

XIV. *D*isciplíne

Discipline "Change of Placement"

What the Federal Regs. Say ...

For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.530 through 300.535, a change of placement occurs if: (1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year; because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and because of such additional factors 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. Sec. 300.536(a).

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings. Sec. 300.536(b).

What the Regulations Mean ...

A "change of placement" for disciplinary removals occurs when the student is removed for **more than 10 consecutive school days** (this automatically constitutes a change of placement). A "change of placement" also occurs when the student is subject to a **series of removals** that are

found to **constitute a pattern**. In order to determine whether a pattern exists to constitute a "change of placement," the following factors must be considered:

- 1) The series of removals must cumulate to more than 10 school days in a school year;
- 2) the child's behavior must be substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
- 3) the length of each removal;
- 4) the total amount of time the child is removed; and
- 5) the proximity of the removals to one another.

What Parents Should Know ...

Understanding the definition of a "change of placement" is the cornerstone to understanding the federal regulations related to discipline.

Schools generally are not allowed to change the placement of a child with a disability without the parents' input. Some exceptions apply in the area of discipline. That is why it is important to understand at what point a removal or series of removals may become a "change of placement."

While one removal of more than 10 consecutive school days is clearly a change of placement, the law is very flexible as to when a "series of removals" achieves "change of placement" status. The school makes that determination, although parents can contest the decision.

Discipline

Authority of School Personnel
- Removals Up to 10
Consecutive School Days



What the Federal Regs. Say ...

Case-by-case determination - 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. Sec. 300.530(a).

General - School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for

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. 300.536). Sec. 300.530(b)(1).

After a child with a disability has been removed from his or her current placement for 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 paragraph (d) of this section. Sec. 300.530(b)(2).



What the Regulations Mean ...

As long as they would treat a child without disabilities in the same fashion, public schools have the authority to automatically remove (suspend or place in another setting) children with disabilities from the child's current placement for a violation of the school's code of student conduct.

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Authority of School Personnel
- Removals Up to 10
Consecutive School Days
(cont.)

Specifically, a child with a disability can be removed for up to 10 consecutive school days at a time for a violation of school rules. Schools can remove/suspend children with disabilities for additional violations of school rules for up to 10 consecutive school days per violation within the same school year, so long as the additional removals do not constitute a "change of placement" (see previous subsection). Once a child has been removed from his or her current placement for more than 10 total school days in a school year, the school must provide special education services to the child in a different setting.

The 2004 Amendments added a section allowing schools the flexibility to look at each situation on a case-by-case basis, rather than automatically applying the dictates of the law.



What Parents Should Know ...

Regardless of the child's disability and how it affects the child, a school can remove a child with a disability from school or place the child in another setting without parental permission for up to 10 consecutive school days for a violation of school rules, so long as a child without a disability would be treated similarly for the same infraction. In this situation, it does not matter whether the child's behavior was a result of the child's disability.

The same rule applies to additional violations of school rules until the school determines that the series of removals constitute a "change of placement." However, once the total days of removal in a school year exceed 10, the school must then serve the child in a different setting, with services that would enable the child to continue to participate in the general education curriculum and progress toward meeting the annual goals in the child's IEP.

Discipline

Authority of School Personnel - Removals Exceeding 10 Consecutive School Days / Services Required

What the Federal Regs. Say ...

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section. Sec. 300.530(c).

Services - A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must continue to receive educational services, as provided in Sec. 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; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. Sec. 300.530(d)(1).

The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting. Sec. 300.530(d)(2).

A public agency is only required to provide services during periods of removal 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 it provides services to a child without disabilities who is similarly removed. Sec. 300.530(d)(3).

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Sec. 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in Sec. 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. Sec. 300.530(d)(4).

If the removal is a change of placement under Sec. 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section. Sec. 300.530(d)(5).

What the Regulations Mean ...

If a school decides to remove (suspend or expel) a child with a disability from the child's current placement for over 10 consecutive school days, this removal constitutes a "change of placement" that triggers

Discipline

Authority of School Personnel - Removals Exceeding 10 Consecutive School Days / Services Required (cont.)

certain procedural requirements. Parents must be notified and provided their procedural safeguards. A manifestation determination must be made within 10 school days. When the child's behavior is determined NOT to be a manifestation of the child's disability, the school must continue to serve the child in another location, such as an interim alternative educational setting, which would be selected by the IEP Team. The setting selected must allow the child to participate in the general educational curriculum and progress toward meeting the child's IEP goals. The school is further mandated to conduct a functional behavioral assessment, as appropriate, and once the assessment is completed, the IEP Team must reconvene to develop appropriate behavioral interventions, based on the functional behavioral assessment, that are designed to address the behavior so that it does not recur. The same requirement applies to children removed due to "special circumstances" and when there is a change of placement based on a series of removals.

