

**NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY
AGGIE ACADEMY**

DISCIPLINE OF STUDENTS WITH DISABILITIES

I. Policy Statement

Aggie Academy (“school”) recognizes its responsibility to provide each student an equal opportunity to receive an education and to provide an atmosphere conducive to learning and which protects student freedoms guaranteed by the Constitution of the United States. The discipline, suspension and expulsion of students with handicaps and disabilities is governed by the federal Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act and their implementing regulations - as well as state law and the most current version of the North Carolina Department of Public Instruction’s *Policies Governing Services for Children Disabilities*.

II. Purpose

It is the purpose of this policy to provide guidelines for Aggie Academy to use in disciplining students with handicaps, disabilities and special needs as those terms are defined in the federal and state laws and regulations referred to above.

III. Scope and Application

The same standards of expected conduct and sanctions set forth in the Aggie Academy Code of Student Behavior Policy/Code of Student Conduct apply to students with disabilities. This policy applies to all students with disabilities at Aggie Academy and modifies and provides additional guidelines for appropriate sanctioning of students with disabilities.

IV. Definitions

- (1) A “Behavior Intervention Plan” or “BIP” is a document attached to a Section 504 Plan or an IEP. It includes those interventions, positive and negative, which will be used to manage the student’s classroom behavior and benchmarks to determine when the IST/IEP Team should meet and assess the effectiveness of the Plan.
- (2) “Dean” means the Dean of the NC A&T College of Education and the Dean’s designee.
- (3) “Functional behavioral assessment” is a method for identifying and evaluating factors that reliably predict problem behavior. The assessment may include interviews with teachers and individuals who have worked with the child, descriptive observations of the child’s behavior, and the completion of behavioral checklists. The assessment involves identifying, if possible when problem behaviors occur, the causes of problem behaviors, and the type of interventions that positively affect managing or minimizing the problem behaviors. It also involves a functional analysis of the student’s disability

- to determine how it affects the student’s behavior. A functional analysis may involve systematically changing the factors that may affect a student’s classroom behavior, including but not limited to:
- The interventions, both positive and negative, currently used to manage behavior;
 - The schedule for the delivery of instruction; or
 - The method used for the delivery of instruction.
- (4) “Individualized Education Program” or Individualized Education Plan (IEP)” is a plan or program developed to ensure that a child who has a disability identified under the law and is attending an educational institution receives specialized instruction and related services.
- (5) An “Instructional Support Team (ISP)” is individuals who assess student performance, develop Instructional Support Plans for students experiencing learning difficulties, and monitors student progress with specific interventions across disciplines and grades.
- (6) “Parent” includes a parent, legal guardian, legal custodian, or other caregiver adult acting in the place of a parent and entitled to enroll a student in school.
- (7) “Principal” means the Aggie Academy principal and the principal’s designee.
- (8) A “Section 504 Plan” is a plan developed to ensure that a child who has a disability identified under the law and is attending an educational institution receives accommodations that will ensure their academic success and access to the learning environment.
- (9) “Students with disabilities” means students with handicaps, disabilities, and special needs as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 701 et seq.), and their implementing regulations; and under North Carolina law and the North Carolina Department of Public Instruction’s *Policies Governing Services for Children Disabilities*.

V. Principles

- (a) Reasons for managing student behavior are to:
- (1) create an orderly environment in which students can learn;
 - (2) teach expected standards of behavior;
 - (3) help students learn to accept the consequences of their behavior; and
 - (4) provide students with the opportunity to develop self-control.
- (b) The following principles apply in managing student behavior:
- (1) Behavior management strategies will complement other efforts to create a safe, orderly and inviting environment.
 - (2) Appropriate positive behavioral interventions will be used to improve student behavior.

- (3) Aggie Academy will integrate responsibility, integrity, civility, and other standards of behavior into the curriculum.
- (4) Disruptive behavior in the classroom will not be tolerated.
- (5) Consequences for unacceptable behavior will be designed to help students learn to comply with rules, to be respectful, to accept responsibility for their behavior, and to develop self-control.
- (6) Strategies and consequences will be age and developmentally appropriate.

VI. Disciplinary Sanctions of Students with Disabilities

A. In-School Suspension

A student with a disability may be assigned to in-school suspension as a sanction if the same sanction would be applied to non-disabled students, and the student is given the opportunity to continue to progress in the general curriculum, continue to receive IEP services, and continue to participate with non-disabled students to the extent they would in their current placement.

