

SECTION: Procedural Safeguards (Discipline)**TOPIC: General****FEDERAL STATUTE: 20 USC 1412(a)(22), 1414(d)(3)(B)(i), and 1418(a)(1)(A)(vii)(I)-(III)****1412(a)(22) Suspension and expulsion rates.**

- (A) *In General.*—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—
- (i) among local educational agencies in the State; or
 - (ii) compared to such rates for nondisabled children within such agencies.
- (B) *Review and Revision of Policies.*—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

1414(d)(3)(B)(i) Consideration of special factors.

The IEP team shall—

- (i) In the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;...

1418(a)(1)(A)(vii)(I)-(III) Program information.

- (vii)(I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;
- (II) the acts or items precipitating those removals; and
- (III) the number of children with disabilities who are subject to long-term suspensions, or expulsions; ...

FEDERAL REGULATION: 34 CFR §§300.121(d) and 300.146**§300.121(d) FAPE for children suspended or expelled from school.**

- (1) A public agency need not provide services during periods of removal under §300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
- (2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must—
 - (i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is—
 - (A) Under the school personnel's authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519(b) (§300.520(a)(1)) or
 - (B) For behavior that is not a manifestation of the child's disability, consistent with §300.524; and
 - (ii) Provide services consistent with §300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is—
 - (A) For drug or weapons offenses under §300.520(a)(2); or
 - (B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with §300.521.

FEDERAL REGULATION: (Continued)

- (3) (i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under §300.519 [§300.520(a)(1)].
- (ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with §300.524.

§300.146 Suspension and expulsion rates.

The State must have on file with the Secretary information to demonstrate that the following requirements are met:

- (a) *General.* The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—
 - (1) Among LEAs in the State; or
 - (2) Compared to the rates for nondisabled children within the agencies.
- (b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>Introductory Comments</p> <p>The purpose of the disciplinary provisions of IDEA is to enable school personnel to ensure learning environments that are safe and conducive to learning for all and to give those officials and parents the opportunity to determine what is the appropriate placement for the child.</p> <p>As a policy matter, it makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change of placement. In fact, IDEA now emphasizes a proactive approach to behaviors that interfere with learning requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP team, as appropriate, considers and address in the child's IEP positive behavioral interventions, strategies, and supports to address the behavior.</p> <p>1. For disciplinary removals, there are three main areas covered in the law and regulation:</p> <ul style="list-style-type: none"> a. Code of conduct— <ul style="list-style-type: none"> (1) Removals of 10 school days or less during a school year (refer to pages 26 and 27 of this section), (2) Subsequent short-term removals beyond the first 10 school days for a school year that are not a change in placement (refer to pages 27 and 28 of this section), and 	<p>Form IEP-607</p>	<p>IEP team</p>	

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>(3) Subsequent removals that are more than 10 school days or a series of removals that constitute a pattern that is considered a change of placement (refer to pages 28 and 29 of this section);</p> <p>b. Drugs/weapons (refer to page 30 through 33 of this section); and/or</p> <p>c. Dangerous behavior (refer to pages 34 and 35 of this section).</p> <p>2. School district personnel shall provide data to EMIS, annually, on the following items:</p> <p>a. Attendance Record,</p> <p>b. Date of Discipline,</p> <p>c. Type of Discipline,</p> <p>d. Discipline Reason,</p> <p>e. Total Discipline Days, and</p> <p>f. Interim Alternative Educational Setting.</p>		<p>Superintendent or designee</p>	

SECTION: Procedural Safeguards (Discipline)

TOPIC: Authority of School Personnel: Code of Conduct Violation

FEDERAL STATUTE: 20 USC 1415(k)(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 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) 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.

FEDERAL REGULATION: 34 CFR §§300.519 and 300.520

§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 §§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.

§300.520 Authority of school personnel.

