

# OVERVIEW OF TEACHER REMOVALS AND SUSPENSIONS

## INTRODUCTION

Every reasonable effort must be made to correct student behavior through interventions and supports. Such supports and interventions should be used both as a preventative measure, and, where disciplinary action is warranted, in connection with the discipline.

Where disciplinary action is required, it must be effectuated in accordance with State Education Law Section 3214 and Chancellor's Regulation A-443. The following provides an overview of the procedural requirements for teacher removals, principal's suspensions and superintendent's suspensions. If a student has an IEP or 504 Plan, additional due process protections may be required, as set forth below. See Standard Operating Procedures Manual for Student with Disabilities Subject to Discipline (SOPM) for additional information (<http://intranet.nycboe.net/NR/rdonlyres/5CCA2455-E729-40E1-8BB4-91E6833FEF12/0/SOPMsectiononMDRsletterhead562015.pdf>).

All disciplinary removals must be entered into SOHO, the DOE's system of record for suspensions and removals, at the time the decision is made to impose discipline. **SCHOOLS MUST USE THE APPROPRIATE PARENT NOTIFICATION LETTERS IN SOHO IN CONNECTION WITH THE DISCIPLINARY ACTIONS DESCRIBED BELOW.** Students with disabilities who are subject to discipline are entitled to additional protections if the imposition of the discipline constitutes a disciplinary change of placement. These protections/rights are outlined in the SOHO notification letters.

In determining which level of discipline to impose in accordance with the Citywide Behavioral Expectations to Support Student Learning (The Discipline Code), the principal must consider:

- the student's age and maturity;
- the student's disciplinary record (including the nature of any prior misconduct, the number of prior instances of misconduct, and the disciplinary and guidance intervention measures applied for each);
- the nature, severity and scope of the behavior;
- the circumstances/context in which the conduct occurred;
- the frequency and duration of the behavior;
- the number of persons involved in the behavior; and
- the student's IEP (Individualized Education Plan), BIP (Behavioral Intervention Plan) and 504 Accommodation Plan, if applicable.

## I. TEACHER REMOVALS

### I.A Removal procedures

A student may be removed from a classroom for 1-4 school days by a teacher if the student's behavior is substantially disruptive or interferes with the teacher's authority over the classroom. Prior to the removal, the teacher must inform the student of the reason(s) for the removal and allow the student to present his/her version of the events. If the student's presence poses a continuing danger or ongoing threat to the academic process, he/she may be removed immediately. The student must be given the reason(s) for the removal and provided an opportunity to explain his/her version of the events within one school day of the removal.

The school must notify the parent by telephone within 24 hours of the removal of the reason(s) for the removal, the length of the removal and the right to request an informal conference with the principal/designee. The student must receive appropriate alternative instruction during the removal period in the school's designated in-school suspension center.

If the parent requests an informal conference, absent extenuating circumstances, it must be held within two (2) school days of the removal. At the conference, the principal/designee must provide an explanation of the basis for the removal and allow the student/parent to present his/her version of the events. Written summaries of the conference, including recommendations for follow-up action, should be prepared and made available to the parent.

## **I.B OORS/SOHO**

The school must enter the occurrence in OORS within 24 hours of the incident. The following information must be entered in SOHO on the same day as the removal:

- Effective Date of Removal
- The number of days of removal
- Removal Period– **Note:** A student may be removed only from the classroom of the teacher seeking the removal. Only elementary school students who do not have multiple teachers may be removed for a half-day or full day
- Infraction(s)

## **II. PRINCIPAL'S SUSPENSIONS**

### **II.A Preliminary Considerations**

When a principal is considering imposing a suspension for 1-5 school days, the parent must be given the opportunity to attend a principal's conference prior to the suspension being authorized unless the student's presence in school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process. In such cases, the suspension may be imposed immediately and the principal's conference will be scheduled to be held thereafter.

### **II.B Proposed Suspension**

When a principal is considering imposing a suspension and does not believe that the student's continued presence in school poses a continuing danger or threat of disruption, the principal/designee must notify the parent, and schedule a conference with the parent, as set forth below, prior to imposing the suspension. In such cases, the student must remain in class until the scheduled date of the conference. If, after the conference, the principal determines to go forward with the suspension, the suspension will begin after the conference has been held (or after the scheduled date of the conference if the parent does not attend). For students with disabilities, the suspension may only begin after an MDR is conducted, if one is required, and there is a finding that the behavior is not a manifestation of the student's disability. Once the student has been suspended, the student must receive appropriate alternative instruction as described below.

### **II.C Immediate Suspension**

If the principal seeks to impose a suspension and believes that the student's presence in school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, the student may be suspended immediately. The principal must notify the parent, and schedule a conference as set forth below. For students with disabilities, the MDR, if one is required, will occur following the conference. The student must receive appropriate alternative instruction (as described below in section IV).

