



### **POLICY 5.1891**

- 4-A** I recommend the Board adopt the proposed revised Policy 5.1891, entitled “Discipline of Students Eligible for Services under Section 504 of the Rehabilitation Act of 1973 (‘Section 504’) and Americans with Disabilities Act (‘ADA’).”

[Contact: Debra Neeson, 434-8817]

#### **Adoption**

#### **CONSENT ITEM**

- This amendment was requested by the District's ADA/504 Specialist to clarify the District's practices regarding discipline of students for use of illegal drugs or alcohol. Other minor updates are included, such as the statutory citations.
- The revision clarifies that the District is not obligated to hold a manifestation determination hearing before disciplining a student (with a 504 plan) for use or possession of illegal drugs or alcohol if that student is currently a user of illegal drugs or alcohol; the student may be disciplined in the same manner as other students for use or possession of illegal drugs or alcohol. Note: the student receives the same due-process and substance-abuse assistance that other students receive in cases of discipline for drug or alcohol possession or use.
- If the student with a 504 plan will be disciplined for an act involving *multiple offenses* including drugs or alcohol (for example: profanity and battery on a teacher, coupled with possession of drugs), the manifestation determination hearing would consider the offenses *other than* the drug/alcohol possession or use.
- The Board approved this proposed revision for development on September 13, and the Adoption Notice was duly advertised on September 27.

**POLICY 5.1891**

1 **DISCIPLINE OF STUDENTS ELIGIBLE FOR SERVICES UNDER SECTION 504 OF**  
 2 **THE REHABILITATION ACT OF 1973 ("SECTION 504") AND AMERICANS WITH**  
 3 **DISABILITIES ACT ("ADA")**  
 4

- 5 1. ~~The above refers to students with active Section 504 accommodation plans. 2.~~  
 6 ~~These District assures that the This Policy policies and procedures for discipline of~~  
 7 ~~students eligible for services under Section 504 is are designed to comply in~~  
 8 ~~compliance with State Board of Education Rule 6A-6.03331(7) 6A-6.0331(8), the~~  
 9 ~~Section 504 Regulations at 34 C.F.R. Part 104, and 29 U.S.C. 794 ("Section 504").~~  
 10 ~~The phrase "eligible for services under Section 504" above refers to students with~~  
 11 ~~active Section 504 accommodation plans.~~
- 12 2. **Definitions.--** The words suspension and expulsion of students with active Section  
 13 504 accommodation plans shall have the following meanings through this policy:
- 14 a. **Suspension.--** Pursuant to Fla. Stat. § 1003.01(5)(a) [and Policy 5.1815],  
 15 suspension, also referred to as out-of-school suspension, is defined as the  
 16 temporary removal of a student from all classes of instruction on public school  
 17 grounds and all other school-sponsored activities, except as authorized by the  
 18 principal/designee, for a period **not to exceed ten (10) (cumulative) school**  
 19 **days** and remanding of the student to the custody of the student's custodial  
 20 parent with specific homework assignments for the student to complete.
- 21 b. **Expulsion.--** As defined in Fla. Stat. § 1003.01(6) 228.041(26), Fla. Stat., and  
 22 Policy 5.1817, expulsion is the removal of the right and obligation of a student  
 23 to attend a public school under conditions set by the Board, and for a period of  
 24 time not to exceed the remainder of the term or school year and one (1)  
 25 additional year of attendance. Expulsions may be imposed with or without  
 26 continuing educational services (subject to Section (4)(f) below) and shall be  
 27 reported accordingly.
- 28 c. **Re-evaluation.--** Students with active Section 504 accommodation plans who  
 29 are recommended for suspension in excess of ten (10) days, or expulsion,  
 30 must have a re-evaluation prior to a significant change in placement, as  
 31 required by ~~34 Code of Federal Regulations ("CFR")~~ 34 C.F.R. § 104.35(d).
- 32 3. **Suspension of Students under Section 504/ADA.--** Students with active Section  
 33 504 accommodation plans are expected to follow the rules of the student conduct  
 34 code. ~~a. Cause of Suspension.--~~ Students who are eligible for services under  
 35 Section 504/ADA may be suspended for infractions as defined for all students  
 36 pursuant to Policies 5.1812 or 5.1813 [and Policy 5.1815], with the following  
 37 limitations:

