Discipline of Special Education Students Under IDEA

(Protections in IDEA apply to children who have been found eligible for special education and to children for whom the school is deemed to have knowledge that the child might have a disability (i.e., children who have not yet been found eligible but the school had a basis of knowledge of a disability, including children who have been referred for initial evaluation). 34 CFR 300.64

Student protected under IDEA violates a school code of conduct

Conduct a Disciplinary Hearing as for all students  ORC 3316.66

Is the current removal one in a series that is a pattern of removal constituting a change of placement?  

34 CFR § 300.136

YES

Notify parents immediately of decision to change placement for disciplinary reasons & provide Whose IDEA Is This? 34 CFR § 300.536. Child is entitled to services as determined by the IEP Team. 34 CFR § 300.131(d)(5)

With 10 school days of the decision to remove the student for disciplinary reasons the district, the parent and relevant members of the IEP Team must review information and make a manifestation determination, 34 CFR § 300.131(a)

NO

Is the conduct a direct result of the district’s failure to implement the IEP? Does the conduct have a direct and substantial relationship to the disability?

34 CFR § 300.530(e)

YES to either

Student conduct IS a manifestation of his/her disability. 34 CFR § 300.530(a)

If conduct was a direct result of failure to implement the IEP, the district must take immediate steps to remedy those deficiencies and review.

34 CFR § 300.131(a)(6)

Conduct a functional behavioral assessment and develop a behavioral intervention plan, or review and modify an existing plan as needed.

34 CFR § 300.131(f)(1)(ii)

And return child to placement unless parents & district agree to a different placement or removal is for “special circumstances” under 34 CFR § 300.131(a)(6)

IF

IF the conduct that the child is being disciplined for involves the “special circumstances” of weapons, illegal drugs, controlled substances, or serious bodily injury, school personnel may remove the child to an interim alternative educational setting (IAES) for up to 45 school days, regardless of the manifestation determination. 34 CFR § 300.536. The IEP Team must determine the IAES.

The flowchart lays out the steps that a school district must take when disciplining a child with a disability; however, it is important to remember that at any point the parents and school district can agree to change a child’s placement for disciplinary reasons. This type of agreement is noted through a review of the child’s IEP and affixing new signatures to the IEP.

Parents can request a due process hearing if they object to a change of placement or if they do not agree with the manifestation determination.

Districts can request a due process hearing if a child is a danger to themselves or others or if parents refuse a change in placement.