

## STUDENTS WITH DISABILITIES

Under the Individuals with Disabilities Education Act (IDEA-04) and Massachusetts Special Education Law, the Special Education and IEP process is a focal point for reaching improved outcomes for students with disabilities. The process, critically important to children with disabilities, must be carefully managed to ensure that the unique needs of the student are addressed and to ensure full compliance with statutory and regulatory requirements.

The TEAM has *three* important and integrated activities to manage. Each is of equal importance and interdependent on the quality of the other.

1. Eligibility Determination: The TEAM must first determine whether a child is eligible for special education services. This determination starts with the careful and thorough evaluation of the child in all areas of suspected disabilities.
2. Development of the IEP: Next, if the TEAM has found the student eligible for special education, the elements of an Individualized Education Program (IEP) must be discussed, planned and then captured in a written document. Input from parents, the student, general educators and special educators is necessary to complete this service contract that sets high expectations for a student and then guides that student's special education services for the next year.
3. Placement Decision: Once all the elements of the IEP are determined, including services and supports, a placement decision must be made. The first placement option considered for each student with a disability must be the general education classroom with the provision of needed aides and services. The law requires that students do not get placed outside of the general education classroom unless their disability requires another setting. The TEAM must always consider the unique needs of the student before making the final placement determination.

## Discipline

In general, if your child has violated the school's disciplinary code, the school may suspend or remove your child from his or her current educational placement for a period not to exceed ten (10) consecutive school days in any school year. If your child possesses, uses, sells or solicits illegal drugs on school grounds or at a school-sponsored event or carries a weapon to school or a school function, the school district may place your child in an interim alternative educational setting for up to 45 school days. If your child has been placed in an interim alternative education setting as a result of a disciplinary action, your child may remain in the interim setting for a period not to exceed 45 days. Thereafter, your child will return to the previously agreed-upon educational placement unless either a hearing officer orders another placement or you and the school agree to another placement.

Anytime the school wishes to remove your child from his or her current educational placement for more than ten (10) consecutive school days in any school year, or for more than ten cumulative days when a pattern of removal is occurring, this constitutes a change of placement.® A change of placement invokes certain procedural protections under the IDEA, the federal special education law. These include the following:

- (a) Prior to any removal that constitutes a change in placement, the school district must convene a Team meeting to develop a plan for conducting a functional behavioral assessment that will be used as the basis for developing specific strategies to address the problematic behavior. If a behavior intervention plan has been previously developed, the Team shall review its implementation and modify it if necessary.
  
- (b) Prior to any removal that constitutes a change in placement, the school district must send you a full statement of your procedural rights and inform you that the Team will consider whether or not the behavior that forms the basis for the removal is related to the student's disability. This consideration is called a manifestation determination.® Remember that you, as the parent, always have the right to participate as a member of the Team.

### **Consideration of whether the behavior is a manifestation of the student's disability:**

The law provides that the Team must consider evaluation information, observational information, the student's IEP and placement, and must determine whether the behavior prompting disciplinary removal was a manifestation of the student's disability. The Team considers if the student understood the impact and consequences of the behavior, and further considers if the student's disability impaired the student's ability to control his or her behavior.

If the Team determines that the behavior was related to your child's disability, then your child may not be removed from the current educational placement (except in the case of weapon or drug possession or use or serious bodily injury) until the IEP Team develops a new IEP and decides upon a new placement and you consent to that new IEP and placement.

