

E3. ENCLOSURE 3

GROUNDS FOR DISCIPLINARY ACTIONS

E3.1. General. This enclosure describes student conduct warranting disciplinary action or consequence and provides guidance as to the seriousness of offenses. However, this Regulation does not list every offense nor does it dictate the seriousness of any particular offense. Instead, it describes categories of conduct with sufficient specificity to inform the student of the type of conduct that may result in disciplinary consequence and is intended to alert principals to their flexibility in assessing the seriousness of offenses for purposes of determining the appropriate consequence. Disciplinary sanctions may be imposed for student conduct:

E3.1.1. While on school property.

E3.1.2. While en route between school and home or any school activity.

E3.1.3. While on vehicles owned by the Government or contracted by DoDEA schools for the transport of students.

E3.1.4. During the lunch period on a school day, whether on or off campus.

E3.1.5. During or while going to or from all school-sponsored or school-supervised events/activities that affect the missions or operations of the school or district including field trips, sporting events, stadium assemblies, and evening school-related activities.

E3.1.6. When the good order, safety, or welfare of the school, students, or staff is affected as a result of out-of-school actions. For out-of-school actions that involve First Amendment rights, there must be substantial disruption to the school.

E3.2. School Bus Discipline. Rules of student behavior and disciplinary procedures prescribed in enclosure 8 that are applicable to students en route by DoD-sponsored school buses between home and school and/or school-sponsored events and activities. The school has the discretion to process disciplinary actions for school bus infractions solely within the context of procedures prescribed in enclosure 8, or as a part of school discipline generally. Disciplinary action that might affect a student's special education program must be processed under the disciplinary procedures for students with disabilities. (See enclosure 6)

E3.3. Additional Guidance at the School/District Level. In addition to this guidance, individual schools; school districts; or directorates may promulgate student policies/manuals that implement the procedures of this Regulation subject to prior coordination in accordance with subparagraph 5.2.8. of this Regulation.

E3.4. Discipline for Minor or First Offenses. A student may be disciplined for relatively minor offenses or first offenses not presenting an immediate threat of danger to self or others through the use of written or oral reprimands or notice to the sponsor/parent/guardian, time out, teacher/student/ conferences, suspension of school or extracurricular privileges, and by any other

teacher intervention deemed by the teacher or principal to be appropriate. Minor offenses include any conduct that is not conducive to the good order and discipline of the school. Examples of conduct for which minor discipline may be appropriate include, but are not limited to: tardiness, unexcused absence, chewing gum or eating food in class, running or horseplay in the halls or classrooms, use of offensive language; disrupting the class by talking, laughing, or wandering about when the teacher determines that such conduct is inappropriate to the classroom activity. Nothing in this paragraph precludes the imposition of more serious disciplinary actions when a student engages in repeated or multiple acts of misconduct and the teacher or principal determined that the nature of the offense, in the context of all circumstances, warrants a more severe consequence than contemplated by this paragraph. Grade (score) reduction as a disciplinary action is not an appropriate means of discipline.

E3.5. Grounds for Removal. A student may be disciplined, to include removal from school (i.e., suspension, expulsion, or out of school placement) in appropriate circumstances; when a preponderance of the evidence demonstrates that the student has engaged in any of the following acts of misconduct:

E3.5.1. Causing, attempting to cause, or threatening to cause, physical injury to another person; or has threatened to use or has used physical force against any person, including physical force that causes serious bodily injury to a person, as defined by section 1365(h)(3) of 18 U.S.C. (reference (k)).

E3.5.2. Possessing, using, or transferring to another person any dangerous weapon (section 930(g)(2) (reference (j)), (e.g., any firearm, knife, explosive, incendiary device, or dangerous object) at the school or at a school-sponsored activity. A minimum 1-year expulsion is required for the possession of firearms.

E3.5.3. Possessing, using, distributing, or the attempted possession; use; or distribution of alcoholic beverages.

E3.5.4. Possessing or using tobacco, or any product containing tobacco or nicotine products; including, but not limited to: cigarettes, cigars, miniature cigars, clove, smokeless tobacco, snuff, chew packets, and betel nut.

E3.5.5. Possessing, using, distributing, or the attempted possession; use or distribution of any illegal/controlled substance; as defined in enclosure 2. A mandatory expulsion recommendation is required for a second offense.

E3.5.6. Offering, arranging, using, or negotiating to sell drug paraphernalia, or the unlawful possession of drug paraphernalia.

