

**WAYNE COUNTY
SUSPENSION/EXPULSION GUIDELINES**

REGARDING

**THE INDIVIDUALS WITH DISABILITIES EDUCATION
ACT of 2004
(and its implementing regulations)**

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Suspension/Expulsion Guidelines Regarding the Individuals with Disabilities Education Act (IDEA) of 2004

Introduction

In addition to the due process protections required for all students by the U.S. Supreme Court in Goss v. Lopez, schools must ensure that discipline procedures used with IDEA eligible students include safeguards that take into account their respective disabilities. The actual IDEA regulatory language is included in this document as *Appendix A*. It is hoped that the following Questions & Answers serve to organize the requirements in a manageable format. While the Q & A is divided into topical sections for easier referencing, the sections are best understood when the document is reviewed in its entirety.

As a final note, school districts are cautioned that the information represents a general overview of IDEA's regulations. Actual disciplinary situations may require consultation with district legal representatives to ensure proper compliance.

Limits to days of suspension/removal

1. Q: To what extent can students with disabilities be suspended in the same exact manner as all other students?

A: For the first 10 school days of suspension in a school year there are no additional due process requirements.

[**Note:** The absence of any additional safeguards does not lessen the school's responsibility to properly implement a behavior intervention plan or behavioral strategies that may have been developed for the student by the IEP team.]

2. Q: What are the additional requirements/considerations if the student's suspensions culminate in more than 10 school days in a school year?

A: In general, the requirements/considerations can be summarized as follows:

- (i) The school district must **provide educational services** to the student during any subsequent days of removal beyond the initial 10 days in a school year (i.e., beginning on the 11th day of removal).
- (ii) School personnel must also consider whether it would be appropriate to provide the student with a **functional behavioral assessment and behavioral intervention plan**, and in some circumstances the behavioral assessment/plan will be automatically required.
- (iii) If the removals constitute a "change in placement" (see Q & A #16), the school will be required to convene a **manifestation determination review**, with the result impacting whether the removal can continue.

3. Q: Does the answer given in **iii** above mean that it is possible to suspend a student with a disability for more than 10 school days in a year without holding a manifestation determination review meeting?

A: Yes, as long as the additional days of suspension beyond the first ten do not result in a change in placement.

[**Note:** Once the student has reached 10 school days of suspension, consideration must be given to each additional suspension with respect to whether a change in placement will occur with the issuance of the suspension.]

Provision of educational services

4. Q: What is meant by the provision of "educational services" during a disciplinary removal?

A: Services that enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

5. Q: Who decides the educational services to be provided?

A: If the removal does not constitute a change in placement, then it is the responsibility of school personnel, in consultation with at least one of the student's teachers (from either regular education or special education), to decide the extent to which services are needed during the removal. If the educational services are for a removal that is a change in placement, then the IEP Team must make the decision.

[**Note:** In the latter circumstance, the IEP Team that convenes the manifestation determination review (see Q & A #19) can also be the IEP team that makes the decision regarding educational services.]

6. Q: Must the student receive credit for work completed during the provision of the educational services?

A: Yes. Otherwise, it can not be said that the student was given the opportunity to "progress."

7. Q: What coursework should the educational services address during the removal?

A: The clarifying commentary to the IDEA regulations views the general education curriculum as equating to the core curriculum requirements of each State. Thus, unless the parent/student agree to alter the curriculum offerings, the educational services for enabling the student to continue to participate in the general education curriculum would necessarily have to address the **core curriculum** that the student was enrolled in at the time of the disciplinary removal. If an additional course(s) was identified on the student's IEP, that course would also need to be addressed during the removal.

The commentary also notes that school districts are not expected to replicate every aspect of the educational services that the student would receive if in his or her normal classroom(s). For example, it is recognized that it may not be feasible for a student to receive all of the services involved in classes that utilize specialized equipment, e.g., chemistry or auto mechanics. Over a prolonged removal, these circumstances would likely impact the student's ability to adequately progress in such "hands-on" courses.

8. Q: Can the IEP Team place a student in a “home-based” program as a means of providing the educational services?

A: Yes. The clarifying commentary to the IDEA regulations states that whether a child’s home constitutes an appropriate educational setting is a decision that needs to be determined on a case by case basis. The commentary suggests consideration be given to such individual circumstances as the length of the removal, the extent to which the student previously has been removed, and the student’s individual needs and educational goals.

