

Building the Legacy: IDEA 2004 Training Curriculum

Module 19

Key Issues in Discipline



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In Partnership with...

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October 2007
National Dissemination Center for Children with Disabilities

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Suggested citation:

Bradley, R. (2007, October). Key issues in discipline (Module 19). *Building the legacy: IDEA 2004 training curriculum*. Washington, DC: National Dissemination Center for Children with Disabilities. Available online at: www.nichcy.org/training/contents.asp



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www.nichcy.org

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This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Background and Discussion

This module is part of a training package on the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), developed by NICHCY for the Office of Special Education Programs (OSEP) at the U.S. Department of Education (hereinafter called the Department). The training curriculum is entitled *Building the Legacy*; this module is entitled *Key Issues in Discipline*.

Introduction

The 2004 Amendments to the Individuals with Disabilities Education Act (IDEA) made by the Individuals with Disabilities Education Improvement Act of 2004, P. L. No. 108-446, include specific provisions that address the discipline of children with disabilities [20 U.S.C. 1415(k)]. The final regulations for Part B¹ of IDEA (Part B), which were published in the *Federal Register* in August of 2006 and became effective on October 13, 2006, implement the changes made to IDEA's discipline procedures by the 2004 Amendments. These final regulations provide continued protection of essential rights of children and parents in disciplinary situations, as well as expanded authority and flexibility for school personnel to maintain a safe learning environment for all children. The new requirements simplify the discipline process and make it easier for school personnel to discipline children with disabilities when discipline is appropriate and justified.

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You'll note the "New in IDEA" icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.

Evolution of Disciplinary Procedures in IDEA

The 1997 Amendments to the IDEA marked the first time that specific discipline procedures were incorporated into the law. These discipline procedures addressed how public agencies could respond to behavioral infractions of children with disabilities. They were also rather complicated.

The audience will be pleased to hear that the procedures specified in the 1997 Amendments have been revised in the 2004 Amendments and that disciplinary processes have been streamlined. This module will

take the audience through those processes, providing a detailed look at the considerations that come into play when a child with a disability breaks a code of student conduct and becomes subject to disciplinary action by the school system. While many in the audience may be familiar with prior requirements, this module is not designed to require that knowledge or reference point. The module emphasizes what's required *now*.

Proactively Addressing Behavior Issues

In addition to including discipline procedures as a means of addressing unacceptable behavior of children with disabilities in certain situations, the reauthorized IDEA continues to



Trainer's Note

Throughout this training module, all references in the discussion section for a slide are provided at the *end* of that slide's discussion.

include several vehicles for proactively addressing the needs of children who exhibit behavior challenges. The most prominent of these is the individualized education program or IEP. As discussed in the modules *Content of the IEP* and *Meetings of the IEP Team*, for a “child whose behavior impedes the child’s learning or that of others,” a factor that must be considered in the development of that child’s IEP is “the use of positive behavioral interventions and supports, and other strategies, to address that behavior” [§300.324(a)(2)(i)]. Functional behavioral assessments (FBA) and behavioral intervention plans (BIP) are possible tools an IEP Team may consider when determining how to address problem behavior. These elements become mandatory in certain disciplinary situations, as we will see in this session, but they must also be used proactively, if the IEP Team determines that they would be appropriate for the child.

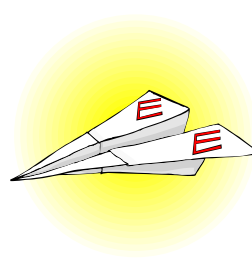
Summary of Discipline Procedures in the Reauthorized IDEA

IDEA’s discipline procedures apply when a child with a disability violates a code of student conduct. The final regulations implementing discipline changes made to Part B of the IDEA by

the 2004 Amendments are found at 34 CFR §§300.530 through 300.536 (2007). Let’s review each topic that will be covered in more detail throughout this training curriculum.

Section 300.530 (Authority of School Personnel) sets out the general authority of school personnel in disciplinary situations. Section 300.530(a) permits school personnel to consider any unique circumstances on a case-by-case basis in determining whether a disciplinary change of placement, consistent with the other requirements of §300.530, is appropriate for a child with a disability who violates a code of student conduct. Section 300.530(b) is a general provision that:

- retains the authority of school personnel for immediate short-term removals of 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 (IAES), another setting, or suspension, for not more than 10 consecutive school days in a school year; and
- addresses when additional short-term removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct are permissible.



Section 300.530(c) retains the authority of school personnel for long-term removals of children with disabilities for behavior that is properly determined not to be a manifesta-

tion of the child’s disability, and, as in the past, these removals must be implemented consistent with the services provisions in §300.530(d). Section 300.530(d) clarifies the standard used for determining when services are required during periods of disciplinary removal, how and where such services can be provided, and who makes the services determination.

Section 300.530(e) retains the requirement for manifestation determination for disciplinary removals that constitute a change of placement but modifies the standard for determining how the manifestation determination is made, specifies when that determination must occur, and specifies who makes that determination. Section 300.530(f) addresses the requirements that apply if the child’s behavior is determined to be a manifestation of the child’s disability.

Section 300.530(g) retains the authority of school personnel to remove a child with a disability to an appropriate IAES for up to 45 school days for weapons and drugs offenses, without regard to whether the child’s conduct is a manifestation of the child’s disability. Paragraph (g)(3) expands this removal authority to include a child who has inflicted serious bodily injury upon another person.



Other topics addressed in this module include:

- parent notification (§300.530(h));
- determination of setting (§300.531);
- appeal by the parent or local educational agency (LEA) and expedited due process hearings (§300.532);
- placement during appeals (§300.533);
- protections for children not determined eligible for special education and related services (§300.534);
- referral to, and action by, law enforcement authorities (§300.535); and
- change of placement because of disciplinary removals (§300.536).

In examining the final Part B regulations containing the discipline procedures, this training curriculum on IDEA also includes some of the Department's responses to public comments clarifying some aspects of these final regulations. Many terms discussed in this module are defined in the handouts. In addition, the handouts include a table depicting the discipline process under IDEA.

This Module in Time and Space

This module on discipline falls within the umbrella topic of **Procedural Safeguards, Theme E**. Within that broad area, there are three modules in all, as follows:

- *Introduction to Procedural Safeguards* provides an overview of many central provisions of IDEA, including parent participation, prior written notice, the procedural safeguards notice, and more.
- *Options for Dispute Resolution* describes the alternatives available for resolving disagreements between parents and schools—from writing a letter of complaint to mediation to due process hearing.
- *Key Issues in Discipline* under IDEA focuses on the procedures and protections applied in the event of violations of a code of student conduct.

All of these modules are intended for general audiences. They've been designed so that trainers can either condense the presentation of information to the essentials, when training time is limited, or expand the training to cover specific procedural safeguards in depth. The background discussion for each mini-module is extensive and detailed, to support trainers in adapting trainings to correspond to participant need and interest.

You are currently reading the background section and discussion in the module on *Key Issues in Discipline*, the last module in the series on procedural safeguards.

Thanks to the Author of This Module

NICHCY would like to express its appreciation for the hard work and expertise of:

Renee Bradley, Office of Special Education Programs, U.S. Department of Education, who is the primary author of this module.

And Thanks to the Office of General Counsel

NICHCY would also like to thank **Rhonda Weiss**, Office of General Counsel, U.S. Department of Education, for her painstaking and thorough review of this module for its legal sufficiency with the statute and final Part B regulations of IDEA. Please pardon the pun, but you have amazing discipline, Rhonda.

Files You'll Need for This Module

Module 19 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

To launch the PowerPoint presentation, double-click the **PLAY.bat** file

- **Trainer's Guide Discussion.**

The discussion text (what you're reading right now) describes how the slides operate and explains the content of each slide, including relevant requirements of the statute signed into law by President George W. Bush in December 2004 and the final regulations for Part B published in August 2006.

The discussion is provided via two PDF files, with the equivalent content also available in one accessible Word file. Here are the files' full names and where to find them on NICHCY's Web site:

PDF of discussion for Slides 1-14
www.nichcy.org/training/19-discussionSlides1-14.pdf

PDF of discussion for Slides 15-end
www.nichcy.org/training/19-discussionSlides15-end.pdf

The entire discussion in an accessible Word® file
www.nichcy.org/training/19-discussion.doc

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **Theme E, Procedural Safeguards**, which includes three different modules (described above). These handouts are available in both PDF and Word® files as follows:

PDF version of the Handouts.
www.nichcy.org/training/E-handouts.pdf

Word® version of the Handouts, for participants who need an accessible version of the handouts or if you'd like to create large-print or Braille versions:
www.nichcy.org/training/E-handouts.doc

- **PowerPoint® slide show.** NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations on discipline procedures under IDEA. Find this presentation at:

www.nichcy.org/training/19slideshow.zip

Important note: You do NOT need the PowerPoint® software to use these slide shows. It's set to display, regardless, because the PowerPoint Viewer® is included. You may be asked to agree to Viewer's licensing terms when you first open the slideshow.

¹ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (at 34 CFR pt. 300). Available online at:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
- <http://idea.ed.gov>

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/reauth/PL108-446.pdf
- <http://idea.ed.gov>

Final Part B Regulations:

- www.nichcy.org/reauth/IDEA2004regulations.pdf
 - <http://idea.ed.gov>
-

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means “Section.”) These references can be used to locate the precise sections in the federal regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of the IDEA regulations so that you don’t have to go looking for them.

The final Part B regulations have been codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It’s not unusual to see references to specific sections of IDEA’s regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. 46738.

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/reauth/IDEA2004regulations.pdf

THE 2004 AMENDMENTS TO IDEA



Key Issues in Discipline

How to Operate the Slide:

Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

Use Slide 1 (above) to orient your audience to this module's topic: Key Issues in Discipline under the 2004 Amendments to IDEA.

This module begins with an activity designed to have participants make a distinction between what can be remembered easily, even effortlessly, and what the brain just can't recall with accuracy. This will ultimately be the springboard to recommend that, after the training session is over, memory will most likely not prove accurate when recalling the current discipline provisions in the reauthorized IDEA. Because it is critical that participants are accurate when discussing and implementing those

provisions, it is strongly recommended that, in the future, they refer back to the handouts provided for this training session (or a copy of the final Part B regulations). The handouts provide the final Part B regulations and, as such, are a source of accurate information when addressing a disciplinary issue involving children with disabilities.

The activity sheet for participants is **Handout E-15**. The activity itself is described in the box on the next page. Use the prompts listed there, or ones of your own devising.

Building the Legacy Training Curriculum

Training modules in *Building the Legacy* are available on NICHCY's Web site: www.nichcy.org/training/contents.asp



Opening Activity

Purposes

1. To illustrate how effortlessly some information is recalled, but not all.
2. To have participants reflect on strategies to use when they can't recall a needed fact.

Total Time Activity Takes

10 minutes.

Group Size

Individual, to complete activity sheet. Large group, to discuss

Materials

Handout E-15
Flip chart (optional)

Instructions

1. Refer participants to Handout E-15 as the activity sheet they'll use to respond to your prompts (see the Prompt box below). There are no right or wrong answers, only what's true for each person.
2. Briefly go over the structure of the activity: There are 10 items on the sheet, and you're going to say 10 prompts, each of which is something they know immediately... or one of the other choices in the right column. If they know the answer to your prompt immediately, they should check the "immediately" box. If they don't, fully and completely, then which of the strategies in the right column would they use to jog their memory?

3. Go through the 10 prompts quickly, not giving participants much time to think about each.

4. When done, go through the list again, getting input from the audience. What was easy to recall? What was difficult, or impossible? Which strategies did they check off as useful for jogging or verifying their memory?

Relating Activity to Training

Indicate that this module on the reauthorized IDEA's discipline provisions is complicated. When participants return home, they take with them the tools for accuracy—the handouts. In applying what they learn here today, they should consult the handouts or other authoritative sources for the precise information or guidance they need.

Suggested Prompts

- | | |
|--------------------------------------|-------------------------------------|
| 1. Name of your 1st grade teacher | 6. The planets in our solar system |
| 2. Your Social Security Number | 7. Your mother's first name |
| 3. How to change the oil in your car | 8. How to get home from the grocery |
| 4. Name of a favorite pet | 9. The words to "Love Me Do" |
| 5. How to hook up a new DVD player | 10. What's on TV tonight |

This module looks at...

- Overview of discipline provisions in 2004 Amendments to IDEA
- What's retained, what's expanded, what's new
- Case studies



Slide loads fully. No clicks are needed except to advance to the next slide.

CLICK to advance to next slide.

Slide 2 is an advance organizer for the audience as to what content they're going to hear and discuss in this module.

Using the Slide to Activate Knowledge and Focus Attention

Each of the bulleted items allows you to solicit a smattering of remarks from your audience, as time permits. The interaction you have with the audience—or more precisely, their participation in the interaction—activates their knowledge base and attention, and allows other participants to absorb that knowledge and interest. Some suggestions:

Bullet 1: Overview of the IDEA's discipline provisions. Ask the group what they know already about the IDEA's discipline provisions, either from the 1997 or the 2004 Amendments to IDEA. Take a

few comments, responding as appropriate with comments of your own, such as

- *You'll be hearing more about that provision, or*
- *When we get to the provision you just mentioned, you'll find it's changed a bit (or it's exactly the same).*

Bullet 2: What's retained, what's expanded, what's new. Can anyone in the audience name something new in the IDEA's discipline provisions based on the final Part B regulations? What's retained (meaning, the same)? What authorities have been expanded? Indicate that in the 2004 Amendments to the IDEA, as explained by the Senate Committee on Health, Education, Labor, and Pensions (HELP), the disciplinary process has been streamlined to "make it

simpler, easier to administer, and provide for a more uniform and fair way of disciplining all students."¹

Bullet 3: Case studies. Indicate that the case studies everyone is going to look at toward the end of the training session will require participants to apply what they've learned through the session about the IDEA's discipline provisions.



Handouts for This Session

While on this slide, direct participants to the handout packet for **Theme E, Procedural Safeguards** (or just those you've chosen to use), and briefly mention some of the key handouts they'll be using in this session, such as:

- *IDEA's regulations:* **Handout E-16** provides the verbatim discipline provisions found in the Part B final regulations for IDEA. The final Part B regulations appearing on the handouts were released in August 2006 and include definitions of key terms that will be used throughout this training module. **Handout E-16** is an essential reference for participants, both during and after the presentation.