E3.5.7. Robbing or extorting, or attempting robbery or extortion.

E3.5.8. Damaging or vandalizing school, U.S. Government, contractor, or private property.

E3.5.9. Stealing, wrongfully appropriating, or attempting to steal or wrongfully appropriate; or knowingly receiving stolen school, Government, contractor, or private property.

E3.5.10. Committing any lewd, indecent, or obscene act; or engaging in habitual profanity or vulgarity.

E3.5.11. Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. This provision includes not only horseplay and other forms of disorderly conduct, but also includes: lying to and/or making false statements to school personnel, violation of the school honor code, and/or the violation of other rules and guidance established for an orderly educational atmosphere.

E3.5.12. Failing to leave the school, the school grounds, the school bus, or otherwise failing to follow the instructions/directions of the principal or staff member in charge after being told to do so; or is otherwise not authorized to be present in such areas (e.g., expelled or removed).

E3.5.13. Gambling in any form.

E3.5.14. Fighting or otherwise engaging in conduct that endangers the well-being of a student or others.

E3.5.15. Bullying (including cyber bullying) another, or a group (e.g., engaging physical intimidation, taunting, hazing, name calling, insulting, cursing, gesturing, or verbally abusing any person; including, but not limited to: comments, abuse, or harassment based on that person's race, religion, gender, creed, national origin, personal or physical attributes, disability, intellectual ability; and matters pertaining to sexuality, or characteristics of another person or the associates of another person).

E3.5.16. Using portable communications devices contrary to school policy (e.g., beepers, cell phones, personal computers, BlackBerrys; other similar devices capable of receiving or transmitting audio, video, picture, or text message; portable electronic devices, including: cameras, electronic games, portable radios, compact disc players, iPods, portable DVD players, or similar devices). Such equipment and devices are subject to confiscation by school authorities.

E3.5.17. Engaging in, or attempting to engage in, acts of arson, making a threat to bomb, burn, or destroy in any manner a school building or school property, or intentionally making a false report of a bomb threat or fire (e.g., making a terrorist or bomb threat, pulling a fire alarm, etc.).

E3.5.18. Forging, cheating, or plagiarizing the work of others.

E3.5.19. Possessing or using fireworks or other explosive devices.

E3.5.20. Violating attendance regulations or policies (i.e., truancy).

E3.5.21. Violating the terms and conditions of the DoDEA Student Computer and Internet Access Agreement, or by illegal or unauthorized means gain access to the computers, software telecommunications, and related technologies of others; engage in any willful act that causes physical or financial damage or otherwise disrupts information technology, or use a computer or communications device to communicate threatening, harassing, indecent messages; or download obscene or pornographic materials.

E3.5.22. Violating any law, rule, regulation, or policy of the military installation or the school.

E3.5.23. Failing to report or otherwise be complicit in the above-described acts.

E3.6. Notice to Law Enforcement Authorities. The principal of the school shall notify the Installation Commander, or his or her designee for law enforcement or legal affairs, of any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.

E3.7. Confiscation of Property. Authorized school officials may immediately confiscate any property belonging to, or in the possession of, any student if the possession or use of that property is inconsistent with the conduct required by this Regulation, or good order and discipline. Unless possession of the item is illegal or dangerous, the confiscating official will return the property to the rightful owner or the student's sponsor as soon as is practicable and safe, or issue a receipt for its retention until such time as it may be returned. Confiscation is not considered a disciplinary action, but is accomplished to preserve health and safety, or to provide evidence incidental to the exercise of disciplinary action.

E4. ENCLOSURE 4

PROCEDURES FOR IMPOSING DISCIPLINARY ACTION, INCLUDING REMOVAL UP TO 10 CONSECUTIVE SCHOOL DAYS

E4.1. General Applicability. The provisions of this enclosure apply to all students, including students with disabilities when consistent with the provisions of enclosure 6 of this Regulation.

E4.2. Educator Responsibilities. Principals, teachers, and other educational staff have the responsibility to exercise disciplinary control over their classrooms and the student(s) under their supervision in a fair and impartial manner in accordance with the procedures specified in this Regulation. They are authorized to enforce discipline by teaching students that consequences flow from inappropriate behavior.

E4.3. Teacher Authority to Discipline. Actions available to a teacher include, but are not limited to: reprimand, time-out, assignment to particular study carrels, notice to and conference with sponsor/parent/guardian, extra work, detention, and any other practice that is reasonable and does not involve removal or otherwise violate this Regulation.