### **II.D OORS/SOHO**

The school must enter the occurrence in OORS within 24 hours of the incident. The following information must be entered into SOHO at the time the decision is made to impose discipline: 1) the reason(s) for the proposed or immediate suspension, 2) the length of the proposed or immediate suspension, 3) the date of the conference with the principal; and, for students with disabilities for whom an MDR is required (see below), 4) the date and time of the MDR. For immediate suspensions, the principal/designee must explain in SOHO why an immediate suspension is necessary. If the number of days of suspension is modified as a result of the conference, the principal/designee must make the necessary change in SOHO within 24 hours of the conference. Principals must obtain prior written approval of the Office of Safety and Youth Development prior to authorizing a Principal's suspension for a student in grades K-3, or for student in grades 4-12 who engages in Infractions A-22/B-21("Defying or disobeying the lawful authority or directive of school personnel...)

### **II.E Notification**

The school must notify the parent of the suspension/proposed suspension both by phone and mail designed to arrive within 24 hours of the incident. The conference must be scheduled to take place no more than five school days from the notice of the proposed suspension/suspension. The school must use the appropriate notification letters found in

SOHO to notify the parents and should maintain a copy of the sent letter in the student's file.

## **II.F Conference**

The principal's conference is informal in nature. During the conference, the incident should be discussed along with how the student's behavior will be addressed. The parents must be provided an opportunity to present the student's version of the event and to question a school official knowledgeable about the incident.

In accordance with Chancellor's Regulation A-443, the principal must conduct the conference and may not delegate the responsibility to attend. The principal must prepare and maintain notes of the parent conference.

In order to provide students who are suspended by the principal with information about their suspension and at the same time protect the privacy of student information, the following procedures apply at a principal's suspension conference:

- 1) The principal may show the suspended student/parent a copy of any non-student written statements at the suspension conference, as long as the names of students, other than the suspended student are redacted. Upon request, the parent may be provided with a copy of non-student written statements, provided the names of students other than the suspended student are redacted.
- 2) The principal may not show the suspended student/parent written statements prepared by other students at the suspension conference. Instead the principal may read the statements aloud, omitting the names of the student authors and omitting the names of any students other than the suspended student that are contained in the written statements. Copies of student statements may not be provided to the parent of the suspended student, regardless of whether they are redacted.
- 3) The principal may show the suspended student/parent a copy of the OORS report at the suspension conference as long as the names of all students other than the suspended student and any other personally identifiable information (e.g., OSIS number, address) about those other students is redacted. Upon request, the parent may be provided with a copy of the OORS report, provided student names (other than the suspended student) and personally identifiable information about those other students are redacted.

## **II.G After the Conference**

The principal **must** notify the parent in writing of his/her decision within ten (10) school days of the conference. This letter **must** state the basis for the decision and, where necessary, make further recommendations. If the student has not already been removed, the letter must indicate the alternate instruction arrangements. Students may not be barred from returning to class after the suspension period has elapsed. Absence from school during the suspension period or parent failure to meet with the principal has no bearing on the suspension's conclusion date.

## **III. SUPERINTENDENT'S SUSPENSIONS**

A superintendent's suspension may result in a period of suspension that exceeds five days.

### **III.A Investigation/OORS/SOHO**

The school must enter the occurrence in OORS within 24 hours of the incident. Where a student engages in conduct for which a Superintendent's suspension may be warranted, it is the responsibility of the principal or his/her designee to fully investigate the incident prior to requesting a suspension. The school official of record must clearly describe the specific acts of alleged misconduct by the student for which the suspension is being requested. This must be entered into SOHO so the borough suspension director can make an informed determination.

### **III.B Requesting a pre-hearing removal**

A student charged with specific level 3 or level 4 infractions (A23, A25-A33, A38, A40, A41, A43, B23, B25-B36, B42, B44, B45) must remain in his/her suspending school pending the hearing unless the principal believes that the student's continued presence in the school poses an immediate, continuing danger to persons or property or an ongoing threat of disruption to the academic process. In such cases, the principal must, through SOHO, request approval from the Borough Suspension Director for the student's immediate removal by checking the box adjacent to "I am seeking permission..." in the SOHO intake screen. In addition to checking the box, school officials must provide specific reason(s) why the student's continued presence poses such a danger or threat of disruption.

If the immediate removal is not requested, or if the request is denied, the student must remain in his/her regular class program until the hearing is held, and the case adjudicated.

For level 4 infractions other than those listed above, the principal may request that the student remain in the school prior to the hearing rather than being immediately removed to a pre-hearing site. These requests must also be made through SOHO.

