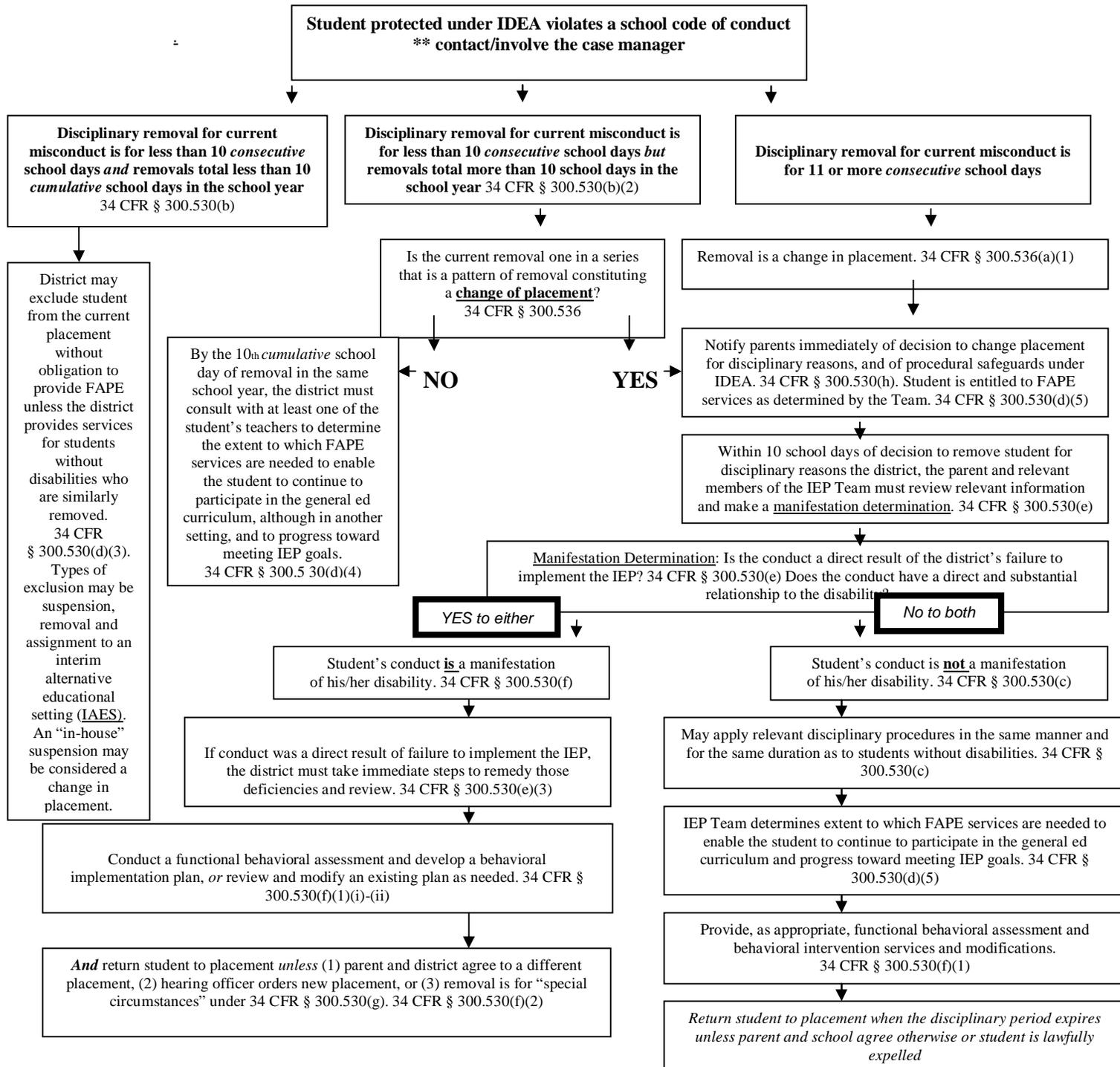


Discipline of Special Education Students Under IDEA 2004
20 U.S.C. § 1415(k) and 34 CFR §§ 300.530-300.536

- This chart should be read in conjunction with discipline procedures in state law, 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



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 services 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 § 500.530(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).