In circumstances where a child has had removals in a school year totaling more than 10 school days, but where they have not been deemed to be a change of placement, the school determines the services to be provided to enable the child to continue to participate in the general education curriculum and progress toward meeting the child's IEP goals.

What Parents Should Know ...

Part of the Congressional intent in setting up the discipline procedures is to require schools to take action to prevent future situations that would result in a student's removal. While IDEA does not define what constitutes a "functional behavioral assessment" (FBA), it is clear that the intent is for the child's behavior to be evaluated so that behavioral intervention services and interventions can be created and implemented. Thus, this assessment would focus on why a student behaves a certain way, given the nature of the student's disability and what is happening in the environment. If the FBA had already taken place prior to the behavior that resulted in the current removal, the IEP Team should meet to review the behavioral intervention services and make changes as are necessary to attempt to prevent further behaviors from occurring. (For further information on FBAs, see Section XII).

For information on how South Dakota's State rules interplay with IDEA's requirements for long-term removals, see "In South Dakota ..." on page 206.



Discipline Manifestation Determination

What the Federal Regs. Say ...

Manifestation determination - 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, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (2) If the conduct in question was the direct result of the LEA's failure to implement the IEP. Sec. 300.530(e)(1).

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. Sec. 300.530(e)(2).

If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. Sec. 300.530(e)(3).

Determination that behavior was a manifestation - 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 if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. Sec. 300.530(f).

What the Regulations Mean ...

Any time there is a change of placement contemplated, a determination must be made whether the behavior in question was a "manifestation" of the child's disability. A finding that the behavior **was** a manifestation can occur in only two ways: 1) if the IEP Team determines the behavior was caused by or was substantially related to the



Discipline Manifestation Determination (cont.)

child's disability; or 2) if the behavior was a "direct result" of the school's failure to implement the IEP. The determination must take place within 10 school days of a decision to remove a child for over 10 consecutive school days.

If the behavior was determined to be a manifestation, the child cannot be removed for over 10 consecutive school days and must be returned to his or her current placement (unless "special circumstances" apply - see next topic), revise the IEP as appropriate, conduct a functional behavioral assessment if not already completed, and implement or revise a behavioral intervention plan. (See Section XII).

If it is determined that the child's behavior was NOT a manifestation of his or her disability, schools may use the discipline policies applicable to all children except that the school must continue to provide FAPE (special education services as required by the IEP) in another setting, such as an interim alternative educational setting.

time a school seeks to have a child removed for what would constitute a change of placement, the IEP Team must conduct a "manifestation determination" to determine whether the child's behavior was a result of (a manifestation of) the child's disability.

When it is determined that a child's behavior WAS a manifestation of the child's disability, the child must be immediately returned to the child's current placement, regardless of whether the school administration or school board desires a long-term suspension or expulsion. The IEP must be revised as necessary, an FBA must occur if not already completed, and a behavioral intervention plan (BIP) must be created or revised. (See Section XII). Again, the intent behind these requirements is that children with disabilities should not be punished for having a disability that causes inappropriate behaviors.

When the IEP Team meets following a determination that behavior was a manifestation of the child's disability, the parents and school may nonetheless want to consider a different placement when reviewing the BIP.

What Parents Should Know ...

IDEA requires that children with disabilities not be removed from school for extended periods of time (that which would constitute a change of placement) if the behavior in question resulted from (or is caused by) the child's disability. Therefore, every



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Special Circumstances /
Notification / Definitions /
Interim Alternative
Educational Setting (IAES)

What the Federal Regs. Say ...

Special circumstances - School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) 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 an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. Sec. 300.530(g).

Notification - 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 Sec. 300.504. Sec. 300.530(h).

Definitions - 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** means a controlled substance; but does not include a controlled 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) **Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) **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.

Sec. 300.530(i).

Determination of setting - The child's IEP Team determines the interim alternative educational setting for services under Sec. 300.530(c), (d)(5), and (g). Sec. 300.531.



What the Regulations Mean ...

IDEA has set out three "special circumstances" where a school can remove a child with a disability to an interim alternative educational setting regardless of whether the behavior in question was a manifestation of the child's disability and without parental permission. These involve very serious behaviors related to possessing a weapon, using illegal drugs or selling/attempting to sell a controlled substance, or inflicting serious bodily injury on another person, either on school grounds or at a school function.

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Special Circumstances / Notification / Definitions / Interim Alternative Educational Setting (IAES) (cont.)

Schedules I to V of the Controlled Substance Act range from drugs which are illegal and have no current accepted medical use (Schedule I) to those with accepted medical use with decreasing levels of restrictions with each schedule (II to V). Drugs are illegal if on the controlled substance schedules unless prescribed (as allowed) by a licensed health care professional or otherwise possessed under legal authority.