- 38 a. ~~b.~~ **Suspension for Ten (10) Cumulative Days or Less.**-- Student suspension  
39 procedures [in Policy 5.1815] will be followed for students who are eligible for  
40 services under Section 504/ADA and recommended for suspension for ten  
41 (10) cumulative days or less.
- 42 b. ~~c.~~ **Any Suspension Beyond Ten (10) Cumulative Days.**-- ~~i.~~ No student who  
43 is eligible for services under Section 504/ADA shall be suspended beyond ten  
44 (10) cumulative days per school year, **except** through the following procedure.  
45 ~~ii.~~ It is the responsibility of the principal/designee to monitor all  
46 serial/cumulative suspensions. (~~iii.~~ **NOTE:** If a student with an active Section  
47 504 accommodation plan has been referred for ESE testing prior to or during  
48 the Section 504 manifestation determination, the student is then protected  
49 under the IDEA for discipline provisions. Therefore, the manifestation team  
50 must treat the student as an ESE student.)
- 51 i. ~~iv.~~ The principal/designee shall notify the 504 Multi-Disciplinary Team  
52 immediately when a student who is eligible for services under Section  
53 504/ADA violates the student conduct code and will be considered for  
54 suspension for more than ten (10) cumulative days per school year.
- 55 ii. ~~v.~~ Within twenty-four (24) hours of the recommendation for the extended  
56 suspension, the principal/designee shall provide written notice to the  
57 custodial parent/guardian and the student of the proposed suspension,  
58 alleged misconduct, and time and date of the scheduled 504 Multi-  
59 Disciplinary Team meeting. Notification of purpose, participants and  
60 location of the meeting will be included.
- 61 iii. ~~vi.~~ The custodial parent/guardian shall also be notified that the 504 Multi-  
62 Disciplinary Team will also serve as a 504 plan team and may change the  
63 student's Section 504 plan. The custodial parent/guardian shall be given  
64 a copy of the Section 504/ADA Procedural Safeguards.
- 65 iv. ~~vii.~~ The notice and copy of Section 504/ADA Procedural Safeguards shall  
66 be delivered by registered or certified mail (return receipt requested) or  
67 personally delivered by the principal/ designee at least twenty-four (24)  
68 hours prior to the meeting. A signed receipt of delivery must be obtained.
- 69 v. ~~viii.~~ Before the student can be removed from the campus for the  
70 suspension recommendation, the principal/designee will arrange a 504  
71 Multi-Disciplinary Team review of the incident that was the ~~reason~~ basis  
72 for the recommendation for suspension.
- 73 vi. ~~ix.~~ Members of the committee must include the following personnel:
- 74 A. A school psychologist as the person knowledgeable of the evaluation  
75 procedures pursuant to the disability.

- 76 B. If the disability of record is a medical disability, the school nurse  
77 should be present to consult with the psychologist.
- 78 C. A teacher, counselor, or appropriate person knowledgeable of the  
79 student.
- 80 D. An administrator (not the recommending administrator) as the person  
81 who is knowledgeable of the suspension/expulsion process.
- 82 vii. ~~x.~~ The 504 Multi-Disciplinary Team will review the case and determine  
83 whether the student's conduct was or was not a manifestation<sup>1</sup> of the  
84 disability for which the student has a Section 504 plan. However, if the  
85 student is currently a user of illegal drugs or alcohol, the District is not  
86 obligated to hold a manifestation determination hearing for an offense of  
87 possession or use of illegal drugs or alcohol; such student may be  
88 disciplined in the same manner as other students for use or possession of  
89 illegal drugs or alcohol under Policies 5.1812 or 5.1813 and Policy 5.1815  
90 and will receive the same due process and substance-abuse assistance  
91 as other students under those Policies.
- 92 viii. ~~xi.~~ A review of the student's present program and case history will be  
93 completed prior to making this determination. ~~xii.~~ Information from  
94 appropriate staff will be reviewed and taken into consideration.
- 95 ix. ~~xiii.~~ A consensus of the members of the team shall determine whether the  
96 student's conduct was or was not a manifestation of the disability.
- 97 x. ~~xiv.~~ PBSD 1469, The ADA/504 Record Form, shall be used to document  
98 the committee's findings and recommendations. PBSD 1051, Conference  
99 Form, may be used if the committee chooses.
- 100 xi. ~~xv.~~ If the 504 Multi-Disciplinary Team determines that the student's  
101 behavior is not a manifestation, then the student may be suspended from  
102 school in the same manner students not on an active Section 504  
103 accommodation plan are suspended.
- 104 xii. ~~xvi.~~ If it is determined that the student's behavior is a manifestation of the  
105 student's disability, federal law does not permit a school district to cease  
106 all educational services.
- 107 xiii. ~~xvii.~~ The student may be excluded with services (as with students eligible  
108 for services under the Individuals With Educational Disabilities Act  
109 ("IDEA")). The 504 Multi-Disciplinary Team must review the Section 504  
110 plan and make modifications with the intent to reduce inappropriate  
111 behaviors.