### **III.C Notification**

The school must notify the parent of the suspension both by phone and mail designed to arrive within 24 hours of the suspension. Schools must use the parent notification letter found in SOHO.

A student who receives a superintendent's suspension must be provided with the opportunity for a hearing at which the student has the opportunity to present evidence and witness on his/her behalf and to question the school's witnesses.

If the school proves the charges and the suspension is upheld, the Chief Executive Officer of the Office of Safety and Youth Development or other designee of the Chancellor or the Community Superintendent may impose one of the following as set forth below. Not all disposition options listed below are available for all infractions. Dispositions must be made in accordance with the Discipline Code, and based on specific charge(s) proven at hearing.

- IMMEDIATE REINSTATEMENT
- CONTINUED SUSEPNSION FOR A FIXED PERIOD OF 6-10 DAYS
- EXTENDED SUSPENSION FOR 30-90 DAYS WITH AN AUTOMATIC REVIEW AFTER 30 OR 60 DAYS
- ONE YEAR SUSPENSION AND ASSIGNMENT TO AN ALTERNATE LEARING SITE WITH AN AUTOMATIC REVIEW FOR EARLY REINSTATEMENT AFTER SIX MONTHS
- ONE YEAR SUSPENSION AND ASSIGNMENT TO AN ALTERNATE LEARNING SITE WITHOUT THE POSSIBILITY FOR EARLY REINSTATEMENT
- EXPULSION (ONLY FOR GENERAL EDUCATION STUDENTS WHO TURNED 17 PRIOR TO THE BEGINNING OF THE SCHOOL YEAR, WHICH IS JULY 1.

### **IV. ALTERNATIVE INSTRUCTION**

All students who are subject to a disciplinary removal must be provided with alternative instruction as set forth below.

Students who are subject to a teacher removal must be provided with continued educational programming within the home school during the period of their removal.

Students on a principal's suspension must be provided with alternative instruction in their home schools. Elementary and middle school students (grades k-8) must be provided a full-time instructional program. High school students (grades 9-12) for must be provided with a minimum of two hours per day of instruction.

Elementary students who are suspended by the superintendent will be assigned to a "buddy school" and must be provided with a full-time instructional program. Students in grades 6-12 who are suspended by the superintendent will be assigned to an Alternate Learning Center (ALC), where they will be provided with a full-time instructional program.

#### **IV.A Alternate Learning Centers**

ALCs are the DOE's educational program for students in all five boroughs serving Superintendent's Suspensions in grades six through twelve. Each borough's ALC is led by a principal. Each site is supervised by an assistant principal and is staffed by a team of core subject area teachers, a guidance counselor, a special education teacher and other support personnel.

There are two main goals for ALCs: continuity of instruction and participation in social and emotional learning for students on suspension. ALCs also work with community based organizations to provide direct services to students such as individual and small group counseling, social emotional learning, community service, arts education and wellness based activities.

## **IV.B Transportation**

MetroCards issued by the home school should not be de-activated at the time of suspension. If the student has a MetroCard from the home school s/he should continue to use that card while at the ALC. If a student has not been issued a MetroCard by the home school, the home school may issue an X-1 or program exception MetroCard for the student to use on his/her first day at the ALC. After that the ALC will issue an X-1 or program exception MetroCard for the remainder of the suspension.

All 6<sup>th</sup> graders are entitled to full fare transportation if the ALC is not within 1 mile walking distance. Full fare transportation is either a yellow bus (if available) or a MetroCard. Students in grades 7-12 are entitled to full fare MetroCards if the ALC is not within 1-1/2 mile walking distance.

If a student with an IEP has a mandate for transportation s/he are entitled to continue the transportation currently used. For more specific information, see section V.F.2, below.

## **IV.C State Assessments**

Students suspended for 90 days or less will return to their home school for state standardized exams. Students on suspension for more than 90 days will be tested at their current suspension location.

## **IV.D Early Reinstatement**

Protocols for Early Reinstatement have changed from previous years. The final decision about whether to grant or deny Early Reinstatement is made by the OSYD borough suspension director, on behalf of the CEO. All students with a disposition that includes the option of early reinstatement will have a meeting at the ALC to determine whether the ALC will recommend the student for return. The ALC will review the student's overall behavior, academics, and attendance while attending the site and will make a recommendation to the borough suspension director who will then examine the materials submitted and make a final determination. The decision will then be communicated to the ALC, the home school and the student/parent.

## **IV.E Transitioning Back**

Students who attend an ALC for a semester or longer are entitled to the credits earned while the student attended the ALC. ALCs will award this credit in STARS and the home schools must honor it.

Home schools should access DOE systems to understand the work the student completed while suspended. For example, the school may wish to review the Suspension Plan for a student with a disability in SOHO to see what kind of services the student was receiving at the ALC. Additionally, the ALC will transmit a packet of work for each student transitioning back to school following a suspension.

