

**Hondo Valley Public School District
PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

Chapter 7. - DISCIPLINE

Chapter 7. Adopted Pursuant to Board Policy: Special Education
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Chapter 7. - DISCIPLINE
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Chapter 7. - DISCIPLINE

The Hondo Valley Public School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).

In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Hondo Valley Public School District will follow the guidance of the PED.

I. DISCIPLINE FOR GENERAL MISCONDUCT (See Flowchart A)

The NMPED has issued a guidance document titled, "Student Discipline: A Technical Assistance Manual for Students with Disabilities" (April 2008), available through the NMPED website at: <http://www.ped.state.nm.us/SEB/technical/index.html>. When disciplining students with disabilities for general misconduct, the Hondo Valley Public School District adopts as its procedures Flowchart A. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

*The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) has issued a guidance document titled, "Questions and Answers On Discipline Procedures" (Revised June 2009), available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>. OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. The ***, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

A. Authority of School Personnel—General

Authority: 34 CFR §300.530 Authority of school personnel.

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

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

...

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

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the Hondo Valley Public

School District is required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. The Hondo Valley Public School District personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

...

- (3) **Program prescriptions.** A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.
- (4) **Immediate removal.** Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC ...

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

F. Behavioral management and discipline

...

- (2) **Suspensions, expulsions and disciplinary changes of placement.** Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR Secs. 300.530-300.536, and these or other department rules and standards, including particularly 6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.
- (4) **Hondo Valley Public School District will keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.**

“Factors such as a child’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a child with a disability prior to the violation of a school code could be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability. We believe providing school personnel the flexibility to consider whether a change in placement is appropriate for a child with a disability on a case-by-case basis and to determine what unique circumstances should be considered regarding a child who violates a code of conduct, as provided for under section 615(k)(1)(A) of the Act, will limit the inappropriate removal of a child with a disability from his or her current placement to an interim alternative educational setting, another setting, or suspension.” 71 Fed. Reg. 46714 (August 14, 2006).

“Local school personnel have the necessary authority to protect the safety and well-being of all children in their school and, therefore, are in the best position to determine a code of student conduct that is uniform and fair for all children in their school. We, therefore, do not believe it is necessary or appropriate to clarify in § 300.530(a) the meaning of ‘violates a code of student conduct.’” 71 Fed. Reg. 46714 (August 14, 2006).

“Section 300.530(a), consistent with section 615(k)(1)(A) of the Act, clarifies that, on a case-by-case basis, school personnel may consider whether a change in placement, that is otherwise permitted under the disciplinary procedures, is appropriate and should occur. It does not independently authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with § 300.530(b) through (i), including the requirement in paragraph (e) of this section regarding manifestation determinations.” 71 Fed. Reg. 46714 (August 14, 2006).

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

1. Counting the days of removal: What days count?

“Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536.” 71 Fed. Reg. 46715 (August 14, 2006).

“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 were a part of the child’s IEP, a bus suspension would be treated as a suspension under § 300.530 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 services will be delivered. If the bus transportation is not a part of the child’s IEP, a bus suspension is not a suspension under § 300.530. In those cases, the child and the child’s parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus.” 71 Fed. Reg. 46715 (August 14, 2006).

The NMPED has issued a guidance document titled, “Student Discipline: A Technical Assistance Manual for Students with Disabilities” (April 2008), available through the NMPED. The manual contains a discipline removal log which is one means of tracking the days of removal. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

2. Not more than 10 cumulative school days in a school year.

Authority: 34 CFR §300.530 Authority of school personnel.

...

(b) General.

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

...

- (3) Hondo Valley Public School 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 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

...

G. Discipline of students with disabilities: ...

...

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

“School personnel may remove a child with a disability from his or her current placement to an interim alternative educational setting, another setting, or suspension for up to 10 school days in the same school year without providing educational services.” 71 Fed. Reg. 46718 (August 14, 2006).

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

3. More than 10 cumulative school days in a school year but not more than 10 consecutive days (if not a change in placement).

Authority: 34 CFR §300.101 Free appropriate public education (FAPE).

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

Authority: 34 CFR §300.530 Authority of school personnel.

...

(b) General.

- (1) Hondo Valley Public School District under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).
- (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

...

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

...

(d) Services.