The term "dangerous 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 1/2 inches in length.

"Serious bodily injury" means an 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.

Like other removals that constitute a change of placement, the child must be placed in an interim alternative educational setting, determined by the IEP Team, where the child can receive sufficient appropriate services so as to allow the student to continue to progress in the general education curriculum AND receive services and modifications contained in the student's IEP that will enable the child to progress toward meeting his or her IEP goals. The child must also receive a functional behavioral assessment and behavior intervention ser-

vices and modifications designed to address the behavior so that it does not recur. A child with a disability can be placed in the interim alternative educational setting for no more than 45 school days when found to have committed one of the infractions constituting "special circumstances."



What Parents Should Know ...

Many students in South Dakota hunt and fish. Hunting/fishing knives, rifles, and shotguns are not excluded from coverage. If a child with a disability has such an item in his or her vehicle, even by accident, and parks it on school property or at a school function, the student may be suspended from school and placed in an interim alternative educational setting as discussed in this section. Children with disabilities alleged to have committed a "special circumstances" act or who are subject to a removal of over 10 consecutive school days under 300.530(c) are entitled to a hearing before the school board. (See "In South Dakota ..." on following page).

While not deemed a *dangerous weapon*, a student possessing a pocket knife with a blade less than 2 1/2 inches in length may well be in violation of school rules and subject to disciplinary action.

When a decision is made to remove a child with a disability where it constitutes a change of placement, the parents must be notified **on that date** and provided their procedural safeguards.

Discipline

South Dakota Rules on Removals of Less Than 10 Consecutive School Days / More Than 10 Consecutive School Days

In South Dakota ...

South Dakota has set out procedures for addressing discipline of all students in its administrative rules in Article 24:07 (Student Due Process). These general discipline rules apply to children with disabilities, but only to an extent. This page will initially address South Dakota's general discipline procedure for short-term suspensions (less than 10 school days), and then the State's procedure for long-term suspensions and expulsions (removals that would constitute a change of placement for a child with a disability).

Short-term suspension procedure - If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the principal or superintendent shall give oral or written notice to the pupil as soon as possible after discovery of the alleged violation, stating the facts that form the basis for the suspension. The pupil must be given the opportunity to answer the charges. If a pupil is suspended, the principal or superintendent shall give the parent oral notice, if possible,

and shall send the parent or a pupil who is 18 years of age or older or an emancipated minor a written notice which provides information regarding the pupil's due process rights. A pupil who is an unemancipated minor may not be removed from the school premises before the end of the school day without contacting a parent unless the pupil's presence poses a continuing threat or danger, in which case the pupil may be immediately removed from the school and transferred into the custody of a parent or law enforcement. ARSD 24:07:02:01.

Remember, per Sec. 300.530(b), the school has the option of removing the child with a disability to another setting or suspension, and only to the extent the same would apply to children without disabilities.

If a school district seeks to remove a child with a disability for more than 10 consecutive school days or otherwise seeks a change of placement, the following general discipline rule is applicable.

Right to request hearing -- Notice of hearing - If the superintendent finds grounds for a long-term suspension from a class or classes, the superintendent may exclude the pupil from a class or classes by using the short-term suspension procedure in § 24:07:02:01. The superintendent shall



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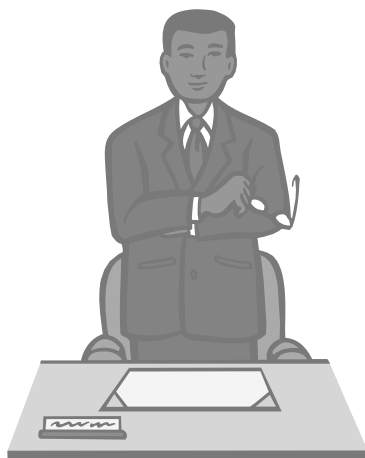
South Dakota Rules on Removals of Less Than 10 Consecutive School Days / More Than 10 Consecutive School Days (cont.)



give a written notice to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor and may schedule a hearing. The notice shall contain the following minimum information:

- (1) The policy allegedly violated;
- (2) The reason for the disciplinary proceedings;
- (3) Notice of the right to request a hearing or waive the right to a hearing.
- (4) A description of the hearing procedure;
- (5) A statement that the pupil's records are available at the school for examination by the pupil's parent authorized representative; and
- (6) A statement that the pupil may present witnesses.

If a hearing is requested, the superintendent shall give notice to each school board



member of an appeal to the board for a hearing. The superintendent shall set the date, time, and place for the hearing and send notice by first class mail to each school board member and by certified mail, return receipt requested, to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor.

If no hearing is requested or the hearing is waived, the action of the superintendent is final. ARSD 24:07:03:02.