9. Q: Must the student be included in state and/or district-wide assessments that occur during the student’s removal?

A: Yes, according to IDEA’s clarifying commentary.

10.Q: Can parents contest the IEP Team’s decision regarding the educational services to be provided during a change in placement removal?

A: Yes, they can request a due process hearing (See Q & A #38-41).

Functional behavioral assessment and behavioral intervention plan

11.Q: What is meant by the phrase “functional behavioral assessment?”

A: Functional behavior assessment is not defined in the regulations, but is commonly understood to be a process through which data is collected and analyzed regarding a student’s inappropriate behavior to determine the function the behavior serves student. The regulations stipulate that the assessment (and the behavior intervention plan) needs to be designed to address the behavior violation so that it does not recur.

[**Note:** Wayne RESA has developed Guidelines for Conducting Functional Behavior Assessment and Developing Behavior Intervention Plans that can assist school districts in these matters.]

12.Q: When are the functional behavioral assessment and behavioral intervention plan automatically required?

A: They are required when a manifestation determination review finds the behavior to be a manifestation of the student's disability.

13.Q: When is the need for functional behavioral assessment and behavioral intervention planning to be informally considered, and then provided **if** determined appropriate?

A: When the suspensions exceeding the initial 10 days of suspension do not constitute a change placement, or if such a change occurs, the subsequent manifestation determination review does not find the behavior to be a manifestation of the student's disability.

14.Q: Must the functional behavioral assessment and behavioral intervention plan be reviewed by the IEP Team?

A: Yes.

15.Q: What if the school had previously conducted a functional behavioral assessment and developed a behavioral intervention plan for the student?

A: The IEP Team should review the behavior intervention plan and modify it as necessary to address the behavior violation.

Manifestation determination reviews

16.Q: What suspension situations necessitate a manifestation determination review?

A: Suspensions that constitute a "change in educational placement."
Such suspensions fall into the following two scenarios:

- (i) Any single school removal exceeding 10 consecutive school days.
- (ii) Multiple school removals that constitute a **pattern** because:
 - They exceed 10 days in accumulation,
 - The student's behavior is substantially similar in the various removals, and
 - Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

17.Q: When must the school take action to notify the student's parents of the situation?

A: On the day of the suspension decision that will result in a change of placement is issued. The notification must provide the parents with a copy of IDEA's procedural safeguards.

18.Q: What constitutes a manifestation determination review?

A: The student's relevant educational records, including the IEP and teacher observations, and any relevant information from the parents are reviewed to determine:

- (i) If the behavior in question is directly and substantially related to/caused by the student's disability, or
- (ii) If it is the direct result of the school's failure to implement the student's IEP.
- (iii) If **either** factor is affirmed, then the behavior is a manifestation of the student's disability.

19.Q: Who conducts the review?

A: The student's IEP Team.

[**Note:** Wayne RESA's model IEP form includes pages for addressing a manifestation determination review.]

20.Q: When must the review take place?

A: Within 10 school days of the day the suspension decision that will result in a change in placement was issued.

21.Q: What happens if the IEP Team concludes that the behavior is a manifestation of the student's disability?

A: The following actions would need to occur:

- (i) The student is returned to his/her previous placement.
- (ii) The IEP Team must conduct a functional behavioral assessment and develop/implement a behavioral intervention plan that

addresses the behavior at issue. If the student already has a behavioral intervention plan, then the IEP Team should review and modify the plan, as necessary, to address the behavior.

(iii) Any failures detected regarding the previous implementation of the student's IEP must be corrected.

22.Q: Does the reinstatement in i above hold true even if the student's behavior is one of the behaviors requiring mandatory expulsion by Michigan law?

A: Yes, **unless**:

- (i) The behavior constitutes a "special circumstance" (see Q & A #27-34);
- (ii) The school requests a due process hearing because it believes that reinstating the student is substantially likely to result in injury to the student or others (see Q & A #36 & 37); or
- (iii) The parents agree to change the student's placement (see Q & A #35).

23.Q: What happens if the IEP Team concludes that the behavior was **not** a manifestation of the student's disability?