- (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—
- (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

F. Behavioral management and discipline

...

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

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

...

B. Students with disabilities. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above).

“We are not removing ‘consecutive’ from §§ 300.530 through 300.536, as recommended by the commenters, because the Department has long interpreted the Act to permit children with disabilities who violate a code of student conduct to be removed from their current educational placement for not more than 10 consecutive school days at a time, and that additional removals of 10 consecutive school days or less in the same school year would be possible, as long as any removal does not constitute a change in placement.” 71 Fed. Reg. 46714 (August 14, 2006).

“We believe it is important for purposes of school safety and order to preserve the authority that school personnel have to be able to remove a child for a discipline infraction for a short period of time, even though the child already may have been removed for more than 10 school days in that school year, as long as the pattern of removals does not itself constitute a change in placement of the child.” 71 Fed. Reg. 46715 (August 14, 2006).

“Beginning, however, on the eleventh cumulative day in a school year that a child with a disability is removed from the child’s current placement, and for any subsequent removals, educational services must be provided to the extent required in § 300.530(d), while the removal continues.” 71 Fed. Reg. 46718 (August 14, 2006).

“The determination of which teacher school personnel should consult should be based on the facts and circumstances of each case, the needs of the child and the expertise of the child’s teachers. We agree that, in many cases, the special education teacher may be the most appropriate teacher with whom school personnel should consult. This, however, is not always the case. In light of the short-term nature of the removals under paragraph (d)(4) of the section and the need for school personnel to make quick decisions regarding services, we believe local school personnel need broad flexibility in making such decisions and are in the best position to determine the appropriate teacher with whom to consult. For these reasons, we are not amending § 300.530(d)(4) to require consultation with the child’s special education teacher as in current §300.121(d)(3)(i). There is nothing, however, in the Act or these regulations that would prohibit school personnel from consulting with one of the child’s special education teachers.” 71 Fed. Reg. 46718 (August 14, 2006).

“We caution that we do not interpret ‘participate’ to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive if in his or her chemistry or auto mechanics classroom as these classes generally are taught using a hands-on component or specialized equipment or facilities.” 71 Fed. Reg. 46716 (August 14, 2006).

“In other words, while children with disabilities removed for more than 10 school days in a school year for disciplinary reasons must continue to receive FAPE, we believe the Act modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child’s IEP. An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child’s IEP.” 71 Fed. Reg. 46716 (August 14, 2006).

“Section 300.530(d) clarifies that decisions regarding the extent to which services would need to be provided and the amount of services that would be necessary to enable a child with a disability to appropriately participate in the general curriculum and progress toward achieving the goals on the child’s IEP may be different if the child is removed from his or her regular placement for a short period of time. For example, a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to

meet this standard as a child who is removed from his or her regular placement for 45 days under § 300.530(g) or § 300.532 and not performing at grade level.” 71 Fed. Reg. 46716 (August 14, 2006).

“Paragraph (d)(4) of this section is not intended to imply that a public agency may deny educational services to children with disabilities who have been suspended or expelled for more than 10 school days in a school year, nor is § 300.530(d)(4) intended to always require the provision of services when a child is removed from school for just a few days in a school year.” 71 Fed. Reg. 46717 (August 14, 2006).

“As provided in § 300.530(e), a manifestation determination is only required for disciplinary removals that constitute a change of placement under § 300.536. However, we must recognize that Congress specifically removed from the Act a requirement to conduct a functional behavioral assessment or review and modify an existing behavioral intervention plan for all children within 10 days of a disciplinary removal, regardless of whether the behavior was a manifestation or not. We also recognize, though, that as a matter of practice, it makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change in placement. In fact, the Act emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP Team consider, as appropriate, and address in the child’s IEP, ‘the use of positive behavioral interventions, and other strategies to address the behavior.’ (See section 614(d)(3)(B)(i) of the Act). This provision should ensure that children who need behavior intervention plans to succeed in school receive them. For these reasons, we decline to make the changes suggested.” 71 Fed. Reg. 46721 (August 14, 2006).

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

B. Change of Placement Analysis

Authority: 34 CFR §300.536 Change of placement because of disciplinary removals.

