

## Summary of Special Education Discipline Under the new IDEA and New Regulations

- I. Suspension of 10 school days or less – unchanged; free to do so. §1415(k)(1)(B); § 300.530(b)(1), (d)(3)
- II. Removal for more than 10 cumulative days – must provide services. §1415(k)(1)(C); § 300.530(b)(2), (d)(4)
  - Services must enable child to continue to participate in the general curriculum; and
  - Services must enable the child to continue to progress toward meeting IEP goals.
- III. New regulations alter change of placement definition:
  - The removal is for more than 10 consecutive days; or
  - A series of removals that constitute a pattern because:
    - § They total more than 10 school days in school year;
    - § The behavior is “substantially similar” to the behavior in previous incidents; and
    - § The length of each removal, their proximity in time and the total length. § 300.536
- IV. If removal constitutes a “change of placement” –
  - Must have Team meeting within 10 school days. §1415(k)(1)(E)(i); § 300.530(e)(1)
  - Must do a manifestation determination.
    - § If it is a manifestation, must conduct and/or review FBA and BIP.  
§1415(k)(1)(F); § 300.530(f)(1)
    - § In most circumstances, if it is a manifestation, the school must return the student to placement unless Parent and School decide on different placement.  
§1415(k)(1)(F)(iii); § 300.530(f)(2)
    - § If not a manifestation, use regular school discipline but with services during removal, including behavior services to keep behavior from recurring. §1415(k)(1)(C), (k)(1)(F); §300.530(c), (d)
  - Service duty increases to include behavior intervention services designed to prevent the behaviors from recurring. §1415(k)(1)(D); § 300.530(b)(2), (d)(1), (5)
- V. New Manifestation Determination Standard:
  - If the conduct in question was “caused by, or had a direct and substantial relationship to, the child’s disability;” §1415(k)(1)(E)(i)(I); § 300.530(e)(1)(i)  
or
  - If the conduct in question was the “direct result of the local school’s failure to implement the IEP.” §1415(k)(1)(E)(i)(II); § 300.530(e)(1)(ii)

- VI.** Regardless of Manifestation, school officials may remove for 45 school days for the following:
- Student carries or possesses a weapon to or at school, on school premises, or at school functions; §1415(k)(1)(G)(i); § 300.530(g)(1)
  - Student knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances at school, on school premises, at school functions; §1415(k)(1)(G)(ii); § 300.530(g)(2)
  - Student inflicts serious bodily injury while at school, on school premises or at a school function. “Serious Bodily Injury” includes: 1) substantial risk of death, 2) Extreme physical pain, 3) Protracted/obvious disfigurement, or 4) Protracted loss or impairment of function of bodily member, organ, or mental faculty. §1415(k)(1)(G)(iii); § 300.530(g)(3); 18 U.S.C. § 1365(h)(3)
- VII.** Hearing Officer Authority:
- Can order student into interim setting for 45 school days on determination that there is a substantial likelihood of injury to student or others. §1415(k)(3)(A), (B)(2); § 300.532(a), (b)(2)(ii)
  - Stay put in interim alternative educational setting during hearing. §1415(k)(4); § 300.533
- VIII.** Student also remains in interim setting during “stay put” if placement resulted from Team decision that behavior is not a manifestation – unless hearing officer rules otherwise in expedited hearing. §1415(k)(4)(A), (B); § 300.533
- IX.** Students not yet eligible – they may receive special education protections only if:
- If school had “knowledge” that the child may have a disability before the incident, shown as follows:
    - § Parent expressed written concern to supervisors/teachers that student needs special education;
    - § Parent has requested a special education evaluation; or
    - § Teacher or other personnel expressed “specific concerns” about a “pattern of behavior” directly to special education director or other supervisory personnel.
- §1415(k)(5)(B)(i)-(iii); § 300.534(a), (b)(1)-(3)

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