Therefore, before any suspension of over 10 consecutive school days or expulsion can take place, the child with a disability and the child's parents are entitled to a hearing before the school board, which can be waived. Of course, if the child's behavior is determined to be a manifestation of the child's disability *and no special circumstances are involved*, any school board-ordered removal would be essentially overruled by IDEA, as the child must then be immediately returned to the child's current placement.

South Dakota also has administrative rules within its special education rules on Suspension (ARSD Chapter 24:05:26) and Expulsion (ARSD Chapter 24:05:26.01) that both mirror the federal regulations and contain sections referencing and "borrowing" from Article 24:07 on Student Due Process.

Discipline

Appeals / Authority of Hearing Officer

What the Federal Regs. Say ...

General - The parent of a child with a disability who disagrees with any decision regarding placement under Secs. 300.530 and 300.531, or the manifestation determination under Sec. 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 Secs. 300.507 and 300.508(a) and (b). Sec. 300.532(a).

Authority of hearing officer - A hearing officer under Sec. 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

In making the determination under paragraph (b)(1) of this section, the hearing officer may: (1) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sec. 300.530 or that the child's behavior was a manifestation of the child's disability; or (2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. Sec. 300.532(b).

What the Regulations Mean ...

Parents can appeal decisions regarding a removal, the appropriateness of an interim alternative educational setting, and a manifestation determination by filing a Due Process Complaint. If it is determined that a student's behavior DID result from his or her disability, a school cannot remove the child from the current educational placement for more than 10 consecutive school days or otherwise remove the student if it would constitute a change of placement (except in the case of "special circumstances").

However, a school can still have the student removed for not more than 45 school days to an interim alternative educational setting by filing for an "expedited due process hearing" and proving it would be a danger (substantially likely to result in injury to the child or others) for the child to remain in the child's current placement.

For a school to accomplish this task, the level of proof is high. At a minimum, the hearing officer should consider the following factors:

- First, the hearing officer would have to find by "substantial evidence" (a higher standard of proof than a preponderance, which is used in other due process hearings) that the current placement is substantially likely to result in injury to the child or to others.

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Appeals / Authority of Hearing Officer (cont.)

- Second, the hearing officer must consider the appropriateness of the current placement. If it is found the school has not made an appropriate education available to a child, a hearing officer would probably order the school to revise the IEP or provide the services contained in the IEP rather than order a removal.
- Third, the hearing officer must consider whether the school had made efforts to reduce the risk of harm in the current setting. If the school had not done so, the hearing officer should order the school to provide additional services in the current setting rather than order a removal.
- Finally, even if the school sufficiently demonstrated that the child was dangerous, that the IEP was appropriate and was being followed, and that the school had reasonably tried various methods to reduce the risk of harm (with no success), the hearing officer also would need to determine that the proposed interim alternative educational setting is appropriate.

When a hearing officer does order placement in an IAES based on a finding that maintaining the child in the current placement IS substantially likely to result in injury to the child or others, the child **must return** to the child's original placement following the removal period (up to 45 school days). However, a school can repeat this

process if it believes the child continues to be a danger to him/herself or to others.

What Parents Should Know ...

In situations when a school is attempting to have a hearing officer order that a child be placed in an interim alternative educational setting because of dangerousness, there are several ways a parent can challenge such a placement. For example, a parent could argue:

- The child is not dangerous to him/herself or others;
- The IEP is not appropriate or is not being followed;
- The school has not sufficiently tried various alternatives short of a removal to a different setting; or
- The proposed interim alternative educational placement is not appropriate.

If a hearing officer orders a child to be placed in an interim alternative educational setting, such placement cannot be for more than 45 school days.



Discipline

Placement During Appeals ("Stay Put")

What the Federal Regs. Say ...

When an appeal under Sec. 300.532 has been made by either the parent or the LEA, 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 specified in Sec. 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. Sec. 300.533.

What the Regulations Mean ...

The general "Stay Put" rule does not apply in discipline cases. If parents appeal an interim alternative educational setting (IAES) placement, the child remains in the IAES pending a hearing decision or the expiration of the IAES placement time limit (whichever comes first).

If, following a placement in an IAES, a school proposes to change the child's placement from what it was prior to the IAES placement and parents contest that change, the child must remain in the current placement (the placement prior to the IAES) through the regular due process procedure.

However, if the school believes returning the child to the setting where the child was placed prior to placement at the IAES is substantially likely to result in injury to the child or others, the school may request an expedited hearing. In that case, the child would still remain in the placement prior to the IAES (assuming the 45 school day placement at the IAES has ended) during the course of the expedited hearing proceedings.

If a manifestation determination resulted in a finding that the child's behavior was a manifestation of the child's disability, requiring the child to remain in the child's current placement, and the school believes maintaining the current placement is substantially likely to result in injury to the child or others, the school can file for an expedited hearing. In this situation, the "stay put" rule for discipline cases seemingly does not apply, because the child would never have been placed in an IAES and thus could not remain there as the regulation suggests.