- (a)(1) School personnel may order—
- (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 §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 §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.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>❖(2) may indicate a need for a functional behavior assessment (refer to Section 6: IEP, pages 37 and 38 of this manual).</p> <p>Note: The district will follow disciplinary procedures that are applicable to all students, in accordance with the Ohio Revised Code 3313.66.</p> <p>2. Short-Term Removals Following the Initial 10 School Days of Removal in the School Year - Not a Change of Placement</p> <p>a. School personnel may order a child removed from school for additional periods of not more than 10 consecutive school days in a school year for separate incidents of misconduct, as long as these removals do not constitute a change in the child's placement.</p> <p>School personnel must consider:</p> <p>(1) the length of each removal;</p> <p>(2) the total amount of time removed; and</p> <p>(3) the proximity of the removals to each other.</p> <p>Note: The district will follow disciplinary procedures that are applicable to all students, in accordance with the Ohio Revised Code 3313.66.</p> <p>b. A removal under these circumstances requires:</p> <p>(1) the IEP team to meet within 10 business days after first removing the child for more than 10 school days in a school year to develop an assessment plan if the school district did not conduct a functional behavior assessment (FBA) and implement a behavioral intervention plan (BIP) for the student. If a FBA was not completed, a functional behavior assessment plan must be developed to—</p> <p>(a) address the function of the behavior; and</p> <p>(b) attend to patterns, if appropriate, such as accumulation of more than 10 days of removal in a school year, length of each removal, total amount of time, and proximity of removals to each other.</p> <p>(2) the IEP team to develop appropriate behavioral interventions, if needed, to address the child's behavior and implement those interventions—</p> <p>(a) if a behavior intervention plan is already in place, then IEP team members are required to review the plan; and</p> <p>(b) if one or more IEP team member(s) believes there is a need for modification, the team shall meet to modify, as the team deems necessary.</p>	<p>Appendix F❖ FBA Pages 8 and 9</p> <p>Form PS-409❖</p> <p>Appendix F❖ FBA Pages 8 and 9</p> <p>Form PS-409❖</p> <p>Appendix F❖, BIP Pages 10 - 12</p>	<p>IEP team</p> <p>Superintendent or designee</p> <p>IEP team</p> <p>IEP team</p> <p>Superintendent or designee</p> <p>IEP team</p> <p>IEP team</p>	<p>Prior to the removal of more than 10 days</p> <p>Not later than 10 business days, after first removing the child for more than 10 school days in a school year</p>

❖Denotes optional procedure/form

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>(3) the provision of FAPE, in which school personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately—</p> <p>(a) progress in the general curriculum; and</p> <p>(b) advance toward achieving the goals set out in the child's IEP.</p> <p>Note: The district will follow disciplinary procedures that are applicable to all students, in accordance with the Ohio Revised Code 3313.66.</p>		School personnel, in consultation with special education teacher	From the eleventh day of removal in a school year
<p>3. Removals following the Initial 10 Days of Removal in the School Year - <u>Change of Placement</u></p> <p>a. School personnel may order a child removed from school for violation of school rules and this removal does constitute a change in the child's placement, because either the removal is more than 10 consecutive school days in a school year, or the removal constitutes a pattern because they accumulate to more than 10 school days in a 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 removals to one another.</p> <p>School personnel must consider:</p> <p>(1) the length of each removal;</p> <p>(2) the total amount of time removed; and</p> <p>(3) the proximity of the removals to each other.</p> <p>b. Removal from school under these circumstances requires:</p> <p>(1) school personnel to provide to the parent—</p> <p>(a) notification of the decision of action taken; and</p> <p>(b) procedural safeguards.</p> <p>Note 1: The district will follow disciplinary procedures that are applicable to all students, in accordance with the Ohio Revised Code 3313.66.</p> <p>Note 2: Neither parent consent nor prior written notice is required for a change in placement as a result of disciplinary action.</p>	Forms PS-409❖ and PS-407❖ or district documentation	IEP team	Prior to the removal of more than 10 days
<p>(2) the IEP team to conduct a manifestation determination to review the relationship between the child's disability and the behavior subject to disciplinary action (refer to pages 41 and 42 of this section).</p>	Form PS-410	IEP team	Within 10 school days of the decision to take disciplinary action