- (a) For purposes of removals of a child with a disability from the child’s current educational placement under §§300.530 through 300.535, a change of placement occurs if--
- (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern--
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals, and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b) (1) The Hondo Valley Public School District determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (2) This determination is subject to review through due process and judicial proceedings.

Authority: 34 CFR §300.530 Authority of school personnel.

...

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

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

...

G. Discipline of students with disabilities: ...

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

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

...

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

...

F. **Behavioral management and discipline**

...

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

“[W]e do not believe it is necessary to include language in § 300.536 regarding a public agency’s zero tolerance policy as such policies are irrelevant to what constitutes a change in placement for disciplinary removals under the Act.” 71 Fed. Reg. 46728 (August 14, 2006).

“Whether the behavior in the incidents that resulted in the series of removals is ‘substantially similar’ should be made on a case-by-case basis and include consideration of any relevant information regarding the child’s behaviors, including, where appropriate, any information in the child’s IEP. However, we do not believe it is appropriate to require in these regulations that the ‘substantially similar behaviors’ be recognized by the IEP Team or included in the child’s IEP as recommended by the commenter. The commenter is correct that what constitutes ‘substantially similar behavior’ is a subjective determination. However, we believe that when the child’s behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2) of this section for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred. Of course, if the parent disagrees with the determination by the public agency, the parent may request a due process hearing pursuant to §300.532.” 71 Fed. Reg. 46729 (August 14, 2006).

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

C. Manifestation Determination Review

Authority: 34 CFR §300.530 **Authority of school personnel.**

...

(e) **Manifestation determination.**

- (1) **Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the Hondo Valley Public School District, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the Hondo Valley Public School District) must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine--**
 - (i) **If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or**
 - (ii) **If the conduct in question was the direct result of the Hondo Valley Public School District’s failure to implement the IEP.**
- (2) **The conduct must be determined to be a manifestation of the child’s disability if the Hondo Valley Public School District, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**
- (3) **If the Hondo Valley Public School District, the parent and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the Hondo Valley Public School District must take immediate steps to remedy those deficiencies.**

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

...

C. Manifestation determination.

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:
 - (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
 - (b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.
- (3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

“The revised manifestation provisions in section 615 of the Act provide a simplified, common sense manifestation determination process that could be used by school personnel. The basis for this change is provided in note 237–245 of the Conf. Rpt., pp. 224–225, which states, ‘the Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.’ The Conferees further intended that ‘if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability.’ No further clarification is necessary.” 71 Fed. Reg. 46720 (August 14, 2006).

“We believe the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability. The intent of Congress in developing section 615(k)(1)(E) was that, in determining that a child's conduct was a manifestation of his or her disability, it must be determined that ‘the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, and was not an attenuated association, such as low self-esteem, to the child's disability.’ (Note 237–245 of the Conf. Rpt., p. 225).” 71 Fed. Reg. 46720 (August 14, 2006).

The NMPED has issued a guidance document titled, “Student Discipline: A Technical Assistance Manual for Students with Disabilities” (April 2008), available through the NMPED. The manual contains a sample form for manifestation determination review. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

D. When Behavior Is Not a Manifestation of the Student's Disability

Authority: 34 CFR §300.530 Authority of school personnel.

...

- (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, Hondo Valley Public School District personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.
- (d) Services.
 - (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

- (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and
 - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
- ...
- (5) If the removal is a change of placement under § 300.536, the child’s IEP Team determines appropriate services under paragraph (d)(1) of this section.

“We believe that in instances where a child’s disciplinary removal constitutes a change in placement, and given the length of time of such removals, the IEP Team is the appropriate entity to determine the educational services necessary to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” 71 Fed. Reg. 46718-46719 (August 14, 2006).

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

E. When Behavior Is a Manifestation of the Student’s Disability

Authority: 34 CFR §300.530 Authority of school personnel.

