

# Discipline Procedures under the Individuals with Disabilities Education Act

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**Provisions from United States Code  
Title 20, Chapter 33**

**Sec. 1415      Procedural safeguards**

**[(a) through (j) omitted from this abbreviated document]**

**(k) Placement in alternative educational setting**

**(1) Authority of school personnel**

- (A) School personnel under this section may order a change in the placement of a child with a disability--
- (i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
  - (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if--
- (I) the child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or
  - (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.
- (B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)--
- (i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or
  - (ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

**(2) Authority of hearing officer**

- A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer--
- (A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
  - (B) considers the appropriateness of the child's current placement;
  - (C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - (D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

**(3) Determination of setting**

**(A) In general**

The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

**(B) Additional requirements**

- Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall--
- (i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
  - (ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

**(4) Manifestation determination review**

**(A) In general**

If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children--

- (i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and
- (ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

**(B) Individuals to carry out review**

A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

**(C) Conduct of review**

In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team--

- (i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--
  - (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
  - (II) observations of the child; and
  - (III) the child's IEP and placement; and
- (ii) then determines that--
  - (I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
  - (II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
  - (III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

**(5) Determination that behavior was not manifestation of disability**

**(A) In general**

If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Sec. 1412(a)(1).

**(B) Additional requirement**

If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

**(6) Parent appeal**

**(A) In general**

- (i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
- (ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

**(B) Review of decision**

- (i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

## **(7) Placement during appeals**

### **(A) In general**

When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

### **(B) Current placement**

If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

### **(C) Expedited hearing**

- (i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.
- (ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

## **(8) Protections for children not yet eligible for special education and related services**

### **(A) In general**

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

### **(B) Basis of knowledge**

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if--

- (i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- (ii) the behavior or performance of the child demonstrates the need for such services;
- (iii) the parent of the child has requested an evaluation of the child pursuant to Sec. 1414; or
- (iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

### **(C) Conditions that apply if no basis of knowledge**

#### **(i) In general**

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

#### **(ii) Limitations**

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the

child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

**(9) Referral to and action by law enforcement and judicial authorities**

(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

**(10) Definitions**

For purposes of this subsection, the following definitions apply:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in Sec. 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term "illegal drug"--

(i) means a controlled substance; but

(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Substantial evidence

The term "substantial evidence" means beyond a preponderance of the evidence.

(D) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Sec. 930 of title 18, United States Code.

[Apr. 13, 1970, Pub. L. 91-230, Title VI, Part B, Sec. 615, as added, June 4, 1997, Pub. L. 105-17, Title I, Sec. 615, 111 Stat. 88; As amended Apr. 29, 1999, Pub. L. 106-25, Sec. 6(a), 113 Stat. 41.]

**Provisions from the Code of Federal Regulations  
Title 34, Part 300**

**Sec. 300.519 Change of placement for disciplinary removals**

For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520-300.529, a change of placement occurs if--

(a) The removal is for more than 10 consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

### **Sec. 300.520 Authority of school personnel**

(a) School personnel may order--

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and 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 change of placement under Sec. 300.519(b))

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under Sec. 300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if--

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under Sec. 300.519, including the action described in paragraph (a)(2) of this section--

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under Sec. 300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Sec. 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug--

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g)

of Sec. 930 of title 18, United States Code.  
(Authority: 20 U.S.C. 1415(k)(1), (10))

### **Sec. 300.521 Authority of hearing officer**

A hearing officer under Sec. 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing--

- (a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
- (b) Considers the appropriateness of the child's current placement;
- (c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- (d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of Sec. 300.522(b).
- (e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k)(2), (10))

### **Sec. 300.522 Determination of setting**

#### **(a) General**

The interim alternative educational setting referred to in Sec. 300.520(a)(2) must be determined by the IEP team.

#### **(b) Additional requirements**

Any interim alternative educational setting in which a child is placed under Secs. 300.520(a)(2) or 300.521 must--

- (1) Be selected so as to 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 child's current IEP, that will enable the child to meet the goals set out in that IEP; and
- (2) Include services and modifications to address the behavior described in Secs. 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

### **Sec. 300.523 Manifestation determination review**

#### **(a) General**

If an action is contemplated regarding behavior described in Secs. 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under Sec. 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children--

- (1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Sec. 300.504; and
- (2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

#### **(b) Individuals to carry out review**

A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review

In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel--

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including--

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that--

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) Decision

If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) Meeting

The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under Sec. 300.520(b).

(f) Deficiencies in IEP or placement

If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

(Authority: 20 U.S.C. 1415(k)(4))

## **Sec. 300.524 Determination that behavior was not manifestation of disability**

(a) General

If the result of the review described in Sec. 300.523 is a determination, consistent with Sec. 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Sec. 300.121(d).

(b) Additional requirement

If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Child's status during due process proceedings

Except as provided in Sec. 300.526, Sec. 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in Sec. 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

## **Sec. 300.525 Parent appeal**

### **(a) General**

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under Secs. 300.520-300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

### **(b) Review of decision**

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Sec. 300.523(d).

(2) In reviewing a decision under Sec. 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Sec. 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

## **Sec. 300.526 Placement during appeals**

### **(a) General**

If a parent requests a hearing or an appeal regarding a disciplinary action described in Sec. 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Sec. 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

### **(b) Current placement**

If a child is placed in an interim alternative educational setting pursuant to Sec. 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

### **(c) Expedited hearing**

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in Sec. 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

(Authority: 20 U.S.C. 1415(k)(7))

## **Sec. 300.527 Protections for children not yet eligible for special education and related services**

### **(a) General**

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in Secs. 300.520 or 300.521, may assert any of the protections provided for in this part if

the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge

An LEA must be deemed to have knowledge that a child is a child with a disability if--

- (1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- (2) The behavior or performance of the child demonstrates the need for these services, in accordance with Sec. 300.7;
- (3) The parent of the child has requested an evaluation of the child pursuant to Secs. 300.530-300.536; or
- (4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception

A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency--

(1) Either--

- (i) Conducted an evaluation under Secs. 300.530-300.536, and determined that the child was not a child with a disability under this part; or
  - (ii) Determined that an evaluation was not necessary; and
- (2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with Sec. 300.503.

(d) Conditions that apply if no basis of knowledge

(1) General

If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) Limitations

- (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.520 or 300.521, the evaluation must be conducted in an expedited manner.
- (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of Secs. 300.520- 300.529 and Sec. 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

### **Sec. 300.528 Expedited due process hearings**

(a) Expedited due process hearings under Secs. 300.521-300.526 must--

- (1) Meet the requirements of Sec. 300.509, except that a State may provide that the time periods identified in Secs. 300.509(a)(3) and Sec. 300.509(b) for purposes of expedited due process hearings under Secs. 300.521-300.526 are not less than two business days; and
  - (2) Be conducted by a due process hearing officer who satisfies the requirements of Sec. 300.508.
- (b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without

exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under Secs. 300.521-300.526 than it has established for due process hearings under Sec. 300.507.

(d) The decisions on expedited due process hearings are appealable consistent with Sec. 300.510.

(Authority: 20 U.S.C. 1415(k)(2), (6), (7))

### **Sec. 300.529 Referral to and action by law enforcement and judicial authorities**

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(9))