❖ Denotes optional procedure/form

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>(3) the IEP team to meet within 10 business days after first removing the child for more than 10 school days in a school year to develop an assessment plan if the school district did not conduct a functional behavior assessment (FBA) and implement a behavioral intervention plan (BIP) for the student. If a FBA was not completed, a functional behavioral assessment plan must be developed to—</p> <p>(a) address the function of the behavior; and</p> <p>(b) attend to patterns, if appropriate, such as accumulation of more than 10 days of removal in a school year, length of each removal, total amount of time, and proximity of removals to each other.</p> <p>(4) the IEP team to develop and implement appropriate behavioral interventions to address the child's behavior. If a behavior intervention plan is already in place then the IEP team members are required to meet and review the plan.</p> <p>(5) the provision of FAPE—</p> <p>(a) if the behavior is a manifestation of a disability, and if the IEP team has identified deficiencies in the IEP, placement, or its implementation, the IEP team must take immediate steps to remedy those deficiencies.</p> <p>(b) if the behavior is not a manifestation of a disability, the IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the IEP.</p>	<p>Appendix F❖ FBA Pages 8 and 9</p> <p>Form PS-409❖</p> <p>Appendix F❖, BIP Pages 10-12</p>	<p>IEP team</p> <p>Superintendent or designee</p> <p>IEP team</p> <p>IEP team</p>	<p>No later than 10 business days, after first removing the child for more than 10 school days in a school year</p> <p>From the 11th day of removal for a school year</p>

Additional Resources:

Ohio Revised Code: Section 3313.66

❖ Denotes optional procedure/form

SECTION: Procedural Safeguards (Discipline)

TOPIC: Authority of School Personnel: Drug, Weapon Violation

FEDERAL STATUTE: 20 USC 1415(k)(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 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) 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.

FEDERAL REGULATION: 34 CFR §§300.121(d) and 300.520

§300.121(d) FAPE for children suspended or expelled from school.

(Refer to pages 22 and 23 of this section for Federal Regulation)

§300.520 Authority of school personnel.

- (a)(1) School personnel may order—
- (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 §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 §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.

FEDERAL REGULATION: (Continued)

- (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 §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 §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 section 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 section 930 of title 18, United States Code, which states: ***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 2.5 inches in length.***

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
1. School personnel may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting if: <ul style="list-style-type: none"> a. the child carries a weapon to school or a school function; or b. 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. 			

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>2. A change in placement requires:</p> <p>a. school personnel to provide to the parent—</p> <p>(1) notification of the decision of action taken; and</p> <p>(2) procedural safeguards.</p> <p>b. the IEP team to conduct a manifestation determination to review the relationship between the student's disability and behavior subject to the disciplinary action (refer to pages 41 and 42 of this section).</p> <p>Note 1: The district will follow disciplinary procedures that are applicable to all students, in accordance with the Ohio Revised Code 3313.66.</p> <p>Note 2: Neither parent consent nor prior written notice is required for a change in placement as a result of disciplinary action.</p> <p>c. the IEP team to meet within 10 business days after first removing the child for more than 10 school days in a school year to develop an assessment plan if the school district did not conduct a functional behavior assessment (FBA) and implement a behavioral intervention plan (BIP) for the student. If a FBA was not completed, a functional behavioral assessment plan must be developed to—</p> <p>(1) address the function of the behavior; and</p> <p>(2) attend to patterns, if appropriate, such as accumulation of more than 10 days of removal in a school year, length of each removal, total amount of time, and proximity of removals to each other.</p> <p>d. the IEP team to develop appropriate behavioral interventions, if needed, to address the child's behavior and implement those interventions if a behavior intervention plan is already in place, the IEP team members are required to meet and review the plan.</p>	<p>Forms PS-406 and PS-407❖ or District Notification of Disciplinary Action</p> <p>Form PS-410</p> <p>Appendix F❖ FBA Pages 8 and 9, and Form PS-410</p> <p>Form PS-409❖</p> <p>Appendix F❖ BIP Pages 10-12</p>	<p>Superintendent or designee</p> <p>IEP team</p> <p>IEP team and school personnel</p> <p>IEP team</p> <p>Superintendent or designee</p> <p>IEP team</p>	<p>No later than the date on which the decision to take action is made</p> <p>No later than 10 school days after making the decision to remove the student</p> <p>No later than 10 business days after first removing the student for more than 10 school days in a school year</p> <p>See above</p>

❖ Denotes optional procedure/form

SECTION: Procedural Safeguards (Discipline)**TOPIC: Authority of Hearing Officer: Dangerous Behavior****FEDERAL STATUTE: 20 USC 1415(k)(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).

FEDERAL REGULATION: 34 CFR §300.521 Authority of hearing officer.

A hearing officer under section 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.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
1. If school personnel believe that a student is a danger to him/herself or others, they may initiate an expedited due process hearing (refer to pages 43-46 of this section). 2. School personnel must provide the parent: <ul style="list-style-type: none"> a. notification of request for an expedited hearing; and b. procedural safeguards. 	Forms PS-406 and PS-408	Hearing officer Superintendent or designee	Forty-five days with no extensions No later than the date on which the decision to take action is made

SECTION: Procedural Safeguards (Discipline)

TOPIC: Determination of Setting: Interim Alternative Educational Setting

FEDERAL STATUTE: 20 USC 1415(k)(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.

