**Discipline of Special Education Students Under IDEA 2004**

**20 U.S.C. § 1415(k) and 34 CFR §§ 300.530-300.536**

* This chart should be read in conjunction with discipline procedures in state law, M.G.L. c. 71, §§ 37H & 37H1/2, and district-wide and school-wide student codes of conduct.
* Protections in the IDEA apply to students who have been found eligible for special education and to students for whom the school is deemed to have knowledge that the child might have a disability (i.e., students who have not yet been found eligible but the school had a basis of knowledge of a disability, including students who have been referred for initial evaluation). 34 CFR § 300.354
* Beginning on the 11th school day of a student’s disciplinary removal during the school year, and if removal is a change in placement, the student must be provided free appropriate public education (FAPE) services during the period of removal to allow him/her to continue to participate in the general education curriculum and progress towards IEP goals, even if in a different setting. 34 CFR § 300.530(b) & (d).
* If the conduct that the student is being disciplined for involves the “special circumstances” of weapons, illegal drugs, controlled substances, or serious bodily injury, school personnel may remove the student to an interim alternative educational setting (IAES) for up to 45 school days, regardless of the manifestation determination. 34 CFR § 300.530(g). The IEP Team must determine the IAES.
* Although the following flowchart lays out the steps that a school district must take when disciplining a student with a disability, it is important to remember that at any point the parent and school district can agree to change a student’s placement for disciplinary reasons. Agreements should be in writing, and signed by the school personnel and the parent.

## Disciplinary removal for current misconduct is for less than 10 *consecutive* school days *and* removals total less than 10 *cumulative* school days in the school year

34 CFR § 300.530(b)

## Disciplinary removal for current misconduct is for 11 or more *consecutive* school days

**Student protected under IDEA violates a school code of conduct**

Student’s conduct is a manifestation

of his/her disability. 34 CFR § 300.530(f)

Student’s conduct is not a manifestation

of his/her disability. 34 CFR § 300.530(c)

**Disciplinary removal for current misconduct is for less than 10 *consecutive* school days *but***

**removals total more than 10 school days in the school year** 34 CFR § 300.530(b)(2)

Within 10 school days of decision to remove student for disciplinary reasons the district, the parent and relevant members of the IEP Team must review relevant information and make a manifestation determination. 34 CFR § 300.530(e)

May apply relevant disciplinary procedures in the same manner and for the same duration as to students without disabilities. 34 CFR § 300.530(c)

IEP Team determines extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum and progress toward meeting IEP goals. 34 CFR § 300.530(d)(5)

***And*** return student to placement *unless* (1) parent and district agree to a different placement, (2) hearing officer orders new placement, or (3) removal is for “special circumstances” under 34 CFR § 300.530(g). 34 CFR § 300.530(f)(2)

Provide, as appropriate, functional behavioral assessment and behavioral intervention services and modifications.

34 CFR § 300.530(f)(1)

By the 10th *cumulative* school day of removal in the same school year, the district must consult with at least one of the student’s teachers to determine the extent to which FAPE services are needed to enable the student to continue to participate in the general ed curriculum, although in another setting, and to progress toward meeting IEP goals.

34 CFR § 300.5 30(d)(4)

District may exclude student from the current placement without obligation to provide FAPE unless the district provides services for students without disabilities who are similarly removed.

34 CFR

§ 300.530(d)(3). Types of exclusion may be suspension, removal and assignment to an interim alternative educational setting (IAES). An “in-house” suspension may be considered a change in placement.

Notify parents immediately of decision to change placement for disciplinary reasons, and of procedural safeguards under IDEA. 34 CFR § 300.530(h). Student is entitled to FAPE services as determined by the Team. 34 CFR § 300.530(d)(5)

NO to both

Conduct a functional behavioral assessment and develop a behavioral implementation plan, *or* review and modify an existing plan as needed. 34 CFR § 300.530(f)(1)(i)-(ii)

If conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies and review. 34 CFR § 300.530(e)(3)

Removal is a change in placement. 34 CFR § 300.536(a)(1)

Manifestation Determination: Is the conduct a direct result of the district’s failure to implement the IEP? 34 CFR § 300.530(e) Does the conduct have a direct and substantial relationship to the disability?

YES to either

Return student to placement when the disciplinary period expires unless parent and school agree otherwise or student is lawfully expelled

NO

Is the current removal one in a series that is a pattern of removal constituting a **change of placement**?