A: The school can continue to suspend the student if such action would be similarly taken with students without disabilities. If the removal continues, then the following actions would need to occur:

- (i) The IEP Team must determine the appropriate educational services to be provided so as to enable the student to participate in the general curriculum, and to progress towards meeting his/her IEP goals.
- (ii) The student would also need to be provided with a functional behavioral assessment and behavioral intervention plan **if** such assessment/plan is determined **appropriate** by the IEP Team.

24.Q: Can parents contest the manifestation determination?

A: Yes, they can request a due process hearing (See Q & A #38-41).

25.Q: Can parents also formally argue that the school is wrong in not having considered the student's multiple removals to constitute a change in placement because of a pattern of removal (thereby necessitating the scheduling of a manifestation determination review)?

A: Yes, a due process hearing can be requested to contest the need for a manifestation determination review.

26.Q: Can more than one manifestation determination review meeting be scheduled for a student during any given school year?

A: Yes. The implementation of behavioral plans and other changes in the student's IEP may not eliminate the possibility of future school removals. If such additional school removals occur, and the removals are determined to constitute a change in placement, then another manifestation determination review must take place.

Removal by special circumstances

27.Q: What are the special circumstances that permit the school to unilaterally decide to remove a student from his or her educational placement (to an "interim alternative educational setting"-see Q & A #31) even though the behavior was found to be a manifestation of the student's disability?

A: The regulations identify the following three special circumstances:

- (i) The student carries a **weapon** to or possesses a weapon at school or at a school function.
- (ii) The student knowingly possesses or uses **illegal drugs**, or sells or solicits the sale of a **controlled substance** while at school or at a school function.
- (iii) The student has inflicted **serious bodily injury** upon another person while at school or at a school function.

28.Q: How are weapons defined?

A: IDEA utilizes the definition of a "dangerous weapon" as defined by Section 930 of Title 18 of the United States Code. This definition

states that “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” (see *Appendix B*).

29.Q: How are illegal drugs and controlled substances defined?

A: “Controlled substances” are defined as drugs or other substances identified under schedules I, II, III, IV, or V of Section 812(c) of Title 21 of the United States Code. “Illegal drugs” are defined as controlled substances except where the controlled substance is legally possessed or used under the supervision of a licensed physician or is legally possessed under other provisions of Federal law (see *Appendix C*).

30.Q: How is serious bodily injury defined?

A: IDEA utilizes the definition of “serious bodily injury” under Section 1365 of Title 18 of the United States Code. This definition states that “the term serious bodily injury means bodily injury which involves— (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty” (see *Appendix D*).

31.Q: What happens if the school does decide to “override” an affirmative manifestation finding and unilaterally removes the student because the behavior constituted one of the special circumstances?

A: The following actions would need to occur:

- (i) The student is removed to an **interim alternative educational setting** that is determined by the IEP Team.
- (ii) The removal can not exceed 45 school days, or the length of time a non-disabled student would be removed, whichever occurs first.
- (iii) The setting must allow the student to receive educational services so as to enable the student’s participation in the general curriculum, and to progress towards meeting his/her IEP goals.
- (iv) The IEP Team must conduct a functional behavioral assessment and develop/implement a behavioral intervention plan that

addresses the behavior at issue. If the student already has a behavioral intervention plan, then the IEP Team should review and modify the plan, as necessary, to address the behavior.

32.Q: Can the interim alternative educational setting extend from one school year to the next?

A: Yes. Nothing would prohibit requiring a student to finish the interim alternative educational setting in another academic year.

33.Q: Is it possible for a school to initiate the unilateral removal for a special circumstance behavior without first completing a manifestation determination review?

A: No, the manifestation determination review must be completed in all cases.

34.Q: What happens if the IEP Team does not find the special circumstance behavior to be a manifestation of the student's disability?

A: In instances where there is a non-manifestation finding it is not necessary for the school to declare a unilateral removal. Behaviors not found to be a manifestation of a student's disability can be disciplined for as long they would be for a nondisabled student (as opposed to the 45 school day limitation of unilateral removals). In other words, the authority to initiate unilateral removals due to a special circumstance was purposely given to schools as a means for overriding an affirmative manifestation finding.