E4.3.1. A teacher may require a student to leave the classroom and go to the principal's office or another setting for a class period, or a day, in order to preserve discipline, while the matter is reported to the principal.

E4.3.2. Removal of a student from class or school for a period up to 10 consecutive school days may be recommended by the teacher, but only the principal or designee may initiate or impose a disciplinary action resulting in such a removal.

E4.4. Principal's Authority to Remove (Suspend). The principal may remove a student and/or revoke or suspend a student's privilege of participating in any school-related activity or extracurricular event (e.g., sports, school dances, graduation exercises, field trips, etc.) for any of the reasons set forth in enclosure 3, for no more than 10 consecutive school days.

E4.5. Informal Conference. When exercising discipline under this enclosure, the principal or teacher must conduct an informal conference with the student. The purpose of the conference is to ensure that the proper student is being disciplined, the alleged infractions actually occurred, the student has the opportunity to give his or her side of the incident, and the student knows why he or she is being disciplined. This informal conference generally will occur immediately upon notifying the student that he or she is being considered for discipline. All necessary fact gathering will be accomplished immediately; perhaps during the informal conference. The principal or teacher must determine from the evidence available that a preponderance of the evidence requires the imposition of a consequence.

E4.5.1. Notice to the Student and Student Rights When Removal From School Is Not an Issue. The principal or teacher shall:

E4.5.1.1. Advise the student why disciplinary action is being taken against the student.

E4.5.1.2. Summarize the information that the teacher or principal is relying upon to conclude that the accused student committed an act described in enclosure 3.

E4.5.1.3. Afford the student, or his or her sponsor/parent/guardian, the opportunity to explain the alleged misconduct, and to present evidence that supports the student's explanation that the student has not committed an act as set forth in enclosure 3.

E4.5.2. Fact-finding and Decision. The principal or teacher shall:

E4.5.2.1. Make any reasonable inquiry necessary to resolve the questions of the student's culpability or mitigation and to make a determination whether a consequence is necessary or appropriate.

E4.5.2.2. Announce to the student the finding as to whether the student committed an act set forth in enclosure 3.

E4.5.2.3. Inform the student as to the disciplinary consequences, if any, that are being imposed.

E4.5.2.4. Advise the student of the appeal procedures, as described in paragraph E4.6. of this enclosure.

E4.5.3. Notice Required Upon Removal (regardless of the age of the student). Upon deciding that a student will be removed, the principal or designee shall:

E4.5.3.1. Contact the student's sponsor/parent/guardian in person or by telephone and advise the sponsor/parent/guardian of the removal; and

E4.5.3.2. Notify the student's sponsor/parent/guardian in writing of the removal by sending a copy of the notice home with the student and by mailing or e-mailing to the sponsor/parent/guardian a copy of same, generally within one school day of the decision. If e-mail is used as the notification method, the principal or designee shall call the student's sponsor/parent/guardian to ensure he or she knows that an e-mail notice was sent. The notice shall include:

E4.5.3.2.1. A statement of facts leading to the decision to remove the student.

E4.5.3.2.2. A statement that the student is to remain away from school, school grounds, and/or activities under the jurisdiction of the school during the period of removal unless given written authorization by the principal to be present.

E4.5.3.2.3. The date and time the student is authorized to return to school.

E4.5.3.2.4. A request that the sponsor/parent/guardian attend a conference with school officials regarding the student's behavior.

E4.5.3.2.5. Notice of the appeal procedures by which the student may appeal the removal.

E4.6. Appeals.

E4.6.1. Appeals Not Involving Removal. Appeals from disciplinary actions imposed by a teacher or a principal that do not involve removing a child from the school are resolved through a conference (informal hearing) between the sponsor/parent/guardian and the teacher or principal.

E4.6.1.1. The request for a conference must be submitted orally or in writing to the teacher or principal, whoever imposed the discipline, within 5 days of the imposition of the discipline.

E4.6.1.2. The teacher or principal promptly shall hold a conference with the sponsor/parent/guardian.

E4.6.1.3. The teacher or principal shall issue a decision, oral or written, within 10 days of holding a conference.

E4.6.1.4. The sponsor/parent/guardian may request a further conference with the principal, if the conference is held by the teacher without the principal. The principal is the final appellate authority for discipline not involving removal from the school; whether the discipline is imposed by a teacher or the principal.