- *Discipline flow chart:* **Handout E-17** is designed to supplement the presentation and depicts the process and decisions that must be made during discipline procedures.

Although **Handouts E-18, E-19, and E-20** are also included in **Theme E's** handouts, consider whether or not you really want to draw participant attention to them just yet. These handouts present the stories of Edward, Charles, and Liz, three children with disabilities subject to disciplinary action at school for violating a code of student conduct. Participants will conclude training by working with this case study material, and they'll enjoy the exercise more if the stories are fresh.

Themes in *Building the Legacy*

Theme A

Welcome to IDEA

Theme B

IDEA
and General Education

Theme C

Evaluating Children
for Disability

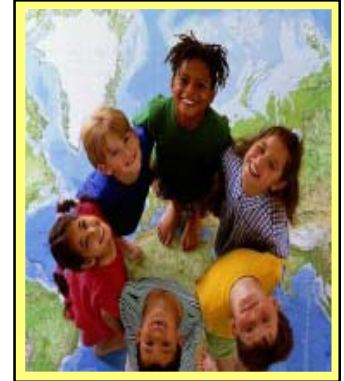
Theme D

Individualized Education
Programs (IEPs)

Theme E

Procedural Safeguards

Available online at:
www.nichcy.org/training/contents.asp



Theme E Considered

You can also use this slide to give the audience the Big Picture of the modules comprising **Theme E** of *Building the Legacy*. This includes making participants aware that:

- there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped (see the list of themes in this training curriculum in the box above); and

- there's more to know about procedural safeguards than what's covered in this specific module.

The topics that *will* be covered in this module are listed on this slide.

Reference



¹ Senate Report No. 108–185, at 43 (2003). Available online at: www.nasponline.org/advocacy/IDEACommittee.pdf

Overview of IDEA's Discipline Provisions

- Authority of school personnel
- Manifestation determination
- Services provisions
- Interim alternative educational setting (IAES)
- Appeals
- Child's placement during appeals
- Protections for children not determined eligible for special education and related services
- Change of placement because of disciplinary removals
- Additional aspects

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advance to the
next slide.

CLICK to advance to next slide.

Slide 3 begins this overview of the IDEA's discipline provisions by providing an agenda for the session and also an outline of how the IDEA's discipline provisions are organized. Indicate this explicitly to the audience, including that this part of the training will walk through the list on the slide in tandem with **Handout E-16**, which presents the entirety of the discipline procedures from §§300.530 through 300.536 of the final Part B regulations. This list is roughly the order in which the discipline procedures appear in the regulations; those omitted will be discussed under the last bullet, "Additional aspects."

As you deem appropriate to the time you have for this session and the needs of your audience, you can expand this topic list into a brief discussion with participants to elicit what they know about any item on the list—"manifestation determination" is a particularly good one to choose, as is "child's placement during appeals." Or, if you're tight on time or want to jump right into the pool, just go over the list and then move right to the next slide.

Authority of School Personnel

Child violates a code of student conduct



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next slide.

CLICK to advance to next slide.

Slide 4 begins a 3-slide series looking at the authority of school personnel to address discipline of children with disabilities. (Note: The authority of school personnel is also the subject of Slides 9 and 10.)

Why So Little Text on the Slide?

Only a minimal amount of text appears on the slide, allowing you to focus participant attention on the actual Part B regulations and to discuss the conditions and caveats that often set the terms for how the main part of a provision will be applied. While the IDEA's discipline procedures have been streamlined in the 2004 Amendments, they still are complicated; dividing participant attention between you, the handouts, and

the slide text is not an effective way to make the information sink in.

So, throughout this training module—take advantage of the minimal text to direct the audience's attention to the content of the handouts. Ask lots of questions that require participants to find specific parts of the provision and read them back to you as answers.

Context Set by the Slide

The one sentence on the slide indicates that a child has violated a code of student conduct. By the picture, we don't know what the violation is, and this is intentional. School codes of student conduct are not the same from place to place, although they probably share certain "basics" in common.

Children often receive guidelines at the beginning of the school year as to expected standards of behavior, dress, academic integrity, and attendance, as well as the consequences of violating those standards. IDEA addresses the extent to which schools may take disciplinary action when a child with disabilities violates that local code of student conduct. If you're training a local group where one specific code of student conduct is applicable to trainees, you might consider having a copy of that code on hand and referring to it as you go through this module. It will help enrich discussions and make them as relevant as possible to participants.

Ask participants to name ways the code of conduct might be broken by a child with a disability. Cover a gamut of infractions,

not just the most hair-raising ones, so that the audience gains a concrete sense of what may be included under the umbrella of breaking the code of student conduct. If someone mentions violations that involve weapons, illegal drugs, or serious bodily injury, indicate that, yes, these represent serious violations of most any code of student conduct. Because they are separate issues in the IDEA's disciplinary procedures, they will be discussed later in this module. and in detail.

Authority of School Personnel

OK, a child with a disability has violated a code of student conduct. What authority do school personnel have to discipline that child? The box below indicates the provision upon which to focus audience attention—§300.530(b)(1). The

bottom half of the provision is “grayed” out (lighter text) and will be the subject of the next slide. For now, we’re just looking at the *general* authority of school personnel, the foundational layer, so to speak.

Direct participant attention to **Handout E-16** and have someone read §300.530(b)(1) aloud. It’s not a new provision; those in the audience who are familiar with the IDEA’s discipline procedures will recognize it. Indicate that you’re going to look at *just the first part* (see the “Points to Make” trainer note on the next page). This first part of the regulation provides the foundational layer for school personnel’s authority to remove a child with a disability from the current setting to another setting for disciplinary infractions.

As suggested earlier, ask questions that require participants to consult §300.530(b)(1) on **Handout E-16** as a way of clarifying the meaning of the provision, such as:



§300.530(b)(1): Authority of School Personnel

(b) *General*. (1) 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 §300.536).

- To where do school personnel have the authority to remove a child? (An appropriate IAES, another setting, or suspension)
- Another setting? Another setting from *what*? (Child’s current placement)
- For how long? (Not more than 10 consecutive school days, to the extent those alternatives are applied to children without disabilities)
- Is day 10 counted in that length of time? (Yes)
- How does disciplining children *without* disabilities relate to this provision? (The alternatives mentioned by IDEA—IAES, another setting, suspension—may only be applied to children with disabilities who violate a code of student conduct to the extent they are applied to children without disabilities.)

The Senate HELP Committee summarized the provision as follows:

S. 1248 [the Senate bill for the 2004 reauthorization of the IDEA] distinguishes three categories of disciplinary actions that a school district can take. The first is ...the 10-day rule, which the bill retains from current law. Under this category, a school may order a change of placement for a child who violates a code of student conduct to an appropriate interim educational setting, another setting, or suspension, for 10 consecutive school days or less, to the same extent that it would apply such a discipline measure to a

child without a disability.
No manifestation
determination is necessary
in order to take action in
this first category.¹

As the Department explained
in its Analysis of Comments and
Changes, in responding to
comments asking for clarification
regarding this provision:

The Act and the regulations
recognize that school
officials need some
reasonable degree of
flexibility when
disciplining children with
disabilities who violate a
code of student conduct.
Interrupting a child's
participation in education
for up to 10 school days
over the course of a school
year, when necessary and
appropriate to the
circumstances, does not
impose an unreasonable
limitation on a child with a
disability's right to FAPE.
Section 300.530(d)(3)
...reflects the Department's
longstanding position that
public agencies need not
provide services to a child
with a disability removed
for 10 school days or less
in a school year, as long as
the public agency does not
provide educational
services to nondisabled
children removed for the
same amount of time. This
position was affirmed by
the Supreme Court in
Honig v. Doe, 484 U.S. 305
(1988). (71 Fed. Reg.
46717)

Points to Make

School personnel may remove a child to an
appropriate IAES, another setting, or suspension
for not more than 10 school days in a row.*

* To the extent those alternatives are
applied to children without disabilities.



Two additional conditions to
be considered and pointed out
to the audience are:

- School personnel may only
remove a child with a disabili-
ty, as described above, to the
extent those alternatives are
applied to children without
disabilities. This caveat appears
as the asterisk (*) in the
Points to Make above.
- The public agency is only
required to provide special
education services to a child
with a disability during peri-
ods of removal for the first 10
school days or less in a school
year *if* it provides services to a
child without disabilities who
is similarly removed.
[§300.530(d)(3)]

This Provision in Context

As the Department explained
in the Analysis of Comments
and Changes accompanying
publication of the final Part B
regulations in the *Federal Register*:

We believe it is important
for purposes of school
safety and order to
preserve the authority that
school personnel have to
be able to remove a child
for a discipline infraction
for a short period of time,
even though the child
already may have been
removed for more than 10
school days in that school
year, as long as the pattern
of removals does not itself
constitute a change in
placement of the child. (71
Fed. Reg. 46715)

As the Senate HELP commit-
tee stated, "This is the first
category of disciplinary actions a
school district might take."¹



Reference

¹ Senate Report No. 108–185, at 43 (2003). Available online at:
www.nasponline.org/advocacy/IDEACommittee.pdf

Authority of School Personnel

What happens if the child violates a code of student conduct again?



Slide loads fully.
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needed except to
advance to the
next slide.

CLICK to advance to next slide.

This slide picks up where the last slide left off. It addresses a logical next question: What if the child violates a code of conduct more than one time in the same school year? Can school personnel remove that child *again* for up to and including 10 school days in a row?

Yes—and for each separate incident of student misconduct— with two associated conditions. The first condition is shown in the “Points to Make” box on the right and on **Handout E-16**, in the conclusion of §300.530(b)(1), and is:

- Additional removals of not more than 10 consecutive school days in a school year from the current educational placement may occur so long as those removals do not constitute a “change of place-

ment” in the disciplinary context under §300.536. (What constitutes a “change of placement” will be examined in an upcoming slide.)

Note: The second condition applicable to the authority of school personnel to make additional removals for not more than 10 consecutive school days in the same school year for separate incidents of misconduct

is the subject of the next slide and is very important:

- The public agency must provide services to the extent required in §300.530(d). This obligation comes directly from §300.101(a) of IDEA, which stipulates that a free appropriate public education (FAPE)

Points to Make

Section 300.530(b)(1) also addresses the authority of school personnel to make—

...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 §300.536). [§300.530(b)(1)]



must be made available to all children with disabilities between the ages of 3 and 21, inclusive, including children who have been suspended or expelled from school, as provided in §300.530(d).

Of course, there may be situations where the public agency must provide services during the first 10 consecutive days or less that the child is removed in that school year if the public agency provides services to nondisabled children who are similarly removed [§300.530(d)(3)]. Otherwise, beginning with the 11th cumulative day in a school year that a child is removed, the obligation to provide services to the extent required in §300.530(d) applies, and this obligation continues during any subsequent days of removal during that school year [§300.530(b)(2) and (d)(4)-(5)]. This will be discussed on the next slide.

Direct participants to **Handout E-16** and either read the conclusion of §300.530(b)(1) aloud or have someone in the audience read it. Though still part of school personnel's authority to remove a child with a disability for an infraction of the code of student conduct, it sets certain limits on how this authority can be used. Ask questions to clarify the provision, such as:

- Why is it important that repeatedly removing a child with a disability from his or her current placement *not* constitute a change of placement? (It is not permissible for school personnel to unilaterally change a child's placement.)
- If an LEA wants to change a child's placement for disciplinary reasons, what must the LEA do to be in compliance with IDEA? (At a minimum, it must notify parents of its decision and follow the procedures for making a manifestation determination.)



This Provision in Context

In the Analysis of Comments and Changes, the Department indicated that it had received a number of comments from the public expressing concern that permitting subsequent removals of up to 10 consecutive school days in the same school year could be misapplied and result in a denial of services. This may also be a concern to the audience. As the Department explained in the Analysis of Comments and Changes:

The requirements in §300.530(b) do not permit using repeated disciplinary removals of 10 school days or less as a means of avoiding the change of placement options in

§300.536. We believe that it is important for purposes of school safety and order to preserve the authority that school personnel have to be able to remove a child for a discipline infraction for a short period of time, even though the child may have already been removed for more than 10 school days in that school year, as long as the pattern of removals does not itself constitute a change in placement of the child.

On the other hand, discipline must not be used as a means of disconnecting a child with a disability from education. Section 300.530(d) clarifies, in general, that the child must continue to receive educational services so that the child can continue to participate in the general curriculum (although in another setting), and progress toward meeting the goals in the child's IEP. (71 Fed. Reg. 46715)

Authority of School Personnel



And on the 11th day...



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next slide.

CLICK to advance to next slide.

Slide 6 focuses upon answering the question: And what happens to a child on the 11th cumulative day that the child is removed from his or her current placement in the same school year?

Answer: The public agency must provide services to the child to the extent required under §300.530(d), which clarifies that the child must continue to receive educational services so that the child can continue to participate in the general education curriculum (although in another setting), and progress toward meeting the goals in the child's IEP.

Have participants look at, and read to themselves or aloud, the regulation at §300.530(b)(2) on **Handout E-16**. (It also appears in the box on this page.)

Ask questions that require participants to explain the

provision in their own words and consider its one condition—captured in the language *to the extent required under §300.530(d)*:

- So—if a child has been removed for the first time for seven days, does the public agency have to provide services to the child during that removal? (No, with one caveat. Section 300.530(d)(3) says that 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.*)

- And what happens to a child on the 11th cumulative school day of removal in a school year? [The public agency must provide services to the child to the extent required under §300.530(d).]



(2) 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.

§300.530(b)(2)

- What type of services must the public agency provide? [We can't answer that yet. We have to read what §300.530(d) requires.]
- Do you think the public agency will be required to provide all of the services listed in the student's IEP? [Again, we can't answer that yet, not without reading §300.530(d). But there's more than a hint of what that answer will be, given that the provision says "to the extent required."]

Counting the Days

Questions naturally arise about what counts as a day of removal, and we'll take a moment here to look at two specific circumstances about which commenters asked for clarification from the Department: in-school suspensions and bus suspensions.