Removal by parent agreement

35.Q: When parents agree to change the student's educational placement despite a finding that the behavior was a manifestation of the student's disability, what must happen?

A: That depends on how the agreement was reached. If the agreement was reached without any request for a due process hearing having been initiated in the matter, then the agreement should be reflected in either an amendment to the IEP or the development of a new IEP. If, on the other hand, a due process hearing had been requested and the agreement is reached during the required "resolution" period (see

Q & A #40), then the agreement is considered to be a **settlement agreement**. While the contents of such agreements are binding, they are not otherwise restricted by IDEA.

Removal by hearing officer

36.Q: If a special circumstance is not involved, is there any other behavioral circumstance that could result in the student's removal despite an affirmative manifestation determination?

A: Yes. If the school district believes the student's **reinstatement** in the present placement is **substantially likely to result in injury** to the student or others, it can request a due process hearing to convince a hearing officer of the need to order an interim alternative educational setting for not more than 45 school days (see Q & A # 38-41).

37.Q: If school personnel continue to believe that injury remains the likely result of reinstating the student, can the hearing officer be petitioned to extend the interim alternative educational setting for another 45 school days?

A: Yes, due process hearing requests can be repeated in these matters.

[**Note:** The school could also request such hearings to extend interim alternative educational settings that were unilaterally implemented due to "special circumstances."]

Due process hearings

38.Q: What discipline issues can be taken to a due process hearing?

A: The following matters are reviewable in a due process hearing:

- (i) Parent contention that the school has failed to recognize a pattern of removal requiring a manifestation determination;
- (ii) Parent disagreement with the IEP Team's manifestation determination finding;

- (iii) Parent disagreement with the IEP Team's determination regarding educational services/interim alternative educational setting; and
- (iv) School district contention that the student's reinstatement is substantially likely to result in injury.

39.Q: What happens with the student while the due process hearing is proceeding?

A: Unless the parents and the school agree otherwise, the student's **removal continues** along with the provision of the educational services/interim alternative educational setting. The removal can continue until the issuance of the hearing officer's decision or until the expiration of the school removal, whichever occurs first.

40.Q: What are the procedural requirements for the due process hearing?

A: The hearing would be requested by the filing of a "**due process complaint.**" The submission of such complaints and the procedures to be followed in convening the hearing are the same as established for all other special education due process hearings (see §§300.507 and 300.508 (a) through (c), and §§300.510 through 300.514-*Appendix E*) except for the following expediting requirements:

- (i) A resolution meeting is to be held between the parties within 7 calendar days of the due process complaint, unless they agree to waive this provision or they agree to use mediation instead;
- (ii) If the resolution meeting does not result in satisfactory resolution within 15 calendar days of the due process complaint, then the hearing goes forward;
- (iii) The hearing must be held within 20 school days of the due process complaint; and
- (iv) The hearing officer must render a determination within 10 school days after the hearing.

[**Note:** The regulations allow States, with some limitation, to impose different procedures for these expedited due process hearings. School districts should confer with the Michigan administrative law judge appointed to their respective cases to be clear on the specific procedures that will be followed.]

41.Q: What happens if the parents refuse to participate in the resolution meeting?

A: Lack of parent participation would be addressed in the same manner as other due process hearings, i.e., the hearing would not proceed unless the school district agreed to waive the resolution meeting. The school district may also request that the hearing officer dismiss the due process complaint due to this lack of parent participation.

Days of suspension/removal

42.Q: Do removals from the school bus constitute removals subject to all of the considerations listed above?

A: Yes, **if** transportation is an identified service on the student's IEP (i.e., special transportation). Each day of removal from special transportation is counted as a day of suspension (even if the student is able to attend school through his/her own means) unless the school district provides some alternative form of transportation.

Otherwise, the answer is no. The parents would have the same obligation to get the student to and from school as nondisabled students who are similarly suspended from the bus.

43.Q: How about situations where the student is only removed to an "in-school" suspension setting?

A: In-school suspensions would not be subjected to the above discipline considerations **if** the student is afforded the opportunity to participate in the general curriculum, continues to receive the services specified in the IEP, and continues to participate with nondisabled students to the same extent they would have without this removal.

[**Note:** The student must be able to earn credit for work completed during the in-school suspension.]