E4.6.2. Appeals Involving Removal for 10 Days or Fewer.

E4.6.2.1. A student disciplined under this enclosure may file a written appeal of the disciplinary action within 5 school days of the imposition of discipline with the district superintendent (appellate authority). The sponsor/parent/guardian/student must simultaneously provide a copy of his or her appeal to the principal who imposed the removal.

E4.6.2.2. The student/sponsor/parent/guardian or the school may present new or previously undiscovered documentary evidence as long as the document is provided to the other party.

E4.6.2.3. The principal shall forward a copy of the record developed in the disciplinary proceedings to the superintendent upon notice an appeal has been filed.

E4.6.2.4. The appeal must describe in full detail why the discipline assessed is inappropriate.

E4.6.2.5. The appeal to the district superintendent is a paper review, affording no party the right to be present or to make oral arguments.

E4.6.2.6. The district superintendent will issue the student/sponsor/parent/guardian a final written decision. No further appeal is authorized.

E4.6.2.7. The school need not defer the imposition of any disciplinary consequence pending the appeal, particularly when the discipline is being taken to protect students or to prevent disruption in the classroom.

E4.6.3. If the basis for the disciplinary action or the disciplinary consequence is reversed on appeal, all records of a student having being disciplined shall be removed from the student's disciplinary file, and notice will be sent to the student's sponsor/parent/guardian to disregard the prior notice of removal and to remove and destroy such prior notices.

E5. ENCLOSURE 5

PROCEDURES FOR REMOVAL OVER 10 CONSECUTIVE SCHOOL DAYS, INCLUDING
EXPULSION

E5.1. General Applicability. The following procedures apply in cases where the principal, or designee, determines that a removal for more than 10 consecutive school days, including expulsion, may be warranted and the student is not eligible for or receiving special education services (requiring processing in accordance with enclosure 6). The procedure for a removal in excess of 10 consecutive school days requires a formal hearing before a school disciplinary committee and a decision by the district superintendent. Prior to proceeding with any disciplinary action at this level, it is incumbent upon the school administrator to assess the severity or seriousness of the incident; the student's age, past history, and ensure the disciplinary action being pursued is appropriate for the offense.

E5.2. Notice of Proposed Removal for Over 10 School Days (Including Expulsion).

E5.2.1. The principal will immediately notify the student and the student's sponsor/parent/guardian in writing of the proposed discipline (removal in excess of 10 consecutive days to expulsion).

E5.2.2. The notice shall:

E5.2.2.1. State the reason(s) for the proposed discipline in sufficient detail to inform the recipient of the nature of the alleged offense and to allow the recipient to answer to the allegations.

E5.2.2.2. Identify the specific proposed punishment (e.g., out-of-school removal for over 10 days, loss of extracurricular activity privilege for over 10 days, immediate removal for over 10 days pending disciplinary committee review, etc.) to be considered by the disciplinary committee.

E5.2.2.3. Provide a copy of this Regulation.

E5.2.2.4. State a right to a prompt hearing, the date of that hearing or the manner in which the date for the hearing will be established by the principal in consultation with the sponsor/parent/guardian.

E5.2.2.5. State the right of a student/sponsor/parent/guardian to waive a hearing.

E5.2.2.6. State the right of the student to be represented by the sponsor/parent/guardian, legal counsel or other representative in a hearing before the disciplinary committee.

E5.2.2.7. State the right to present a defense at the hearing, including the presentation of evidence and calling of witnesses to refute the allegations of misconduct and to mitigate the severity of the proposed disciplinary action.

E5.2.2.8. State the school administration's right to present evidence, call witnesses, and be represented by counsel or other representative.

E5.2.2.9. State the procedures that the student may exercise to appeal any determination the student believes is adverse to his or her interests.

E5.3. Procedures for Appointing the School Disciplinary Committee. In consultation with the district superintendent, the principal:

E5.3.1. Will appoint a school disciplinary committee at the start of each school year, or whenever reasonably practicable thereafter. The disciplinary committee shall be composed of an odd number of members (not less than 3) each of whom must be either a DoD employee, or a non-DoD employee who has executed a voluntary services agreement in accordance with reference (f), and received instruction in protecting student privacy.

E5.3.2. Shall ensure that representation on the committee is heterogeneous and that no group has disproportionate membership: The school disciplinary committee membership may be from any combination of the following groups, as appropriate:

E5.3.2.1. School administrator(s) from another school or the district.