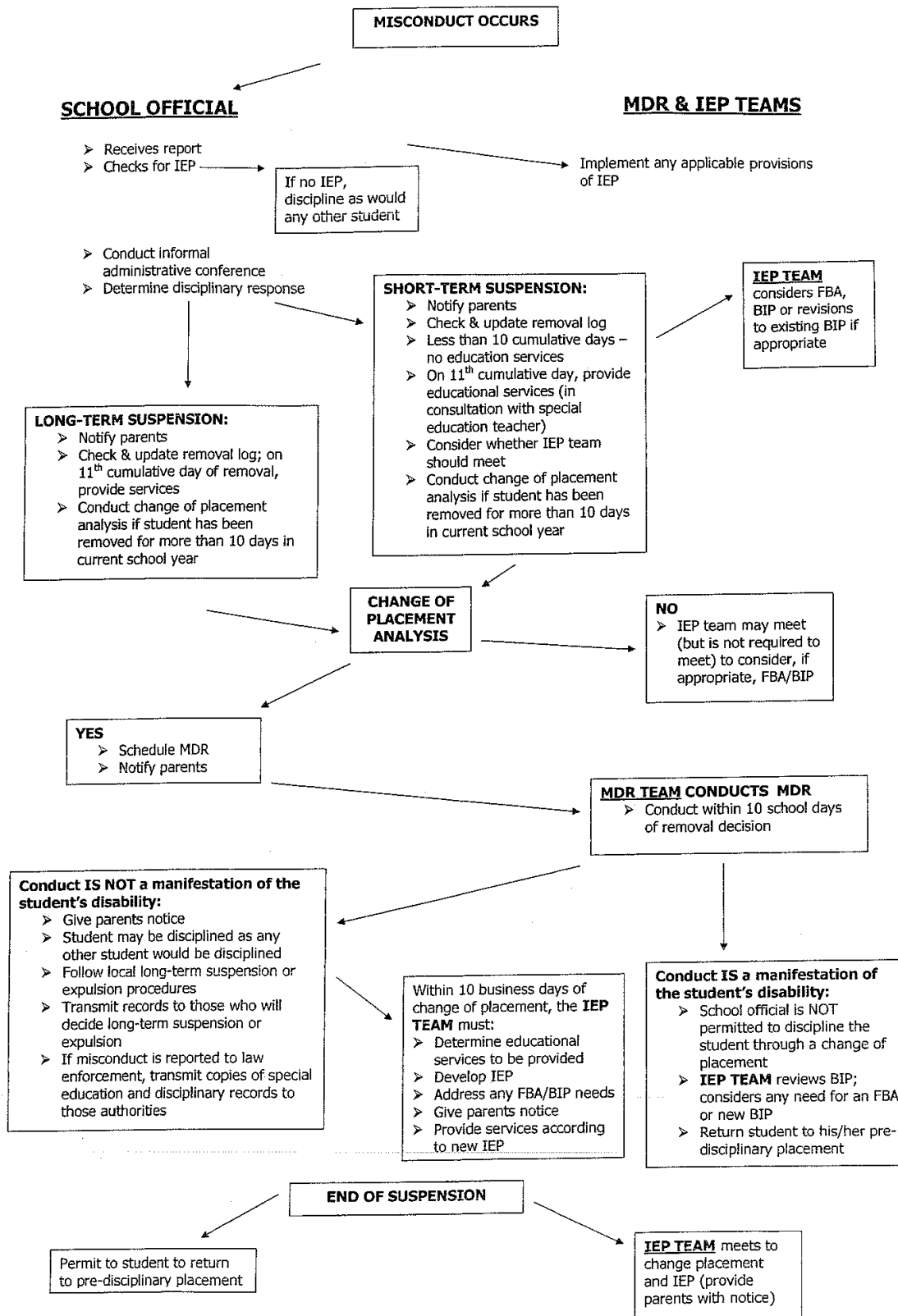
- ...
- (f) **Determination that behavior was a manifestation.** If the Hondo Valley Public School District, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team must--
- (1) **Either—**
 - (i) Conduct a functional behavioral assessment, unless the Hondo Valley Public School District had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section [special circumstances], return the child to the placement from which the child was removed, unless the parent and the Hondo Valley Public School District agree to a change of placement as part of the modification of the behavioral intervention plan.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

The Hondo Valley Public School District will utilize NMPED Flowchart A (below) for General Misconduct.

FLOWCHART A—GENERAL MISCONDUCT



II. SPECIAL CIRCUMSTANCES (DRUGS, WEAPONS, SERIOUS BODILY INJURY) (See Flowchart B)

Authority: 34 CFR §300.530 Authority of school personnel.

...
(d) Services.