44.Q: What if the student is sent home for the day pursuant to a "send home" behavioral strategy identified in a behavior intervention plan?

A: If the behavior intervention plan is incorporated in the student's IEP, and the school is following the overall strategies specified in the plan, the Michigan Department of Education has ruled that the send home would not count as a disciplinary removal. The student must be given the opportunity to make up any missed assignments, and the send home must have no negative bearing on credit, grading, or disciplinary actions that might ensue in the future.

[**Note:** It is important that the use of a send home strategy is determined on an individual basis; its inclusion is based on the results of a functional behavior assessment; and it is implemented after less restrictive strategies have been tried with the student.]

45.Q: If a student with a disability is suspended in the middle of the school day, does that count as a half day or full day of removal?

A: MDE has ruled that partial day suspensions count as a full day of removal with respect to the requirements of IDEA 2004.

46.Q: Some school districts have attendance policies that trigger semester terminations for too many absences. How are these policies effected by IDEA 2004?

A: Although these policies often refer to the student as being dropped from enrollment rather than suspended, when they involve a student with a disability the situation must be treated as a disciplinary removal subject to all of the above considerations.

Protections for “has knowledge” students

47.Q: Do the disciplinary protections of IDEA 2004 cover any students other than those with IEPs?

A: Yes, the disciplinary protections of IDEA 2004 can be asserted by students whom the school district “has knowledge” of a disability but has not completed the evaluation/eligibility process.

48.Q: What constitutes the school district as having such knowledge?

A: The school district would be deemed to have knowledge of a disability if one of the following scenarios had occurred **before** the behavior that precipitated the disciplinary action:

- (i) The parent expressed concern about the need for special education in writing to the student's teacher or to supervisory/administrative personnel;
- (ii) The parent formally requested/consented to a special education evaluation; or
- (iii) The student's teacher, or other staff, expressed concern to the district's director of special education or other supervisory personnel about a pattern of behavior demonstrated by the student.

[**Note:** While the IDEA regulations do not elaborate on the "pattern of behavior" in **iii**, the commentary language makes it clear that it would be behavior that would lead the teacher to express the need for a special education referral.]

49.Q: Are there any exceptions in these scenarios?

A: Yes. The school district would not be deemed to have knowledge if:

- (i) The parent had previously refused to consent to an evaluation or refused special education services; or
- (ii) The student had been previously evaluated and determined not to be eligible for special education.

50.Q: If the school district is deemed to have knowledge, how should the disciplinary protections be applied to the student?

A: IDEA 2004 does not specifically address how the protections should be applied in such situations. Lacking such specificity, it would seem that the school district should:

- (i) Expedite the evaluation/IEP Team process; and
- (ii) When the suspension exceeds 10 consecutive school days, either hold any additional days of suspension in abeyance until the completion of the evaluation process or provide the student with educational services that will enable him/her to continue to participate in the general curriculum.

51.Q: What if the IEP Team determines that the student has a disability?

A: This depends on whether the IEP Team finds the behavior subject to discipline to be a manifestation of the newly identified disability. If a manifestation is determined, and none of the special circumstances exist, then the student should be reinstated in school and provided the special education services determined appropriate by the IEP Team. A functional behavior assessment and behavior intervention plan will also need to be completed for the student.

If the IEP Team does not find the behavior to be a manifestation of the disability, then the student can continue to be removed from school. The IEP Team will need to determine the educational services that will be provided for enabling the student to continue to participate in the general education curriculum and to progress toward meeting goals set forth by the team.

Parent referrals submitted after the removal is initiated

52.Q: If the school district is not deemed to have knowledge of a disability, do parents have any right to request that an initial special education evaluation be completed during the time period that the student is being removed from school?

A: Yes, and unless the school district chooses to contest the need for such an evaluation at a due process hearing, the evaluation must proceed in an expedited manner. The results of such evaluations should be handled in the same manner as described in Q & A #51.

Reporting requirements

53.Q: Are there any specific requirements for reporting the suspensions/removals issued to students with disabilities?

A: Yes. Michigan must provide the Office of Special Education Programs, U.S. Department of Education, with specific data about the number, length, and type of disciplinary removals given to each student with a disability. Local school districts are required to provide this information to MDE via the Single Record Student Database (SRSD). School districts are also required by the Michigan

Revised School Code and the policies of the Office for Safe Schools, Michigan Department of Education, to report behaviors that are subject to mandatory expulsion to the local police and to the appropriate county department of social services or county community health agency.

