34 CFR 300.530 - Authority of school personnel.

**§ 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.

**(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).

**(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)](https://www.law.cornell.edu/cfr/text/34/300.530#d) of this section.

**(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)](https://www.law.cornell.edu/cfr/text/34/300.530#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)](https://www.law.cornell.edu/cfr/text/34/300.530#d) of this section.

**(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)](https://www.law.cornell.edu/cfr/text/34/300.530#d_1) of this section.

**(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.

**(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)](https://www.law.cornell.edu/cfr/text/34/300.530#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)](https://www.law.cornell.edu/cfr/text/34/300.530#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.

**(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.

**(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.

**(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)](https://www.law.cornell.edu/uscode/text/21/812#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.

(Authority: [20 U.S.C. 1415(k)(1)](https://www.law.cornell.edu/uscode/text/20/1415#k_1) and (7))

34 CFR 300.536 - Change of placement because of disciplinary removals.

**§ 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.