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

- (i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

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

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

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the NMPED or the Hondo Valley Public School District;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the Hondo Valley Public School District; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NMPED or the Hondo Valley Public School District;

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

- (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
- (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

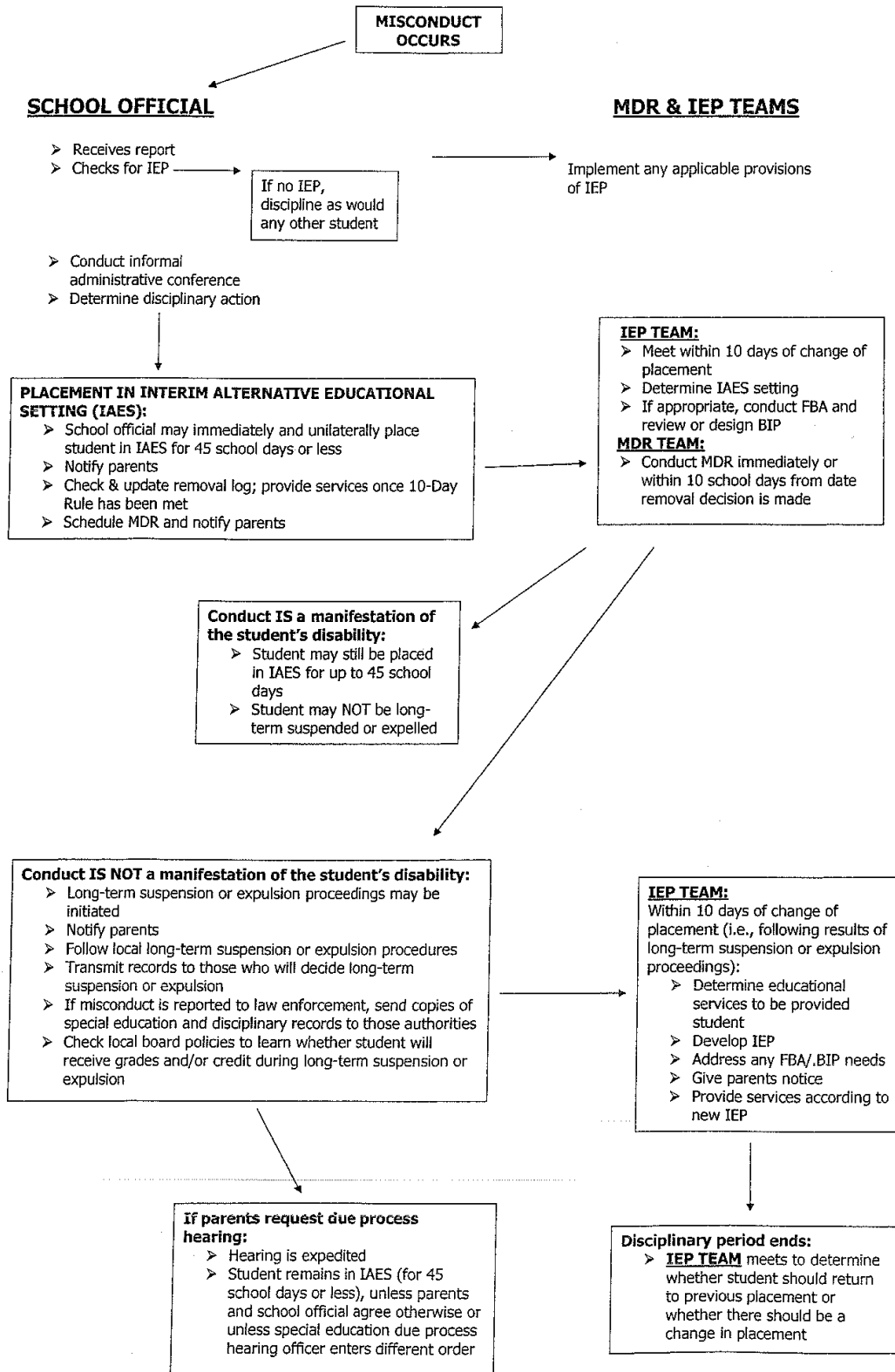
Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