## **V. STUDENTS WITH DISABILITIES**

Students with IEPs or 504 plans (referred to collectively as students with disabilities or SWDs) who are subject to a disciplinary change of placement are afforded specific protections under federal and state law and regulations and DOE policy.

### **V.A Deemed to Know**

A student who has not yet been determined to be eligible for special education services who engages in behavior that violates the Discipline Code may be entitled to IDEA due process protections if prior to the behavior that precipitated the disciplinary action, school officials were "deemed to know" that the student is a student with a disability under the IDEA. Prior to taking any disciplinary action against a student without an IEP, school officials must determine if the DOE is "deemed to know" that the student is a student with a disability under the IDEA.

The DOE is "deemed to know" that a student is a student with a disability under the IDEA if, prior to the conduct at issue:

- The parent expressed concern in writing<sup>1</sup> to a school-based administrator, the district CSE or a teacher of the student advising that he/she thinks his/her child may have a disability;
- The parent has requested in writing<sup>9</sup> to the school principal or the district CSE an evaluation of his/her child to determine whether the student is a student with a disability (request for an initial evaluation); or
- A teacher of the student, or other DOE employee, has expressed concerns directly to the school principal or district CSE about a pattern of behaviors demonstrated by the student.

The DOE is not deemed to know, and a student is not presumed to have a disability, if:

- The parent declined to consent to an evaluation, has not produced the student for an evaluation or has revoked or withdrawn consent;
- The parent refused to allow the provision of special education services; or
- The student was evaluated and determined not to be a student with a disability under the IDEA.

If it is determined that the DOE is “deemed to know” that a student is a student with a disability under the IDEA, the school must follow protocols to obtain parental consent. Upon receipt of consent, the school must conduct an expedited evaluation within 15 school days. If the parent fails to provide consent after outreach by the DOE, the case will be closed, and the student is not a “deemed to know” student.

If, following the expedited evaluation, it is determined that the student is a student with a disability under the IDEA, and it is determined that an MDR is required, the additional due process protections for students with disabilities must be provided. Contact the MDR Support Unit for assistance at [mdrsupport@schools.nyc.gov](mailto:mdrsupport@schools.nyc.gov).

## **V.B Manifestation Determination Review (MDR)**

A student with a disability is entitled to an MDR if the imposition of discipline will result in a “disciplinary change of placement” (see below). The purpose of the MDR is to determine whether the behavior that led to the teacher removal, principal’s suspension or superintendent’s suspension was caused by or had a direct and substantial relationship to the student’s disability and/ or was the direct result of the failure to implement the student’s IEP or 504 plan.

### **V.B.1 Disciplinary Change of Placement**

A disciplinary change of placement occurs if a student is removed from his/her current educational program:

1. for more than 10 consecutive school days as the result of a superintendent’s suspension; or
2. for more than 10 cumulative school days in a school year as a result of multiple disciplinary removals that constitute a “pattern of removals” as defined below.

### **V.B.2 Pattern of Removals**

There are two types of patterns of removals that may result from the imposition of discipline: Presumptive patterns and Non-presumptive patterns.<sup>2</sup>

#### **i. Presumptive Patterns of Removals**

As a matter of DOE policy, a pattern of removals is presumed and an MDR is required whenever a SWD will be removed from his/her current educational placement for more than 10 cumulative school days in a 40-school-day period as the result of the imposition of at least three disciplinary removals of 10 school days or less. Such a

<sup>1</sup> A written concern or request may be made orally only if the parent does not know how to write or has a disability that interferes with his/her ability to prepare a written statement.

<sup>2</sup> SOHO is programmed to prompt a pattern determination by looking at the number of days for which the student has been removed during the current school year, including the time that a student has been removed for a prehearing removal.

pattern is referred to as a “presumptive pattern of removals.” When a disciplinary removal will result in a presumptive pattern of removals, SOHO is programmed to notify the school by email that an MDR is required. In these instances, the principal/designee does not have to decide whether a pattern of removals will occur if discipline is imposed. It is presumed to occur and an MDR must be held.

## **ii. Non-presumptive Patterns of Removals**

If the imposition of two or more disciplinary removals will result in the SWD being removed for more than 10 cumulative school days in the school year and does not result in a presumptive pattern of removals, the principal/designee must determine whether a non-presumptive pattern of removals will occur if the discipline is imposed. Once an SWD has been removed for more than 10 cumulative school days in the school year, the non-presumptive pattern determination must be made for every subsequent removal that is not a presumptive pattern of removals or that is not more than 10 consecutive days. This must be done regardless of whether prior behaviors have been found to constitute a pattern of behavior or an MDR has previously been conducted for the student.

