

Special Education Considerations in Student Discipline Procedures

October 30, 2006

Introduction

The following is intended to provide a user-friendly explanation of the laws and regulations pertaining to student discipline in the Individuals with Disabilities Improvement of Education Act 2004 and its implementing regulations at 34 CFR §300 et. seq., August 14, 2006.

Students who happen to be receiving special education are, first and foremost, general education students. Most discipline cases involve relatively minor incidents handled with routine policy and procedure applicable to all students. Special education regulations provide an “extra measure of due process” to assure a review of possible impacts of a student’s disability in a discipline incident. Application of local general discipline policy should be diligently followed and altered only to the extent indicated by proper consideration of a disability and student’s behavior history as outlined in this document. **Regulatory compliance issues are minimized, and student progress is best achieved with the documented use of scientifically-based positive behavior support techniques, and procedures that avoid removal of a student from school.**

The flowcharts do not exhaust the topic of discipline, but rather give the general sequence of events and timelines associated with the extra measure of due process when considering a student’s disability in school discipline procedures. Some limited citations are provided here to guide the reader to further material in the IDEA regulations. In the more serious cases, a district will likely prefer to contact a school attorney.

Start Here: General Considerations (p. 1) – The purpose of this chart is to guide the reader to the appropriate section of the regulations appropriate for the student’s status and type of discipline procedure: (p. 2) student not in special education, (p. 3) short-term removal from school when student is receiving special education, and (p. 4) longer term removal (>10 school days) when student is receiving special education.

Student Not Eligible for Special Education (p. 2) - Even when a student is not currently receiving special education, the district is still responsible to consider the existence of “prior knowledge” about a disability.

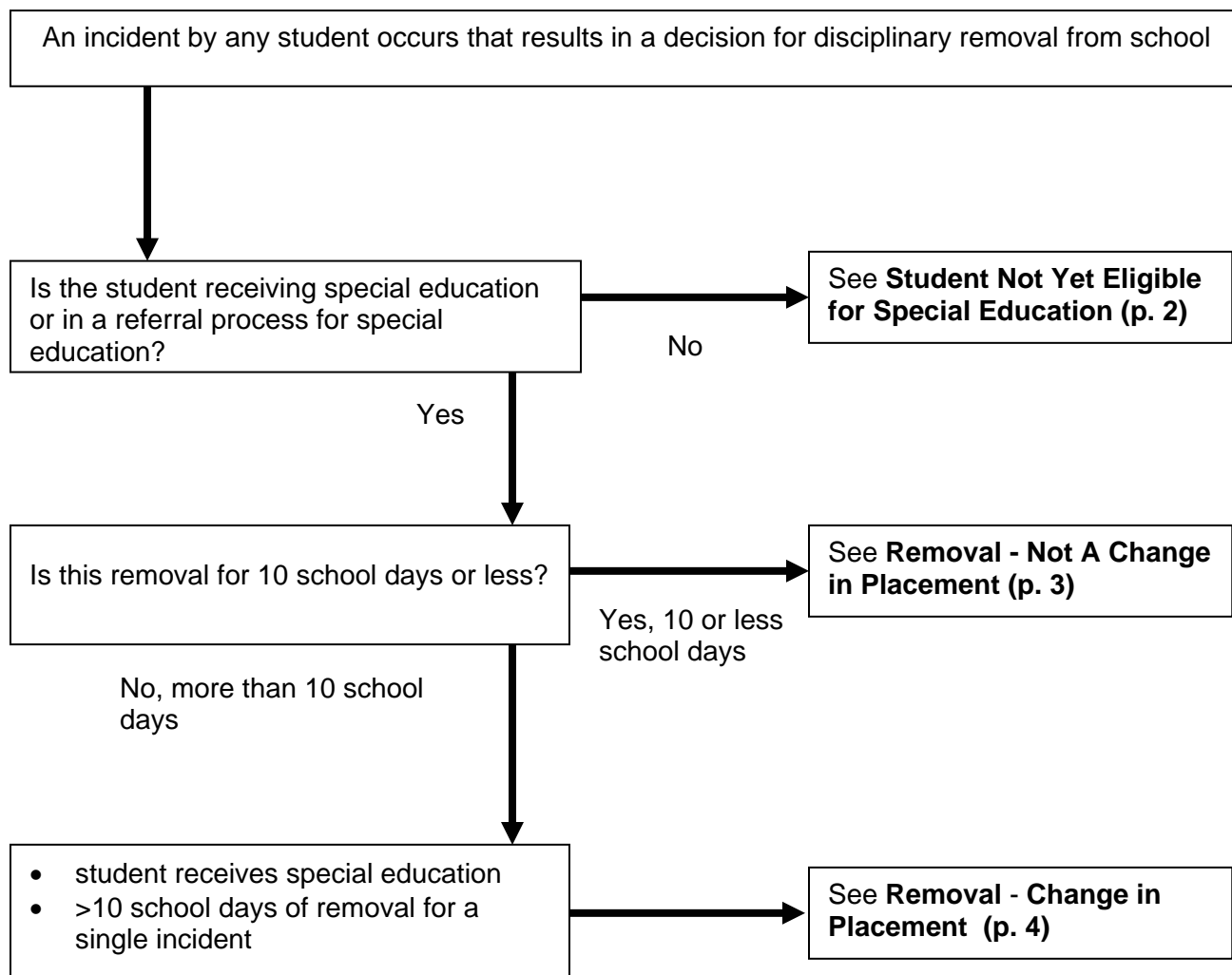
Removals - Not A Change in Placement (p. 3) - These are defined as a single removal of 10 or less school days. A series of removals in a school year, however, may under the rules provide additional services by accumulating to more than 10 days, or forming an ongoing pattern of exclusion that may trigger the same procedural rights as a long-term removal (**change of placement**, below).

