

Monroe 2-Orleans BOCES Policy**Series 7000 – Instruction****Policy #7122 – STUDENTS PRESUMED TO HAVE A DISABILITY FOR DISCIPLINE PURPOSES**

The parent/legal guardian of a student who has violated any rule or code of the BOCES and who was not identified as a student with a disability at the time of such behavior may assert several protections provided for under the Individuals with Disabilities Education Act (IDEA) and State regulations if the home school district is deemed to have had knowledge (as determined in accordance with law and/or regulations and referenced below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of Knowledge

The home school district shall be deemed to have knowledge that the student had a disability if prior to the time the behavior occurred:

- a) The parent/legal guardian of the student had expressed concern in writing to supervisory or administrative personnel, or to a teacher of the student, that the student is in need of special education and related services. However, expressions of concern may be oral if the parent/legal guardian does not know how to write or has a disability that prevents a written statement;
- b) The parent/legal guardian of the student has requested an evaluation of the student; or
- c) A teacher of the student, or other BOCES personnel, has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the home school district's Director of Special Education or to other home school district supervisory personnel in accordance with the home District's established child find or special education referral system.

Exception

A student is not a student presumed to have a disability for discipline purposes if, as a result of receiving the information specified above (i.e., subheading "Basis of Knowledge"):

- a) The parent/legal guardian of the student has not allowed an evaluation of the student pursuant to law and/or regulations;
 - b) The parent/legal guardian of the student has refused services under law and/or regulations;
- or
- c) The student has been evaluated and it was determined that the student is not a student with a disability.

Responsibility for Determining Whether a Student is a Student Presumed to Have a Disability

If it is claimed by the parent/legal guardian of the student or by BOCES personnel that the home school district had a basis for knowledge, in accordance with law and/or regulation, that the student was a student with a disability prior to the time the behavior subject to disciplinary action occurred, it shall be the responsibility of the Superintendent of Schools, Building Principal or other

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home district school official imposing the suspension or removal to determine whether the student is a student presumed to have a disability.

Conditions That Apply if There is No Basis of Knowledge

If it is determined that there is no basis for knowledge that the student is a student with a disability, the student may be subject to the same disciplinary measures as any other nondisabled student who engaged in comparable behaviors.

However, if a request for an individual evaluation is made during the time period in which such nondisabled student is subjected to a disciplinary removal, an expedited evaluation shall be conducted in accordance with law and/or regulations. Pending the results of the evaluation, the student shall remain in the educational placement determined by the home district school authorities.

If the student is determined to be a student with a disability taking into consideration information from the evaluation and information provided by the parents/legal guardians, the home school district shall provide special education and related services in accordance with law and/or regulations.

Individuals with Disabilities Education Improvement

Act of 2004 [Public Law 108-446, Section 615(k)(5)]

Individuals with Disabilities Education Act (IDEA)

20 United States Code (USC) Section 1400 et. seq.

34 Code of Federal Regulations (CFR) Part 300

8 New York Code of Rules and Regulations (NYCRR)

Section 201.5

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