What Parents Should Know ...

This section provides an exception to the general "stay put" provision. While generally a child must continue in the current (last agreed upon) placement if a due process hearing is requested (unless the parties agree otherwise), if a parent contests a child's placement in an IAES, the child must remain in that alternative setting pending the hearing officer's decision or the end of the 45 school days, whichever comes first.

However, if at the end of that placement in an IAES, the school wishes to continue to have the child placed there or in a different placement rather than return the child to the child's original placement (the placement prior to removal to the IAES), and the parents contest that placement, the general "stay put" rule would apply and the child would remain in the original placement.

The LEA can use the expedited due process hearing procedure if it believes returning the child to the placement prior to the IAES is substantially likely to result in injury to the child or others.

Discipline

Expedited Due Process Hearings

What the Federal Regs. Say ...

Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of Secs. 300.507 and 300.508 (a) through (c) and Secs. 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. Sec. 300.532(c)(1).

The SEA or 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. Sec. 300.532(c)(2).

Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in Sec. 300.506: A resolution meeting must occur within seven days of receiving notice of the due process complaint; and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. Sec. 300.532(c)(3).

A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this

section, the State must ensure that the requirements in Secs. 300.510 through 300.514 are met. Sec. 300.532(c)(4).

The decisions on expedited due process hearings are appealable consistent with Sec. 300.514. Sec. 300.532(c)(5).

What the Regulations Mean ...

Expedited due process hearings must meet the "hearing rights" requirements of a regular due process hearing, except the hearing must occur within 20 school days of receipt of the due process complaint and the hearing officer's decision must be issued within 10 days of the hearing. No extensions are allowed. Also, unlike a regular due process hearing, a Resolution Meeting or mediation does not delay the start of the time period for holding the expedited hearing. Further, the party receiving the Due Process Complaint cannot contest its content, there is no requirement to respond to the Due Process Complaint or for the school to provide written notice if not previously provided, and the provisions for amending a Due Process Complaint do not apply. States may develop their own procedural rules, provided they are consistent with Secs. 300.510 through 300.514. The hearing officer's decision may be appealed using the regular appeal procedures.

What Parents Should Know ...

Expedited due process hearings are similar in most respects to regular due process hearings. However, because the purpose of an expedited hearing is to obtain as fast a resolution as possible, no exceptions or extensions to the time limits are allowed.

Discipline

Protections for Children Not Determined Eligible for Special Education and Related Services

What the Federal Regs. Say ...

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 a code of student conduct, may assert any of the protections provided for in this part if the public agency 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. Sec. 300.534(a).

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: (1) 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; (2) The parent of the child requested an evaluation of the child pursuant to Secs. 300.300 through 300.311; or (3) 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. Sec. 300.534(b).

Exception - A public agency would not be deemed to have knowledge under paragraph (b) of this section if: (1) The parent of the child has not allowed an evaluation of the child pursuant to Secs. 300.300 through 300.311; or has refused services under this part; or (2) the child has been evaluated in accordance with Secs. 300.300 through 300.311 and determined to not be a child with a disability under this part. Sec. 300.534(c).

Conditions that apply if no basis of knowledge - If a public agency 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 disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

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. 300.530, the evaluation must be conducted in an expedited manner. 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. 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 must provide special education and related services in accordance with this part, including the requirements of Secs. 300.530 through 300.536 and section 612(a)(1)(A) of the Act. Sec. 300.534(d).

Discipline

Protections for Children Not Determined Eligible for Special Education and Related Services (cont.)

What the Regulations Mean ...

A student who is not on an IEP may assert the protections of the discipline section of IDEA if the school is deemed to "have knowledge" he or she was a "child with a disability" prior to the behavior in question. A school will be "deemed to have knowledge" if: 1) the parent had expressed concerns in writing that the child might need special education and related services; 2) the parent had requested an evaluation; or 3) a teacher or other personnel had expressed concern about a child's behavior directly to the special education director or other administrator.

A school will not be "deemed to have knowledge" if it had evaluated the child and determined the child was not eligible, or the parents had refused an evaluation or services.

If a school is not "deemed to have knowledge" that a student has a disability prior to the behavior resulting in disciplinary action, the student may be subjected to the regular discipline policies of the school. However, if a parent requests an evaluation during the disciplinary period, it must be expedited. Until the evaluation is completed, the student remains in the placement determined by the school authorities, which may well mean suspension or expulsion without services. If a student is then found to have a disability, the school must provide special education and related services as required by IDEA.

What Parents Should Know ...

If parents have concerns that their child may have a disability and require special education services, they should bring those concerns to the school's attention in writing (dated, signed) and request an evaluation. Parents should keep a copy of all correspondence. Then, should the evaluation not have yet occurred or the school not followed through with the evaluation, and then the child engages in behavior subject to removal for over ten days, the child will be protected (entitled to continuing services) because the school will be deemed to "have knowledge."