Removals - Change of Placement (p. 4) - A key concept in the more serious disciplinary exclusions is **change in placement**. Change in placement is a single removal for more than 10 school days or an ongoing pattern of short-term removals. Another key concept is the responsibility of the IEP Team to determine the relationship between a disability and the behavior precipitating a disciplinary action. The results of **manifestation determination review** (and other factors such as drugs/weapons/bodily injury) determine whether the student will remain in the **pre-incident placement** or be temporarily placed in an **interim alternative setting**.

Notes (p. 5) - Some boxes in the flowchart are marked with a ¹superscript which refer to explanatory text at the end of the document.

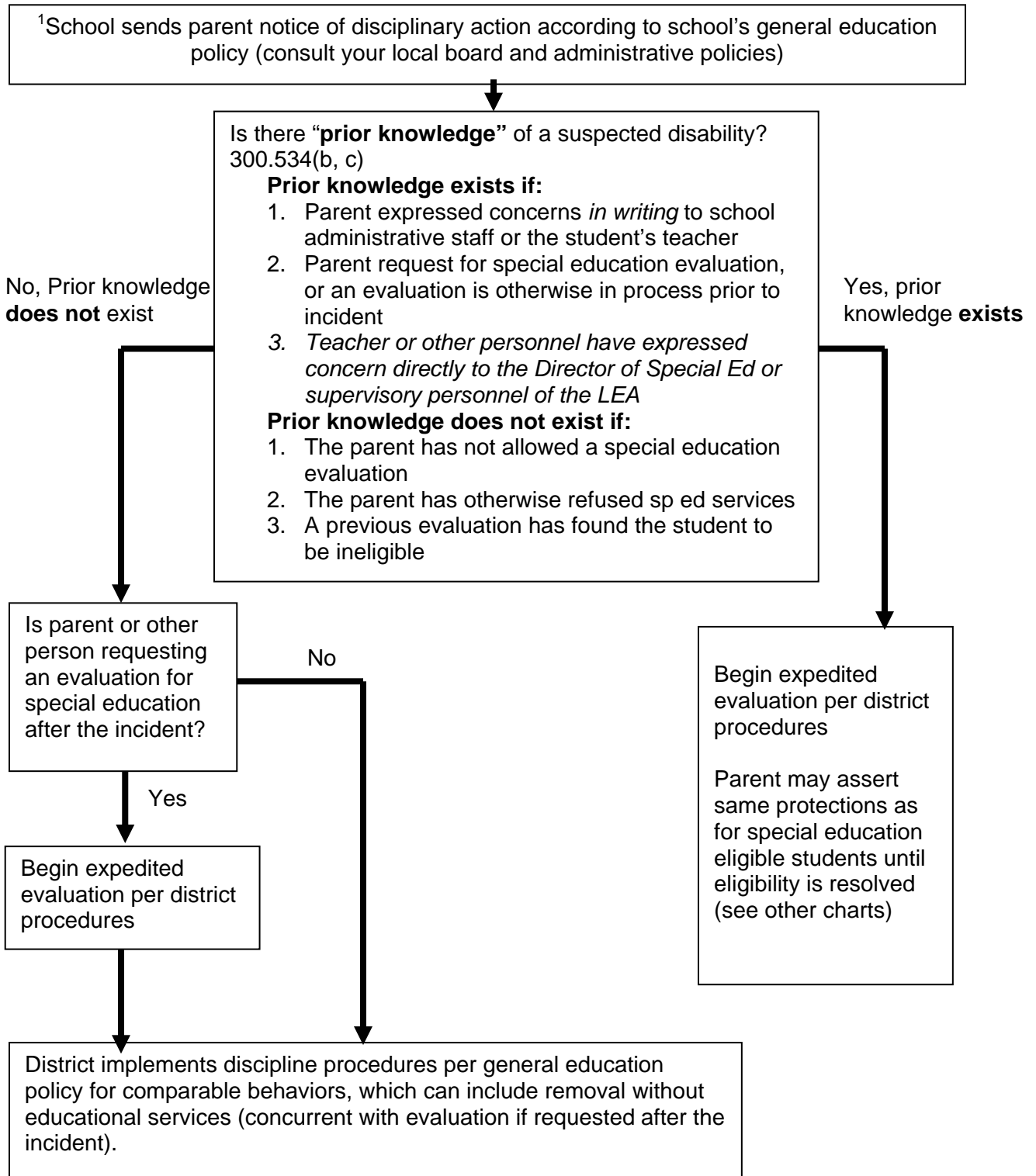
Comments on this document are appreciated and should be directed to: John Dickey, [johndickey@kentisd.org](mailto: johndickey@kentisd.org), 616-365-2280; or Jim Paris, [parisjim@michigan.gov](mailto: parisjim@michigan.gov), 517-335-0474