Special Education Consideration In Student Discipline Procedures

Introduction

The following is intended to provide a user-friendly explanation of the laws and regulations pertaining to student discipline in the Individuals with Disabilities Improvement of Education Act 2004 and its implementing regulations at 34 CFR §300 et. seq., August 14, 2006.

Students who happen to be receiving special education are, first and foremost, general education students.

Most discipline cases involve relatively minor incidents handled with routine policy and procedure applicable to all students. Special education regulations provide an “extra measure of due process” to assure a review of possible impacts of a student’s disability in a discipline incident. Application of local general discipline policy should be diligently followed and altered only to the extent indicated by proper consideration of a disability and student’s behavior history as outlined in this document.

Regulatory compliance issues are minimized, and student progress is best achieved with the documented use of scientifically-based positive behavior support techniques, and procedures that avoid removal of a student from school.

The flowcharts do not exhaust the topic of discipline, but rather give the general sequence of events and timelines associated with the extra measure of due process when considering a student’s disability in school discipline procedures. Some limited citations are provided here to guide the reader to further material in the IDEA regulations. In the more serious cases, a district will likely prefer to contact a school attorney.

Start Here: General Considerations (p. 1) –

The purpose of this chart is to guide the reader to the appropriate section of the regulations appropriate for the student's status and type of discipline procedure: (p. 2) student not in special education, (p. 3) short-term removal from school when student is receiving special education, and (p. 4) longer term removal (>10 school days) when student is receiving special education.

Student Not Eligible for Special Education (p. 2) –

Even when a student is not currently receiving special education, the district is still responsible to consider the existence of "prior knowledge" about a disability.

Removals - Not A Change in Placement (p. 3) –

These are defined as a single removal of 10 or less school days. A series of removals in a school year, however, may under the rules provide additional services by accumulating to more than 10 days, or forming an ongoing pattern of exclusion that may trigger the same procedural rights as a long-term removal (**change of placement**, below).