If a school "had knowledge" that a student may be a "child with a disability" but proceeds to suspend or expel that student without evaluating the child to make that determination, that student may assert the protections of the IDEA disciplinary rules as if the child had already qualified for services.

Even when a school does not have knowledge that a child is a "child with a disability" prior to taking disciplinary action, parents may request that the child be evaluated during the suspension/expulsion and the school must then evaluate the child as soon as possible.



TIP - If a school is found to "have knowledge" of a child's disability, but failed to provide the child with appropriate services under IDEA, essentially the school failed to provide FAPE and the student may be entitled to compensatory educational services.

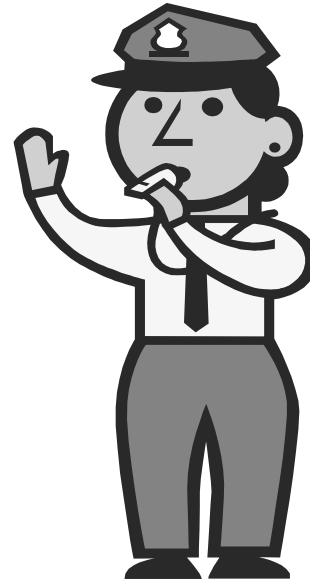
Discipline

Referral to and Action by Law Enforcement and Judicial Authorities

What the Federal Regs. Say ...

Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents 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. Sec. 300.535(a).

Transmittal of records - An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. 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. Sec. 300.535(b).



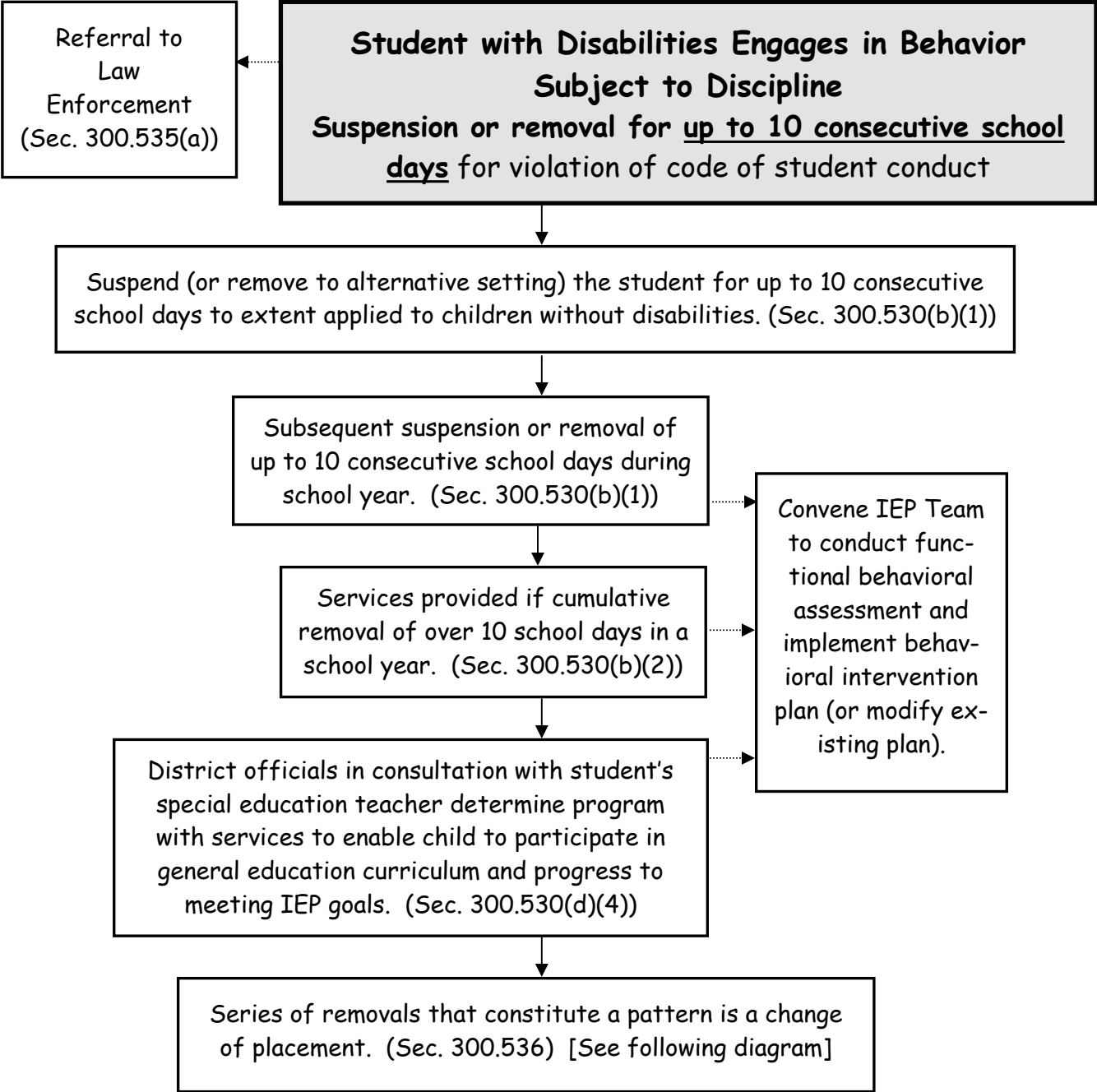
What the Regulations Mean ...

