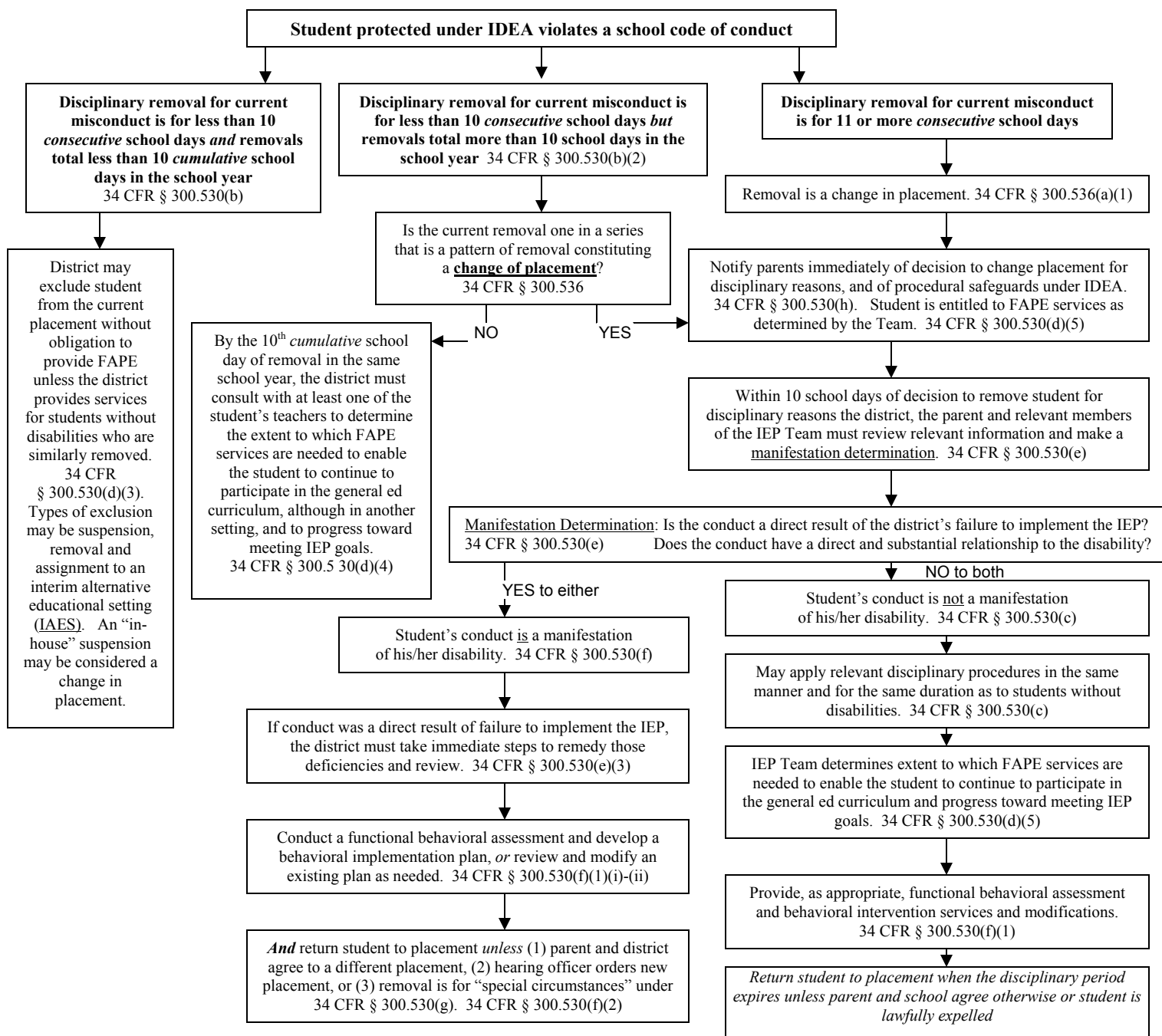


Discipline of Special Education Students Under IDEA 2004

20 U.S.C. § 1415(k) and 34 CFR §§ 300.530-300.536

- This chart should be read in conjunction with discipline procedures in state law, M.G.L. c. 71, §§ 37H & 37H1/2, and district-wide and school-wide student codes of conduct.
- Protections in the IDEA apply to 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
- Beginning on the 11th school day of a student's disciplinary removal during the school year, and if removal is a change in placement, the student must be provided free appropriate public education (FAPE) services during the period of removal to allow him/her to continue to participate in the general education curriculum and progress towards IEP goals, even if in a different setting. 34 CFR § 300.530(b) & (d).
- 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 IEP Team must determine the IAES.
- Although the following flowchart lays out the steps that a school district must take when disciplining a student with a disability, it is important to remember that at any point the parent and school district can agree to change a student's placement for disciplinary reasons. Agreements should be in writing, and signed by the school personnel and the parent.