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

The NMPED has issued a guidance document titled, "Student Discipline: A Technical Assistance Manual for Students with Disabilities" (April 2008), available through the NMPED website at: <http://www.ped.state.nm.us/SEB/technical/index.html>. When disciplining students with disabilities under special circumstances (for drugs, weapons, serious bodily injury), the Hondo Valley Public School District adopts as its procedures Flowchart B (below). The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

*The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) has issued a guidance document titled, "Questions and Answers On Discipline Procedures" (Revised June 2009), available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2COaCorner%2C7%2C>. OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. The ***, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

FLOWCHART B—SPECIAL CIRCUMSTANCES (DRUGS, WEAPONS, SERIOUS BODILY INJURY)



III. INTERIM ALTERNATIVE EDUCATIONAL SETTING

Authority: 34 CFR §300.531 Determination of setting.

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

Authority: 34 CFR §300.530 Authority of school personnel.

...

(d) Services.

...

- (2) The services required by paragraph (d)(1)[disciplinary change of placement that is not a manifestation of the child's disability, and special circumstances], (d)(3)[not more than 10 cumulative school days in a school year], (d)(4)[more than 10 cumulative school days in a school year but not more than 10 consecutive days (if not a change in placement)], and (d)(5) [disciplinary change of placement] of this section may be provided in an interim alternative educational setting.

Authority: NMAC 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

...

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

"If the child's current placement is a special education setting, the child could be removed from the special education setting to another setting for disciplinary reasons. Similarly, if the child with a disability who violated a school code of conduct receives services in a regular classroom, the child could be removed to an appropriate interim alternative educational setting, another setting, or suspension. Section 300.530(b), consistent with section 615(k)(1)(B) of the Act, provides that school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. However, § 300.530(d) is clear that the child who is removed for more than 10 school days in the same school year must continue to receive educational services, to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP." 71 Fed. Reg. 46717 (August 14, 2006).

"Section 615(k)(2) of the Act provides that the IEP Team is responsible for determining the interim alternative educational setting for a child with a disability for certain removals that are a change of placement. In § 300.531, for reasons described elsewhere in this preamble, we interpret this obligation to apply to all removals that constitute a change of placement for disciplinary reasons, as defined in § 300.536. We interpret 'setting' in this context to be the environment in which the child will receive services, such as an alternative school, alternative classroom, or home setting. In many instances, the location and the setting or environment in which the child will receive services are the same. It is possible, however, that a school may have available more than one location that meets the criteria of the setting chosen by the IEP Team. For example, an LEA may have available two alternative schools that meet the criteria of the interim alternative educational setting chosen by the IEP Team. In those cases school personnel would be able to assign the child to either of these locations, if the IEP Team has not specified a particular one." 71 Fed. Reg. 46719 (August 14, 2006).

*The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) has issued a guidance document titled, "Questions and Answers On Discipline Procedures" (Revised June 2009), available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>. OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. The ***, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

The Hondo Valley Public School District will ensure that when a student with a disability is placed in an interim alternative educational setting (IAES) beyond the first 10 cumulative school days in a school year, the IAES can deliver the services according to the standards of the IDEA for disciplinary removals beyond 10 cumulative school days in a school year. See sections I and II of these procedures.

IV. PROTECTION FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION

Authority: 34 CFR §300.534 Protections for children not yet eligible for special education and related services.

- (a) **General.** A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the Hondo Valley Public School District had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) **Basis of knowledge.** The Hondo Valley Public School District must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—
 - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
 - (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (3) The teacher of the child, or other personnel of the Hondo Valley Public School District, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the Hondo Valley Public School District or to other supervisory personnel of the Hondo Valley Public School District.
- (c) **Exception.** The Hondo Valley Public School District would not be deemed to have knowledge under paragraph (b) of this section if—
 - (1) The parent of the child—
 - (i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or
 - (ii) Has refused services under this part; or
 - (2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.
- (d) **Conditions that apply if no basis of knowledge.**
 - (1) If a Hondo Valley Public School District does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.
 - (2)
 - (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.
 - (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
 - (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the Hondo Valley Public School District and information provided by the parents, the Hondo Valley Public School District will provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

Authority: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

...

G. Discipline of students with disabilities: ...

...

