

Guidance Regarding Discipline of Special Education Students under IDEA 2004

20 U.S.C § 1415(k), 34 CFR §§ 300.530-300.536 and OAR 581-015-2400 through 581-015-2445

The flowchart below should be read in conjunction with discipline procedures pursuant to state law, (OAR 581-015-2400 through OAR 581-015-2445), along with district-wide and school-wide student codes of conduct.

- Under the Individuals with Disabilities Education Act (IDEA), additional procedures apply in instances of discipline for students who have been found eligible for special education and to students for whom the school is deemed to have knowledge that the child might have a disability (i.e. students who have not yet been found eligible but the school had a basis of knowledge of a disability, including students who have been referred for initial evaluation). 34 CFR § 300.354 (OAR 581-015-2440). These procedures arise in three different scenarios:

Scenario 1:

Removal from school for 11 or more *consecutive* days is an automatic change of placement. 34 CFR 300.536(a)(1). Districts must:

- Provide prior written notice (PWN) of the change of placement. 34 CFR 300.530(h); OAR 581-015-2310
- Provide FAPE. 34 CFR 300.530(d)(5); OAR 581-015-2415
- Conduct a manifestation determination review (MDR). 34 CFR 300.530(e); OAR 581-015-2415.

Scenario 2:

Removal for current misconduct is for less than 10 *consecutive* school days, but removals total more than 10 school days in the school year, *and* the series of removals constitute a pattern resulting in a change of placement. Districts must:

- Follow the steps in **Scenario 1**. 34 CFR 300.536(a)(2); OAR 581-015-2415

Scenario 3:

Removal for current misconduct is for less than 10 *consecutive* school days, but removals total more than 10 school days in the school year, *and* the series of removals *do not* constitute a pattern resulting in a change of placement. Districts must:

- Provide FAPE. 34 CFR 300.530(d)(4); OAR 581-015-2410

If the conduct that the student is being disciplined for involves the “special circumstances” of weapons, illegal drugs, controlled substances or serious bodily injury, school personnel may remove the student to an interim alternative educational setting (IAES) for up to 45 school days, regardless of the manifestation determination. 34 CFR § 300.530(g).

The following flowchart lays out the steps that a school district must take when disciplining a student under the IDEA. It is important to note that parents and school districts can agree to change a student’s placement for disciplinary reasons at any point. Agreements should be in writing and signed by school personnel and the parent.

For questions, please contact Lisa Joy Bateman, Education Specialist at Oregon Department of Education, Office of Student Services. lisajoy.bateman@ode.oregon.gov, or (503) 569-2951.

January 2019

This document should be used as guidance and is not intended as legal advice.

Student protected under IDEA violates a school code of conduct
Verify who is Eligible –
(See OAR 581-015-2440 Protections for Children Not Yet Eligible)