While many violations of school rules do not constitute a potential violation of a State or federal criminal law, when a child with a disability's behavior is such that it may constitute criminal behavior, schools may report such behavior to appropriate law enforcement authorities. When a school does report a crime to law enforcement authorities, it must ensure that a copy of the child's special education and disciplinary records are provided for law enforcement authorities to take into consideration.

What Parents Should Know ...

Being on an IEP does not make a child immune from criminal prosecution. If school personnel believe a child with a disability has committed what would be a criminal offense, they can contact law enforcement personnel and report the alleged crime.

Discipline
Removal for up to 10 Consecutive School Days (Diagram)

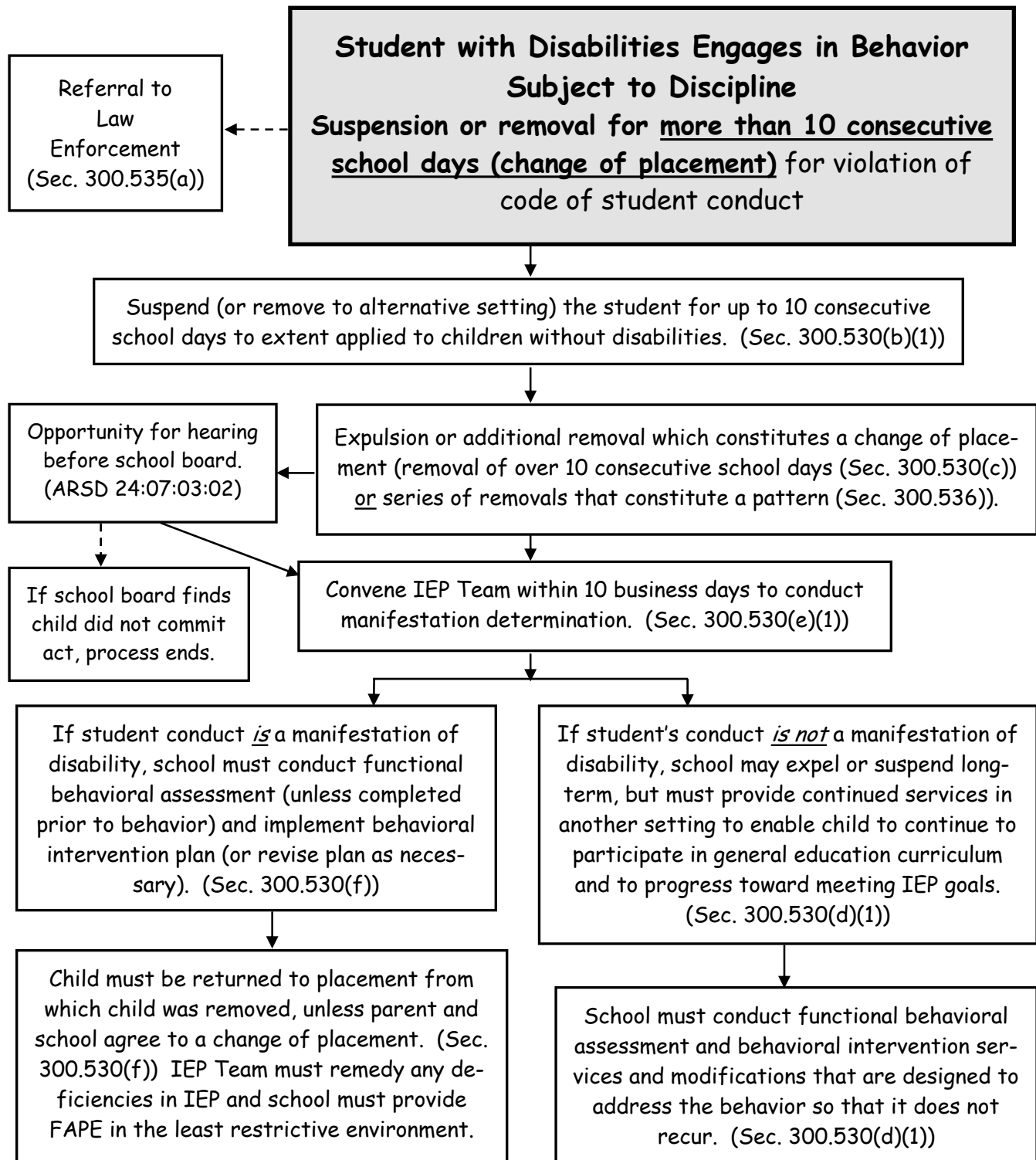


XIV. Discipline

Note: For purposes of these charts, a solid line indicates action steps, while a dotted line indicates a discretionary action.