112 4. **Expulsion of Students under Section 504/ADA**

- 113 a. Students eligible for services under Section 504/ADA may be recommended  
114 for expulsion as defined for all students.
- 115 b. The principal/designee shall notify the 504 Multi-Disciplinary Team  
116 immediately when a student with a Section 504 plan is being recommended  
117 for expulsion.
- 118 c. In addition to procedures under Policy 5.1817, within twenty-four (24) hours of  
119 the recommendation for expulsion, the principal/designee shall provide written  
120 notice to the custodial parent/guardian and the student of the proposed  
121 expulsion and the date and time of the scheduled 504 Multi-Disciplinary Team  
122 meeting to determine manifestation of disability. However, if the student is  
123 currently a user of illegal drugs or alcohol, the District is not obligated to hold a  
124 manifestation determination hearing for an offense of possession or use of  
125 illegal drugs or alcohol; such student may be disciplined in the same manner  
126 as other students for use or possession of illegal drugs or alcohol under  
127 Policies 5.1812 or 5.1813 and Policy 5.1817 and will receive the same due  
128 process and substance-abuse assistance as other students under those  
129 Policies.
- 130 d. The notice, procedural safeguards, and a copy of this Policy shall be delivered  
131 by ~~registered~~ or certified mail (return receipt requested) or the  
132 principal/designee shall personally deliver it ~~delivered by the principal/~~  
133 ~~designee and~~. A obtain a signed receipt ~~shall be obtained~~.
- 134 e. If it is determined that the misconduct is not a manifestation of the student's  
135 disability, the student **may be expelled** in the same manner as students not  
136 on an active Section 504 accommodation plan. f. In such a situation, Section  
137 504 of the Rehabilitation Act would permit all educational services to cease.
- 138 f. ~~g.~~ If it is determined that the student's misconduct is a manifestation of the  
139 student's disability, federal law does not permit a school district to cease all  
140 educational services. ~~h.~~ The student may be excluded with services (as with a  
141 student eligible for services under the IDEA).

142 <sup>1</sup> [ Footnote to (3)(b)(vii):] Manifestation of the Disability: A manifestation of the disability is the exhibition  
143 of behaviors which are considered to be a component of the individual student's disability.

144  
145 STATUTORY AUTHORITY: §§ 230.22; 1001.41(2); 1001.42(22); 1001.43(1), (6),  
146 Fla. Stat.

147 LAWS IMPLEMENTED: §§ 228.04(25)(b); 228.041(25)(a); 228.041(26); 230.2316;  
148 1001.43(1), (6); 1003.01(5), (6); 1003.53, Fla. Stat.

149 STATE BOARD RULE SUPPLEMENTED: ~~6A-6.03331(7);~~ 6A-6.0331(8)

150 HISTORY: 01/14/2002; \_\_ / \_\_ / 04

Legal Signoff:

The Legal Department has reviewed proposed Policy 5.1891 and finds it legally sufficient for development by the Board.

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date