

# OSEP Part B Regulations Regional Implementation Meetings



Building the Legacy: IDEA 2004



## Discipline



*U.S. Department of Education  
Office of Special  
Education Programs*



# Key Issues: Discipline

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- Add new authority that allows school personnel to consider unique circumstances on a case-by-case basis

34 CFR §300.530(a)

Section 615(k)(1)(A)

- Expand removal authority for special circumstances related to serious bodily injury

34 CFR §300.530(g)(1)-(3)

Section 615(k)(1)(G)(i)-(iii)

# Key Issues: Discipline

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Retain previous authority for:

- Immediate short-term removals (10 days or less) and
- Long-term removals (more than 10 days) for behavior that is not a manifestation of the disability

34 CFR §300.530(b)(1) and (c)  
Section 615(k)(1)(B) and (C)

# Key Issues: Discipline

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Clarify when services are required during a disciplinary removal:

- For 10 school days or less, only if the agency provides services to others similarly removed  
(34 CFR §300.530(d)(3))
- That occurs after a removal from the current placement for 10 school days in the same school year  
(34 CFR §300.530(b)(2))

# Key Issues: Discipline

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- That is a disciplinary change in placement for more than 10 consecutive school days where the behavior is not a manifestation of the disability
- For special circumstances related to drugs, weapons or serious bodily injury

34 CFR §300.530(d)(1)  
Section 615(k)(1)(D)

# Key Issues: Discipline

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Specify when:

- The child's IEP Team determines services (34 CFR §300.530(d)(5))
- School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed (34 CFR §300.530(d)(4))
- The child's IEP Team determines the interim alternative educational setting (34 CFR §300.531)
- The LEA must give parental notice related to a disciplinary removal

# Key Issues: Discipline

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- Establish new standards for making manifestation determinations (34 CFR §300.530(e); Section 615(k)(1)(E))
- Establish specific requirements when the behavior was a manifestation of the disability (34 CFR §300.530(f); Section 615(k)(1)(F))
- Retain a definition of change of placement and clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals meets that definition (34 CFR §300.536)

# Key Issues: Discipline

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- Retain protections if the public agency's has a "basis of knowledge" of a disability for children not determined eligible under the IDEA  
(34 CFR §300.534; Section 615(k)(5))
- Establish exceptions to the agency's basis of knowledge where the parent refuses an evaluation or services or where the child is determined not eligible  
(34 CFR §300.534; Section 615(k)(5))

# Key Issues: Discipline

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- Revise and clarify due process hearing provisions for discipline, including hearing officer's review and specific timelines  
(34 CFR §300.532; Section 615(k)(3))
- Define how expedited hearing procedures relate to standard hearing procedures, including timelines for resolution sessions  
(34 CFR §300.532)

# *IDEA* Final Regulations

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## Retain a definition of **change of placement**:

For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR §§300.530 through 300.535, a change of placement occurs if the removal is for more than ten consecutive school days, OR

34 CFR §300.536(a)(1)

# IDEA Final Regulations

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- Add new authority for school personnel:  
School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct

34 CFR §300.530(a); Section 615(k)(1)(A)

# *IDEA* Final Regulations

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Specify when the LEA must give **notice**:

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR §300.504

34 CFR §300.530(h); Section 615(k)(1)(H)

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Define **basis of knowledge**:

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

34 CFR §300.534(b)(1)-(2);  
Section 615(k)(5)(A)(i)-(ii)

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## Define basis of knowledge (cont):

- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency

34 CFR §300.534(b)(3); Section 615(k)(5)(B)(iii)

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Define serious bodily injury:

**Serious bodily injury** has the meaning given the term “serious bodily injury” under U.S.C. 18 1365(h)(3)

34 CFR §300.530(i)(3); Section 615(k)(7)(D)

The term “serious bodily injury” means bodily injury which involves—(A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty

18 U.S.C. 1365(h)(3)

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Clarify services and appropriate **interim alternative educational settings**:

**Services**. A child with a disability who is removed from the child's current placement pursuant to 34 CFR §300.530(c) or (g) must—continue to receive educational services, as provided in 34 CFR §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP;

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Clarify services and appropriate interim alternative educational settings (cont):

Determine the extent to which services are needed, as provided in 34 CFR §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP

34 CFR §300.530(d)(4)

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Establish procedures for an expedited **due process hearing** (cont):

The state educational agency (SEA) or local educational agency (LEA) is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing

34 CFR §300.532(c)(2); Section 615(k)(4)(B)

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Add a new provision when the behavior was a manifestation of the disability:

- If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either
  - Conduct a **functional behavioral assessment**, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

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- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior

34 CFR §300.530(f)(1);  
Section 615(k)(1)(f)(i)-(ii)

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## Retain due process rights related to hearings on disciplinary issues:

The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under 34 CFR §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR §§300.507 and 300.508(a) and (b)

34 CFR §300.532(a); Section 615(k)(3)(A)

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Establish new standards for making **manifestation determinations:**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file,

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Establish new standards for making manifestation determinations (cont):

including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine-- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or If the conduct in question was the direct result of the LEA's failure to implement the IEP

34 CFR §300.530(e)(1); Section 615(k)(1)(E)(i)

# Resources

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- The Individuals with Disabilities Education Act, 20 U.S.C. §1415 *et seq.*  
<http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2C>
- The Individuals with Disabilities Education Act Regulations, 34 C.F.R. §300.530 *et seq.*  
<http://idea.ed.gov/download/finalregulations.pdf>
- Analysis of Comments and Changes to The Individuals with Disabilities Education Act Regulations (included in regulations document)
- <http://www.pbis.org>