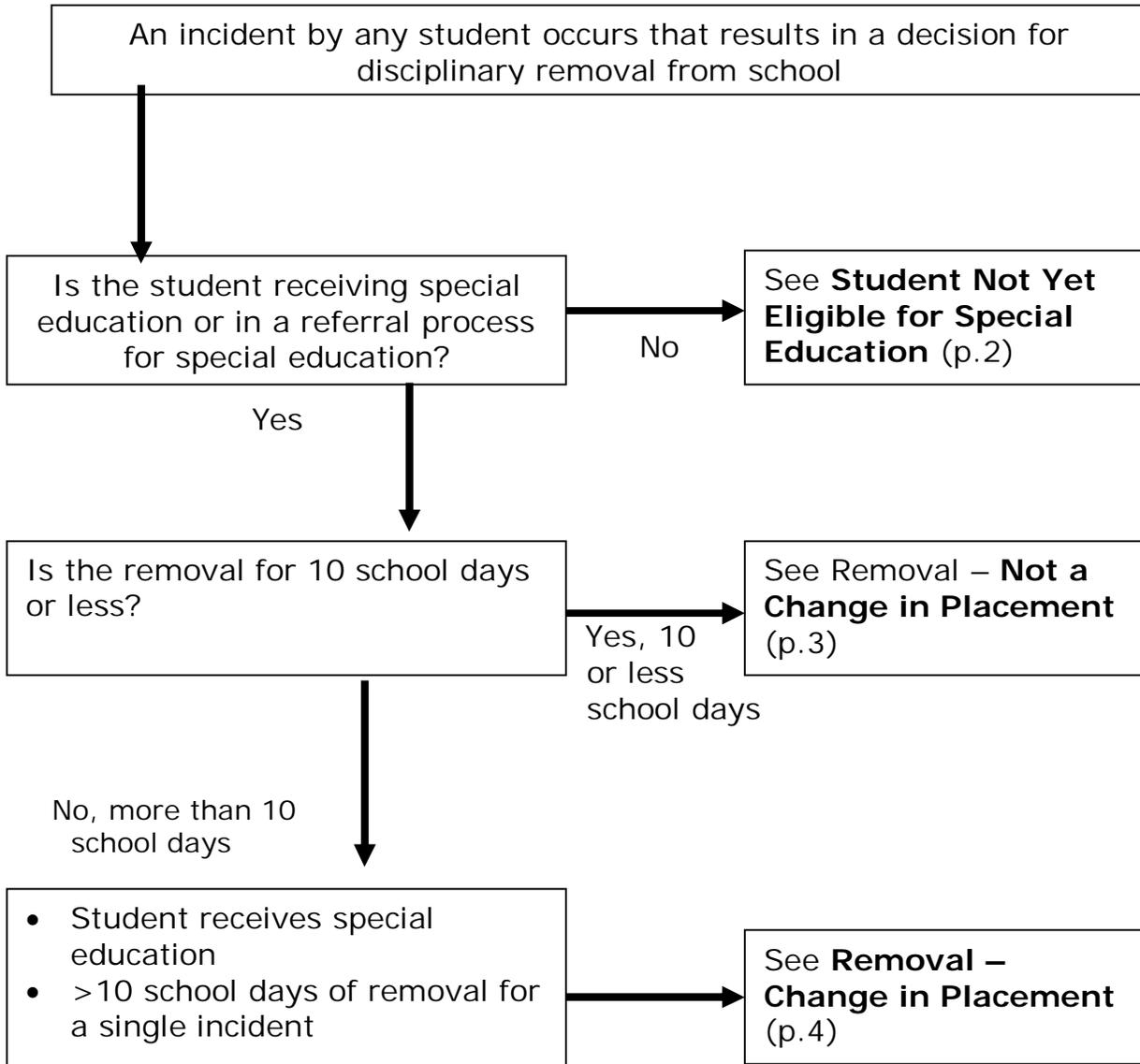
Removals - Change of Placement (p. 4) –

A key concept in the more serious disciplinary exclusions is **change in placement**. Change in placement is a single removal for more than 10 school days or an ongoing pattern of short-term removals. Another key concept is the *responsibility of the IEP Team to determine the relationship between a disability and the behavior precipitating a disciplinary action*. The results of **manifestation determination review** (and other factors such as drugs/weapons/bodily injury) determine whether the student will remain in the **pre-incident placement** or be temporarily placed in an **interim alternative setting**.

Notes (p. 5) –

Some boxes in the flowchart are marked with a 1 superscript which refer to explanatory text at the end of the document.

Start here: General Considerations



Student Not Eligible for Special Education

(Student is not currently referred for a special education evaluation and does not currently receive special education programs/services.)

¹School sends parent notice of disciplinary action according to school's general education policy (consult board and administrative policies)



Is there "**prior knowledge**" of a suspected disability? 300.543(b, c)

Prior Knowledge exists if:

1. Parent expressed concerns in writing to school administrative staff or the student's teacher
2. parent request for special education evaluation, or an evaluation is otherwise in process prior to incident
3. Teacher or other personnel have expressed concern directly to the Director of Special Ed or supervisory personnel of the LEA

Prior knowledge does not exist if:

1. The parent has not allowed a special education evaluation
2. The parent has otherwise refused sp ed services
3. A previous evaluation has found the student to be ineligible

No, Prior knowledge **does not** exist

Yes, prior knowledge **exists**

Is parent or the other person requesting an evaluation for special education after the incident?