B. School Bus Suspension

Whether a bus suspension counts as a day of suspension for a student with a disability will depend on (1) whether the bus transportation is a part of the student's IEP; and (2) whether the student's parents have the ability to transport the student to school.

If bus transportation is a part of the student's IEP, a bus suspension will be treated as an out-of-school suspension unless the student with an alternative transportation service. If bus service is not a part of the student's IEP, a bus suspension will not be a suspension unless the student's parents do not have the ability to transport the student to school.

C. Short-Term Suspensions

(a) First Ten Days

Generally, students with a disability may be suspended for up ten (10) school days in a school year to the same extent and for the same misconduct that non-disabled students would be suspended under the relevant provisions of the Student Behavior Policy/Code of Student Conduct. These short-term suspensions are not considered a change of placement and require no special education procedures or services. Due process procedures for short-term suspensions apply as set forth in the Student Behavior Policy/Code of Student Conduct.

(b) Cumulative Short-Term Suspensions Totaling more than 10 Days

(1) Duty to Assess Behavior and Implement a BIP

- a. If the principal is considering a short-term suspension of a student with a disability and the total number of days suspended in the school year will exceed 10 school days, the principal shall notify the IST/IEP Team.
- b. If the IST/IEP Team did not conduct a functional behavioral assessment and implement BIP for the child before the behavior resulting in the proposed suspension, Section 504 and IDEA regulations require the IST/IEP Team to meet within 10 business days to develop a plan to conduct a functional behavioral assessment and develop a BIP to address the student's behavior.
- c. If a BIP exists, the IST/IEP Team members shall review the BIP (not necessarily in a meeting) and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the Team shall meet to consider the request to modify the BIP and its implementation. If not, the Team does not have to meet and should implement the BIP as written.

(2) Duty to Determine Whether Cumulative Suspensions is a Change of IEP

- a. If the principal is considering a short-term suspension of a student with a disability and the total number of days suspended in the school year will exceed 10 school days, the principal shall determine whether the cumulative effect of the suspensions change of the student's IEP.
- b. During these short-term suspensions following the first ten days of suspension, educational services must be provided, if necessary, for the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP.
- c. The following factors shall be used in determining whether cumulative short-term suspensions totaling more than 10 days in a school year have the effect of changing a student's IEP and trigger the procedural safeguards of the Section 504 and the IDEA and State Procedures Governing Programs and Services for Children with Special Needs.
 - (i) The length of the suspensions - The longer each suspension, the more they should be viewed collectively as a change of placement. If the average length of the suspensions would be more than 5 school days, it should be considered a change of the IEP.
 - (ii) The total number of days a student is suspended - There is no specific number of cumulative days that defines a change in placement. However, more than 20 days in a school year should be considered a change of the IEP.
 - (iii) The proximity of the suspensions to each other - If, during a particular time period, a student would spend a significant amount of time out of school due to a series of short-term suspensions, the

suspensions should be viewed collectively as a change of placement. If a student is suspended for more than 25% of the days in a school month, it could be considered a change of the IEP.

- (iv) The similarity of the misconduct - If the student repeatedly engages in the same type of misconduct, the misconduct may be a manifestation of the student's disability and the repeated suspensions may be viewed collectively as a change in the IEP.
- d. If the principal determines that the cumulative effect of the additional short-term suspension is not a change of the student's IEP, the principal shall notify the student's parents of that determination at the time the decision is made and give the parents a copy of the *Parent's Rights Handbook*, explaining their procedural right to appeal the determination.
- (i) The principal may implement the suspension unless the parents exercise their right to appeal the determination.
 - (ii) The principal, in consultation with the student's special education teacher and any other appropriate persons, shall determine the educational services to be provided during the short-term suspension. At a minimum, the student must be required to make-up the class work missed during the suspension.
- e. If the principal determines that the cumulative effect of the additional suspension is a change of the student's IEP, the IST/IEP Team shall meet within 3 business days to determine whether the conduct is a manifestation of the student's disability.
- f. In making the manifestation determination, the IST/IEP Team must consider all information relevant to the conduct subject to discipline, including but not limited to evaluations, diagnostic results, and other relevant information from the parents, observations of the student, and the student's Section 504 Plan or IEP and placement. The misconduct is not a manifestation of the student's disability if the IST/IEP Team finds that in relationship to the misconduct subject to discipline:
- (i) The Section 504 Plan or IEP and placement were appropriate;
 - (ii) Special educational services, supplementary aids and services, and behavior intervention strategies were provided consistent with the Section 504 Plan or IEP and the student's placement;
 - (iii) The disability did not impair the student's ability to understand the impact and consequences of the misconduct; and
 - (iv) The disability did not impair the ability of the student to control the misconduct.