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Appendix A

§ 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) 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) 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) 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) 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) 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) 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)). (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) and (7))

§ 300.531 Determination of setting. The child's IEP Team determines the interim alternative educational setting for services under § 300.530(c), (d)(5), and (g). (Authority: 20 U.S.C. 1415(k)(2))

§ 300.532 Appeal. (a) *General*. The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b). (b) *Authority of hearing officer*. (1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may— (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. (c) *Expedited due*

process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506— (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met. (5) The decisions on expedited due process hearings are appealable consistent with § 300.514. (Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

§ 300.533 Placement during appeals. When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the

expiration of the time period specified in §A300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. (Authority: 20 U.S.C. 1415(k)(4)(A))

§ 300.534 Protections for children not determined eligible for special education and related services. (a)

General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred— (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if— (1) The parent of the child— (i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or (ii) Has refused services under this part; or (2) The child has been evaluated in accordance with §§ 300.300 through

300.311 and determined to not be a child with a disability under this part. (d) *Conditions that apply if no basis of knowledge.*

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section. (2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under, the evaluation must be conducted in an expedited manner. (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act. (Authority: 20 U.S.C. 1415(k)(5))

§ 300.535 Referral to and action by law enforcement and judicial authorities. (a) *Rule of construction.*

Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (b) *Transmittal of records.* (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the

child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. (2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (Authority: 20 U.S.C. 1415(k)(6))

§ 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. (Authority: 20 U.S.C. 1415(k))

§ 300.537 State enforcement mechanisms. Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not

mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States. (Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))

Appendix B

18 USC Sec. 930 01/03/05 TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES CHAPTER 44 - FIREARMS Sec. 930. Possession of firearms and
dangerous weapons in Federal facilities-STATUTE-

(a) Except as provided in subsection (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

(b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) A person who kills any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, or attempts or conspires to do such an act, shall be punished as provided in sections 1111, 1112, 1113, and 1117.

(d) Subsection (a) shall not apply to - (1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law; (2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or (3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both. (2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (d).

(f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

(g) As used in this section: (1) The term "Federal facility" means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties. (2) 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 1/2 inches in length. (3) The term "Federal court facility" means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

(h) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (e) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if

such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (e), as the case may be.

-SOURCE- (Added Pub. L. 100-690, title VI, Sec. 6215(a), Nov. 18, 1988, 102 Stat. 4361; amended Pub. L. 101-647, title XXII, Sec. 2205(a), Nov. 29, 1990, 104 Stat. 4857; Pub. L. 103-322, title VI, Sec. 60014, Sept. 13, 1994, 108 Stat. 1973; Pub. L. 104-294, title VI, Sec. 603(t), (u), Oct. 11, 1996, 110 Stat. 3506; Pub. L. 107-56, title VIII, Sec. 811(b), Oct. 26, 2001, 115 Stat. 381.)

-MISC1- AMENDMENTS 2001 - Subsec. (c). Pub. L. 107-56 struck out "or attempts to kill" after "A person who kills", inserted "or attempts or conspires to do such an act," before "shall be punished", and substituted "1113, and 1117" for "and 1113". 1996 - Subsec. (e)(2). Pub. L. 104-294, Sec. 603(t), substituted "subsection (d)" for "subsection (c)". Subsec. (g). Pub. L. 104-294, Sec. 603(u)(1), redesignated subsec. (g), related to posting notice in Federal facilities, as (h). Subsec. (h). Pub. L. 104-294, Sec. 603(u)(2), substituted "(e)" for "(d)" wherever appearing. Pub. L. 104-294, Sec. 603(u)(1), redesignated subsec. (g), related to posting notice in Federal facilities, as (h). 1994 - Subsec. (a). Pub. L. 103-322, Sec. 60014(2), substituted "(d)" for "(c)". Subsecs. (c) to (g). Pub. L. 103-322, Sec. 60014(1), (3), added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively. 1990 - Subsec. (a). Pub. L. 101-647, Sec. 2205(a)(1), inserted "(other than a Federal court facility)" after "Federal facility". Subsecs. (d), (e). Pub. L. 101-647, Sec. 2205(a)(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f). Subsec. (f). Pub. L. 101-647, Sec. 2205(a)(2), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g). Subsec. (f)(3). Pub. L. 101-647, Sec. 2205(a)(4), added par. (3). Subsec. (g). Pub. L. 101-647, Sec. 2205(a)(5), inserted "and notice of subsection (d) shall be posted conspicuously at each public entrance to each Federal court facility," after "each Federal facility," "or (d)" before "with respect to", and "or (d), as the case may be" before the period. Pub. L. 101-647, Sec. 2205(a)(2), redesignated subsec. (f) as (g). EFFECTIVE DATE OF 1990 AMENDMENT Section 2205(b) of Pub. L. 101-647 provided that: "The amendments made by subsection (a) [amending this section] shall apply to conduct engaged in after the date of the enactment