Start Here: General Considerations



Student Not Eligible for Special Education

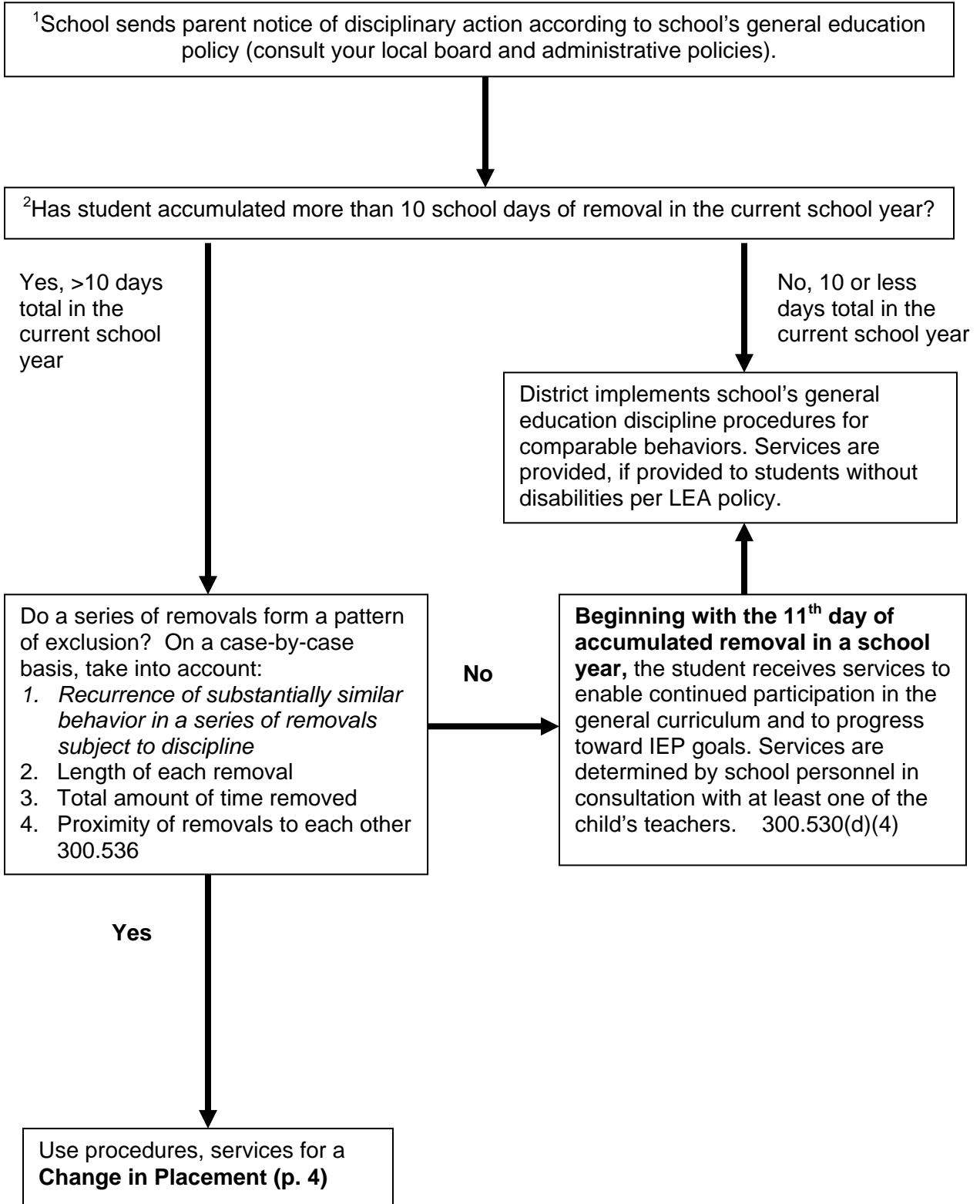
(Student is not currently referred for a special education evaluation and does not currently receive special education programs/services.)



