

ARKANSAS REGISTER

Transmittal Sheet

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Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Education Division of Elementary and Secondary Education

Department Learning Services

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Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 6-11-105 and 6-41-207

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5/19/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Title

5/19/2020

Date

**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
 RULES GOVERNING SPECIAL EDUCATION AND RELATED SERVICES
 11.00 DISCIPLINE PROCEDURES
 Effective June 1, 2020**

11.01 CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

11.01.1 For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 - 300.535, a change of placement occurs if -

11.01.1.1 The removal is for more than ten (10) consecutive school days; or

11.01.1.2 The child has been subjected to a series of removals that constitute a pattern because the series of removals total more than ten (10) school days in a school year, and because of factors such as the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

11.02 SERVICES

11.02.1 A child with a disability who is removed from the child's current placement pursuant to this section must -

11.02.1.1 Continue to receive educational services, as provided in 34 CFR 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

11.02.1.2 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.

- 11.02.2 The services required by paragraph 11.02.1 of this section may be provided in an interim alternative educational setting.
- 11.02.3 A public agency 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.
- 11.02.4 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 34 CFR 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 34 CFR 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.
- 11.02.5 If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 11.02.1 of this section.

11.03 AUTHORITY OF LEA/PUBLIC AGENCY PERSONNEL

- 11.03.1 Case-by-case determination. School 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.
- 11.03.2 To the extent removal would be applied to children without disabilities, the removal of a child with a disability who violates a code of a student conduct, from the child's 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 additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536 and §11.04.3 of this part);

- 11.03.3 After a child with a disability has been removed from his current placement for more than 10 school days in the same school year, during any subsequent days of removal the LEA/public agency must provide services to the extent required under 34 CFR 300.101(a) and § 11.02 of these rules.
- 11.03.4 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 §11.05 school 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 11.02 of this section.
- 11.03.5 Special circumstances. School 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-
- 11.03.5.1 Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- 11.03.5.2 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 an SEA or an LEA; or
- 11.03.5.3 Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- 11.03.6 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 LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR 300.504.

- 11.03.7 For purposes of this section, the following definitions apply -
- 11.03.7.1 Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act [21 U. S. C. 812 (c)].
- 11.03.7.2 Illegal drug -
- A. Means a controlled substance; but
- B. 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 authority under that Act or under any other provision of Federal law.
- 11.03.7.3 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.
- 11.03.7.4 Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of ~~the first~~ subsection (g) of § 930 of Title 18, United States Code -
- A. The term "dangerous weapon" means a weapon, 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 ½ inches in length.

11.04 DETERMINATION OF SETTING

- 11.04.1 The child's IEP Team determines the interim alternative education setting for services under 34 CFR 300.530(c), (d)(5), and(g).
- 11.04.2 The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others,

may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b).

11.04.3 Authority of hearing officer.

11.04.3.1 A hearing officer under 34 CFR 300.511 hears, and makes a determination regarding an appeal under 11.04.2 of this section.

11.04.3.2 In making the determination under 11.04.3.1 of this section, the hearing officer may -

- A. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or
- B. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

11.04.3.3 The procedures under this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

11.05 MANIFESTATION DETERMINATION

11.05.1 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 LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observation, and any relevant information provided by the parents to determine -

- 11.05.1.1 If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- 11.05.1.2 If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- 11.05.2 The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in 11.05.1.1 A and B of this section was met.
- 11.05.3 If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 11.05.1.1 B of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- 11.05.4 Determination that behavior was a manifestation.
- 11.05.4.1 If the LEA, 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 -
- A. Either -
1. Conduct a functional behavioral assessment, unless the LEA 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
 2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- B. Except as provided in Special Circumstances (§11.03.4) return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the

modification of the behavioral intervention plan.

11.06 APPEAL

- 11.06.1 General. The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b).
- 11.06.2 Authority of hearing officer.
- 11.06.2.1 A hearing officer under 34 CFR 300.511 hears, and makes a determination regarding an appeal under 11.06.1.1 of this section.
- 11.06.2.2 In making the determination under 11.06.1.2 A of this section, the hearing officer may -
- A. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or the child's behavior was a manifestation of the child's disability; or
 - B. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- 11.06.2.3 The procedures under §§ 11.06.1.1 and 11.06.1.2 A and B may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

- 11.06.3 Expedited Due Process Hearing.
- 11.06.3.1 Whenever a hearing is requested under §11.06.1 the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through (c) and 34 CFR 300.510 through 300.514, except as provided in §§11.06.3.2 and 11.06.3.3.
- 11.06.3.2 The SEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
- 11.06.3.3 Unless the parents and LEA agree in writing to waive the resolution meeting described in 11.06.3.3A of this section, or agree to use the mediation process described in 34 CFR 300.506 -
- A. A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - B. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- 11.06.3.4 The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.516, civil action.

11.07 PROTECTIONS FOR CHILDREN NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

- 11.07.1 General.
- 11.07.1.1 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 of the LEA/public agency, may assert any of the protections provided for in this part if the LEA/public agency had

knowledge (as determined in accordance with §11.07.2 of this part) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

11.07.2 Basis of knowledge.

11.07.2.1 An LEA/public agency 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 -

- A. 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.
- B. The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 - 300.311 and § 6.00 of these rules; or
- C. The teacher of the child, or other personnel of the LEA/public agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or other supervisory personnel of the agency.

11.07.3 Exception.

11.07.3.1 An LEA/public agency would not be deemed to have knowledge under § 11.07.2 of this part if -

- A. Either -
- B. The parent of the child -
 - 1. Has not allowed an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or

2. Has refused services under this part;
or

C. The child has been evaluated in accordance with 34 CFR 300.300 through 300.311 and determined to not be a child with a disability under this part.

11.07.4 Conditions that apply if no basis of knowledge.

11.07.4.1 If an LEA/ public agency does not have knowledge that a child is a child with a disability (in accordance with §§ 11.07.2 and 11.07.3 of this part) 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 §11.07.4.1A-C of this part.

A. If a request is made for an evaluation of the child during the time period in which the child is subjected to disciplinary measures under 34 CFR 300.530, the evaluation must be conducted in an expedited manner.

B. Until the evaluation is completed, the child remains in the educational placement determined by school/public agency authorities, which can include suspension or expulsion without educational services.

C. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA/ public agency and information provided by the parents, the LEA/public agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of 34 CFR 300.530 through 300.536, and section 612(a)(1)(A) of the IDEA.

11.08 REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

- 11.08.1 Nothing in this part prohibits an LEA/public agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- 11.08.2 An LEA/public agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.
 - 11.08.2.1 An LEA/public agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

11.09 CORPORAL PUNISHMENT

- 11.09.1 A school district that authorizes use of corporal punishment, shall not:
 - 11.09.1.1 Use corporal punishment on a child who is intellectually disabled, non-ambulatory, non-verbal, or autistic; or
 - 11.09.1.2 Include in its written student discipline policy, a provision to allow the use of corporal punishment on a child who is intellectually disabled, non-ambulatory, non-verbal, or autistic.

Note: In addition to the requirements of IDEA and these Rules, school districts must follow all requirements and meet all obligations to its students under Ark. Code Ann. §§ 6-18-501 et seq. and 6-16-1406, and the DESE Rules regarding student discipline.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

- b) The reason for adoption of the more costly rule;

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
- Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.