34 CFR § 300.536

YES

# **Appeals Process for Disciplinary Placement Decisions for Students with Disabilities**

**Under IDEA 2004: 20 U.S.C. § 1415(k) and 34 CFR §§ 300.532-300.533**

**Who may file an appeal of a disciplinary decision?**

* A parent of a child with a disability who disagrees with any decision regarding the child’s disciplinary placement, or the manifestation determination, may appeal the decision by requesting a hearing at the Bureau of Special Education Appeals (BSEA). Reasons for appeal may include but are not limited to disagreement with the student’s removal to an interim alternative educational setting (IAES), disagreement regarding the manifestation determination, disagreement regarding the determination of whether the removal is a change of placement, disagreement regarding the educational services the student receives during the period of removal, and disagreement regarding the functional behavioral assessment and/or implementation of a behavioral intervention plan. 34 CFR §§ 300.530-300.531.
* An LEA that believes that maintaining the student’s current placement is substantially likely to result in injury to the child or others may file a request for hearing at the BSEA.

HO determines that maintaining the current placement is substantially likely to result in injury to the child or others and orders a change in placement to an appropriate IAES for not more than 45 school days.

34 CFR

§ 300.532(b)(2)(ii)

***Or*** time period for disciplinary placement expires while the appeal is pending and child is returned to original placement.

**Parent or LEA files a request for hearing**

**at the Bureau of Special Education Appeals (BSEA)** 34 CFR § 300.532(a)

Student remains in disciplinary placement

while the appeal is pending. 34 CFR § 300.533

The BSEA will schedule an **expedited due process** hearing to occur within 20 school days of the date the hearing request is filed. 34 CFR § 300.532(c)

Parties agree to use a voluntary mediation process.

34 CFR § 300.506

***Or*** parent and district agree to another placement while the appeal is pending.

Mediation

Parties agree in writing to waive a resolution meeting.

34 CFR § 300.510(3)

Parties proceed with a

resolution meeting.

 34 CFR § 300.510

Due Process Hearing

Resolution meeting must occur within seven days of receiving notice of the due process complaint. 34 CFR § 300.532(c)(3)(i)

Parties reach agreement. Matter resolved to the parties’ satisfaction. 34 CFR § 300.506(b)(6)

Continue with the due process hearing. The Hearing Officer (HO) makes a determination within 10 days of the hearing.

34 CFR § 300.532(c)(2)

Parties do not reach agreement. Matter not resolved.

HO finds a violation of 34 CFR § 300.530 and returns the student to the placement from which the child was removed. 34 CFR § 300.532(b)

(2)(i)

Resolution Session

Parties reach agreement. Matter resolved. 34 CFR § 300.510(d)

Hearing Officer’s decision may be appealed to state or federal court. 34 CFR § 300.532(c)(5)

Matter not resolved to the parties’ satisfaction.

Parties withdraw hearing request.

The due process hearing continues unless the matter has been resolved within 15 days of the receipt of the complaint.

34 CFR

§ 300.532(c)(3)(ii)

HO finds no violation. Student may remain in disciplinary placement until it expires or until parent and district agree otherwise.

**DEFINITIONS**

A student for whom the district is deemed to have knowledge of a disability – A child who has not yet been determined to be eligible for special education and related services may assert the disciplinary protections under IDEA if the school had a basis of knowledge that the child is a child with a disability before the behavior that precipitated the disciplinary action occurred. The school is deemed to have knowledge if: (1) the child’s parent expressed concern in writing to administrative or supervisory personnel of the school or district that the child is in need of special education and related services; (2) the parent of the child had requested a special education evaluation; or (3) the child’s teacher or other school or district personnel expressed specific concerns to the director of special education or to other supervisory personnel about a pattern of behavior demonstrated by the child. The school or district is *not* deemed to have knowledge of a disability if (1) the parent has not allowed an evaluation or has refused special education and related services, *or* (2) the child has been evaluated and determined not to be a child with a disability. 34 CFR § 300.534.

Change of placement – A change of placement because of a disciplinary removal occurs if a child with a disability is removed from his/her current educational placement for more than 10 consecutive school days, or the child is subjected to a series of removals that constitutes a pattern because: (1) the removals total more than 10 school days in a school year; (2) the child’s behavior is substantially similar to previous incidents that resulted in the series of removals; and (3) additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another constitute a pattern. 34 CFR § 300.536.

Current placement – The placement from which the student was removed for disciplinary reasons.

Interim alternative educational setting (IAES) – An IAES is a disciplinary placement that is not the same as the child’s current placement as defined in his/her IEP.

Manifestation determination – The determination made by the district, the parent, and relevant members of the student’s Team, after review of all relevant information in the student’s file including the IEP, teacher observations, and relevant information provided by the parents, whether (1) the conduct in question was caused by or had a direct and substantial relationship to the child’s disability; *or* (2) the conduct in question was the direct result of the district’s failure to implement the student’s IEP. 34 CFR § 300.530(e).

Special circumstances – Where the disciplinary conduct is a “special circumstance,” school personnel may remove a student to an IAES for not more than 45 school days, regardless of the results of the manifestation determination. Special circumstances exist if the student:

* + - * carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency (district); or
			* knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
			* inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency. 34 CFR § 300.530(g).

Serious bodily injury – As defined in 18 U.S.C. § 930, a bodily injury that 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. 34 CFR § 300.530(i)(3).