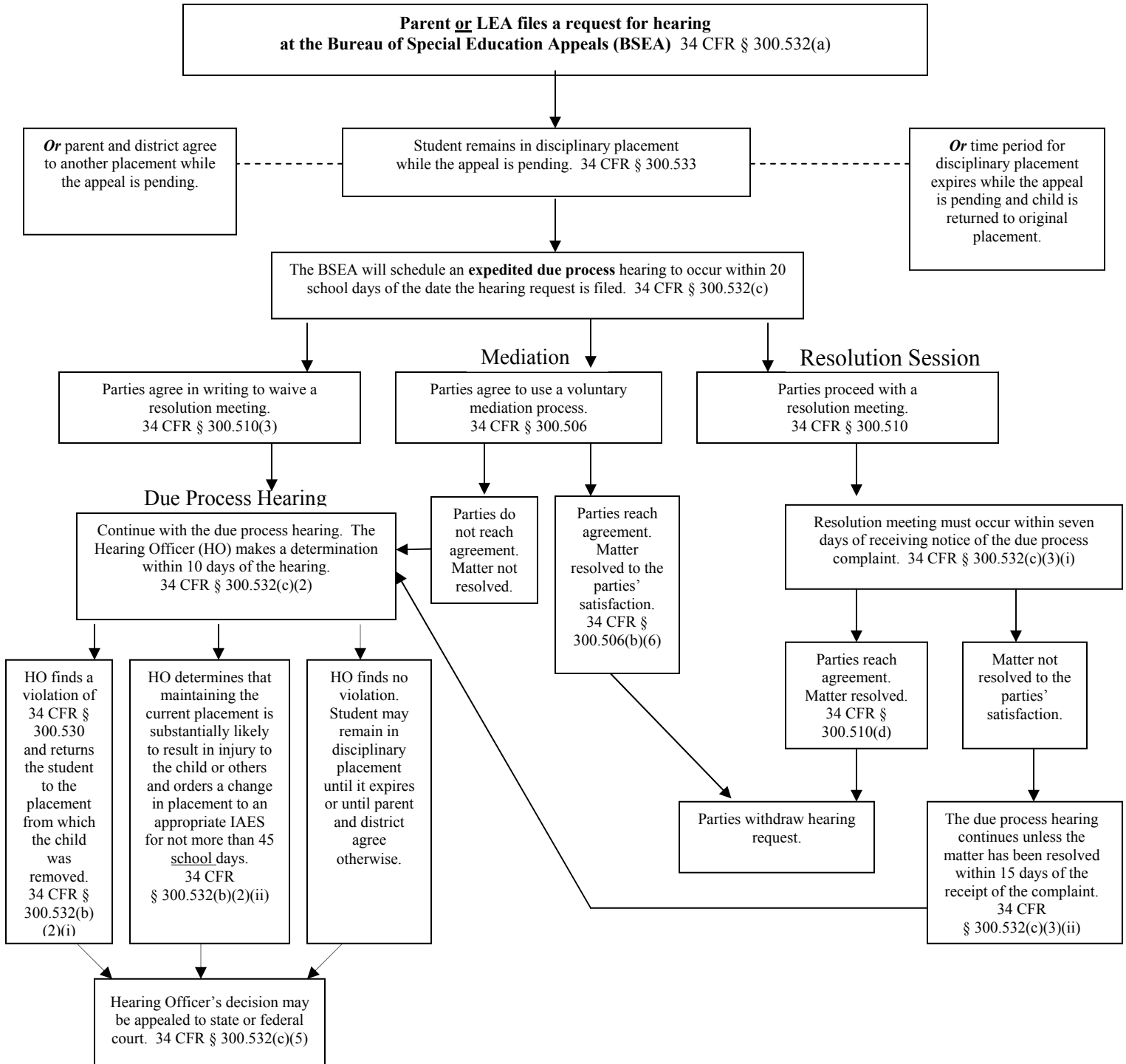


Appeals Process for Disciplinary Placement Decisions for Students with Disabilities

Under IDEA 2004: 20 U.S.C. § 1415(k) and 34 CFR §§ 300.532-300.533

Who may file an appeal of a disciplinary decision?

- A parent of a child with a disability who disagrees with any decision regarding the child's disciplinary placement, or the manifestation determination, may appeal the decision by requesting a hearing at the Bureau of Special Education Appeals (BSEA). Reasons for appeal may include but are not limited to disagreement with the student's removal to an interim alternative educational setting (IAES), disagreement regarding the manifestation determination, disagreement regarding the determination of whether the removal is a change of placement, disagreement regarding the educational services the student receives during the period of removal, and disagreement regarding the functional behavioral assessment and/or implementation of a behavioral intervention plan. 34 CFR §§ 300.530-300.531.
- An LEA that believes that maintaining the student's current placement is substantially likely to result in injury to the child or others may file a request for hearing at the BSEA.



DEFINITIONS

A student for whom the district is deemed to have knowledge of a disability – A child who has not yet been determined to be eligible for special education and related services may assert the disciplinary protections under IDEA if the school had a basis of knowledge that the child is a child with a disability before the behavior that precipitated the disciplinary action occurred. The school is deemed to have knowledge if: (1) the child's parent expressed concern in writing to administrative or supervisory personnel of the school or district that the child is in need of special education and related services; (2) the parent of the child had requested a special education evaluation; or (3) the child's teacher or other school or district personnel expressed specific concerns to the director of special education or to other supervisory personnel about a pattern of behavior demonstrated by the child. The school or district is *not* deemed to have knowledge of a disability if (1) the parent has not allowed an evaluation or has refused special education and related services, *or* (2) the child has been evaluated and determined not to be a child with a disability. 34 CFR § 300.534.