In determining whether a non-presumptive pattern of removals will occur the principal/designee must consider:

- Whether the behaviors underlying the prior and proposed disciplinary removals are substantially similar, including prior behavior(s) that resulted in positive manifestation determinations during the current school year; and
- If those behaviors are substantially similar, whether the imposition of the removal will result in a pattern of removals, taking into account the nature of the behavior and such additional factors including the temporal proximity of the prior and proposed removals to one another, the length of each removal, and the total amount of time the student will have been removed) to determine whether a non-presumptive pattern of removals exists.

SOHO will prompt the school to answer questions, as described in more detail in Section V.B.3(i), when the principal/designee enters the disciplinary removal into SOHO.

To help the principal/designee, the following information regarding each prior disciplinary removal is available in SOHO by searching via the student’s ID number:

- The number of days of removal for each disciplinary action;
- The date each removal was imposed;
- The infraction code(s) associated with each disciplinary removal; and
- A link to the associated Online Occurrence Reporting System (OORS) report for each disciplinary removal, which includes a description of the behavior for which the student has been removed.

## **V.B.3 Determining Whether a Disciplinary Removal will Result in a Non-Presumptive Pattern of Removals**

### **i. Principal’s Suspension/Teacher Removal**

The following sets forth the process for determining whether the imposition of a teacher removal or principal’s suspension will result in a non-presumptive pattern of removals.

The principal/designee must enter the number of days of a teacher removal or of a proposed or imposed principal’s suspension into SOHO. SOHO will calculate the total number of days of removal for the student for the school year.

If the number of days of the removal, when aggregated with prior removal(s), results in more than 10 cumulative days of removal in the school year, and a presumptive pattern of removals will not occur, SOHO will prompt the principal/designee to make a pattern of removals determination by answering the following question(s):

1. Is this behavior substantially similar to the student’s behavior in the previous incident(s) that resulted in a

disciplinary action (removal or suspension) this school year, taking into account what happened in the incidents and the surrounding circumstances, including but not limited to, the precipitating events, the location and time of the incidents and the participants?

**Yes** *This behavior is substantially similar to the student's behavior in prior incident(s)*

**No** *This behavior is not substantially similar to the student's behavior in prior incident(s)*

If the principal/designee answers "NO" to this question, a pattern of removals will not occur from the imposition of discipline and an MDR will not be required. SOHO will send an email to the school advising that an MDR is not required.

If the principal/designee responds "YES" to this question, the principal/designee will be asked to consider additional factors in determining whether a pattern of removals will occur if the discipline is imposed. The following will appear in SOHO:

2. In addition to considering the similarity of behaviors, you must determine whether there is a pattern of removals by considering additional factors such as::

- a. Whether the length of this disciplinary action is similar to the length of the prior disciplinary action(s) imposed this school year?
- b. Whether the student has been removed from his regular class for a significant number of days due to disciplinary action this school year; and
- c. Whether this disciplinary action is close in time to the prior disciplinary action(s) this school year (i.e., the prior teacher removal(s) and/or suspension(s))?

**YES** *Based on the considerations above, I believe that the imposition of this discipline will result in a pattern of removals*

**NO** *I believe that the imposition of this discipline will not result in pattern of removals*

If the principal/designee answers "NO," an MDR is not required.

If the principal/designee determines that there is a pattern of removals, the principal must answer "YES" to the second question in SOHO. SOHO will then send an email notifying the school that an MDR must be conducted and that the school must take the following steps:

1. Schedule the MDR and send the suspension/removal and MDR notification letter generated from SOHO to notify the parent of the MDR. Call the parent to confirm attendance.
2. Review the MDR Worksheet and gather the relevant documents to prepare for the meeting.
3. Ensure that the appropriate staff members will be present at the MDR.
4. Conduct the meeting and complete, the Worksheet at the meeting.
5. Within 24 hours of the completion of the MDR meeting, enter the MDR Worksheet into SOHO. The Worksheet is accessed in the MDR queue by scrolling to the last column on the right.

ii. **Superintendent's Suspensions of 10 Days or Less**

Whenever a superintendent's suspension has been authorized for a SWD, there is the possibility of a disciplinary change of placement following the hearing if the charges are sustained. Therefore, as soon as the suspension is authorized, SOHO preliminarily schedules the MDR and notifies the school by email of the date for the MDR. The Hearing Office will send a letter to the parent notifying the parent of the possible MDR.

If the charges are sustained at the suspension hearing or a plea of no contest is entered, the suspension hearing office will enter the proposed disposition into SOHO.

If the proposed disposition following the hearing or plea of no contest is a continued suspension for less than 11 school days and will result in a presumptive pattern of removals, the MDR must be conducted as originally scheduled by SOHO.<sup>3</sup> The principal will receive an email reminding him/her of the original deadline for conducting the MDR.