Yes

No

Begin expedited evaluation per district procedures

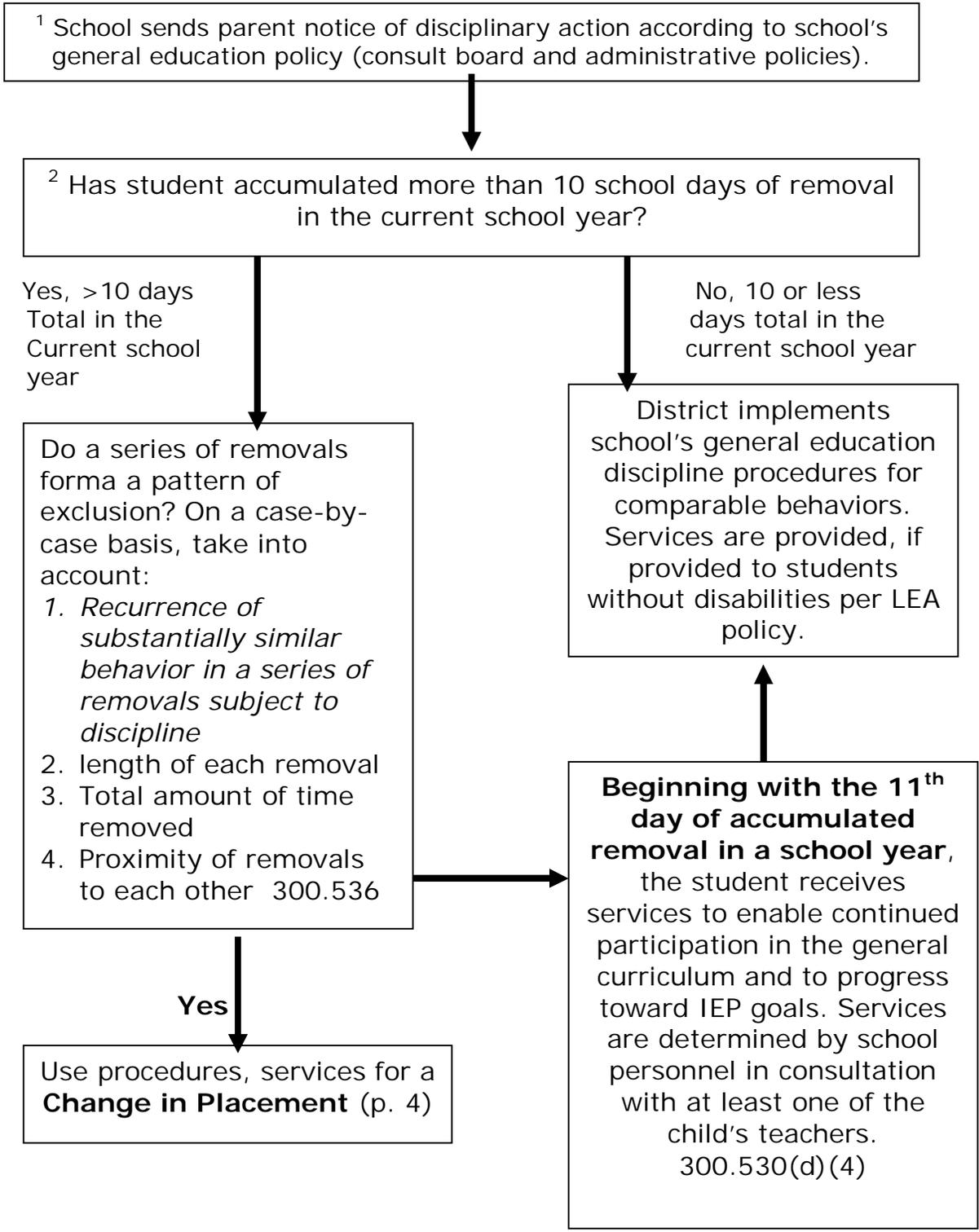
Begin expedited evaluation per district procedures

Parent may assert same protections as for special education eligible students until eligibility is resolved (see other charts)

District implements discipline procedures per general education policy for comparable behaviors, which can include removal without educational services (concurrent with evaluation if requested after the incident).

Removals – Not a Change in Placement

10 or less school days per incident – 300.530(b) and student receives special education or is involved in a n initial evaluation for special education



¹ School sends parent notice of disciplinary action according to school's general education policy (consult board and administrative policies).

² Has student accumulated more than 10 school days of removal in the current school year?