Change of placement – A change of placement because of a disciplinary removal occurs if a child with a disability is removed from his/her current educational placement for more than 10 consecutive school days, or the child is subjected to a series of removals that constitutes a pattern because: (1) the removals total more than 10 school days in a school year; (2) the child's behavior is substantially similar to previous incidents that resulted in the series of removals; and (3) additional factors such 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 constitute a pattern. 34 CFR § 300.536.

Current placement – The placement from which the student was removed for disciplinary reasons.

Interim alternative educational setting (IAES) – An IAES is a disciplinary placement that is not the same as the child's current placement as defined in his/her IEP.

Manifestation determination – The determination made by the district, the parent, and relevant members of the student's Team, after review of all relevant information in the student's file including the IEP, teacher observations, and relevant information provided by the parents, whether (1) the conduct in question was caused by or had a direct and substantial relationship to the child's disability; *or* (2) the conduct in question was the direct result of the district's failure to implement the student's IEP. 34 CFR § 300.530(e).

Special circumstances – Where the disciplinary conduct is a "special circumstance," school personnel may remove a student to an IAES for not more than 45 school days, regardless of the results of the manifestation determination. Special circumstances exist if the student:

- carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency (district); or
- 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 a State or local educational agency; or
- inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency. 34 CFR § 300.530(g).

Serious bodily injury – As defined in 18 U.S.C. § 930, a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 34 CFR § 300.530(i)(3).