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

“We do not believe it is necessary to clarify the phrase ‘express concern’ in § 300.534(b) because we believe that, in the context of this section, it is understood to mean that a parent is concerned that his or her child is in need of special education and related services and expresses that concern in writing to the child’s teacher or administrative personnel.” 71 Fed. Reg. 46727 (August 14, 2006).

“A public agency will not be considered to have a basis of knowledge under § 300.534(b) merely because a child receives services under the coordinated, early intervening services in section 613(f) of the Act and §300.226 of these regulations. The basis of knowledge criteria is clearly stated in section 615(k)(5)(B) of the Act and §300.534. We do not believe that expanding the basis of knowledge provision, as recommended by the commenter, would be appropriate given the specific requirements in the Act. However, if a parent or a teacher of a child receiving early intervening services expresses a concern, in writing, to appropriate agency personnel, that the child may need special education and related services, the public agency would be deemed to have knowledge that the child is a child with a disability under this part.” 71 Fed. Reg. 46727 (August 14, 2006).

“When a parent revokes consent for special education and related services under § 300.300(b), the parent has refused services as described in § 300.534(c)(1)(ii); therefore, the public agency is not deemed to have knowledge that the child is a child with a disability and the child may be disciplined as a general education student and is not entitled to the Act’s discipline protections.” 73 Fed. Reg. 73012 (December 1, 2008).

“We do not believe a specific timeline for an expedited evaluation or an eligibility determination should be included in these regulations. What may be required to conduct an evaluation will vary widely depending on the nature and extent of a child’s suspected disability and the amount of additional information that would be necessary to make an eligibility determination. However, § 300.534(d)(2)(i), consistent with section 615(k)(5)(D)(ii) of the Act, specifies that the evaluation in these instances be ‘expedited’, which means that an evaluation should be conducted in a shorter period of time than a typical evaluation conducted pursuant to section 614 of the Act, which must be conducted within 60 days of receiving parental consent for the evaluation. (See section 614(a)(1)(C)(i)(I) of the Act.) Further, we believe it would be inappropriate to specify the timeframe from the completion of an evaluation to the determination of eligibility when there is no specific statutory basis to do so. The Department has long held that eligibility decisions should be made within a reasonable period of time following the completion of an evaluation.” 71 Fed. Reg. 46728 (August 14, 2006).

“After revoking consent for his or her child, a parent always maintains the right to subsequently request an initial evaluation to determine if the child is a child with a disability who needs special education and related services. Nothing in the Act or the implementing regulations prevents a parent from requesting an evaluation when their child has a discipline issue or is at risk of not succeeding in school.” 73 Fed. Reg. 73014 (December 1, 2008).

*The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) has issued a guidance document titled, “Questions and Answers On Discipline Procedures” (Revised June 2009), available at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>. OSERS issues this Q&A document to provide guidance on discipline policies enacted for school-age students to personnel in State educational agencies (SEAs) and local educational agencies (LEAs), and families. This Q&A document represents the Department’s current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. The ***, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

The Hondo Valley Public School District will ensure IDEA protections of students who are not yet eligible for special education services if they meet the criteria for such protections.

V. LAW ENFORCEMENT

Authority: 34 CFR §300.535 Referral to and action by law enforcement and judicial authorities.

- (a) **Rule of construction.** Nothing in this part prohibits the Hondo Valley Public School District from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (b) **Transmittal of records.**
 - (1) The Hondo Valley Public School District reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - (2) The Hondo Valley Public School District 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: NMAC 6.11.2.10 ENFORCING RULES OF CONDUCT:

...

G. Discipline of students with disabilities: ...

...

- (6) **Referral to and action by law enforcement and judicial authorities.**
 - (a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
 - (b) **Transmittal of records.**
 - (i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.
 - (ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

“We maintain that the provisions in section 615(k)(6)(B) of the Act, as reflected in § 300.535(b)(2), must be read consistent with the disclosures permitted under FERPA for the education records of all children. Under FERPA, personally identifiable information (such as the child's status as a special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child's special education and disciplinary records under paragraph (b)(2) of this section without parental consent is permissible only to the extent that such transmission is permitted under FERPA.” 71 Fed. Reg. 46728 (August 14, 2006).

When the Hondo Valley Public School District reports a crime committed by a student with a disability to law enforcement authorities, the Hondo Valley Public School District will transmit special education and disciplinary records of the student only to the extent permitted by FERPA.