Yes, >10 days
Total in the
Current school
year

No, 10 or less
days total in the
current school year

Do a series of removals forma a pattern of exclusion? On a case-by-case basis, take into account:

1. Recurrence of substantially similar behavior in a series of removals subject to discipline
2. length of each removal
3. Total amount of time removed
4. Proximity of removals to each other 300.536

District implements school's general education discipline procedures for comparable behaviors. Services are provided, if provided to students without disabilities per LEA policy.

Beginning with the 11th day of accumulated removal in a school year, the student receives services to enable continued participation in the general curriculum and to progress toward IEP goals. Services are determined by school personnel in consultation with at least one of the child's teachers. 300.530(d)(4)

Yes

Use procedures, services for a **Change in Placement** (p. 4)

Removals – Change in Placement

11 or, more days per incident, or pattern of removals constituting a change in placement – 300.536 and student receives special education or is involved in an initial evaluation for special education

³On the day on which the decision is made to make a removal due to a violation of a code of student conduct, the school provides parent a copy of the procedural safeguards and other provisions pursuant to a **change of placement**. 300.530(h)

⁴**Within 10 school days** of the decision to change the placement due to a violation of a code of student conduct, the LEA, the parent and relevant members of the IEP Team (as determined by the parent and LEA) must determine: **Is the behavior a manifestation of the disability?** 300.530(e)

Yes, the behavior is manifestation of the disability

No, the behavior in question is not a manifestation of the disability

⁵**Special circumstances:** Did the incident involve: (1) drugs, (2) weapons, or (3) serious bodily injury? 300.530(g) Or does the LEA believe that the student’s return to pre-incident placement be substantially likely to result in injury to the student or others?

Yes

No

Return to pre-incident placement:
1. General disciplinary removals are terminated.
2. the student returns to the placement in the current IEP, or other placement determined by the IEP Team.
3. *The IEP Team must either initiate a FBA/BIP, or review an existing FBA/BIP to address the behavior.*
4. Deficiencies (if any) to implement the previous IEP are remedied.

⁶**The district may use general discipline procedures and place the student in an interim alternative educational setting (IAES). Setting and services are determined by the IEP Team** (see Notes).
Special Circumstances: Regardless of the manifestation determination outcome, in cases involving drugs/weapons/bodily injury the school may unilaterally place the student in an IAES for up to 45 school days. In other cases, the LEA must obtain a court injunction or hearing officer decision to unilaterally use an IAES for up to 45 school days if it is believed that maintaining the student in the current placement is substantially likely to result in injury to the student or others.

IEP Team Consensus

Appeal - Hearing

Implement the IEP for the interim setting

Placement During Hearing Process

A **due process hearing** initiated by: (1) the parent, to contest the manifestation determination or IAES, or (2) the LEA, to justify or extend an IAES, placement made because of substantially likely injury to student or others.

Expedited Due Process Hearing 300.533
1. A resolution session must occur within 7 days of the notice for a hearing
2. An expedited hearing must occur within 20 school days from date of filing a request. When concluded, a determination by the hearing officer must be made within 10 school days.
During the appeal, the student remains in the interim setting until timelines expire for the interim setting, discipline procedures, or until the hearing officer decision, whichever occurs first, unless the parent and LEA agree otherwise.

Notes:

All references e.g., 300.xxx refer to the regulations for the IDEA 2004, published in the Federal Register on August 14, 2006.

¹School sends parent notice of disciplinary action according to school's general education policy (consult local board and administrative policies).

Students who happen to be receiving special education are, first and foremost, considered to be general education students. Most discipline cases involve relatively minor incidents handled with routine policy and procedure applicable to all students. Special education regulations provide an extra measure of due process to assure that a review of possible impacts (if any) of a student's disability (if any) in a discipline incident. Application of local general discipline policy should be diligently followed, and altered only to the extent indicated by proper consideration of a disability and student's behavior history, as outlined in this document.

²Has student accumulated more than 10 school days of removal in the current school year?

It is important that complete records are maintained on all suspensions and expulsions throughout the school year in a building, for dealing with individual cases and to fulfill end-of-year state/ federal reporting requirements. Consult your data management staff for available tracking assistance in the local student management system.