Do in-school suspensions count as days of removal? In the Analysis of Comments and Changes, the Department provided clarification about whether to count an in-school suspension as part of the 10-day removal period and whether there was a requirement to provide services to a child with a disability during an in-school suspension. The Department explained:

It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 as long as the child is

afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in §300.536. (71 Fed. Reg. 46715)



How about a bus suspension? Riding the school bus is the primary means by which large numbers of children get to school. A disciplinary violation on a school bus

may well result in being suspended from using the bus service for some period of time. So this may be a question many participants in your audience have. In the Analysis of Comments and Changes, the Department addressed this concern as follows:

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under §300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be

delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under §300.530. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child. (*Id.*)

Not Done Yet

The central thrust of the Part B regulation at §300.530(d) is the nature and extent of the public agency's obligation to provide services to a child with a disability during periods of disciplinary removal. Since a number of factors are involved, the provisions of §300.530(d) will be discussed more fully on subsequent slides. Indicate that an upcoming slide will take an in-depth look at what §300.530(d) requires, but for now, participants should simply recognize that the provisions of §300.530(d) must be analyzed carefully in determining the extent to which services must be provided on school day 11 of a child's removal in a school year that are necessary to enable the child to appropriately participate in the general education curriculum and to progress toward achieving the goals on the child's IEP.

Defining “Change of Placement”



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next slide.

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On an earlier slide (Slide 5), we heard about “change of placement.” This is a crucial point. School personnel have the authority to make additional removals of a child with a disability for not more than 10 consecutive school days in the same school year for separate incidents of misconduct—as long as those removals do not constitute a change of placement under §300.536. Section 300.536 provides that a change of placement occurs if:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern.

The regulation identifies the factors to be considered in determining whether the series of removals constitutes a pat-

tern. The public agency determines—on a case-by-case basis—whether or not a pattern of removals constitutes a change of placement. The relevant Part B regulation is found on the last page of **Handout E-16** and in the box on the next page.

Direct participants to the text of the Part B regulation describing what constitutes a “change of placement for disciplinary removals.” There are two circumstances described at §300.536(a), only one of which must be met [note the use of “OR” between §300.536(a)(1) and (a)(2)].

On the other hand, an “AND” is used between the elements of what constitutes a pattern of removals:

- 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.

Using **Handout E-16** and the precise regulatory language as your reference point, discuss these provisions with the audience, prompting their interaction with the material via literal questions requiring literal answers and prompting questions that require application of the provisions. For example, consider the two illustrations below.

Case 1.

If Jenna, a child with a disability, is suspended from school for 6 days in November and then another 3 days in February and then 1 day in April, does that constitute a pattern of removals that amount to a change of placement for Jenna? (No, that's only 10 school days total. The Part B regulation at §300.536(a)(2)(i) states that a pattern is "a series of removals that total more than 10 school days in a school year."

Case 2.

How about this situation with a child with a disability named Robert? Could the public agency determine that the following removals constitute a pattern and, thus, a change of placement?

1—Two separate incidents of throwing food at children in the cafeteria, each time resulting in a suspension of one day in September and October.

2—Pulling the fire alarm in November. A five-day suspension.

3—Fighting in class in December. Two days removal.

4—Setting off the sprinkler system in the school with a lighter in February. Two days removal.

Yes. According to §300.536(a)(2)(i), a pattern is "a series of removals that total more than 10 school days in a school year." In our case, Robert has been removed from his current placement for a total of 11 days. Public agencies cannot use repeated short-term removals as a way of avoiding the Act's change in placement provisions.

So, the public agency would need to consider whether this series of removals constitutes a pattern and, thus, a change of placement.

And how does the agency go about considering whether or not a series of removals constitutes a pattern and, thus, a change of placement? Have the audience revisit IDEA's provisions at §300.536(a)(2)(i), (ii), and (iii). Ask whether Robert's behavior was substantially similar to that of previous incidents. What additional factors must be considered in

order to determine whether or not Robert has been subjected to a disciplinary change of placement?

What must the school do if it wants to suspend Robert for a week after incident #4?

This Provision in Context

The Department's discussion in the Analysis of Comments and Changes of what constitutes a change of placement is useful, especially with respect to the



§300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§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—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) 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.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

meaning of “substantially similar” behavior.

[I]n light of the Department’s longstanding position that a change in placement has occurred if a child has been subjected to a series of disciplinary removals that constitute a pattern, we believe requiring the public agency to carefully review the child’s previous behaviors to determine whether the behaviors, taken cumulatively, are substantially similar is an important step in determining whether a series of removals of a child constitutes a change in placement, and is necessary to ensure that public agencies appropriately apply the change in placement provisions. Whether the behavior in the incidents that resulted in the series of removals is “substantially similar” should be made on a case-by-case basis and include consideration of any relevant information regarding the child’s behaviors, including, where appropriate, any information in the child’s

IEP. However, we do not believe it is appropriate to require in these regulations that the “substantially similar behaviors” be recognized by the IEP Team or included in the child’s IEP as recommended by the commenter. (71 Fed. Reg. 46729)

The Department also acknowledged in response to a public comment:

...what constitutes “substantially similar behavior” is a subjective determination. However, we believe that when the child’s behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2) of this section for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred. Of course, if the parent disagrees with the determination by the public agency, the parent may request a due process hearing pursuant to §300.532. (*Id.*)

Parent Notification Requirements: §300.530(h)

Starting View



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:

Slide loads with this view.

Parent Notification Requirements: §300.530(h)

Click 1



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

Click 1:
Bullets 1 and 2—
what the LEA must
do—appear.

CLICK AGAIN to advance to next slide.

(discussion on next page) ➡



The reauthorized IDEA clarifies how parent notification fits into discipline of children with disabilities. In fact, one provision governs this important aspect of implementing the discipline procedures—it's in the box on this page, on **Handout E-16** at §300.530(h), and on the slide!

Prior Written Notice and Change of Placement

The term “notify” brings with it, implicitly, the requirement to “provide notice” as described at §300.503. Prior written notice is discussed at length in the module *Introduction to Procedural Safeguards*, as is the procedural safeguards notice mentioned in the box and which the public agency must provide to the parents as described in the notification provision in §300.530(h). A public agency would need to provide parents notice of a disciplinary action that reflects the relevant requirements of §300.503.

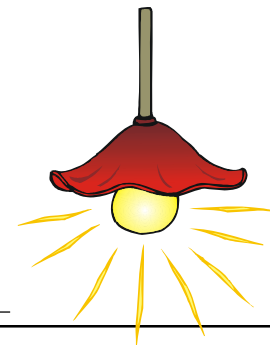
When a public agency proposes to change the educational placement of a child with a disability, IDEA requires that the agency provide parents with prior written notice of its intended action, or, as stated in the regulations, the agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Beside representing both good common sense and appropriate educational policy, this is why notice is required when the public agency

decides—on the very date it decides—to remove a child from his or her current placement and change that placement because of a violation of a code of student conduct.

“Providing notice” requires much more than a quick phone call to parents. Can your audience name elements that must be contained within the notice that a public agency must provide to a parent when the agency changes the placement of a child with a disability who has violated a code of student conduct? Here's a quick list for your reference. The provision appears in the final Part B regulation at §300.503(b) and is available as a handout in the *Introduction to Procedural Safeguards* module (see **Handout E-2**).

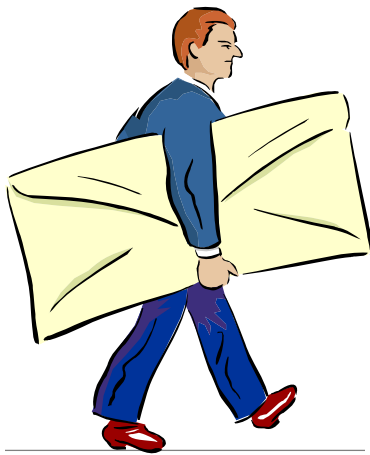
- A description of the action proposed or refused by the agency;

- An explanation of why the agency proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parents of a child with a disability have protection under the procedural safeguards of this part (the actual procedural safeguards notice, which describes those protections, is sent to parents, too, as part of meeting §300.530(h)'s notification requirements);



§300.530(h): Parent Notification Requirement

(h) *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 §300.504.



- Sources for parents to contact to obtain assistance in understanding the provisions of Part B;
- A description of other options considered and the reasons why those options were rejected; and
- A description of other factors that are relevant to the agency's proposal or refusal.

In meeting their obligations under §300.530(h), public agencies must comply with appropriate requirements in §300.504(b) in providing parents of a child subject to a disciplinary change of placement for a violation of a code of student conduct with written notice of the public agency's proposed action.

Additionally, §300.530(h) specifies that the public agency must also provide the parents with a procedural safeguards notice described in §300.504. In response to a public comment asking whether the public agency could simply remind the parents of the procedural safeguards, rather than provide them with a copy of the procedural safeguards notice, the Department explained:

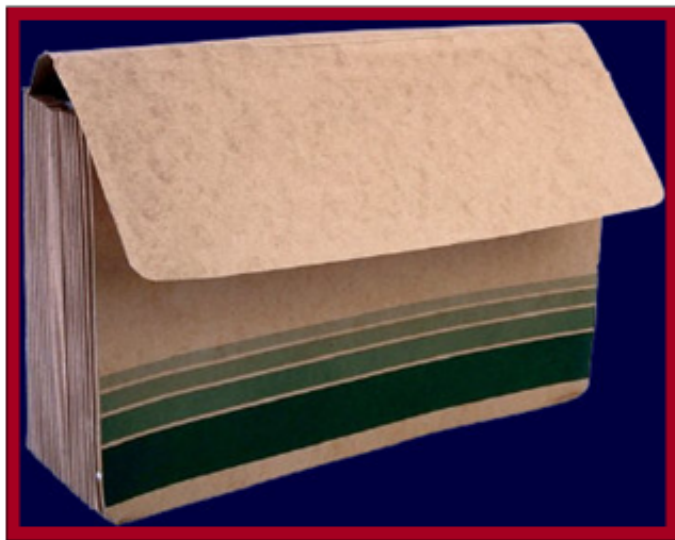
The Commenter is correct that section 615(k)(1)(H) of the Act does not specifically state that the LEA must "provide a copy" of the procedural safeguards notice but, that the LEA must "notify" the parent of the LEA's decision to take disciplinary action and of

all procedural safeguards accorded under section 615 of the Act. We believe, however, implicit in the Act is a much higher standard for "notify" than "remind" parents as suggested by the commenter. Further, in other places where "notify" is used in the Act, it is clear that the meaning of the term is "to provide notice. . . ." We believe that §300.530(h), which requires the LEA to notify the parents of the decision to change the placement of their child with a disability because of a violation of a code of student conduct and provide the parents the procedural safeguards notice described in §300.504, is reasonable and consistent with the Act. (71 Fed. Reg. 46723)



View I

Authority of School Personnel



New Authority
in IDEA

Case-by-
Case

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with this
view.

Authority of School Personnel

Click I

New Authority
in IDEA

Case-by-
Case

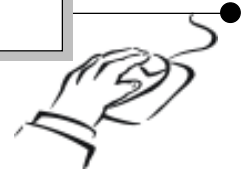
School personnel may consider any
unique circumstances on a case-by-
case basis in determining whether a
change of placement is appropriate
for a child with a disability

§300.530(a)

Click1:
Picture lifts away,
revealing a summary
of this new authority.

CLICK AGAIN to advance to next slide.

(discussion on next page)



We return again to “authority of school personnel.” (Slides 4-6 also dealt with this subject.)

This slide examines a new authority in the reauthorized IDEA that allows school personnel to consider any unique circumstances on a case-by-case basis when determining whether a change in placement (consistent with other requirements of §300.530) is appropriate for a child with a disability who violates a code of student conduct. This provision is the very first paragraph on **Handout E-16**; it also appears in the box below.



The provision clarifies that, on a case-by-case basis, school personnel may consider whether a change in placement *that is otherwise permitted under the disciplinary procedures* is appropriate and should occur. We italicize those words to stress their importance. At first blush, this provision may appear to give school personnel the authority to unilaterally determine a change of placement for a child, but this is not true. School personnel must exercise this new authority on a case-by-case basis, and they can only use this authority if the removal would otherwise be consistent with the other provisions in §§300.530-300.536 in determining whether a disciplinary “change of placement” is appropriate. So school authorities may only exercise their discretion on a case-by-case basis to allow removals for unique circumstances if the other disciplinary procedures have been satisfied. As

the Department explained in the Analysis of Comments and Changes:

Section 300.530(a)...does not independently authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with §300.530(b) through (i), including the requirement in paragraph (e) of this section regarding manifestation determinations... [A]ny consideration regarding a change in placement under paragraph (a) of this section must be consistent with all other requirements in §300.530. (71 Fed. Reg. 46714)

This provision gives school personnel the authority to take any unique circumstances or factors into consideration as part of change-of-placement decision making.



Is the IEP Team Involved in a Case-by-Case Determination?

As the Department explained in the Analysis of Comments and Changes:

[W]e do not believe it is appropriate to define a role for the IEP Team in this paragraph. There is nothing, however, in the Act or these regulations that would preclude school personnel from involving parents or the IEP Team when making this determination. (*Id.*)

Which School Personnel Are Involved?

A public comment on the proposed regulations for Part B raised this very question. In the Analysis of Comments and Changes, the Department declined to specify the school personnel that must make the case-by-case determination as

§300.530 Authority of school personnel.

(a) *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.

described in §300.530(a), and explained:

...such decisions are best made at the local school or district level and based on the circumstances of each disciplinary case. (*Id.*)

Considering Unique Circumstances

In responding to public comments, the Analysis of Comments and Changes included a substantial discussion about whether the phrase “consider any unique circumstances on a case-by-case basis” needed to be clarified and whether specific criteria should be used when making a case-by-case determination. The Department determined that clarification was not needed, saying that:

...what constitutes “unique circumstances” is best determined at the local level by school personnel who know the individual child and all the facts and circumstances regarding a child’s behavior. (*Id.*)



However, the Department *did* indicate that it agreed with examples that commenters provided about what could constitute “unique circumstances” and explained:

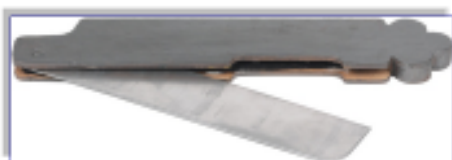
Factors such as a child’s disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a child with a disability prior to the violation of a school code [of student conduct] could all be unique circumstances considered by school personnel when

determining whether a disciplinary change in placement is appropriate for a child with a disability. (*Id.*)

What Happens Next?

If a decision is made to change the child’s placement because of a violation of a code of student conduct, then a manifestation determination must be conducted within 10 school days of that decision [§300.530(e)]. Manifestation determinations are discussed beginning on Slide 11.