Removals - Not A Change in Placement

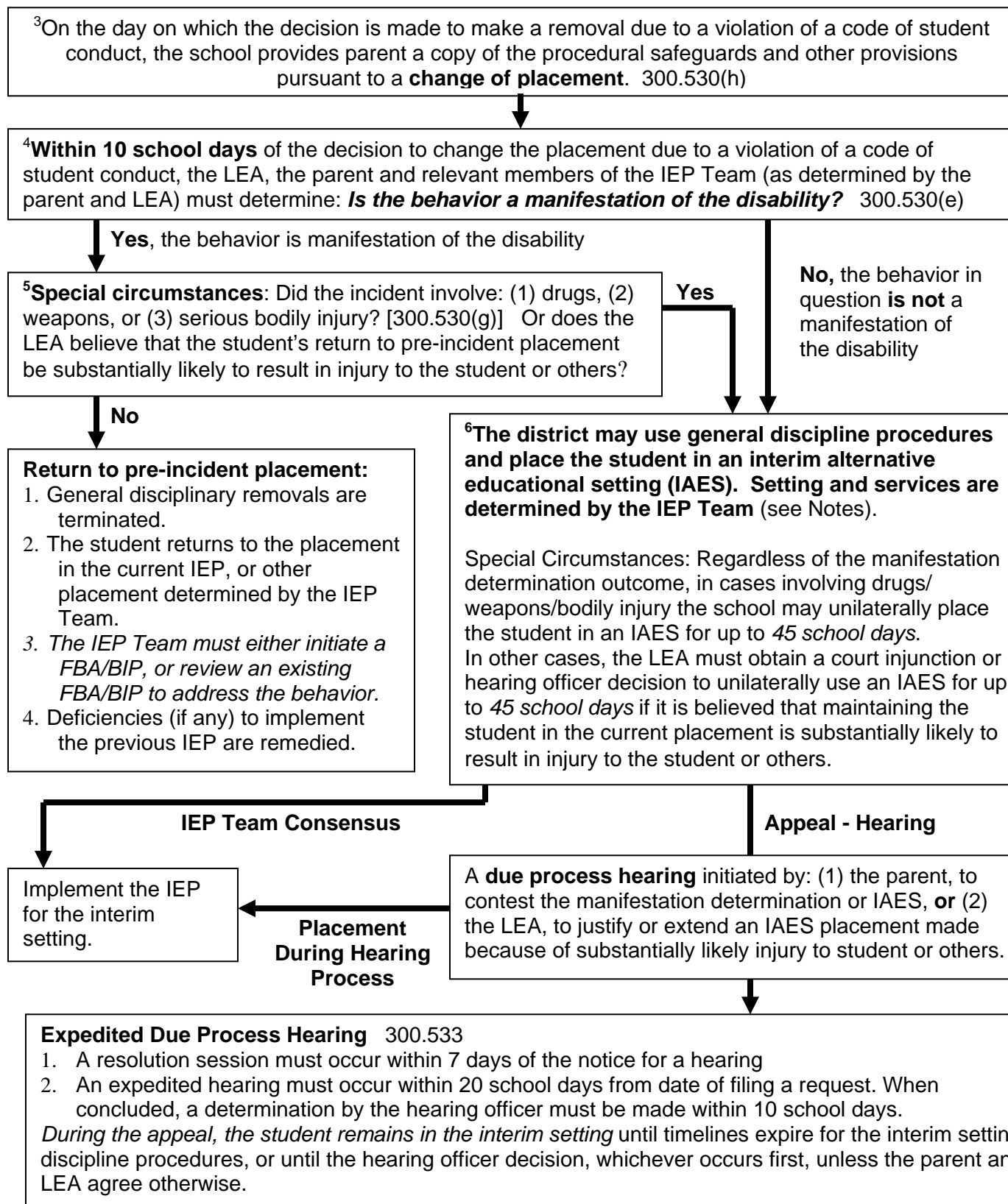
10 or less school days per incident - 300.530(b)

and student receives special education or is involved in an initial evaluation for special education



Removals - Change in Placement

11 or more days per incident, or pattern of removals constituting a change in placement – 300.536 and student receives special education or is involved in an initial evaluation for special education



Notes:

All references e.g., 300.xxx refer to the regulations for the IDEA 2004, published in the Federal Register on August 14, 2006.

¹School sends parent notice of disciplinary action according to school's general education policy (consult your local board and administrative policies).

Students who happen to be receiving special education are, first and foremost, considered to be general education students. Most discipline cases involve relatively minor incidents handled with routine policy and procedure applicable to all students. Special education regulations provide an extra measure of due process to assure that a review of possible impacts (if any) of a student's disability (if any) in a discipline incident. Application of local general discipline policy should be diligently followed, and altered only to the extent indicated by proper consideration of a disability and student's behavior history, as outlined in this document.

²Has student accumulated more than 10 school days of removal in the current school year?

It is important that complete records are maintained on all suspensions and expulsions throughout the school year in a building, for dealing with individual cases and to fulfill end-of-year state/federal reporting requirements. Consult your data management staff for available tracking assistance in the local student management system.

What **counts** as a day of suspension?

- Any part of a day suspended is a full day
- Actual days removed from school, regardless of any other conditions set by the school. For example, any day (or part of a day) missed by the student **still counts as suspension** when: (1) the student's return is contingent upon a parent meeting, or (2) a parent voluntarily takes a student home by school request.
- Days of school missed because of suspension from special IEP'd transportation. While the school cannot require parent to provide special transportation, parent transportation may be a mutually agreeable alternative.

What **does not count** as a day of suspension?

- 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. (IDEA Regulations, **Federal Register**, Vol. 71, No. 156, Monday, August 14, 2006, p. 46715)
- Nonattendance when general non-IEP'd transportation privileges are interrupted/terminated.