If the proposed disposition is for less than 10 days, but the imposition of the discipline will result in more than 10 cumulative school days of removal and will NOT result in a presumptive pattern, the principal/designee will be required to make a non-presumptive pattern of removals determination in SOHO. SOHO will send an email to the principal directing the school to access the "MDR Queue" in SOHO and make a non-presumptive pattern of removals determination, as set forth in Section V.B.3(i) above.

If the principal/designee determines in SOHO that there is a non-presumptive pattern of removals, an MDR must take place (and the principal will receive an email reminding the school of the original deadline for the MDR). If the principal/designee determines that no pattern exists, an MDR is not required and an email will be sent to the school notifying the principal of the cancellation of the MDR. The school must notify the parent of the cancellation.

## **V.C Timeframes and Notification Requirements**

The MDR must be scheduled to occur within certain timeframes, as set forth below, depending upon the type of disciplinary action imposed. Parents must receive written notification of the MDR meeting. This notice must inform the parent of the date of the meeting, the purpose of the meeting, the name of individuals expected to attend and the parent's right to request that additional members of the school-based or district Committee on Special Education (CSE) participate.

### **i. Superintendent's Suspension that Results in a Disciplinary Change of Placement**

Whenever a superintendent's suspension has been imposed for a SWD, SOHO automatically schedules an MDR for two school days after the hearing date and notifies the school by email of the date of the suspension hearing and MDR.

The MDR will be cancelled by SOHO if, following the suspension hearing or a plea of no contest:

- The charges are dismissed,  
or
- The imposition of the discipline will not result in a presumptive pattern of removals or the principal /designee has determined that it will not result in a non-presumptive pattern of removals.

The suspension hearing office will notify the parent in writing of the suspension and the date of the suspension hearing and the required information about the MDR. The suspension hearing office will also notify the school of any hearing postponements or rescheduled or cancelled MDRs and the school must notify the parent of these changes.

### **ii. Principal's Suspension that Results in a Disciplinary Change of Placement**

The MDR must be scheduled to occur no later than five school days after the date scheduled for the principal's suspension conference. SOHO will automatically notify the school that an MDR must be scheduled by that date.

The school must notify the parent in writing of the suspension and the MDR by sending the principal's suspension/MDR notification letter found in SOHO. This notice must be sent in a manner which assures receipt within 24 hours of the decision to suspend. The school must notify the parent of any subsequent change to the MDR date or time.

### **iii. Teacher Removals that Result in a Disciplinary Change of Placement**

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<sup>3</sup> Additionally, if the proposed disposition is for greater than ten school days, the MDR will also go forward as planned.

The MDR must be scheduled to occur no later than five school days after the date the teacher removal was imposed. SOHO will automatically notify the school that an MDR must be scheduled by that date.

The school must notify the parent in writing of the MDR by sending the teacher removal/MDR notification found in SOHO on the same date the removal is imposed. Additionally, the school must notify the parent of any subsequent change to the MDR date or time

## **V.D Required Steps Following the MDR**

### **V.D.1 Determination of a Manifestation**

If the MDR Team finds that the action for which the student was subject to discipline was a manifestation of his/her disability, the student must be immediately returned to school, except as set forth below.

If a student's misconduct is found to be a manifestation of the student's disability, the student may still be assigned to an Alternate Learning Center (ALC) for up to 45 school days by the CEO/designee if charges involving the following offenses were sustained at the superintendent's suspension hearing:

- Weapons: The student brought or possessed a weapon<sup>4</sup> to or in school, on school premises, or at a school function under the jurisdiction of the school or DOE.
- Drugs: The student knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school, on school premises or at a school function under the jurisdiction of the school or DOE.
- Serious bodily injury: The student inflicted serious bodily injury on another person at school, on school premises, or at a school function, meaning bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The following steps must also be taken if the MDR Team concludes that the action is a manifestation:

- If the student does not already have one, an FBA must be conducted and, if appropriate, a BIP must be developed and implemented immediately. For more information about FBAs and BIPs, visit the "Special Education Resources" page within the Special Populations section on the DOE Intranet.
- If an FBA has already been conducted, it must be reviewed to determine whether the FBA should be updated and whether a BIP should be created. If a BIP was already developed it must be reviewed and modified as necessary to address the behavior that resulted in the removal/suspension. Additionally, if appropriate, the BIP should be reviewed to address other behaviors identified in the FBA that impede learning.
- If the student's IEP is not fully implemented, steps must be taken immediately to remedy the deficiencies.

### **V.D.2 Determination of No Manifestation**

If it is determined that the student's behavior was not a manifestation of his/her disability, the disciplinary removal may be imposed.