FEDERAL REGULATION: 34 CFR §300.522 Determination of setting.

- (a) *General.* The interim alternative educational setting referred to in § 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 §§ 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 §300.520(a)(2) or §300.521, that are designed to prevent the behavior from recurring.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>1. An interim alternative educational setting (IAES) is considered in the following situations:</p> <ul style="list-style-type: none"> a. For drug and weapon violations, the IEP team determines the interim alternative setting with the authority to remove to the IAES resting with the school district. b. For dangerous behavior violations, the interim alternative educational setting is proposed by school personnel in consultation with the child's special education teacher with the authority to remove resting with the hearing officer. c. For removals of less than 10 days for code of conduct violations that are not a change of placement, school personnel may remove a student to an interim alternative educational setting. If this removal constitutes a change of placement, the procedures regarding code of conduct violations, beginning on page 25 of this section, are followed. 		<p>IEP team</p> <p>Hearing officer</p> <p>Superintendent or designee</p>	<p>Expedited</p>

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>2. Any interim alternative educational setting for drugs, weapons, or dangerous behavior must be selected so as to enable the child to:</p> <ul style="list-style-type: none"> (a) continue to progress in the general curriculum, although in another setting; (b) 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 (c) receive services and modifications designed to— <ul style="list-style-type: none"> (1) address the behavior that resulted in removal from the child's current educational placement, and (2) prevent the behavior from recurring. 	<p>Form IEP-607</p>	<p>IEP team or hearing officer</p>	

SECTION: Procedural Safeguards (Discipline)**TOPIC: Functional Behavior Assessment; Manifestation Determination****FEDERAL STATUTE: 20 USC 1415(k)(1), 1415(k)(4), and 1415(k)(5)****1415(k)(1) Authority of school personnel.** (Refer to page 25 of this section for Federal Statute)**1415(k)(4) Manifestation determination review.**

- (A) *In General.* If a disciplinary action is contemplated as described in paragraph (1) (page 30 of this section) or paragraph (2) (page 34 of this section) 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.

1415(k)(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 section 612(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.

FEDERAL REGULATION: 34 CFR §§300.520, 300.523, and 300.524**§300.520 Authority of school personnel.** (Refer to pages 25 and 26 of this section for Federal Regulation)

FEDERAL REGULATION: (Continued)**§300.523 Manifestation determination review.**

- (a) *General.* If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §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 §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 § 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.

§300.524 Determination that behavior was not manifestation of disability.

- (a) *General.* If the result of the review described in §300.523 is a determination, consistent with §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 §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 §300.526, § 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in §300.523, that the behavior of the child was not a manifestation of the child's disability.

SECTION: Procedural Safeguards (Discipline)**TOPIC: Expedited Hearings****FEDERAL STATUTE: 20 USC 1415(k)(6) and (7)****1415(k)(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).

1415(k)(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 educational 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).

FEDERAL REGULATION: 34 CFR §§300.525, 300.526, and 300.528**§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 §§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 §300.523(d).
- (2) In reviewing a decision under §300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in §300.521.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
3. If the parent requests an expedited hearing, school personnel must contact the Ohio Department of Education, Division of Special Education and follow items 4.a. and b. below.	Form PS-408	School district designee	Before the end of the following business day from the day the parent's request was received
4. If the school district initiates an expedited hearing, school personnel must a. call or fax the State consultant responsible for due process at the Ohio Department of Education, Division of Special Education, and immediately send a hard copy of the request to the Division of Special Education, 933 High Street, Worthington, Ohio 43085; and b. contact the parent by phone or fax and send a hard copy.	Form PS-408		Same as below
5. An impartial hearing officer will be appointed by the Ohio Department of Education, Division of Special Education, and the impartial hearing officer shall contact both parties.		ODE, Division of Special Education	Before the end of the next business day from the day the district informs the Division
6. The impartial hearing officer will issue a written decision and mail the decision to both parties.	Findings and decision of hearing officer	Hearing officer	Forty-five calendar days from the date of request (no extensions)
7. If a child is placed in an interim alternative educational setting for drugs, weapons, or dangerous behavior, the child remains (stays put) in the interim alternative placement.			Pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent and the district agree otherwise
8. An appeal of the impartial hearing officer's decision may be made to the State Board of Education, in care of the Division of Special Education, in writing.		Superintendent/designee	10 calendar days after the notification of the hearing officer's written decision
9. The review shall be completed and a written decision issued by the state level review officer.		State level review officers	30 calendar days (no extensions)