- g. If the IST/IEP Team determines that the student's behavior is not a manifestation of the student's disability, it shall provide the student, the student's parent, and the principal with a copy of the Manifestation Worksheet and provide the parents with a copy of the Parent's Rights Handbook containing their appeal rights.
 - (i) The principal may implement the suspension unless the parents exercise their right to appeal the IST/IEP Team's determination.
 - (ii) The principal, in consultation with the child's special education teacher and any other appropriate persons, shall determine the educational services to be provided during the short-term suspension.
 - (iii) The student shall be required to make-up the class work missed during the suspension.

- h. If the IST/IEP Team determines that student's behavior is a manifestation of the student's disability and the student has a BIP in effect or the IST/IEP Team develops a BIP, the IST/IEP Team shall review the BIP, modify it and implement the BIP, as necessary, to address the behavior.

D. Long-Term Alternative School Assignments, Suspensions and Expulsions

(1) Notice of Misconduct and Due Process Rights

If a student is alleged to have committed a serious offense as set forth in the Aggie Academy Student Behavior Policy/Code of Student Conduct, the principal may impose a long-term alternative school assignment, a long-term suspension, a 365-day suspension or an expulsion in accordance with that policy. The principal shall notify the student and the student's parents of this sanction and of their rights to a hearing as under the Aggie Academy Student Discipline Procedures, and provide the parents with a copy of the Parents Rights Handbook.

(2) Weapons and Drug Offenses

If the student is accused of possessing a weapon which could inflict a serious bodily injury (other than a pocket knife which has a blade of 2.5 inches or less), of knowingly possessing or using illegal drugs, or of selling or soliciting the sale of a controlled substance, the principal should also recommend placement of the student in an interim alternative setting determined by the IEP Team for up to 45 calendar days pending any appeals under the provisions of the IDEA.

(3) Violent Behavior

If the student is accused of violent behavior and the principal believes the student is dangerous, the principal may recommend to the Dean that Aggie Academy request:

- a. A court order placing the student in an interim alternative setting;
- b. An expedited hearing before an Administrative Law Judge for an order placing the student in an interim alternative setting as determined by the IST/IEP Team for up to 45 calendar days pending any appeals; or
- c. Other appropriate actions consistent with state and federal law and the school's commitment to providing a safe educational and work environment.

E. Functional Behavioral Assessment and Behavior Intervention Plan

- (1) If the IST/IEP Team has not conducted a functional behavioral assessment and implemented a BIP for the child before the behavior resulting in the proposed disciplinary action, Section 504 and IDEA regulations require the IST/IEP Team to meet within 10 business days to conduct a functional behavioral assessment and develop a BIP to address the student's behavior.
- (2) Within three (3) business days, the IST/IEP Team must meet to conduct a manifestation determination. However, the 45-day interim alternative placement may be implemented for a drug or weapon offense even if the IST/IEP Team determines the misconduct was a manifestation of the disability.

F. Standard Due Process Procedures

- (1) Students with disabilities have a right to a hearing in the same manner as non-disabled students under the Aggie Academy Student Discipline Procedures to determine whether the student violated the Student Behavior Policy/Code of Student Conduct and, if so, whether the recommended disciplinary action is consistent with this policy and appropriate to the student's misconduct.
- (2) If the student or the student's parents allege that the student's misconduct is a manifestation of the student's disability, the hearing officer must review and consider the IST/IEP Team's manifestation determination. The IST/IEP Team may meet and make the manifestation determination prior to the hearing.
- (3) If the hearing panel finds that the student did not violate the Student Behavior Policy/Code of Student Conduct, the student shall be readmitted to school immediately.
- (4) If the hearing panel finds that the student violated the Student Behavior Policy/Code of Student Conduct, the hearing panel must apply this policy and impose appropriate discipline. The hearing panel also must consider the IST/IEP Team's manifestation determination before determining the sanction.
- (5) If the student does not request a hearing, the hearing panel shall review the principal's recommendation, apply this policy, consider the manifestation

determination of the IST/IEP Team, and make a decision regarding the principal's recommendation.