Authority of School Personnel



Special Circumstances



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CLICK to advance to next slide.

This slide describes the expanded removal authority of school personnel for “special circumstances.”

The 2004 Amendments to the IDEA continue to allow removals of a child with a disability for drugs and weapons offenses. This removal authority applies to a child with a disability:

- who carries a weapon to or possesses a weapon at school, on school premises, or at a school function; or
- who knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, at school, on school premises, or at a school function.

The 2004 Amendments *add* a new removal authority for a child who has inflicted serious bodily injury upon another person



*New in
IDEA!*

while at school, on school premises, or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA).

Thus, the three special circumstances—as shown on the slide, in the box on the next page, and on **Handout E-16** [at §300.530(g)]—are:

- weapons
- drugs (either possession, use or sale of illegal drugs; or sale of a controlled substance), and
- serious bodily injury upon another person.

Shortened Terminology, but the Precise, Full Meaning

When these special circumstances are referred to throughout the remainder of this module, specific definitions apply.

You’ll find those definitions on page 19-31, in the box, and on **Handout E-16**. It’s important for participants to know what those definitions are, regardless of the convenience of referring to them in shorthand. Let’s go through them now.

Knowing the precise meaning of “weapons violation.” When we say a “weapons violation,” we mean a weapon as defined within IDEA at §300.530(i)(4)—see the definition provided in the box on page 19-31 and on **Handout E-16**—and that the child has carried such a weapon to, or possessed such a weapon at, school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA [§300.530(g)(1)].

Thus, a reference to “weapons violation” in this module will mean that any of those conditions is involved. The child

doesn't have to *use* the weapon, for example; he or she may merely *possess* it.

Knowing the precise meaning of "drugs violation." Similarly, whenever the term "drugs violation" is used in this module, it will have the precise and complete meaning given in IDEA. Start by looking at the provision below, which describes *what* a drugs violation is. Have participants look at the same provision (on **Handout E-16**), and stress its different elements. A drugs violation means that a child with a disability:

(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... [§300.530(g)(2)]

Thus, it's enough for a child with a disability to knowingly *possess* an illegal drug, he or she doesn't have to be caught *using* the drug. In contrast, when speaking in terms of drug violations involving controlled substances, IDEA means that the child must sell or solicit the sale of a controlled substance.

Note, then, that there's a difference between *illegal drug* and *controlled substance*. IDEA defines what a controlled substance is and what an illegal drug is at §300.530(i)(1) and (2). They're given in the box on the next page. And it will be *those* definitions we are automatically referencing whenever we talk in this module about violations that fit in to the second prong of the "special circumstances" provision.

And what about the definition of *serious bodily injury*? What do we mean when we use this term? Well, we mean what IDEA means, of course! The definition of *serious bodily injury* is found at §300.530(i)(3), on **Handout E-16**, and in the box on the next page. That definition reads:

(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.

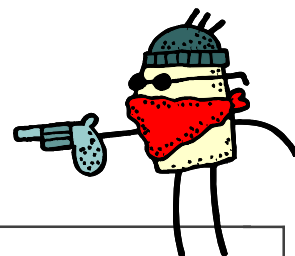
Clear as mud, eh? Fortunately, the Department explained in the Analysis of Comments and Changes regarding the definition in 18 U.S.C. 1365(h)(3):

That provision defines *serious bodily injury* as bodily injury, which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or

impairment of the loss of a bodily member, organ, or mental faculty. (71 Fed. Reg. 46723)

Consequences Involving Special Circumstances

What authority do school personnel have to remove a child with a disability who has committed a weapons or drug violation, or who has inflicted serious bodily injury on another person in the specific situations outlined above? School personnel may remove that child to an interim alternative educational setting—hereafter referred to as an IAES—for not more than 45 school days without regard to



§300.530(g): Special Circumstances and Authority of School Personnel

(g) *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.

whether the behavior is determined to be a manifestation of the child's disability. [§300.530(g)]

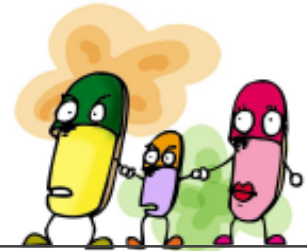
Other provisions of IDEA's discipline procedures apply under special circumstances—for example, conducting the manifestation determination under §300.530(e), notifying parents under §300.530(h), and determining the extent of services that

must be provided to the child under §300.530(d)(1). We will look at each in its own turn as the slides proceed.

Definitions

As mentioned, IDEA provides definitions for the key terms used in §300.530(g). The definitions have been incorporated into the final Part B regulations

verbatim at §300.530(i). These are available for participants on the last page of **Handout E-16** and—for your convenience, all in one place!— in the box below.



§300.530(i): Key Definitions

(i) *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.

In response to a public comment requesting that the Department include the definition of "controlled substance" in the final Part B regulations, the Department responded:

We are not including the definition of *controlled substance* from section 202(c) of the Controlled Substances Act because the definition is lengthy and frequently changes. (71 Fed. Reg. 46723)

In response to a public comment asking for more clarification of the meaning of the term "serious bodily injury," the Department provided the following excerpt from the definition of that term from 18 U.S.C. 1365(h)(3):

The term *serious bodily injury* means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (71 Fed. Reg. 46723)

In response to a public comment seeking more clarification of the term "weapon," the Department provided the following excerpt from the definition of "dangerous weapon" in 18 U.S.C. 930(g)(2):

[T]he 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 ½ inches in length. (71 Fed. Reg. 46723)

This Provision in Context

As the Senate HELP committee pointed out in its *Report [to Accompany S. 1248]*, IDEA includes three categories of disciplinary actions that a school district can take. The special circumstances described here represent the third category:

The third category, similar to the 1997 law, covers cases involving weapons or drugs, and also adds a new situation to this category: when a child has committed serious bodily injury upon another person. If a child commits acts involving any of these three instances, a school can remove the child from the regular classroom setting for up to 45 school days, regardless of whether the child's behavior was a manifestation of his or her disability.¹

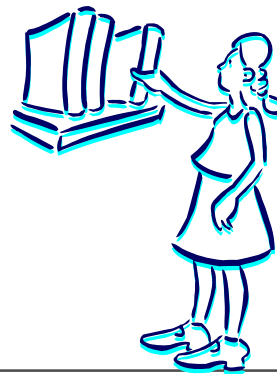
While the manifestation determination need not occur prior to the removal under §300.530(g), and the removal can continue for not more than 45 school days, regardless of

whether the behavior is later determined to be a manifestation of the child's disability, school personnel need to take prompt steps to complete the manifestation determination under §300.530(e).

Painting a clear picture of how IDEA's "special circumstances" disciplinary provisions fits into current initiatives to ensure safe schools for all children, the Senate HELP committee explained:

Because of the inherent and immediate dangers connected with this category of cases, school personnel need to retain the ability to take swift action to address these situations, to ensure the safety of all students, teachers, and other such personnel. Indeed, Congress recognized this when it passed the Gun

Free Schools Act, which provides that a State wishing to receive federal education dollars must have in place a State law requiring the one year expulsion of a student found with a firearm at school. If the child's behavior is determined not to be a manifestation of the disability, regular disciplinary consequences can be applied in addition to the 45 day removal, subject to section 612(a)(1). Even if the child's behavior is later determined to be a manifestation of his disability, the committee believes it is critical that schools have the flexibility to keep the child out of his regular setting for up to 45 days.²



Reference

¹ Senate Report No. 108-185, at 43 (2003). Available online at: www.nasponline.org/advocacy/IDEACommittee.pdf

² Senate Report No. 108-185, at 43-44 (2003).

Manifestation Determination



New Standards in IDEA

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The 2004 Amendments to IDEA simplify the manifestation determination process. IDEA has limited the requirement to perform a manifestation determination to removals that constitute a change of placement under IDEA's disciplinary procedures. There is no requirement for a manifestation determination for removals for less than 10 consecutive school days that do not constitute a change in placement. Under §300.530(e), a manifestation determination must occur within 10 days of any decision to change the



child's placement because of a violation of a code of student conduct.

One of the purposes of a manifestation determination is to determine whether or not the child's behavior is linked to his or her disability (hence the link on the slide). Under the 2004 Amendments to IDEA, the LEA, the parent, and relevant members of the IEP Team must determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" (see the relevant statutory provision in the box on the next page and on **Handout E-16**).



The link between the child's conduct violation and his or her disability is important. As the Department noted in the Analysis of Comments and Changes:

We believe the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability. (71 Fed. Reg. 46720)

The relationship between the child's behavior and disability, however, is not the only factor to be considered in a manifestation determination. As §300.530(e)(1)(ii) indicates, a manifestation determination

must also consider if the child's conduct was the direct result of the LEA's failure to implement the IEP. As will be discussed in an upcoming slide, if such a finding is made, the regulations require the LEA to take immediate steps to remedy those deficiencies [§300.530(e)(3)].

Historically Speaking

The courts have required manifestation determinations for several decades. The first time, however, that the law included a requirement to conduct the manifestation determination was in the 1997 reauthorization of the IDEA. This requirement is continued in the 2004 reauthorization, but the standards for making the manifestation determination have been modified.

Examining Manifestation Determination

Direct the audience to §300.530(e) on **Handout E-16**. Ask a series of questions that requires participants to parse the elements of this provision, such as:

- Under what circumstances must a manifestation determination be conducted? (Whenever a decision is made to change the placement of a child with a disability because he or she has violated a code of student conduct.)
- What's the time frame for conducting a manifestation determination? (The manifestation determination must occur 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.)

§300.530(e) Manifestation Determination begins...

(e) *Manifestation determination.* (1) 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—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. . .

§300.530(e)(1)-(2)

- Who is involved in conducting a manifestation determination? (The LEA, parent, and relevant members of the child's IEP Team.)
- Who decides who's a "relevant member" of the Team? (The parent and the LEA.)

Changes in Manifestation Determination Processes



The 2004 Amendments to IDEA change the manifestation determination process while retaining the purposes behind it. What is now required is, as the Senate HELP committee observed, is "a more simplified, common sense procedure for schools to use."

Under the 1997 law, schools were forced to prove a negative: that a child's behavior was not a manifestation of his or her

disability based upon a complicated set of factors. Many schools found this test to be confusing and unfair. S. 1248 directs a school to determine whether the child's behavior was a manifestation of his or her disability based upon two questions: (1) Was the conduct in question the result of the child's disability; and (2) did the conduct result from the failure to implement the IEP or to implement behavioral interventions...? If the answer to either of these questions is yes, then the school must conclude that the child's conduct was indeed a manifestation of his or her disability.¹

As a result, as the Department clarified in the Analysis of Comments and Changes:

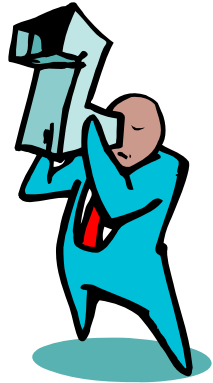


The Act no longer requires that the appropriateness of the child's IEP and placement be considered when making a manifestation determination." (71 Fed. Reg. 46720)

For those in the audience who are familiar with what was required under the 1997 reauthorization of IDEA, it will be important to point out this change.

Scope of the Review

The IDEA states that the LEA, the parent, and relevant members of the child's IEP Team 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" as part of conducting a manifestation determination



[§300.530(e)(1)]. Although the regulation identifies the type of information that the LEA, the parent, and relevant members of the IEP Team must review in making this determination, the Department, in responding to public comments in the Analysis of Comments and Changes, indicated that this list is not exhaustive. It may include other relevant information in the child's file, including those factors mentioned by various commenters (placement appropriateness, supplementary aids and services, and if the behavior intervention strategies were appropriate and consistent with the IEP, see 71 Fed. Reg. 46719).

Also included in the Analysis of Comments and Changes is an excerpt from the U.S. House of Representatives Conference Report 108-779 that clarified both the scope of the manifestation review and the intent behind it.

[T]he "Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented." The Conferees further intended that "if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability." (71 Fed. Reg. 46720)

What Happens Next?

So the group has met, reviewed all relevant information in the child's file, considered the child's conduct in light of his or her disability, considered the LEA's implementation of the IEP, and come to a determination. What happens if that determination is yes—or no? The next slides will examine outcomes of the manifestation determination reached by the group.

Reference

¹ Senate Report No. 108–185, at 44 (2003). Available online at: www.nasponline.org/advocacy/IDEACommittee.pdf

Manifestation Determination

If ~~Yes~~



Slide loads with this view. No clicks needed except to advance to the next slide.

CLICK to advance to next slide.

This slide examines what must occur if the manifestation determination is “yes”—the conduct was a manifestation of the child’s disability or the direct result of the LEA’s failure to implement the child’s IEP. The relevant Part B regulations are provided in the box on the next page and, for the audience, on **Handout E-16**.

Basis for the Determination

The final Part B regulation provides that a determination that the child’s behavior was a manifestation of the disability can be based on an answer of *yes* to one of two inquiries—*either*:

- Was the conduct in question caused by, or did it have a direct and substantial relationship to, the child’s disability?
- or

- Was the conduct in question the direct result of the LEA’s failure to implement the IEP?

These are the “conditions” mentioned in the first paragraph in the box—“paragraphs (e)(1)(i) or (1)(ii).” If either condition is met, then the determination must be “yes.”

But it matters *which* of the two conditions was the basis for the determination of “yes.” On the slide, this is represented by the image of the puzzle being put together by the group of people you can see in the background.



“Yes,” for Failure to Implement the IEP

If the LEA, parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) determine that the child’s misconduct was the direct result of the LEA’s failure to implement the child’s IEP, the “LEA must take immediate steps to remedy those deficiencies.” As the Department explained in the Analysis of Comments and Changes, if such a determination is made:

[T]he LEA has an affirmative obligation to take immediate steps to ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as identified in the IEP. (71 Fed. Reg. 46721)

Unless the behavior involved one of the special circumstances—weapons, drugs, or serious bodily injury—the child would be returned to the placement from which he or she was removed as part of disciplinary action. However, the parent and LEA can agree to a change of placement as part of the modification of the behavioral intervention plan. [§300.530(f)(2)]

“Yes,” for Conduct Directly Related to Disability

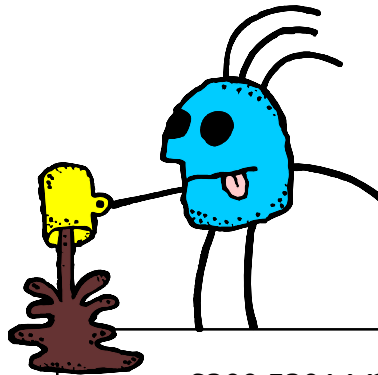
If the LEA, parent, and relevant members of the IEP Team involved in making the manifestation determination find that the child’s misconduct had a direct and substantial relationship to his or her disability, then the group *must* reach a manifestation determination of “yes.” Such a determination carries with it two immediate considerations:

- Functional behavioral assessment (FBA)—Has the child had one? Does one need to be conducted?
- Behavioral intervention plan (BIP)—Does the child have one? If so, does it need to be reviewed and revised? Or if the child does not have one, does one need to be written?