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>10. Any party aggrieved by the final order of the State Level Review Officer may appeal the final order to the following courts:</p> <p>a. The common pleas court of the county of the child's school district of residence as provided by section 3323.05 of the Ohio Revised Code; or</p> <p>b. The federal district court of competent jurisdiction.</p>		<p>Judge determines</p> <p>Judge determines</p>	<p>Determined by common pleas court</p> <p>Determined by federal district court</p>

SECTION: Procedural Safeguards (Discipline)**TOPIC: Protections for Children Not Yet Eligible for Special Education and Related Services****FEDERAL STATUTE: 20 USC 1415(k)(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 section 614; 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.

FEDERAL REGULATION: 34 CFR §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 §§ 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 §300.7;
 - (3) The parent of the child has requested an evaluation of the child pursuant to §§ 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—

FEDERAL REGULATION: (Continued)

- (1) Either—
 - (i) Conducted an evaluation under §§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 §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 § 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 §§300.520-300.529 and section 612(a)(1)(A) of the Act.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior violating any rule or code of conduct of the school district may assert any of the protections provided in this part if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action.</p> <p>2. The school district is deemed to have knowledge that a child is a child with a disability if:</p> <ul style="list-style-type: none"> a. The parent has expressed concern in writing or orally (if the parent does not know how to write), to appropriate personnel of the school district that the child is in need of special education and related services; b. The behavior or performance of the child demonstrates the need for these services (refer to Section 2: Child Identification, of this manual); c. The parent has requested an evaluation for determination of eligibility for special education services; or d. 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 or other appropriate school personnel in accordance with the agency's child find or special education referral system (refer to Section 2: Child Identification, pages 4-10). 	<p>Documentation of parent referral</p> <p>Documentation of written parent request</p> <p>Forms CI-204, CI-205, CI-207❖, and CI-211</p>		

❖ Denotes optional procedure/form

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>3. A school district would not be deemed to have knowledge if the agency:</p> <ul style="list-style-type: none"> a. conducted an evaluation and determined that the child was not a child with a disability; or b. determined that an evaluation was not necessary (see Section 2: Child Identification, pages 4 through 10 of this manual); and c. provided written notice to the child's parents of its determination. <p>4. If the school district does not have knowledge that a child is a child with a disability prior to taking disciplinary measures, the child may be subjected to the same disciplinary measures applied to children without disabilities.</p> <p>5. If a request for a multifactored evaluation for a suspected disability of the child is made during the time period in which the child is subject to disciplinary action:</p> <ul style="list-style-type: none"> a. The evaluation must be conducted in an expedited manner; b. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension and expulsion without educational services; and c. The school district shall provide special education and related services, if the child is determined to be a child with a disability. 	<p>Referral documentation and Form MFE-501a-o</p> <p>Form CI-211</p> <p>Forms CI-211 and PS-401</p> <p>Form PS-409❖</p> <p>Form IEP-607</p>	<p>Superintendent or designee</p> <p>Superintendent or designee</p>	<p>Without undue delay</p>

❖ Denotes optional procedure/form

SECTION: Procedural Safeguards (Discipline)

TOPIC: Referral to and Action by Law Enforcement and Judicial Authorities

FEDERAL STATUTE: 20 USC1415(k)(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.

FEDERAL REGULATION: 34 CFR §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.

PROCEDURES	DOCUMENTATION	RESPONSIBILITY	TIME LINE
<p>1. Nothing in the Federal Statute or Federal Regulations prohibits school personnel from reporting a crime committed by a child with a disability to appropriate authorities. Nor does anything in either the Federal Statute or Federal Regulations prevent State law enforcement and judicial authorities from exercising their responsibility with regards to applying Federal and/or State law to a crime(s) committed by a child with a disability.</p> <p>2. If such a crime(s) is reported to appropriate authorities, copies of the special education and disciplinary records of the child with disabilities must be transmitted for consideration by appropriate authorities only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA), when there is a subpoena or court order, or when the parent gives permission.</p>	<p>Form CN-308</p>	<p>Agency reporting crime(s)</p>	