

2021 Kansas Statutes

72-3433. Change in placement of child with disability to alternative setting as disciplinary action for certain behavior; duties of IEP team and hearing officer; behavioral assessment and intervention plan; determination and review procedure. (a) School personnel may order a change in the placement of a child with a disability:

- (1) To an appropriate interim alternative educational setting or other setting, or the short-term suspension of the child;
- (2) to an appropriate interim alternative educational setting for not more than 45 school days if: (A) The child carries or possesses a weapon to, or at, school, on school premises, or to, or at, a school function under the jurisdiction of an agency; (B) the child 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 an agency; or (C) the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an agency; or
- (3) To an appropriate interim alternative educational placement for not more than 186 school days, if it is determined that the conduct of the child violated the code of student conduct and was not a manifestation of the child's disability, if the relevant disciplinary procedures applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities, except that services must continue to be provided to the child during the period of disciplinary action.

(b) Any child with a disability whose placement is changed under subsection (a)(2) or (a)(3) shall:

- (1) Continue to receive educational services 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
- (2) receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the inappropriate behavior so that it does not recur.

(c) The alternative educational setting described in subsections (a)(2) and (a)(3) shall be determined by the IEP team.

(d) If a disciplinary action is contemplated as described in subsection (a)(2) or (a)(3):

- (1) Not later than the date on which the decision to take that action is made, the agency shall notify the parents of that decision and of all procedural safeguards afforded under K.S.A. 72-3434, and amendments thereto; and
- (2) within 10 school days of the date on which the decision to take disciplinary action is made, a review shall be conducted to determine the relationship between the child's disability and the conduct that is subject to disciplinary action.

(e) (1) The review described in subsection (d)(2) shall be conducted by the agency, the parent, and relevant members of the child's IEP team as determined by the parent and the agency. In carrying out the review, that group shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent.

(2) Based upon its review of all the relevant information, the group shall determine if the conduct in question:

- (A) Was caused by, or had a direct and substantial relationship to, the child's disability; or
- (B) was the direct result of the agency's failure to implement the child's IEP.
- (3) If it is determined that the conduct of the student is described in either paragraph (2)

(A) or (2)(B) of this subsection, then the conduct shall be determined to be a manifestation of the child's disability.

(f) If it is determined that the conduct of a child was a manifestation of the child's disability, the IEP team shall:

(1) Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the agency has not conducted such an assessment prior to the behavior that resulted in a change in placement;

(2) if the child already had a behavioral intervention plan, review and modify it, as necessary, to address the behavior; and

(3) except as provided in paragraph (a)(2), return the child to the placement from which the child was removed, unless the parent and the agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) For the 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 21 U.S.C. § 812(c);

(2) "illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under any federal or state law;

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

(4) "serious bodily injury" means an injury as described in subsection (h)(3) of section 1365 of title 18 of the United States Code.

History: L. 2005, ch. 171, § 17; July 1.