Appendix C

21 USC Sec. 812 01/03/05 -EXPCITE- TITLE 21 - FOOD AND DRUGS CHAPTER 13
- DRUG ABUSE PREVENTION AND CONTROL SUBCHAPTER I - CONTROL
AND ENFORCEMENT

Part B - Authority To Control; Standards and Schedules -HEAD- Sec. 812. Schedules of controlled substances -STATUTE-

(a) Establishment. There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

(b) Placement on schedules; findings required. Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows: (1) Schedule I. - (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision. (2) Schedule II. - (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions. (C) Abuse of the drug or other substances may lead to severe psychological or physical dependence. (3) Schedule III. - (A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II. (B) The drug or other substance has a currently accepted medical use in treatment in the United States. (C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence. (4) Schedule IV. - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III. (B) The drug or other substance has a currently accepted medical use in treatment in the United States. (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. (5) Schedule V. - (A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV. (B) The drug or other substance has a currently accepted medical use in treatment in the United States. (C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Initial schedules of controlled substances Schedules I, II, III, IV, and V shall, unless and until amended (!) pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I (a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and

salts is possible within the specific chemical designation: (1) Acetylmethadol. (2) Allylprodine. (3) Alphacetylmethadol.⁽¹²⁾ (4) Alphameprodine. (5) Alphamethadol. (6) Benzethidine. (7) Betacetylmethadol. (8) Betameprodine. (9) Betamethadol. (10) Betaprodine. (11) Clonitazene. (12) Dextromoramide. (13) Dextrorphan. (14) Diampromide. (15) Diethylthiambutene. (16) Dimenoxadol. (17) Dimepheptanol. (18) Dimethylthiambutene. (19) Dioxaphetyl butyrate. (20) Dipipanone. (21) Ethylmethylthiambutene. (22) Etonitazene. (23) Etoxeridine. (24) Furethidine. (25) Hydroxypethidine. (26) Ketobemidone. (27) Levomoramide. (28) Levophenacymorphan. (29) Morpheridine. (30) Noracymethadol. (31) Norlevorphanol. (32) Normethadone. (33) Norpipanone. (34) Phenadoxone. (35) Phenampromide. (36) Phenomorphan. (37) Phenoperidine. (38) Piritramide. (39) Propheptazine. (40) Properidine. (41) Racemoramide. (42) Trimeperidine. (b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) Acetorphine. (2) Acetyldihydrocodeine. (3) Benzylmorphine. (4) Codeine methylbromide. (5) Codeine-N-Oxide. (6) Cyprenorphine. (7) Desomorphine. (8) Dihydromorphine. (9) Etorphine. (10) Heroin. (11) Hydromorphanol. (12) Methyl-desorphine. (13) Methylhydromorphine. (14) Morphine methylbromide. (15) Morphine methylsulfonate. (16) Morphine-N-Oxide. (17) Myrophine. (18) Nicocodeine. (19) Nicomorphine. (20) Normorphine. (21) Pholcodine. (22) Thebacon. (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: (1) 3,4-methylenedioxy amphetamine. (2) 5-methoxy-3,4-methylenedioxy amphetamine. (3) 3,4,5-trimethoxy amphetamine. (4) Bufotenine. (5) Diethyltryptamine. (6) Dimethyltryptamine. (7) 4-methyl-2,5-dimethoxyamphetamine. (8) Ibogaine. (9) Lysergic acid diethylamide. (10) Marihuana. (11) Mescaline. (12) Peyote. (13) N-ethyl-3-piperidyl benzilate. (14) N-methyl-3-piperidyl benzilate. (15) Psilocybin. (16) Psilocyn. (17) Tetrahydrocannabinols.