What **counts** as a day of suspension?

- Any part of a day suspended is a full day
- Actual days removed from school, regardless of any other conditions set by the school. For example, any day (or part of a day) missed by the student **still counts as suspension** when: (1) the student's return is contingent upon a parent meeting, or (2) a parent voluntarily takes a student home by school request.
- Days of school missed because of suspension from special IEP'd transportation. While the school cannot require parent to provide special transportation, parent transportation may be a mutually agreeable alternative.

What **does not count** as a day of suspension?

- An in-school suspension would not be considered a part of the days of suspension addressed in § 300.530 *as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.* (IDEA Regulations, **Federal Register**, Vol. 71, No. 156, Monday, August 14, 2006, p. 46715)
- Nonattendance when general non-IEP'd transportation privileges are interrupted/terminated. When are days of suspension in a school year re-set to zero?
- **Only** at the beginning of the school year. Transfers between districts in the same school year, other types of suspensions, etc. do not reset the days of suspension within a school year.

³On the day on which the decision is made to make a removal due to a violation of a code of student conduct, the school provides parent a copy of the procedural safeguards and other provisions pursuant to a change of placement. 300.530(h)

A key concept in discipline procedures is that a removal to an interim alternative setting for more than 10 consecutive days is a **change in placement**, triggering the same procedural safeguards for IEP Team meetings, notice, etc. as for non-disciplinary changes in placement. Also note that notice is due "On the day a decision is made" to make a change in placement.

Special education services [300.530(d)(5)] and the interim setting (300.531) in a disciplinary case are specified before implementation in an IEP. If a dispute arises, however, there is a key difference between non-disciplinary and disciplinary cases. During due process dispute resolution in a disciplinary case (500.532), the student's placement while the dispute is being resolved is the **interim setting** for up to 45 school days, or until timelines associated with the disciplinary action or the hearing expire (300.533). The school may also repeat hearing procedures to extend the interim setting beyond 45 school days. This is in contrast to non-discipline cases, in which the student's placement during dispute resolution for a proposed IEP is the setting in the last-agreed upon ("pendant") IEP (300.518).

Within 10 school days of the decision to change the placement due to a violation of a code of student conduct, the LEA, the parent and relevant members of the IEP Team (as determined by the parent and LEA) must determine: ***Is the behavior a manifestation of the disability?*** 300.530(e)

This box refers to an IEP Team meeting (with the LEA, parent and relevant members of the IEP Team) held within **10 school days** of any decision to change the placement (single disciplinary removal of more than 10 school days, or pattern of removal) of a child with a disability because of a violation of a code of student conduct. (300.530(e)). The Team considers the relationship between the behavior in question and the student's disability. The behavior is determined to be a manifestation of the disability **only if** there is a documented:

- A. IEP Team review of: (1) the IEP; (2) any teacher observations; and (3) relevant information supplied by the parent.
- B. Determination that **either of the following are true**:
 - 1. The conduct in question was caused by, or had a direct and substantial relationship to the student's disability; **or**
 - 2. The conduct in question was the direct result of the LEA's failure to implement the IEP.

⁵**Special circumstances:** Did the incident involve: (1) drugs, (2) weapons, (3) serious bodily injury? Or does the LEA believe that

Federal definition. The term dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Serious Bodily Injury. The term “serious bodily injury” is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean 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. [615(k)(7)(D)].

Other cases: In other cases, if the LEA believes that returning the student to the pre-incident placement will likely result in injury to the student or others, the district may seek a court injunction or hearing officer decision to unilaterally place the student in an IAES.

⁶The district may use general discipline procedures and unilaterally place the student in an interim alternative educational setting (IAES). Services are determined by the IEP Team (see Notes).

The IEP Team determines services in an interim setting during a disciplinary removal which must:

- (1) Enable the child to continue to:
 - participate in the general education curriculum, although in another setting
 - to progress toward meeting the goals set out in the child’s IEP
 - appropriately progress in the general curriculum
 - advance toward IEP goals; and;
- (2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. [300.530(d)]