The provisions covering these requirements are found at §300.530(f)—see **Handout E-16** and the provisions in the box on this page.

An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a

child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.¹



If a child’s misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP Team will need to immediately conduct a FBA of the child, unless one has already been conducted. Similarly, the IEP Team must write a BIP for this child, unless one already exists. If the latter is the case, then the IEP Team will need to review the plan and modify it, as necessary, to address the behavior.

§300.530(e)(2)-(3) and (f): When Conduct is a Manifestation of the Child’s Disability

(e) *Manifestation determination.* (1)...

(2) 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.

(3) 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.

(f) 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—

(1) Either—

(i) 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

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

(2) 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.

The IEP Team must address a child's misbehavior via the IEP process as well. As the Department explained in the Analysis of Comments and Changes:

When the behavior is related to the child's disability, proper development of the child's IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior, consistent with §300.324(a)(2)(i) and (a)(3)(i). When the behavior is determined to be a manifestation of a child's disability but has not previously been addressed in the child's IEP, the IEP Team must review and revise the child's IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate under the Act and section 504, even if the behavior is a manifestation of the child's disability. (71 Fed. Reg. 46720-21)



Finally, the child must also be returned to the placement from which he or she was removed as part of the disciplinary action, with two exceptions:

- if the behavioral infraction involved special circumstances of weapons, drugs, or serious bodily injury; or
- if the parents and LEA agree to change the child's placement as part of the modification of the BIP.

If either of these exceptions apply, then the child need not necessarily return to the same placement.

Addressing Behavior Proactively

Section 300.530(f)(1)(i) provides that an FBA and BIP are required if the child's behavior is determined to be a manifestation of his or her disability. Under §300.530(d)(1)(ii), a child with disabilities disciplined for special circumstances violations and for behavior determined not to be a manifestation of his or her disability may receive, as appropriate, an FBA and a BIP that are designed to address the behavior violation so that it does not recur.

The lack of an explicit requirement for an FBA and BIP outside of the services determination concerned several individuals who commented on the proposed regulations for Part B of IDEA, especially considering IDEA's proactive approach to addressing behavior challenges. The Department responded to these public comments in the Analysis of Comments and Changes as follows:

[W]e must recognize that Congress specifically removed from the Act a requirement to conduct a functional behavioral assessment or review and modify an existing behavioral intervention plan for all children within 10 days of a disciplinary removal, regardless of whether the behavior was a manifestation or not.



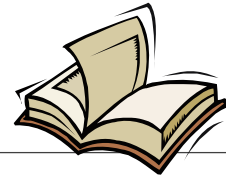
We also recognize, though, that as a matter of practice, it makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change in placement. In fact, the Act emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP Team consider, as appropriate, and address in the child's IEP, "the use of

positive behavioral interventions, and other strategies to address the behavior.”

...This provision should ensure that children who need behavior intervention plans to succeed in school receive them. (71 Fed. Reg. 46721)

Thus, IDEA contains other provisions, outside of the discipline procedures, to address a child’s misbehavior even if that misbehavior has been determined not to be a manifestation of his or her

disability. If the IEP Team has not previously considered the special factor of behavior when developing the child’s IEP, and the child’s behavior gives rise to the discipline procedures, then it would be necessary for the IEP Team to consider that special factor in reviewing or revising that child’s IEP.
[§300.324(a)(2)(i) and (3)(i)]



¹ Center for Effective Collaboration and Practice. (n.d.). *Functional behavioral assessment*. Retrieved August 22, 2007, from <http://cecp.air.org/fba/default.asp>

View

Manifestation Determination

If No—

(Determination is that behavior is not a manifestation)

Child is disciplined in the same manner and for the same length of time* as a child without disabilities would be disciplined except that services provisions apply

Slide loads with this view.

Manifestation Determination

If No—

(Determination is that behavior is not a manifestation)

Child is disciplined in the same manner and for the same length of time* as a child without disabilities would be disciplined except that services provisions apply

* Child continues to receive services as described in 300.530(d)

Click 1

Click 1:
The meaning of the asterisk (*) is provided.

CLICK AGAIN to advance to next slide.

(discussion on next page)





As the provision from the final Part B regulations in the box at the right indicates and as the slide captures, if there is a manifestation determination of “no”—the child’s behavior was not caused by or did not have a direct and substantial relationship to the child’s disability or the direct result of the LEA’s failure to implement the IEP—then school personnel may apply the relevant disciplinary procedures to the child with disabilities in the same manner and for the same duration as the procedures would be applied to a child without disabilities, *except*—and this is very important—for whatever services the public agency is required to provide the child with disabilities under §300.530(d).

What the final Part B regulations require under the services provisions is the subject of the next three slides.

One, Two, Three

You may recall that we’ve twice mentioned the Senate HELP committee’s summary of the three categories of disciplinary actions a school district can take under IDEA. Slide 4 addressed the first category of action (the 10-day rule), and Slide 9 addressed the third category (special circumstances involving drugs, weapons violations, or serious bodily injury). Well, the situation described on this slide corresponds to the *second* category of disciplinary actions a school district can take. As the Senate HELP committee described in its *Report [to Accompany S. 1248]*:

In the second category, if a school chooses to discipline a child for a violation of the school code for a period beyond 10 consecutive school days, then the school can apply the same disciplinary procedures that it would apply to a child without a disability, as long as the school has determined that the violation in question was not a manifestation of the child’s disability. However, if the child’s disability did cause the violation of the school code, the “stay put” rule applies. However, the school, working through the IEP team, could obtain the parent’s consent to

remove the child for more than 10 consecutive school days for disciplinary reasons.¹

What’s Coming Up Next?

Break-time, that’s what! The next slide gives you and the audience the opportunity to shake out the knots and clear the brain. Not only has a lot of information been presented (and hopefully absorbed), the subject coming up is a pivotal one. So a brief moment, a deep breath, and some movement first may be just what everyone in the room needs to get ready.

So—what pivotal topic is waiting in the wings? What was introduced on Slide 6—the requirements of §300.530(b)(2). To jog the memory, here’s that provision again:

After a child with a disability has been



§300.530(c): When Conduct Is NOT a Manifestation of Child’s Disability

(c) *Additional authority.* 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.

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 [§300.530(d)].

Ahhh, you sigh, “extent of services, yes, *definitely* an important topic. Perhaps we’ll take a break first...”



Reference

¹ Senate Report No. 108–185, at 44 (2003). Available online at: www.nasponline.org/advocacy/IDEACommittee.pdf

Slide 14

Take a Break Slide!



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CLICK to advance to next slide.

Slide 14 is all about taking a *meaningful* break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Tell your audience that in a moment the topic will shift to the top-priority topic of “services determination”—or the extent to which public agencies must provide services to a child with a disability subject to disciplinary

action. But not yet. First everyone has to clear their mind.

Have the audience get to their feet. Are they up? Good, good... Now guide participants through a few simple stretches and other relaxation techniques.

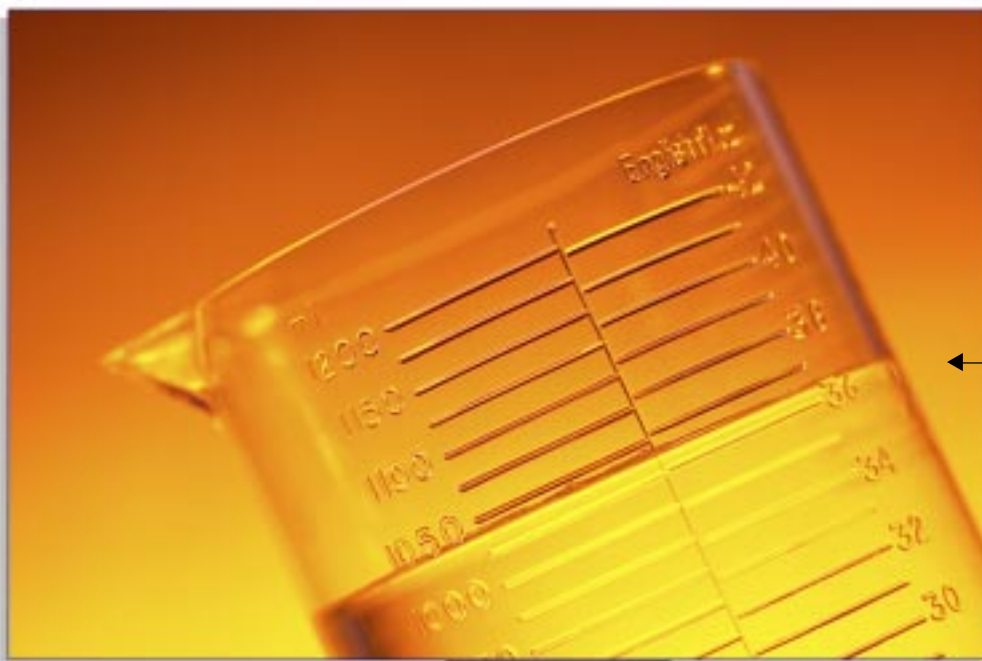
Devote at least 1 minute to this break. Nothing potentially vigorous enough to strain muscles or

cause accidents, but movement nonetheless, accompanied by deep breaths. Interesting research exists to suggest the benefits that physical movement can bring to learning—in particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.



View

When Services Are Required Under §300.530(d)



Slide loads with this view.

When Services Are Required Under §300.530(d)



How is the services determination made?



Where will the child receive those services?



Who decides?

Click 1

Click 1: Picture lifts away, and three questions to be answered appear.

CLICK AGAIN to advance to next slide.

(discussion on next page) ➡



All right, we told you it was coming. Now it's here, the priority topic of "services determination."

This slide builds on what was introduced on Slide 6 when we were talking about the requirements of §300.530(b)(2). So that you have that provision right in front of you, it reads:

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 [§300.530(d)].

You'll note the very last line of that provision refers to §300.530(d). And what might *that* regulation require? It's time to find out.

Take a Moment to Review

A brief, refresher review may be useful to participants. Refer back to Slide 6's discussion as appropriate to establish the connection. Indicate that the purpose of this slide is to delve into the details of §300.530(d).

Getting to the Point

Under IDEA, a free appropriate public education (FAPE) must be made available to all children with disabilities between the ages of 3 and 21, inclusive, including children who have been suspended or expelled from school, as provided in §300.530(d). This requirement is stated very clearly at §300.101(a).

The services that a public agency must provide a child with a disability subject to disciplinary removal and the extent to which services need to be provided will depend on many factors and

§300.530(d):

When Must Services Be Provided, and What is the Nature of this Obligation?

(d) *Services*. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in §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

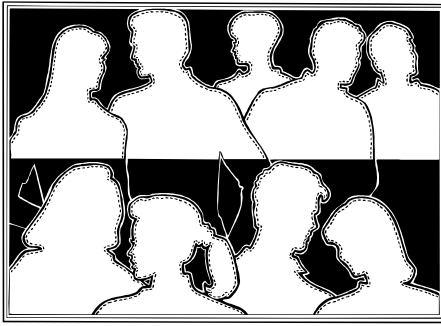
(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) 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.

(3) 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.

(4) 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 §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 §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.

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



sometimes a combination of factors, including but not limited to:

- whether the behavior infraction committed by the child was determined to be a manifestation of his or her disability;
- whether educational services are provided to children without disabilities removed for the first 10 days or less in a school year;
- how long the disciplinary removal is supposed to last;
- how many days of removal the child has already been subjected to in this school year as part of other disciplinary actions; and
- the nature of the child's infraction (e.g., did it involve a weapon, drugs, or serious bodily injury).

One glance at the provisions governing "services in the final Part B regulations " (in the box on this page and on **Handout E-16**) makes it clear that this is the very case in point made in the opening activity—for some things we can remember effortlessly and for others we need to consult authoritative sources to assure accuracy in implementation. You might want to remind

participants to keep their handouts handy when they leave this training to assist them in determining the extent to which a specific child with a disability, in a specific set of circumstances, will be provided services during a disciplinary change of placement.

Which Services, Under Which Circumstances, and Who Decides?

Given the if-this, then-that nature of §300.530(d), perhaps the easiest way to understand the extent to which services must be provided to a disciplined child with a disability is by looking at the clearcut, straightforward cases first. There are three.

When removals total no more than 10 school days in a school year. When the total number of days a child with a disability has been removed from his or her current placement is 10 school days or less in a school year, a public agency is only required to provide services to that child if it provides services to children *without* disabilities who are similarly removed [§300.530(d)(3)]. Note, however, that, once a child's cumulative days of removal in a school year exceed 10 school days, beginning with the 11th cumulative day and "during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section" [§300.530(b)(2) and (d)].

Children subject to disciplinary removal for behavior determined not to be a manifestation of the child's disability and children whose conduct violation involves "special circumstances." Where a child's disciplinary removal is for behavior determined not to be a manifestation of the child's disability or is the result of offenses involving weapons, drugs, or serious bodily injury, the child must continue to receive educational services [as provided for in IDEA's FAPE provisions at §300.101(a)]. This includes children who are either suspended or expelled for behavior determined not to be a manifestation of the child's disability and children removed to an IAES* chosen by the IEP Team for violations involving special circumstances—drugs, weapons, or serious bodily injury.