E5.3.2.2. Member(s) of the school board, school, or Installation Advisory Committee, school improvement committee, etc.

E5.3.2.3. Representative(s) from the installation command with the concurrence of the Commander or his or her designee.

E5.3.2.4. Educator(s) or community member(s) with special expertise of benefit to the committee (e.g., background in special education, behavior management, etc.).

E5.3.3. May adjust the membership, as necessary. For example, add a member(s) with special expertise (e.g., a special educator in a case involving a student suspected of or with a disability); substitute for or replace a member who is unavailable; increase the membership, if the matter is serious enough to warrant greater community involvement; or excuse a member when the principal determines that the member has a potential conflict of interest.

E5.3.4. Shall disqualify any member of the disciplinary committee who has a personal relationship with any student or the sponsor/parent/guardian of any student brought before the disciplinary committee.

E5.3.5. Will ensure the disciplinary committee takes no disciplinary action involving a student with disabilities unless and until a CSC has determined, pursuant to the procedures in enclosure 6, that further action by the disciplinary committee is appropriate.

E5.3.6. Will obtain a signature on a voluntary services agreement prescribed by reference (f) for any member of the school disciplinary committee who is not a DoD employee, and will brief

each such member on his or her duties to protect the confidentiality of the evidence presented, deliberations by, and identification of any student appearing before the disciplinary committee.

E5.4. Hearing Procedures.

E5.4.1. The principal shall:

E5.4.1.1. Convene the disciplinary committee to conduct a hearing promptly after the principal decides to recommend a disciplinary action involving removal from the school for a period in excess of 10 days.

E5.4.1.2. Appoint or allow the disciplinary committee to elect a member of the committee to serve as its chairperson to manage the hearing.

E5.4.1.3. Appear and represent or appoint the assistant principal or another administrator to appear and represent the interests of the school before the disciplinary committee.

E5.4.1.4. Ensure that a record is made regarding the matters presented at the school disciplinary hearing by furnishing the disciplinary committee with a tape recorder or a court reporter to record the proceedings. If a tape recorder is used, at least two copies of the tapes shall be made; with one being presented to the student facing discipline, immediately after the conclusion of the hearing.

E5.4.1.5. Promptly send the record of the disciplinary committee; including the evidence, the written decision, and any notes or deliberations, to the district superintendent for a decision.

E5.4.2. Disciplinary Committee/Chairperson Duties. The chairperson rules on objections and requests from parties at the hearing and ensures that:

E5.4.2.1. The student, sponsor/parent/guardian, student's representative, and the school's administration or representatives are afforded an opportunity to present evidence in the form of witnesses and/or documentation.

E5.4.2.2. No member of the disciplinary committee is a witness in the disciplinary proceeding.

E5.4.2.3. The hearing proceeds in an orderly and timely manner.

E5.4.2.4. The committee meets in closed session (not transcribed or taped) to determine appropriate findings of fact, and recommend appropriate action; as determined by the majority of the members. The committee meets after it has provided all parties a sufficient opportunity to be heard.

E5.4.2.5. The committee prepares a written report of its findings of fact and its recommendations on disposition, including any relevant attachments, and forwards it to the district superintendent.

E5.4.2.6. The committee report identifies, as appropriate, specific extenuating (i.e., self defense or other matters suggesting a reason to find no misconduct), mitigating (i.e., evidence of sincere remorse; accident or mistake; attempts to ameliorate injury; assistance in identifying other perpetrators, etc.), or aggravating (i.e., multiple prior offenses; seriousness of the offense; apparent maliciousness of the perpetrator; extent of injuries caused, etc.) circumstances that influenced the committee's deliberations and recommendation.

E5.4.2.7. The committee is mindful of the requirements to protect Privacy Act information in accordance with (reference (e)).

E5.5. Deciding Official (District Superintendent).

E5.5.1. The district superintendent, after review and consideration of the recommendation of the disciplinary committee, promptly prepares and delivers to the student, or the student's representative, his or her written decision stating the findings of fact and disciplinary action; if any, to be taken against the student.

E5.5.1.1. The district superintendent's written decision may agree or disagree with the disciplinary committee's findings of fact and /or the recommendations concerning disciplinary action.

E5.5.1.2. The district superintendent may disagree with the disciplinary committee's findings of fact or recommendation concerning disciplinary action; however, the district superintendent shall ensure that his or her decision explains the basis for the disagreement.

