504 of the Rehabilitation Act of 1973. Federal statutes define “weapon” to mean “firearm.” State statute addresses possession by students of any “firearm or other weapon” prohibited upon the school campus by law or by policies adopted by the school board. Consistent with the requirements of the GFSA, Arkansas Act 567 of 1995 (Arkansas Code Annotated 6-15-502) requires that local educational agencies (school districts) expel from school for not less than one year a student who brings a weapon to school, except that the local educational agency’s chief administering officer may modify the expulsion requirement for a student on a case-by-case basis. Compliance with the GFSA can be achieved consistent with the requirements that apply to students with disabilities as long as the discipline of such students is determined on a case-by-case basis in accordance with IDEA and Section 504.**~~

- ~~1. Under the IDEA, school personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—
 - ~~(i) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the district or the Arkansas Department of Education;~~
 - ~~(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the district or the Arkansas Department of Education; or~~
 - ~~(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the district or the Arkansas Department of Education.~~~~

- ~~2. The student’s educational placement cannot be changed beyond the 10 school days until the student’s IEP committee has been convened. As with any meeting of the IEP committee, the parent must be an invited participant. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents with a procedural safeguards notice under the IDEA. The school district may place the student in an interim alternative educational placement that the committee believes would be appropriate for the student. Such an alternative educational placement could then be implemented for up to 45 school days. If either the student’s parents or the district initiate an expedited~~

~~due process hearing, and if the parties cannot agree on another placement, the student must remain in the interim alternative educational placement during authorized review proceedings or until the time period specified, whichever occurs first.~~

- ~~3. Section 504 requires a determination by a group of persons knowledgeable about the student, on whether the bringing of the weapon to school was a manifestation of the student's disability. Under Section 504, a student with a disability may be expelled only if this group of persons determines that the bringing of a weapon to school was not a manifestation of the student's disability, and after applicable procedural safeguards have been followed.~~
- ~~4. All of the procedural safeguards and other protections of IDEA and Section 504 must be followed. Once it is determined by an appropriate group of persons that the student's bringing of a weapon to school was not a manifestation of the student's disability, the school district's chief administering officer may exercise his/her decision-making authority under the GFSA in the same manner as with nondisabled students in similar circumstances. However, **for students with disabilities identified under IDEA who are expelled in accordance with the expulsion provisions of GFSA, educational services must continue during the expulsion period.** Nothing in the GFSA may be construed to prevent a State from allowing a school district that has expelled a student with disabilities from the regular educational program/setting from providing educational services to that student in an alternative educational setting.~~
- ~~5. If it is determined by the IEP committee (or other knowledgeable group of individuals in the case of a Section 504 review) that the student's behavior of bringing a weapon to school was a manifestation of the student's disability, the chief administering officer must exercise his/her authority under the GFSA to determine that the student may not be expelled for the behavior. This is when other immediate steps may be taken, including temporary removal.~~
- ~~6. For students with disabilities who are not eligible for services under IDEA, but who are covered by Section 504 and are expelled in accordance with the above conditions, educational services may be discontinued during the expulsion period if nondisabled students in similar circumstances do not receive continued educational services.~~

COMMENTARY: ~~In summary, a student with a disability who brings a weapon to school may be removed from school for 10 school days or less, and placed in an interim alternative educational setting by the IEP committee for up to 45 school days. However, if the parents initiate an expedited due process proceeding, the student must remain in the interim alternative placement during these authorized review proceedings which may exceed 45 school days unless the parents and school district can agree on a different placement. In addition, school districts may initiate change in placement procedures for such a student, subject to the parents' right to due process. A school district also could seek a court order if the school district believes that the student's continued presence in the classroom is substantially likely to result in injury to the student or to others.~~