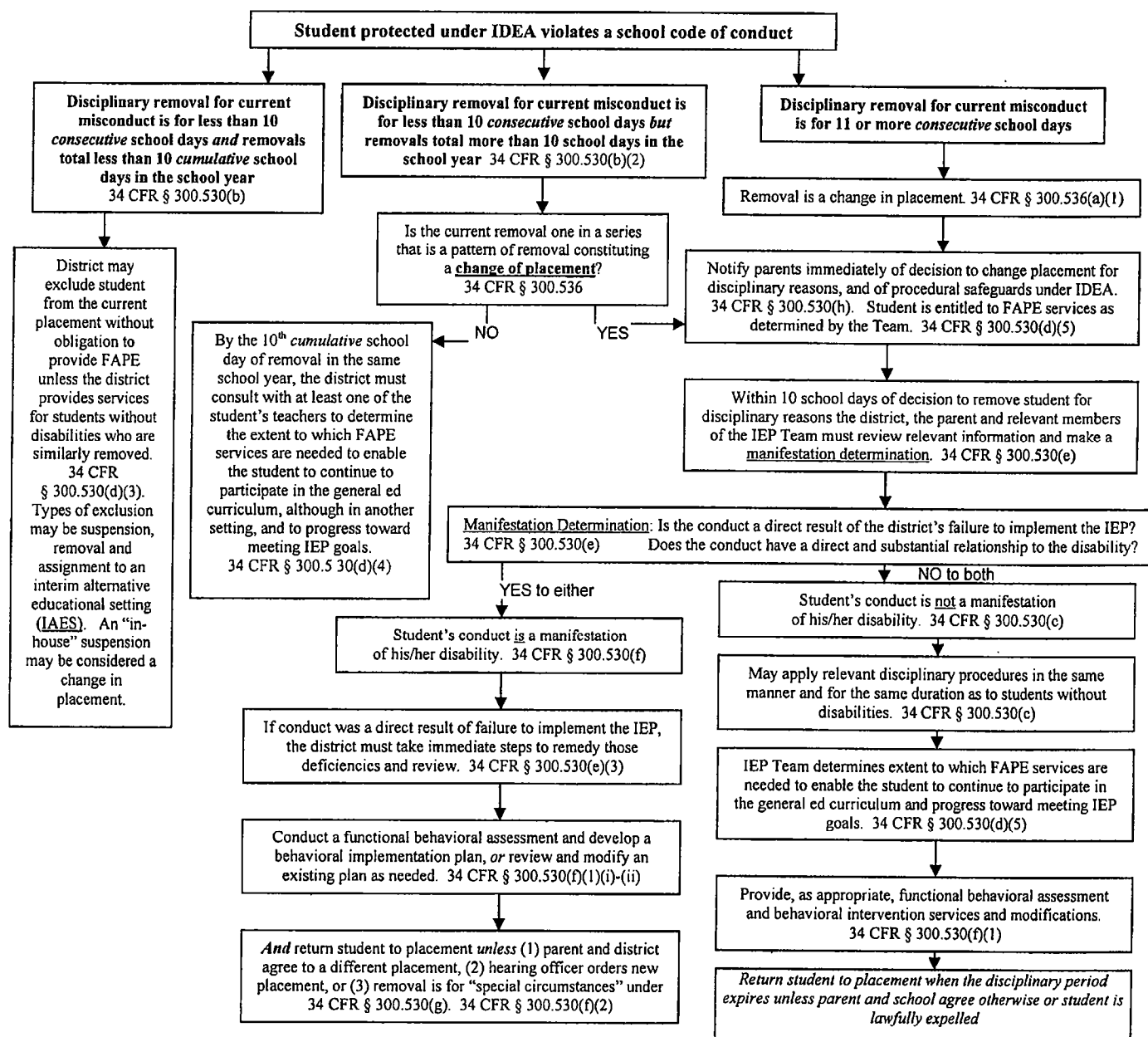
If the Team determines that the behavior was not related to your child's disability, then the school may suspend or otherwise discipline your child according to the school's code of student conduct, except that for any period of removal exceeding ten days, the school district must provide your child with a Free Appropriate Public Education (FAPE). The school district must determine the educational services necessary for FAPE and the manner and location for providing those services.

### **In the case of a disagreement with the Team's determination:**

If you disagree with the Team's decision on the manifestation determination® or with the decision relating to placement of your child in an interim alternative education setting or any other disciplinary action, you have the right to request an expedited due process hearing from the Bureau of Special Education Appeals.

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

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



## DEFINITIONS

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

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

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

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

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

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

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

Serious bodily injury – As defined in 18 U.S.C. § 930, a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 34 CFR § 300.530(i)(3).