E5.5.2. There is no requirement for the district superintendent to attend the disciplinary committee hearing; however, the district superintendent or his or her designee may attend the hearing if feasible.

E5.6. First Level Appellate Authority (Area Director).

E5.6.1. The student or his or her representative has five school days from the date of receipt of the district superintendent's decision to appeal the decision by writing to the Area Director, with a copy to the district superintendent; explaining/arguing the basis of the appeal and including any documentary evidence relied upon to support the appeal. The appeal may address and/or seek review of the district superintendent's findings of fact, the disciplinary consequence, or both.

E5.6.2. If the student, or his or her representative, appeals the decision, the district superintendent forwards the case file upon receipt of a copy of the appeal to the Area Director. The case file includes the hearing tapes and/or transcript, all memoranda, exhibits, documentary evidence, and any arguments or other written submissions prepared by the student and his or her

sponsor/parent/guardian/ representative. In addition, the student's school records are always reviewable by the deciding official.

E5.6.3. The Area Director will review the case file as expeditiously as possible, normally within 10 business days of the receipt of the hearing record, and render a decision in writing.

E5.7. Second Level (Final) Appellate Authority (Director, DoDEA).

E5.7.1. The student or his or her representative have five school days from the date of receipt of the Area Director's decision to appeal the decision in writing to the Director, DoDEA, with a copy to the Area Director, explaining/arguing the basis of the appeal, and including any documentary evidence relied upon to support the appeal. The appeal may address and/or seek review of the Area Director's findings of fact, the disciplinary consequence, or both.

E5.7.2. If the student appeals the decision, the Area Director forwards the case file to the Director, DoDEA, upon receipt of a copy of the appeal. The case file includes the hearing tapes and/or transcript, all memoranda, exhibits, documentary evidence, and any arguments or other written submissions prepared by the student and his or her sponsor/parent/guardian/ representative.

E5.7.3. The Director, DoDEA, will review the case file as expeditiously as possible, and render a decision in writing, normally within 10 business days of the receipt of the hearing record.

E5.7.4. The Director, DoDEA, will issue his or her written decision on an appeal as soon as practicable, normally within 10 days of receipt of the appeal/case file.

E5.8. Other Considerations.

E5.8.1. No student who has been expelled or suspended pursuant to this enclosure may enroll in any other school within DoDEA without express authorization of the district superintendent from the school that administered the discipline and the district superintendent of the new school.

E5.8.2. The suspension or expulsion will not be stayed pending the outcome of the disciplinary hearing process.

E5.8.3. The term of an expulsion should not extend beyond the end of the current school year, except when:

E5.8.3.1. The violation is a firearm violation.

E5.8.3.2. The misconduct leading to expulsion occurs during the last 6 weeks of the school year, in which case the expulsion may be extended to the end of the first semester for the following year.

E5.8.4. Students expelled from DoDEA will be provided the opportunity to obtain academic counseling at the closest DoD school. The principal will identify appropriate correspondence courses or other appropriate educational programs for the duration of the expulsion. If the principal determines that correspondence courses are the most appropriate method of affording educational services during the expulsion, they will be provided at DoDEA's expense for students who are eligible or space-required; however, the sponsor/parent/guardian must bear the expense for a student who is space-available or otherwise not eligible.

E6. ENCLOSURE 6

MODIFIED PROCEDURES FOR THE ADMINISTRATION OF DISCIPLINE TO CHILDREN/STUDENTS WITH DISABILITIES

E6.1. Applicability. The rules in this enclosure modify the rules in enclosure 5 and must be followed when a student with disabilities, as defined under reference (c), is proposed for disciplinary action that would change the student's placement.

E6.2. Change of Placement

E6.2.1. It is a change of placement if a child with disabilities is removed from his or her current placement for more than 10 consecutive school days.

E6.2.2. A change of placement may result after a student has been removed for 10 cumulative days in a school year if the CSC determines, after considering the following circumstances, that the student with disabilities has been subjected to a series of removals that constitute a pattern:

E6.2.2.1. The series of removals total more than 10 school days in a school year.

E6.2.2.2. The student's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals.

E6.2.2.3. The length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

E6.2.3. A change of placement determination is subject to review by a hearing officer in accordance with the provisions of enclosure 9 of reference (c).