Since these removals would constitute a disciplinary change of placement, the IEP Team determines what services will be provided to the child, if they will be provided in an IAES, and, if so, what that IAES will be [§300.530(d)(1) and (5) and §300.531]. The IEP Team must keep in mind that the services are to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the

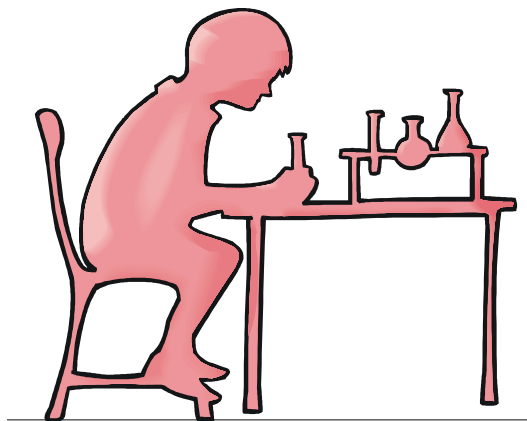


* Just a reminder: IAES stands for interim alternative educational setting.

goals set out in that child's IEP [§300.530(d)(1)(i)]. Note that the public agency is not required to replicate in another setting the exact services included in the IEP. (More on this in a moment...)

In addition, under §300.530(d)(1)(ii), a child subject to disciplinary removal for special circumstances (weapons, drugs, or serious bodily injury offenses) or a child subject to a disciplinary change of placement for behavior that is not a manifestation of the child's disability must receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. See §300.530(d)(1)(ii).

For children whose removal constitutes a change of placement. When a child's removal for disciplinary reasons is considered a change of placement under §300.536, the child's IEP Team determines appropriate services under §300.530(d)(1), and these are services to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to progress toward meeting IEP goals [§300.530(d)(5)]. The IEP Team also determines if the child will be placed in an IAES to receive those services and what the IAES will be.



The final Part B regulation at §300.531 reads as follows:

§300.531 Determination of setting.

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (e)(5), and (g).

Well, we regret to tell you that those cases were the easy ones!

Combining factors. Arguably, the most complicated circumstance in §300.530(d) is found at (d)(4). This provision combines total number of removals, current removal time, and the qualifier that this removal is not considered a change of placement. It reads:

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 §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 §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. [§300.530(d)(4)]

This provision is a bit confusing, isn't it? The Department's discussion of the provision in the Analysis of Comments and Changes is considerably more illuminating:

The provisions in §300.530(d)(4) only address the provision of services in those situations where a removal of a child with a disability from the child's current placement is for a short period of time and the removal does not constitute a change in placement. In many instances, these short-term removals are for one or two days. We believe that, in these instances, it is reasonable for appropriate school personnel, in consultation with at least one of the teachers of a child, to determine how best to address the child's needs during these relatively brief periods of removal. (71 Fed. Reg. 46717-18)



The Department provided additional clarification regarding §300.530(d)(4) in the Analysis of Comments and Changes, an excerpt of which appears in the box below. A pivotal aspect in decision making regarding “extent of services” can be found in the last line of the Department’s discussion and in §300.530(d)(4) itself—services must be provided to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child’s IEP.

Which brings us to a critical aspect of §300.530(d) and the provision of services to children with disabilities subject to disciplinary action. What types of services are we talking about? A replica of the special educational program described in a child’s IEP, including all the related services and supplementary aids and supports? The Department’s discussion responding to public comments on this point in the Analysis of Comments and Changes addressed the context within which decisions about services are made. Let’s have a look.

Services to Children Under Disciplinary Removal

Both the Act and its implementing regulations stipulate that the services provided to a child with a disability under disciplinary removal are to enable that child “to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP” [see §300.530(d)(1)(i)]. The Department noted, however, that:

...the Act specifically uses different language to describe a child’s relationship to the general education curriculum in periods of removal for disciplinary reasons than for services under the child’s regular IEP.... We caution that we do not interpret “participate” to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. (71 Fed. Reg. 46716)

In response to a public comment, the Department provided an example—why it

generally would not be feasible for a school district to provide a child removed for disciplinary reasons with every aspect of the services that would be received in his or her chemistry or auto mechanics classroom, as “these classes generally are taught using a hands-on component or specialized equipment or facilities” (71 Fed. Reg. 46716).



Excerpts from Discussion of Public Comments on §300.530(d)(4)

From the Analysis of Comments and Changes
71 Fed. Reg. 46717-18

We believe §300.530(d)(4) ensures that children with disabilities removed for brief periods of time receive appropriate services, while preserving the flexibility of school personnel to move quickly to remove a child when needed and determine how best to address the child’s needs. Paragraph (d)(4) of this section is not intended to imply that a public agency may deny educational services to children with disabilities who have been suspended or expelled for more than 10 school days in a school year, nor is §300.530(d)(4) intended to always require the provision of services when a child is removed from school for just a few days in a school year. We believe the extent to which educational services need to be provided and the type of instruction to be provided would depend on the length of the removal, the extent to which the child has been removed previously, and the child’s needs and educational goals. For example, a child with a disability who is removed for only a few days and is performing near grade level would not likely need the same level of educational services as a child with a disability who has significant learning difficulties and is performing well below grade level. The Act is clear that the public agency must provide services to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child’s IEP.

The Department acknowledged in response to a public comment that the amount of time a child is removed from his or her regular placement for disciplinary reasons may also affect the nature and extent of services provided during the time of removal. For example:

...a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to meet this standard as a child who is removed from his or her regular placement for 45 days under §300.530(g) or §300.532 and not performing at grade level. (*Id.*).

The Department, in responding to public comments, also addressed the requirement to provide FAPE to children with disabilities suspended or

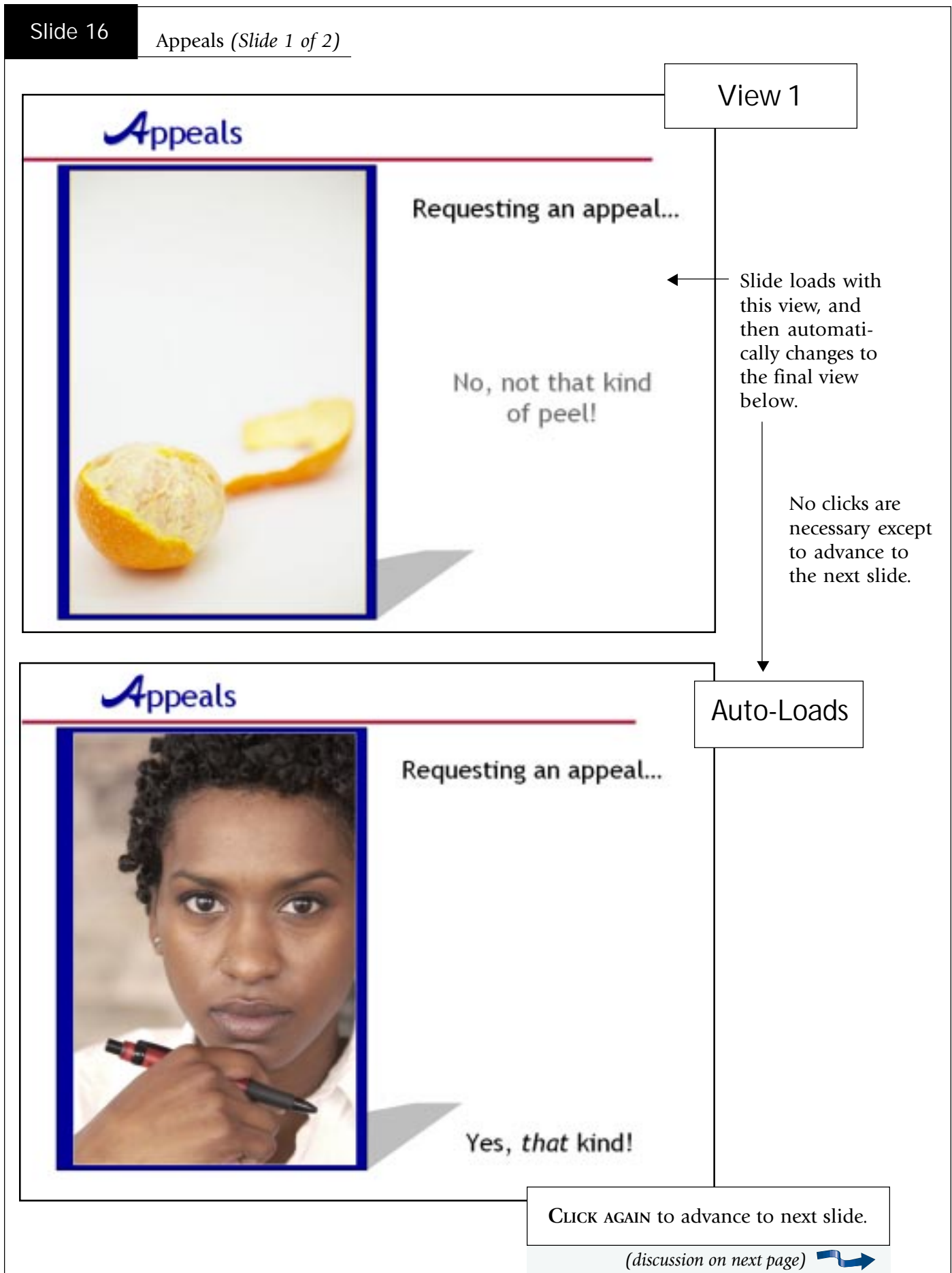
expelled from school under §300.101, which is also cross-referenced in §300.530(d)(1)(i):

...while children with disabilities removed for more than 10 school days in a school year for disciplinary reasons must continue to receive FAPE, we believe the Act modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does

receive must enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. (71 Fed. Reg. 46716)

In other words, the Department explained:

Specifically, we interpret section 615(k)(1)(D)(i) of the Act to require that the special education and related services that are necessary to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP, must be provided at public expense, under public supervision and direction, and, to the extent appropriate to the circumstances, be provided in conformity with the child's IEP. (*Id.*).





Slide 16 introduces the provisions regarding appeal related to decisions made during disciplinary actions. These are quite lengthy and will be divided between this slide and the next (which looks at the authority of the hearing officer). The first provision related to this slide's discussion appears in the box below and on **Handout E-16**.

As the final Part B regulation at §300.532(a) makes clear, either the LEA or the parent of the child with a disability has the right to request a due process hearing to appeal decisions taken during disciplinary procedures, although the reasons these parties may do so differ as follows:

- Parents may appeal decisions regarding placement of their children (under §§300.530 and 300.531);
- Parents may appeal decisions regarding manifestation determination under §300.530(e); and
- The LEA may appeal a decision to maintain the current placement of the child, if the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

Procedures for Filing a Due Process Complaint

The last sentence in the provision indicates that a hearing is requested via filing a due process complaint as described in §300.507 and §300.508(a) and (b). Both of these sets of provisions are available in the

handouts as part of *Options for Dispute Resolution*. Depending on the time you have available for training and the needs of your audience, especially if they have not participated in training under the *Options for Dispute Resolution* module, you may wish to take a look at what §300.507 and §300.508(a) and (b) require the parent or the LEA to do with respect to filing a complaint under those provisions. Briefly, here, some salient points you may wish to make include:

- The public agency must inform the parent of any free or low-cost legal or other relevant services in the area. [§300.507(b)]
- The due process complaint must remain confidential. [§300.508(a)(1)]
- The party who files a due process complaint must forward a copy of the complaint to the SEA. [§300.508(a)(2)]
- The due process complaint must include specific information: name of the child; address of the child's residence; name of the child's school; description of the nature of the problem, including any related facts; and a proposed resolution of the problem (to the extent known and available to the filing party at the time). [§300.508(b)]
- If the child is a homeless child or youth, the complaint must include available contact information for the child and the name of the school he or she is attending. [§300.508(b)(4)]



§300.532 Appeal.

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

Speeding Up The Process: Expedited Hearings

The second set of provisions to be examined using this slide are those related to the right to, and the conduct of, an expedited due process hearing. These provisions are also on **Handout E-16**, under §300.532. The introductory provision for expedited due process hearings is presented in the box on this page.

As you can see, embedded in the regulation are numerous references to other Part B regulations. Let's take a moment to briefly identify what these references mean, moving sequentially through them.

- §§300.507 and 300.508(a) and (b)—We just discussed elements of these provisions, except §300.508(c). That specific provision states that a party may not have a hearing on a due process complaint until the party (or his or her attorney) files a due process complaint that meets the requirements of §300.508(b).
- §§300.510 through 300.514—These are the provisions regarding the resolution process; impartial due process hearings; hearing rights; hearing decisions; and the finality of decision, appeal, and impartial review. All are included in the handouts provided with *Options for Dispute Resolution*. If participants were given the handout packet for all modules under the umbrella topic of IDEA's Procedural Safeguards, they should have these provisions.

Introducing...

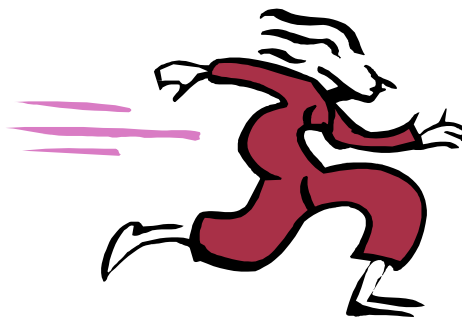
§300.532(c): Expedited Due Process Hearings

(c) *Expedited due process hearing.* (1) 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 §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

§300.532(c)(1)

- “Except as provided in paragraph (c)(2) through (4)” — These provisions, which will be discussed in a moment, address (among other things) the timelines associated with an expedited hearing and alternatives to a hearing, such as a resolution meeting or mediation.

All right, so what does all that mean for discipline situations? Basically, it means that the parent and the LEA must have the opportunity for an expedited due process hearing on the disciplinary matter about which they are disagreeing, a hearing that must comply with IDEA's provisions for due process hearings in general except where its expedited nature affects timelines and process established in IDEA (or by the State) for the typical, non-expedited due process hearing.



Clarifying the Nature of an Expedited Due Process Hearing

Some confusion may arise as to whether the due process hearing that a parent or LEA may request under §300.532(a) is the same as the expedited hearing described under §300.532(c) or, in fact, is a separate and distinct hearing. Be sure to indicate to participants that these two hearings are not two different hearings; they are the same. The right to a due process hearing in the disciplinary context described in paragraph (a) is the same as the expedited due process hearing described in paragraph (c). This regulation is not talking about two separate hearings.