G. Impact of Manifestation Determination

- (1) If the IEP Team determines that the student's behavior is not a manifestation of the disability, the IEP Team must:
 - a. Complete a Manifestation Determination Worksheet and submit it with all relevant data and information to the principal, Dean, and hearing panel, if a hearing is requested by the parent under the Student Discipline Procedures; and
 - b. Provide the student's parents with a copy of the IEP Team's determination and a copy of the Parents Rights Handbook to notify them of their procedural rights to request mediation and/or a hearing before an administrative law judge to appeal the manifestation determination.
 - c. The student may be given an alternative school assignment for the remainder of the school year (or for up to 365 days), suspended for the remainder of the school year (or for up to 365 days), or expelled in accordance with this policy.
 - d. If the student is identified as a student with a disability under the IDEA, the school must continue to provide a free appropriate public education ("FAPE") including special education and related services in an alternative setting as determined by the IEP Team. Notwithstanding the sanction, the student must continue to receive services that enable the student to progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. The IEP Team will determine the services necessary to meet this standard.
 - e. If the student is identified as a student with a disability under Section 504, the school is not required to continue to provide a FAPE for the student during an out-of-school suspension or expulsion.

- (2) If the IEP Team determines that the student's behavior is a manifestation of the student's handicap:
 - a. The student may not be disciplined for the conduct.
 - b. The student should be returned to the current placement immediately unless an interim alternative placement was approved by the hearing panel for the possession of a dangerous weapon, the possession or use of illegal drugs, the sale or solicitation of a controlled substance, or ordered by a judge or Administrative Law Judge.
 - c. The IEP Team should immediately consider appropriate ways to manage the student's behavior including but not limited to:
 - (i) Ensuring appropriate implementation of the IEP/Section 504 Plan;
 - (ii) Changing the IEP/Section 504 Plan;
 - (iii) Developing, modifying and/or implementing a BIP; or
 - (iv) Changing the student's placement.

- d. If the student is in an interim alternative setting, the student may remain in that setting pending the decision of the IEP Team regarding a change in the student's placement and any appeals, subject to the 45-day limitation, unless the student's parents agree to an extension of the interim alternative placement. If the parents do not appeal the IEP Team's decision, the student should be returned to the current or agreed upon placement as soon as possible.
- (3) When necessary, the IEP Team must determine the interim alternative educational setting.
- a. The setting selected must enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP that will enable the student to meet the IEP goals.
 - b. The setting must also include services and modifications designed to prevent the behavior from recurring to address the misconduct that brought about the interim alternative educational setting placement.

H. Protection for Students Not Yet Eligible for Special Education

- (1) A student who has not been identified as a child with a disability must be provided the procedural rights and safeguards of the IDEA if Aggie Academy had knowledge of the child's disability before the incident that precipitated the disciplinary action.
- (2) Knowledge of a disability is presumed if:
- a. The parents notified the principal in writing (unless the parent is illiterate) that the child is in need of special education;
 - b. The parent has requested an evaluation;
 - c. The child's behavior or performance demonstrates the need for special education; or
 - d. The child's teacher or other Aggie Academy personnel expressed concern about the child's behavior or performance to the principal in accordance with the procedures for the referral of a student.
- (3) If Aggie Academy had no knowledge of the student's disability at the time that it initiated a disciplinary action and the parent requests an evaluation after the incident, the student shall be subject to discipline as a non-disabled student.
- a. However, the school must provide the evaluation as requested by the parent and if it is determined that the child has a disability and is in need of special education, the IEP Team shall then determine whether the student's misconduct was a manifestation of the student's disability.
 - b. Once determined, the same rules apply as if the manifestation determination was made at the time of the incident.

Authority: Chancellor

References:

Individuals with Disabilities Education Act, [20 U.S.C. 1400 et seq.](#); [34 C.F.R § 300 et seq.](#)

Nondiscrimination under Federal Grants and Programs, [29 U.S.C. § 794 et seq.](#); [34 CFR § 104 et seq.](#)

Americans with Disabilities Act of 1990 as amended by ADA Amendments of 2008, [42 U.S.C. § 12101 et seq.](#); [28 C.F.R. Part 35](#); [28 C.F.R. Part 36](#)

Section 504 of the Rehabilitation Act and their implementing regulations

[N.C. Gen. Stat. § 116-239.5](#)

UNC Code, Section 502

[Program Administration for Children with Special Needs, State Board of Education Policy EXCP-000](#)

North Carolina Department of Public Instruction [Policies Governing Services for Children with Disabilities](#)