The following additional follow-up steps must be taken:

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<sup>4</sup> A weapon for these purposes 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 this term does not include a pocket or other knife with a blade of less than two and one-half inches in length.

- At the next CSE meeting, the school-based or district CSE must determine whether the student's behavior necessitates conducting or updating an FBA and/or developing or reviewing a BIP.<sup>5</sup> If the student requires an FBA, one must be conducted by the home school, and a decision must be made as to whether the student requires a BIP. If the student requires a BIP, it must be developed and implemented immediately. If the student already has a BIP, it must be reviewed to determine if a new FBA is needed to gather new data or if changes need to be made to the BIP. The FBA and creation of the BIP may require the input of the people at the ALC who have the opportunity to observe the student and can add significantly to the content and development of the FBA and BIP.
- The FBA and the BIP must be forwarded to the student's suspension site upon completion.

### **V.D.3 For Either Outcome**

Regardless of whether the behavior is found to be a manifestation of the student's disability, if any member of the MDR Team determines that the educational or related service needs of the student warrant a change in the student's program or a reevaluation of the student, the member must submit a request for reevaluation or an IEP review immediately following the completion of the MDR.

### **V.E MDR Support Unit**

The DOE has established a Manifestation Determination Review (MDR) Support Unit to provide support to schools on how to conduct high quality MDR meetings. Support will include training and capacity building for school-based teams, as well as other resources and written materials. Members of the Support Unit have backgrounds in special education, which include school psychologists, former CSE staff, and special education administrators. They have received professional development by the DOE in addressing behavioral issues concerning students with disabilities, including how to conduct an MDR.

### **V.F Suspension Plans**

#### **V.F.1 Introduction**

A Suspension Plan must be developed for all SWDs whose suspensions result in the student being out of school for more than 10 consecutive school days. A Suspension Plan sets forth the services that will allow the student to participate in the general education curriculum and to continue to progress towards meeting the goals on the student's IEP while on suspension. It provides the student and the staff of the suspension site with a description of the special education services the student will receive during the period of suspension.

The Suspension Plan is separate from a student's IEP, but contains information about the student's skills, behavior, needs and services that will help develop an appropriate program for the student while serving the suspension. For example, the student's service level intensity and frequency may be different than the services indicated on the student's current IEP. The Suspension Plan must be used in conjunction with the student's IEP goals to enable the suspension site to provide appropriate services to the student at the site.

A Suspension Plan must be created under the following circumstances:

1. The student is suspended by the Superintendent and the disposition results in the student being out of his/her regular school program for more than 10 consecutive school days; or
2. The student is removed pre-hearing and an adjournment results in the student being out of his/her regular school program for more than 10 consecutive school days.

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<sup>5</sup> If the student is attending the ALC, the school should work with the ALC staff to gather the relevant information to create or update the FBA/BIP.

The Suspension Plan is composed of two parts. Part 1 summarizes the student's academic performance, behavioral issues, and/or instructional supports. Part 2 describes the special education program, related services, and other supports the student will receive while suspended.

All schools grades 6-12 must complete Part 1 of the Suspension Plan in SOHO by the third day of the suspension. SOHO will notify a school that a Suspension Plan Part 1 must be completed and the school can access the Part 1 via the MDR Queue in SOHO. Part 2 will be completed in SOHO by the CSE at the Alternate Learning Center.

All schools grades K-5 must complete Suspension Plan Parts 1 and Part 2 in SOHO by the tenth day of the suspension.

## V.F.2 Part 1

Part 1 **MUST** be completed by student's home school for students in all grades. This year, the Suspension Plan has been made into an electronic form and is required to be completed in SOHO. Schools can access the Suspension Plan by visiting the MDR Queue and clicking on the link to Part 1.

Part 1 of the Suspension Plan focuses on gathering student-specific information regarding academics, behavior, and instructional supports. The home school must collect information from staff members with personal knowledge about the student. Some of this information may be auto-populated in the Suspension Plan with information from SESIS. If the school determines there is an error in the information, it must change the underlying IEP information in SESIS.

Part 1 includes five sections:

- **Student Information** (demographic information, grade level, ELL status, and Disability Classification),
- **Suspending School Information** (name of the person completing form and a special education contact at the suspending home school with specific information about the SWD),
- **Student Needs** (transportation needs, medical alerts, and whether student has a Behavioral Intervention Plan (BIP))<sup>6</sup>,
- **Current Skill-based Performance** (descriptions of the SWD's need for support in various areas and include any helpful strategies, interventions and supports that have been successful), and
- **Other** (behavior, skills, study habits, and skills, as well as strategies, interventions, programs, or supports that are currently used for the student).