The Department explained in the Analysis of Comments and Changes:

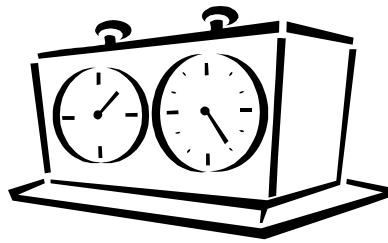
Paragraph (c) of this section clarifies that a hearing requested under paragraph (a) of this section is an impartial due process hearing consistent with the due process hearing requirements of §§300.510 through 300.514 (including hearing rights, such as a right to counsel,

presenting evidence and cross-examining witnesses, and obtaining a written decision), except that the timelines for the hearing are expedited and a State may establish different procedural rules for expedited due process hearings as long as the rules ensure the requirements in §§300.510 through 300.514 are met. We believe these regulations will ensure that the basic protections regarding hearings under the Act are met, while enabling States to adjust other procedural rules they may have superimposed on due process hearings in light of the expedited nature of these hearings. Further, we believe it is important that all the due process protections in §§300.510 through 300.514 are maintained because of the importance of the rights at issue in these hearings. (71 Fed. Reg. 46724)

Timeline for Expedited Due Process Hearings

IDEA establishes a timeline within which the expedited due process hearing must be conducted and the hearing officer's determination made. The provisions are set out in the final Part B regulations as follows:

(2) 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. [§300.532(c)(2)]

Can Due Process Be Avoided?

As discussed in the separate module on *Options for Dispute Resolution*, the IDEA strongly favors avoiding due process hearings, when possible, by resolving disputes through alternate, less adversarial and more cost-effective means. Mediation was newly emphasized in the 1997 reauthorization and was expanded further as an alternative means of dispute resolution in the 2004 reauthorization. It is specifically mentioned as an option when a due process hearing, including when an expedited due process hearing, is requested. Under IDEA, parties can choose to use mediation to resolve a dispute regardless of whether a due process hearing has been requested, and a parent can choose not to have a resolution meeting, if the parent and the school district

agree instead to use mediation to resolve their differences. This is discussed fully in *Options for Dispute Resolution*.

IDEA's provisions regarding the resolution process are found at §300.510 of the final Part B regulations. The reference to the resolution process here, in the context of an expedited due process hearing, is set out at §300.532(c)(3) as follows:

(3) 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 §300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

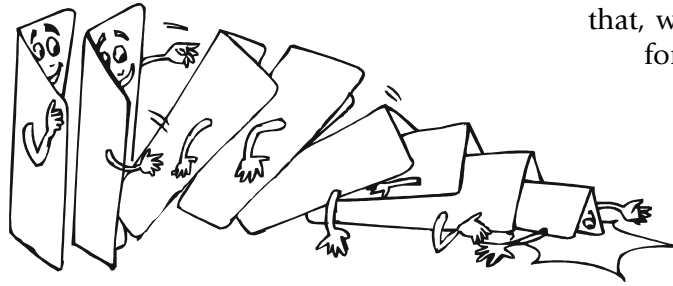
(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. [§300.532(c)(3)]

Thus, parents and the LEA have available to them either the resolution process or the mediation process as vehicles for resolving their differences without having to conduct an expedited due process hearing. They also may choose to waive either option and proceed directly to an expedited due process hearing. Waiving the resolution meeting, however, requires that both parties agree in writing to do so.



How Expedited Due Process Affects Other Timelines and Issues

Speeding up the timeline within which a due process hearing must occur affects other timelines and due process procedures, like a line of dominos going down. For example, the Part B regulation describing the resolution process indicates that a resolution meeting must be convened by the LEA within “15 days of receiving notice of the parent’s due process complaint” [§300.510(a)(1)]. When a resolution meeting is held associated with an expedited due process hearing, the timeline is shortened to seven days from receipt of the due process complaint [§300.532(c)(3)(i)]. Further, other provisions governing non-expedited due process hearings do not apply to expedited due process hearings—such as sufficiency of complaint at §300.508(d), which the Department acknowledged, in the Analysis of Comments and Changes, “is not practical to apply to the expedited due process hearing” because of the latter’s “shortened timelines” (71 Fed. Reg. 46725).



The shortened timeline established for the expedited due process hearing is driven by a “need to promptly resolve a disagreement regarding a disciplinary decision.” (*Id.*)

State-Imposed Procedural Rules

Given that the IDEA itself establishes different timelines for what occurs within expedited due process (as opposed to other due process hearings), it’s not surprising that the final Part B regulations recognize that States may need to adjust their procedural rules for expedited due process hearings regarding disciplinary decisions and give States limited authority to do so. The relevant provision for this authority is provided in the box on this page, appears at the final Part B regulation at §300.532(c)(4), and on **Handout E-16**.

This provision makes it clear that, while a State’s procedures for expedited due process hearings may be different from its other due process procedures, the State must ensure that the requirements in §§300.510 through 300.514 of the final

Part B regulations are met (requirements regarding the resolution process; impartial due process hearing; hearing rights; hearing decisions, and finality of decision; appeal; impartial review). As the Department explained in the Analysis of Comments and Changes:

This will ensure that the basic protections regarding expedited hearings under the Act are met, while enabling States, in light of the expedited nature of these hearings, to adjust other procedural rules they have established for due process hearings. (71 Fed. Reg. 46726)

There’s More

Not discussed on this slide, although part of §300.532, are IDEA’s provisions regarding the authority of the hearing officer. This subject is coming up in the next slide.



§300.532(c)(4): States’ Own Rules for Expedited Due Process Hearings

(4) 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 §§300.510 through 300.514 are met.



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Continuing this examination of the appeal process for disciplinary decisions, Slide 17 brings the authority of the hearing officer into focus. If the parents and LEA have not resolved their disagreement via a resolution meeting or mediation, and the due process hearing goes forward, the hearing officer must issue a decision in an expedited due process hearing.

The box on the next page and **Handout E-16** present IDEA's provisions covering the hearing officer's authority in expedited due process hearings to resolve disciplinary disputes between parents and LEAs. The hearing officer is given the authority to determine:

- whether a child's removal violated §300.530 (authority of school personnel);

- whether a child's behavior was a manifestation of his or her disability; and
- whether maintaining the child's current placement is substantially likely to result in injury to the child or to others.

The hearing officer can also return the child to the placement from which he or she was removed—or order that a child's placement be changed to an appropriate interim alternative educational setting for no more than 45 school days. The qualifications that a hearing officer must have are detailed under §300.511.

Note that it is only through the authority of a hearing officer in an expedited due process hearing that an LEA can appeal a hearing officer's determination to return the child to the original placement when the LEA believes that doing so is substantially likely to result in injury to the child or others. As §300.532(b)(3) states:

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.

If the procedures described above are repeated, the procedures regarding expedited due process hearings apply.

Note that the LEA has the discretion to remove a child with a disability to an IAES for up to 45 school days, if the special circumstances involving weapons, drugs, or serious bodily injury are present. If the special circumstances are not involved, “[s]chool officials must seek permission from the hearing officer in §300.532” (71 Fed. Reg. 46722)—the process of appeal described in both this slide and the one preceding it.

Regarding the authority of the hearing officer, the Department explained in the Analysis of Comments and Changes:

Hearing officers have the authority under §300.532 to exercise their judgments after considering all factors and the body of evidence presented in an individual case when determining whether a child’s behavior is substantially likely to result in injury to the child or others. (*Id.*)

May The Hearing Officer’s Determination Be Appealed?

Yes. Section 300.532(c)(5) of the final Part B regulations provides:

(5) The decisions on expedited due process hearings are appealable consistent with §300.514. 34 CFR §300.532(c)(5).

Section 300.514, in its turn, states that the decision of the hearing officer is final, except that any “party aggrieved by the findings and decision in the hearing may appeal to the SEA” [§300.514(b)(1)]. In some instances, bringing a civil action is also possible (see §300.516).



§300.532(b): Authority of the Hearing Officer

(b) *Authority of hearing officer.* (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) 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 §300.530 or that the child’s behavior was a manifestation of the child’s disability; or

(ii) 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.

(3) 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.

Child's Placement During Appeals

Here—
Or there?



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Slide 18 takes up a topic of common concern—the child's placement during the appeal process. Where will the child be placed until a decision on the appeal is issued—the IAES, the original placement from which the child was removed during the disciplinary action, or another setting that the parents and the public agency agree to?

The regulation addressing the child's placement during appeals is presented in the box on this page and on **Handout E-16**. As can be seen, the "default" placement during an appeal is the IAES. The child must remain in the IAES chosen by the IEP Team until the hearing officer makes his or her decision on the appeal—or the time period specified in §300.530(c) or (g) expires, whichever comes first, unless the parent and the SEA or LEA agree otherwise.

To what time periods is IDEA referring? It's important to be specific here.

Time period in §300.530(c). Can anyone in the audience remember the regulation—let alone the timeline!—at §300.530(c)? Remind the audience of the opening exercise and the reality of sometimes having to check an authoritative source to answer a question accurately. Have the audience find in the handouts just one such authoritative source—in this case, the

very first page of **Handout E-16**, where §300.530(c) appears. It reads:

(c) *Additional authority.* 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



§300.533 Placement during appeals.

When an appeal under §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 §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

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.

So, in this case, the time period would be whatever local policy dictates be applied to children without disabilities being disciplined for a similar violation of the code of student conduct as that made by the child with a disability at issue in this disciplinary appeal, except that the services provisions in §300.530(d) would apply to the child with a disability. If the child is disciplined pursuant to §300.530(c), the provision at §300.530(d)(1) applies to the child. Of course, we all recall that §300.530(d)(1) reads:

(d) *Services.* (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in §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

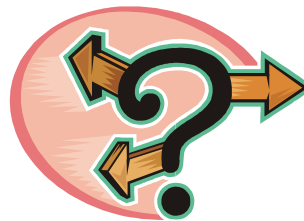
(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

If the time period expires *before* the hearing officer makes his or her determination on the appeal, then the child with a disability would be returned to the original placement from which he or she was removed as a result of the violation of the conduct code (unless the parent and the SEA or LEA agree otherwise).

Time period in §300.530(g). Again, can anyone remember the time period specified in §300.530(g)? You may need to remind participants that §300.530(g) is referring to violations involving the special circumstances (weapons, drugs, or serious bodily injury). Does that help anyone remember? All these very specific details...which is why it's so important to look back at the regulations themselves. Have the audience look again at §300.530(g)—it's on **Handout E-16**, of course—and tell you what the time period involved is. Their answer should go something like this:

School personnel may remove a child to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability.

So, a child subject to a disciplinary removal for misconduct that is not a manifestation of the child's disability but that is a special circumstances violation may be removed to an IAES for no more than 45 school days. If that time period expires before the hearing officer makes his or her determination on the appeal—which must be decided on an expedited basis, again, unless the parent and the SEA or LEA agree otherwise—the child with a disability would be returned to the original placement from which he or she was removed as a result of the violation of the conduct code.



Which Time Period Applies?

We have two time periods to consider. Which applies in the situation of this child?

Ask the audience to speculate. Chances are, they will tell you the answer immediately—whatever time period is associated with how the child was disciplined. Was the child disciplined under circumstances pursuant to §300.530(c) (a disciplinary change of placement for misconduct that is determined not to be a manifestation of the child's disability)—or under circumstances pursuant to §300.530(g) (for weapons or drugs violations, or serious bodily injury)? The answer to that question will help you determine the relevant time period to be applied.

In Conclusion

Thus, under IDEA, during appeals under §300.532 by either the parent or the LEA (which are subject to the procedures for expedited due process hearings), the child must remain in the IAES pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) (for removals of children disciplined

for misconduct not related to their disability) or §300.530(g) (for drugs or weapons violations or serious bodily injury), whichever occurs first, unless the parents and the SEA or LEA agree otherwise.

If procedures for appeals under §300.532 are repeated, the procedures for expedited due process hearings apply, and §300.533, described above, governs the child's placement during the appeal.



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This slide sets up the discussion of how IDEA's discipline provisions apply to children *not* previously determined to be eligible for special education and related services under Part B of IDEA. The specific situation we're going to look at is that such a child has engaged in behavior that constitutes a violation of a code of student conduct, and the child wishes to assert the protections provided in Part B.

IDEA continues to permit that, where the public agency had knowledge that the child was a "child with a disability" (as IDEA defines that term) before the behavior that precipitated the disciplinary action occurred, the child can assert IDEA's protections. The relevant provision in the final Part B regulations is presented in the

box below and appears on **Handout E-16**.

Basis of Knowledge

The pivot point in §300.534 is, without a doubt, whether or not the public agency had knowledge that the child was a "child with a disability" when

the child violated the code of student conduct. The final Part B regulation is clear about the criteria to be used to determine whether or not the public agency, indeed, had such knowledge. These criteria have direct relevance to teachers, administrators, and parents alike, and it's important for participants to

The Beginning of §300.534: Protections for Children Not Determined 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 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.

§300.534(a)

familiarize themselves with how these provisions might apply to them directly.

Large-Group Discussion, Individual Reflection

Ask for a show of hands as to how many in the audience are parents? Teachers? Supervisors or administrative personnel in an educational agency? Special education directors or other special education personnel?

Then ask participants to look at §300.534 on **Handout E-16** and underline any reference to the type of role they would be playing in a situation where a child who has not been determined eligible for special education and related services has violated a code of student conduct, is subject to disciplinary action, and wishes to assert one or more of the protections under Part B of the IDEA.

Then ask participants to circle references to the *other people's* roles that might intersect with their own. For example, participants who are teachers might circle "parent" in the provision at §300.534(b)(1) that reads:

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....

An administrator or supervisor in the public agency might also circle "parent."

Ask participants what elements within these provisions they circled and why. How do they see that other person's actions intersecting with their own, and impacting whether or not a public agency had knowledge that a child was a child with a disability before the behavior evoking the disciplinary action occurred?

Also ask clarifying questions to pinpoint specific aspects of these provisions, such as:

- What if the parent said something to the child's teacher about the child maybe needing special education? Would that be enough to determine

that the LEA had "knowledge?" (No, the parent's concern must be expressed in writing.)

- Suppose the child's teacher was talking to another teacher in the lounge about the child's behavior. Is that enough? (No, the teacher's concern must be expressed directly to someone filling a supervisory role in the public agency.)
- If you're an LEA employee and you're worried about a child's behavior and thought that child needed special education and related services, to whom should you express your specific concerns? (To the director of special education or to other supervisory personnel at the LEA.)



§300.534(b): Criteria for Basis of Knowledge

(b) *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 §§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.