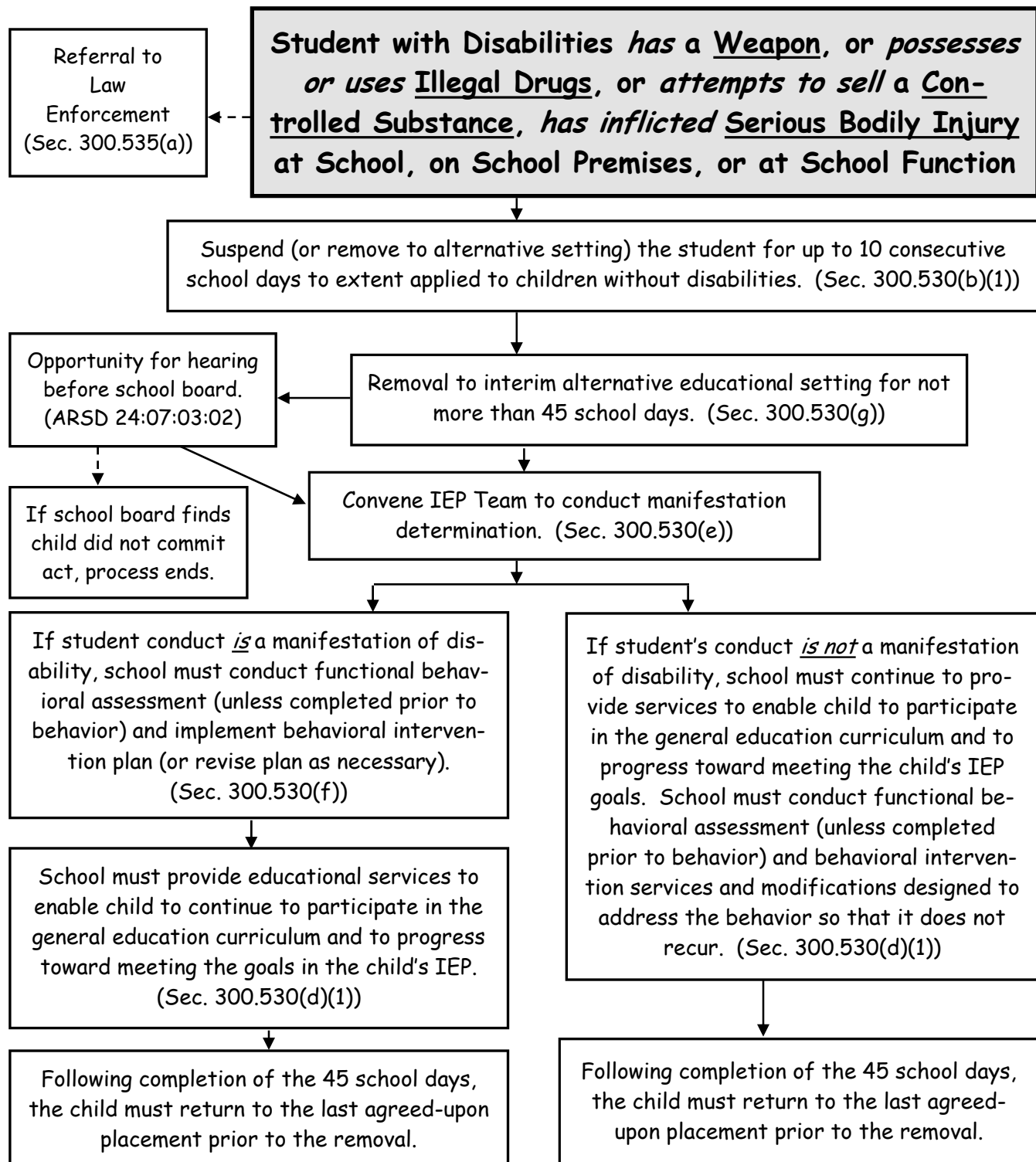
Discipline

Removal for More than 10 Consecutive School Days (Diagram)



Discipline

Removal for More than 10 Consecutive School Days due to Special Circumstances (Diagram)



**Discipline
Appeal Process (Diagram)**