When are days of suspension in a school year re-set to zero?

- **Only** at the beginning of the school year. Transfers between districts in the same school year, other types of suspensions, etc. do not reset the days of suspension within a school year.

³On the day on which the decision is made to make a removal due to a violation of a code of student conduct, the school provides parent a copy of the procedural safeguards and other provisions pursuant to a **change of placement**. 300.530(h)

A key concept in discipline procedures is that a removal to an interim alternative setting for more than 10 consecutive days is a **change in placement**, triggering the same procedural safeguards

for IEP Team meetings, notice, etc. as for non-disciplinary changes in placement. Also note that notice is due “On the day a decision is made” to make a change in placement.

Special education services [300.530(d)(5)] and the interim setting (300.531) in a disciplinary case are specified before implementation in an IEP. If a dispute arises, however, there is a key difference between non-disciplinary and disciplinary cases. During due process dispute resolution in a disciplinary case (500.532), the student’s placement while the dispute is being resolved is the **interim setting** for up to 45 school days, or until timelines associated with the disciplinary action or the hearing expire (300.533). The school may also repeat hearing procedures to extend the interim setting beyond 45 school days. This is in contrast to non-discipline cases, in which the student’s placement during dispute resolution for a proposed IEP is the setting in the last-agreed upon (“pendant”) IEP (300.518).

⁴**Within 10 school days** of the decision to change the placement due to a violation of a code of student conduct, the LEA, the parent and relevant members of the IEP Team (as determined by the parent and LEA) must determine: ***Is the behavior a manifestation of the disability?*** 300.530(e)

This box refers to an IEP Team meeting (with the LEA, parent and relevant members of the IEP Team) held within **10 school days** of any decision to change the placement (single disciplinary removal of more than 10 school days, or pattern of removal) of a child with a disability because of a violation of a code of student conduct. (300.530(e)). The Team considers the relationship between the behavior in question and the student’s disability. The behavior is determined to be a manifestation of the disability **only if** there is a documented:

- A. IEP Team review of: (1) the IEP; (2) any teacher observations; and (3) relevant information supplied by the parent.
- B. Determination that **either of the following are true**:
 - 1. The conduct in question was caused by, or had a direct and substantial relationship to the student’s disability; **or**
 - 2. The conduct in question was the direct result of the LEA’s failure to implement the IEP.

⁵**Special circumstances**: Did the incident involve: (1) drugs, (2) weapons, (3) serious bodily injury? Or does the LEA believe that return to pre-incident placement be substantially likely to result in injury to the student or others?

Drugs. Violations involving drugs refer to when a student 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 SEA or a LEA.

Weapons – state and federal definitions.

State definition. The term “dangerous weapon” means a firearm, dirk, dagger, stiletto, iron bar, knife with a blade over 3 inches in length (note: see federal definition below), pocket knife opened by a mechanical device, and brass knuckles [MCL 380.1313(4)]. The definition of “firearm” in section 380.1311 refers to the definition of that term in the federal *Gun-Free Schools Act of 1994* which in turn refers to another section of federal law which defines “firearm” as:

- Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive;
- The frame or receiver of any such weapon;

- Any firearm muffler or firearm silencer; or
- Any destructive device.

Federal definition. The 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.

Serious Bodily Injury. The term “serious bodily injury” is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean 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. [615(k)(7)(D)].

Other cases: In other cases, if the LEA believes that returning the student to the pre-incident placement will likely result in injury to the student or others, the district may seek a court injunction or hearing officer decision to unilaterally place the student in an IAES.

⁶The district may use general discipline procedures and unilaterally place the student in an interim alternative educational setting (IAES). Services are determined by the IEP Team (see Notes).

The IEP Team determines services in an interim setting during a disciplinary removal which must:

- (1) Enable the child to continue to:
 - participate in the general education curriculum, although in another setting
 - to progress toward meeting the goals set out in the child’s IEP
 - appropriately progress in the general curriculum
 - advance toward IEP goals; and;
- (2) 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. [300.530(d)]