Home schools may also need to complete the **Suspension Transportation Variance Form** if the student is recommended to receive specialized transportation on his or her IEP or where specified below. All students will continue to be transported to their suspension site in the same manner they were transported to their home school site, with the following exceptions:

- Students who walk to school and will now attend a suspension site to which they are unable to walk because of the distance from their home<sup>7</sup> may receive a MetroCard. In these cases, the home school must issue a single-use MetroCard for the student's first day of attendance at the suspension site.
- Students who travel by public transportation to school, but whose cognitive and/or emotional condition present extenuating circumstances given the travel distance to a suspension site may receive yellow bus transportation. In making this determination, the home school must consider the student's disability-related issue and the length of time and/or distance between their home and the suspension site. If appropriate for the SWD, the home school should make a transportation request using the **Suspension Transportation Variance Form**.

Note: Although MetroCards are available for eligible students at each suspension site, cards issued by the home school should not be deactivated at the time of suspension.

The more information the home school includes regarding the student and his/her needs, the more helpful Part I will be for the suspension site.

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<sup>6</sup> Note: The suspending home school should provide supporting information/documentation to the Hearing Office, including the BIP, if it is not already in SESIS.

<sup>7</sup> Students are eligible for MetroCards if they live more than 1 mile from the ALC (grade 6) or more than 1-1/2 mile from the ALC (grades 7-12)

### V.F.3 Part 2

For students in grades 6-12, Part 2 must be completed by the ALC. For students in grades K-5, Part 2 must be completed by the home school. In both cases, Part 2 must be completed in SOHO.

Part 2 of the Suspension Plan focuses on creating a plan tailored to meet the specific needs of the student, which will enable the student to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. For Part 2, a CSE meeting is required to complete the Suspension Plan.

Part 2 of the Suspension Plan includes five sections:

- **Suspension Plan Team Information** (the date of the IEP team meeting and the participants);
- **IEP and Other Information** (information regarding testing accommodations, promotional criteria and whether student needs additional transportation);
- **Special Education Program** (describing the specific supports and programs to be used while the student is suspended);
- **Related and Other Services** (describing the specific related services and other services the student will receive while suspended); and
- **Transition Planning** (explanation of the steps taken to transition the student from the suspension site).

All available information on the student, including the IEP, Part 1 of the Suspension Plan, and supporting materials, must be used when completing Part 2 of the Suspension Plan. Part 2 must be completed **within 10 school days** of the student's suspension, which includes notifying the parent, conducting a meeting with the CSE and filling out the required portions of the Plan. The CSE can either input Part 2 of the Plan directly into SOHO at the meeting or use a paper version of the Plan at the meeting and enter the information into SOHO immediately thereafter.

### V.G Child Find

ALC staff may make a Request for Initial Referral to a student's home school if they determine that a general education student has not made adequate progress after an appropriate period of time of receiving services and interventions designed to maintain the student in general education and the lack of progress is suspected of being the result of a disability. ALC staff will also follow up with a call or email to the home school to discuss the case further.

Once the home school receives the referral, the principal must determine, by collaborating with the ALC, whether an initial referral is appropriate and take the necessary follow up steps.

### V.H Annual Reviews and Three Year Reevaluations

The requirements to conduct annual reviews and three year reevaluations remains in effect while students are serving suspensions.

Students in ALCs remain the responsibility of the home school's IEP team for the duration of the suspension. It is important that the home school continues to review SESIS on a regular basis to ensure you are conducting annual review or three year reevaluations for students at ALCs. If a student enrolled at your school has an annual or mandated three year reevaluations that comes due during his/her suspension, the home school is responsible for conducting the appropriate next steps. This student will appear on the appropriate SESIS report and the home school must take every step to ensure that the annual review or three year reevaluation is conducted and the new IEP is created and finalized within the relevant time periods.

Because the student is not currently attending the home school, the home school's CSE will need to work with the ALC the student is attending to complete the required tasks. The home school is required to make the following arrangements:

1. Arrange to have the student report back to the home school to conduct the assessments and/or IEP meeting,
2. Send a team to the ALC to conduct the assessments and/or IEP meeting, or
3. Make arrangements to have the assessments and/or IEP meeting at a mutually agreed upon off-site location.

The home school should work with the ALC staff to gather appropriate and relevant information (including any folders of student work) on the student. The home school psychologist should contact ALC staff to gather observations and other

data as needed. The home school should invite ALC staff, including teachers and related services providers and any other relevant staff members, to participate in the annual review or three year reevaluation meeting, either in person or by telephone. If such staff members are not available, the home school should provide the relevant ALC staff members with a request to summarize the student's progress.

## OSYD Contact Information

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For SOHO Technical Assistance Contact: OSYD helpdesk: (718) 935-5004  
For questions regarding MDRs: [MDRSupport@schools.nyc.gov](mailto:MDRSupport@schools.nyc.gov)

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