"Basis of Knowledge" provisions within the 1997 Amendments have been revised in the 2004 reauthorization to be more precise about "who" needs to say (or write) "what" to "whom." The Senate HELP committee's *Report [to Accompany S.1248]* clarified why Congress made these revisions:



The committee maintains its intent that children who have not yet been identified for IDEA should be afforded certain protections under the law. However, the committee has heard many concerns regarding the abuses resulting from the provision in the 1997 law affording these protections. For example, under current law, a school is deemed to have knowledge that a child has a disability based on a claim that the child's "behavior or performance demonstrates the need" for special education and related services, or because a teacher made a stray, isolated comment expressing "concern about the behavior or performance of the child" to another teacher. The committee believes that these provisions as written have had the unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student. Therefore, S. 1248 revises this provision to ensure that schools can appropriately discipline students, while maintaining protections for students whom the

school had valid reason to know had a disability.¹

The Child Find Mechanism

These provisions contain within them a presumption that, if involved individuals express concerns to other involved individuals (especially those in supervisory positions within the public agency) about a child's behavior or possible need for special education and related services, the agency has an affirmative obligation to act upon those concerns and investigate the child's need for special education and related services. As the Department explained in the Analysis of Comments and Changes:

...the child find and special education referral system is an important function of schools, LEAs, and States. School personnel should refer children for evaluation through the agency's child or special education referral system when the child's behavior or performance indicates that they may have a disability covered under the Act. Having the teacher of a child (or other personnel) express his or her concerns regarding a child in accordance with the agency's established child find or referral system helps ensure that the concerns expressed are specific, rather than casual comments, regarding the behaviors demonstrated by the child and indicate that the child may be a child with a disability under the Act. (71 Fed. Reg. 46727)



However, as the Department also explained, not all child find systems and referral processes in States and LEAs have policies in place that meet the requirements described in IDEA's "basis of knowledge" provisions—specifically, that:

...[a] teacher of the child, or other personnel of the LEA...must express specific concerns about a pattern of behavior demonstrated by the child "directly to the director of special education of such agency or to other supervisory personnel of the agency"... (*Id.*)

Recognizing that child find and special education referral policies in the States vary, the Department cautioned:

For these reasons, we would encourage those States and LEAs whose child find or referral processes do not permit teachers to express specific concerns directly to the director of special education of such agency or to other supervisory personnel of the agency, to change these processes to meet this requirement. (*Id.*)

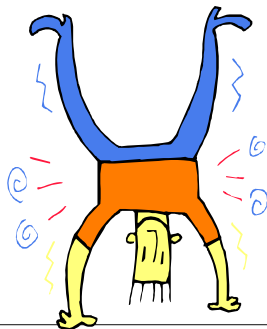


Noting the Exceptions

IDEA also includes several exceptions to the “basis of knowledge” criteria, wherein a public agency would *not* be deemed to have the knowledge that a child was a “child with a disability” before the child’s behavior precipitating the disciplinary action occurred. These provisions appear at §300.534(c) on **Handout E-16** and in the box on this page. Go over these with participants.

Children Receiving Early Intervening Services

An issue not mentioned in either “basis of knowledge” or the “exception” provisions at §300.534 is whether or not a public agency would be deemed to have “knowledge” if the child in question is receiving early intervening services. Early intervening services are discussed in detail in the module *Early Intervening Services and Response to Intervention* and, among other things, are provided to children:



...in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. [§300.226(a)]

In the Analysis of Comments and Changes, the Department responded to a public comment on this point and stated:

A public agency will not be considered to have a basis of knowledge under §300.534(b) merely because a child receives services under the coordinated, early intervening services...

However, if a parent or a teacher of a child receiving early intervening services expresses a concern, in writing, to appropriate agency personnel, that the child may need special

education and related services, the public agency would be deemed to have knowledge that the child is a child with a disability under this part. (71 Fed. Reg. 46727)

What Happens if There is No “Basis of Knowledge?”

The final portion of §300.534 describes the conditions that apply if the public agency is deemed not to have a “basis of knowledge” that the child was a “child with a disability.” Relevant provisions are presented in a box on the next page and on **Handout E-16**.

As the above provision makes clear, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. If an evaluation of the child is requested during the period of time in which the child is subjected to these disciplinary measures, the evaluation must be conducted in an expedited manner and, 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 found to be a “child with a disability,” the public agency must then provide special education and related services to the child. This includes the requirements of §§300.530 through 300.536—any one in the audience care to venture a summary of what those requirements entail? They are the very provisions studied in this training module: the final Part B

§300.534(c):

Exceptions to Basis of Knowledge

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

regulations implementing IDEA's discipline procedures! This reference to them is necessary to cover those instances where the child may still be subject to the disciplinary measure when he or she is determined to be a "child with a disability" and special education services must begin to

be provided. Questions raised in this training session would apply, especially those posed on Slide 15 related to "extent of services."



§300.534(d):
No Basis of Knowledge:
What Conditions Then Apply?

(d) *Conditions that apply if no basis of knowledge.* (1) 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.

(2)(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 §300.530, 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 must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

Reference

¹ Senate Report No. 108–185, at 45–46 (2003). Available online at: www.nasponline.org/advocacy/IDEACommittee.pdf

Final Aspect

Reporting crimes
committed
by children with
disabilities



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Slide 20 finishes this look at the disciplinary procedures within IDEA by focusing on referral to and action by law enforcement and judicial authorities. Found at §300.535 (and on **Handout E-16** and in the box below), “Referral to and action by law enforcement and judicial authorities” provisions are unchanged from the 1997 Amendments to the IDEA.



§300.535 Referral to and action by law enforcement and judicial authorities.

(a) *Rule of construction.* 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.

(b) *Transmittal of records.* (1) 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.

(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.

The IDEA makes clear that agencies are not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. Similarly, the law does not prevent State law enforcement and judicial authorities from exercising their responsibilities. The agency reporting the crime must ensure that copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities—however, only to the extent that the transmission is permitted by the Family Educational Rights and Privacy

Act (FERPA), a Federal law that protects the privacy of children's education records. As the Department explained in the Analysis of Comments and Changes:

Under FERPA, personally identifiable information (such as the child's status as a special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child's special education and disciplinary

records under paragraph (b)(2) of this section without parental consent is permissible only to the extent that such transmission is permitted under FERPA. (71 Fed. Reg. 46728)

FERPA's Regulations

FERPA's regulations are available online. Find them at: www.ed.gov/policy/gen/reg/ferpa/index.html

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Putting It All Together



Edward.

Charlie.



Liz.

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Slide 21 is called “Putting It All Together” because here is where participants will begin to work with case studies that require them to apply IDEA’s disciplinary procedures to real-life examples.

Overview of Case Study Activity

There are three case studies for participants to go through. The first deals with Charlie, a 5th grader. We recommend that you go through Charlie’s case study as a large group, asking and answering the questions on **Handout E-18**, which describes Charlie’s case. This will give participants some practice in how to apply the IDEA’s disciplinary provisions to the facts of Charlie’s situation. Also use

Handout E-17, the Discipline Flow Chart, to familiarize participants with this handy tool.

After participants have Charlie’s case under their belt, divide the audience into groups, having them count off by four’s (1-2-3-4) and then having all the 1s get together, the 2s, the 3s, and so on—depending on the size of your audience you may have multiple groups of 1s, 2s, 3s, 4s. So that each person’s opportunities for participation are maximized, try not to form groups larger than 4 people. But audience size will clearly affect how you break into groups.

After the small groups work with the second case study involving Edward (**Handout E-19**), re-convene in large group and go through answers. We’ve

provided on the next pages of this background section suggested answers to each of the case studies. Use these as your reference point for what actions would be correct to take in each case study.

If you still have time available in this training session, move on to the last case study—Liz. Have participants break into small groups again, or work individually, this time using **Handout E-20**, which describes Liz’s case. Reconvene in large group after about 10 minutes, and again go over answers.

Case Study #1: Charlie

Charlie is a 5th grader who receives special education services for a learning disability. Charlie is on grade level in math and two years below grade level in reading. He receives services in a resource setting for one hour each day. Charlie has no history of behavior problems.

Charlie was caught stealing software from the computer lab at his school. His teacher referred him to the assistant principal who issued a three-day suspension and required him to return the stolen materials.

Charlie returned to the classroom to gather his belongings and confronted his teacher. He called her names, threatened to

come back to school with a knife to “cut her,” and pretended to swing his fists toward her. Charlie’s teacher called the principal, who, in accordance with the student code of conduct at the school, issued an additional 10-day suspension for Charlie, bringing his total days of suspension to 13.

What happens immediately to Charlie?

Because the 13-day suspension is more than 10 days, it is considered a change in placement. Therefore, Charlie must be removed to an IAES until a manifestation determination is made. The determination of where the IAES will be is made by Charlie’s IEP Team.

What services, if any, are provided to Charlie during his removal to an IAES?

Charlie’s IEP Team must determine appropriate services. He must continue to receive educational services as provided in FAPE requirements so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP.

Who needs to be contacted?

Charlie’s parents must be notified that he has been removed from the classroom and that this action constitutes a change in placement. The LEA is

responsible for notifying Charlie’s parents and providing them with the procedural safeguards notice on the date that the LEA decides to make this removal that constitutes a change of placement.

As required, now a manifestation determination review is held for Charlie, and it’s determined that his behavior was not a manifestation of his disability. The next set of decisions can now be made.

What disciplinary actions are permissible?

Since the behavior is not a manifestation of his disability, Charlie can be disciplined in the same manner and for the same amount of time as a child who does not have a disability. That decision is left up to the LEA.

What, if any, services will be provided to Charlie during the duration of the disciplinary action?

Charlie must continue to receive educational services as provided under FAPE require-

ments, so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP.

What happens if Charlie’s parents appeal the manifestation determination?

If a hearing is requested, the SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process complaint was filed.

The hearing officer must make a determination within 10 school days after the hearing.

If this happens, Charlie will remain in the IAES pending the decision of the hearing officer.

Case Study #2: Edward

Edward is a 10th grader who receives special education services for a behavior disability and under other health impairment, due to his AD/HD.

Because Edward has trouble concentrating and tends to act out, he is failing most of his academic sub-

jects. He receives services in an inclusion setting at his high school. Edward's record includes an FBA and a BIP, in addition to his IEP.

Edward's high school has a zero-tolerance policy for weapons and drugs. Edward brought a gun to school, which he showed to a friend between

classes and made a threat about using it to shoot another child. A teacher discovered the gun and reported Edward to the administration.

The school had Edward immediately removed for 45 school days to an IAES.

What services, if any, are provided to Edward during this time?

Edward must continue to receive educational services as provided under FAPE requirements, to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP.

Who needs to be contacted?

Edward's parents must be notified that he has been removed from the classroom and that this action constitutes a change in placement. The LEA is responsible for notifying his parents and providing them with the procedural safeguards notice on the date that the LEA decides to make this removal that constitutes a change of placement.

A manifestation determination review is held for Edward. It is determined that his behavior was not a manifestation of his disability. Edward's parents appeal this decision.

In what setting will Edward be placed during the appeal?

He will remain in the IAES that was determined by his IEP Team, pending the decision of the hearing officer, until the expiration of the time period for him to remain in the IAES, whichever occurs first, unless the parents and the LEA agree otherwise.

What, if any, services will be provided to him?

Edward must continue to receive educational services as provided under FAPE requirements so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP.

What is the role of the LEA?

The LEA (or SEA) is responsible for arranging the expedited due process hearing. The LEA must also continue to provide appropriate educational services as specified in the Edward's IEP while he is placed in the IAES.

What is the role of the hearing officer?

The hearing officer hears and makes a determination regarding an appeal in an impartial due process hearing. In making the determination the hearing officer may:

- Return the child with a disability (in this case, Edward) to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
- Order a change in placement of the child with a disability to an appropriate IAES 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 others.

What is the timeline for the due process hearing?

The hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. Unless the parents and LEA agree in writing to waive the

resolution meeting or agree to use the mediation process:

- 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.

Case Study #3: Liz

Liz is a 7th grader who receives special education services for an emotional disability. She has poor impulse control and has been removed from her home on more than one occasion for abuse. Liz spends 50% of her day in a

self-contained special education class. She has a BIP that was written last year, based on an FBA conducted while she was in 5th grade.

In the cafeteria, two other girls began teasing Liz about her clothing and about her family. The girls came right up to Liz

and provoked her. She began to fight with them. This was the third fight Liz had been involved in during the past three weeks.

She was referred to the principal who gave her a 12-day suspension and a removal to an IAES.

What services, if any, are provided to Liz during this time of removal?

Liz must continue to receive educational services as provided under FAPE requirements so as to enable her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in her IEP.

Who needs to be contacted?

Liz's parents must be notified that she has been removed from the classroom and that it constitutes a change in placement. The LEA is responsible for notifying her parents and providing them with the procedural safeguards notice on the date that the LEA decides to make this removal that constitute a change in placement.

A manifestation determination review is held for Liz, and it is determined that Liz's behavior was a manifestation of her emotional disability.

What will happen to Liz immediately?

She will return to the placement from which she was removed, unless the parent and LEA agree to a change of placement as part of the modification of the BIP.

What are the next steps for the LEA?

The LEA, along with the parent and relevant members of the IEP Team, must conduct an FBA unless the LEA had conducted an FBA before the behavior that resulted in the change of placement occurred (as is the case with Liz).

This group of individuals must also BIP for the child or, if a BIP has already been developed (as is the case with Liz), review the BIP and modify it as necessary to address the behavior.

Are there other steps you would take as a member of the IEP Team? If so, what?

Answers will vary here, but may include:

- Conducting another FBA, even though one was conducted previously, to ensure that it is current and reflects Liz's current behavior.
- Reviewing the IEP to determine if there are additional educational and/or related services that might be needed to assist Liz.

Roundup Time!



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CLICK to END the slide show.

Use this slide for a review and recap of your own devising, or open the floor up for a question-and-answer period. Depending on how much time you have available for this training session, you can have participants work in small groups to make a quick list of what information they've gleaned from this session, what's different about the discipline procedures in the 2004 Amendments to IDEA, what's the same, or what aspects are most pertinent to them.

Emphasize the local or personal application of the information presented here. As a final note and for future reference, suggest that participants visit the Department's idea.ed.gov Web site (solely devoted to IDEA) and download the Department's (2007) *Questions and Answers on Discipline Procedures*, which answers additional questions about discipline of children with disabilities who violate a code of student conduct. The Q&A is available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C>