E6.3. Notification of Change of Placement. On the date the decision is made to make a removal that constitutes a change of placement for a child with a disability because of a violation of a code of student conduct, the school must notify the parents of that decision, and provide the parents the procedural safeguards notice described in reference (b).

E6.4. Period of Removal: School personnel may remove a child with a disability who violates a DoDEA code of student conduct from his or her current placement to an appropriate interim alternative educational setting (AES), another setting, or suspension:

E6.4.1. For not more than 10 consecutive school days; to the extent those alternatives are applied to children without disabilities.

E6.4.2. For 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 pattern under subparagraph 6.2.2.

E6.4.3. Special Circumstances: School personnel may remove a child with a disability to an interim AES for a period up to 45 school days; if the student:

E6.4.3.1. Carries a weapon to school, or possesses a weapon.

E6.4.3.2. Possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance.

E6.4.3.3. Inflicts serious bodily injury upon another person.

E6.4.4. Extended Removal by Hearing Officer. In other circumstances when school personnel believe that returning the student to his or her current educational placement is substantially likely to cause injury to the student or to others, the school should contact the DoDEA Office of the General Counsel, petitioning for an expedited hearing before a hearing officer who is empowered to remove the student to an interim AES for up to 45 school days.

E6.5. Services Required During Removal.

E6.5.1. If a student with a disability is removed from his or her placement for 10 cumulative school days or less in a school year, the school is required only to provide services comparable to the services it provides to a student without disabilities who is similarly removed.

E6.5.2. If a student with a disability is removed from his or her placement for more than 10 consecutive or cumulative school days, the student must:

E6.5.2.1. Continue to receive educational services, to enable the student, although in another setting, to continue participating in the general education curriculum and to progress toward meeting the goals set out in the student's IEP.

E6.5.2.2. Receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications designed to address the behavior violation so that it does not recur.

E6.5.3. Once a student with a disability has been removed for more than 10 cumulative school days within a school year, the next time the student is proposed to be removed for disciplinary reasons, the CSC must determine whether the pattern of removals constitutes a change of placement.

E6.5.3.1. If the CSC determines the removals do not constitute a pattern, and the pending removal is not a change of placement, then the CSC determines the extent to which services are needed to enable the child to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

E6.5.3.2. If the CSC determines that there is a pattern of removals that constitutes a change of placement, then the CSC must conduct a manifestation determination.

E6.5.4. If, during the period of removal the student enrolls in an alternate educational program at personal expense, or a DoDEA sponsored correspondence program; DoDEA will provide services required by the IEP at the alternate educational setting established by DoDEA.

E6.6. Manifestation CSC Determination Required.

E6.6.1. A principal must give the notice required by reference (b) and convene a manifestation determination meeting with the CSC; consisting of the school, the parent, and relevant members of the child's CSC as determined by the parent and the school:

E6.6.1.1. Within 10 school days of making a disciplinary decision that would remove a student with disabilities for more than 10 consecutive school days; or

E6.6.1.2. For a period in excess of 10 cumulative school days when the student has been subjected to a series of removals that constitute a pattern.

E6.6.2. The manifestation CSC will review all relevant information in the student's file (including the IEP, any teacher observations, and any relevant information provided by the sponsor/parent/guardian) to determine whether the misconduct was a manifestation of the student's disability.

E6.7. CSC Determination that Misconduct Did Not Result from the Student's Disability. The CSC will promptly:

E6.7.1. Forward the case and a recommended course of action to the principal, who may refer the case to a disciplinary committee for processing under enclosure 5.

E6.7.2. Reconvene following a disciplinary decision that would change the student's placement, to revise the student's IEP and/or devise a suitable alternate educational setting and delivery system to ensure the student receives services consistent with his or her IEP.

E6.8. CSC Determination that Misconduct Results from a Student's Disability.

E6.8.1. The student's misconduct is a manifestation of his or her disability when all information described in subparagraph E6.2.3. of enclosure 6, has been reviewed and the CSC determines that the student's conduct was:

E6.8.1.1. Caused by, or had a direct and substantial relationship to, the student's disability; or

E6.8.1.2. Was the direct result of the school's failure to implement the student's IEP.

E6.8.2. Special Procedures When Misconduct Is a Manifestation. The principal must immediately convene the student's IEP CSC to:

E6.8.2.1. Conduct a functional behavioral assessment and implement a behavioral management plan; if no such assessment had been conducted or plan devised by the school prior to the decision to remove the student from his or her placement.