SCHEDULE II (a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate. (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium. (3) Opium poppy and poppy straw. (4) coca⁽¹³⁾ leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph. (b) Unless specifically excepted or unless listed in another schedule, any of the following

opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation: (1) Alphaprodine. (2) Anileridine. (3) Bezitramide. (4) Dihydrocodeine. (5) Diphenoxylate. (6) Fentanyl. (7) Isomethadone. (8) Levomethorphan. (9) Levorphanol. (10) Metazocine. (11) Methadone. (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4- diphenyl butane. (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1- diphenylpropane-carboxylic acid. (14) Pethidine. (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine. (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate. (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4- carboxylic acid. (18) Phenazocine. (19) Piminodine. (20) Racemethorphan. (21) Racemorphan. (c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III (a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers. (2) Phenmetrazine and its salts. (3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers. (4) Methylphenidate. (b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system: (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid. (2) Chorexadol. (3) Glutethimide. (4) Lysergic acid. (5) Lysergic acid amide. (6) Methyprylon. (7) Phencyclidine. (8) Sulfondiethylmethane. (9) Sulfonethylmethane. (10) Sulfonmethane. (c) Nalorphine. (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof: (1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium. (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts. (3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium. (4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (8) Not

more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. (e) Anabolic steroids.

SCHEDULE IV (1) Barbital. (2) Chloral betaine. (3) Chloral hydrate. (4) Ethchlorvynol. (5) Ethinamate. (6) Methohexital. (7) Meprobamate. (8) Methylphenobarbital. (9) Paraldehyde. (10) Petrichloral. (11) Phenobarbital.

SCHEDULE V Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone: (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams. (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams. (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams. (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams. - SOURCE- (Pub. L. 91-513, title II, Sec. 202, Oct. 27, 1970, 84 Stat. 1247; Pub. L. 95-633, title I, Sec. 103, Nov. 10, 1978, 92 Stat. 3772; Pub. L. 98-473, title II, Secs. 507(c), 509(b), Oct. 12, 1984, 98 Stat. 2071, 2072; Pub. L. 99-570, title I, Sec. 1867, Oct. 27, 1986, 100 Stat. 3207-55; Pub. L. 99-646, Sec. 84, Nov. 10, 1986, 100 Stat. 3619; Pub. L. 101-647, title XIX, Sec. 1902(a), Nov. 29, 1990, 104 Stat. 4851.)

-MISC1- AMENDMENTS 1990 - Subsec. (c). Pub. L. 101-647 added item (e) at end of schedule III. 1986 - Subsec. (c). Pub. L. 99-646 amended schedule II(a)(4) generally. Prior to amendment, schedule II(a)(4) read as follows: "Coca leaves (except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed); cocaine, its salts, optical and geometric isomers, and salts of isomers; and ecgonine, its derivatives, their salts, isomers, and salts of isomers." Pub. L. 99-570 amended schedule II(a)(4) generally. Prior to amendment, schedule II(a)(4) read as follows: "Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine." 1984 - Subsec. (c). Pub. L. 98-473, Sec. 507(c), in schedule II(a)(4) added applicability to cocaine and ecgonine and their salts, isomers, etc. Subsec. (d). Pub. L. 98-473, Sec. 509(b), struck out subsec. (d) which related to authority of Attorney General to except stimulants or depressants containing active medicinal ingredients. 1978 - Subsec. (d)(3). Pub. L. 95-633 added cl. (3). EFFECTIVE DATE OF 1990 AMENDMENT Amendment by Pub. L. 101-647 effective 90 days after Nov. 29, 1990, see section 1902(d) of Pub. L. 101-647, set out as a note under section 802 of this title. EFFECTIVE DATE OF 1978 AMENDMENT Amendment by Pub. L. 95-633 effective on date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of this title. CONGRESSIONAL FINDING; EMERGENCY SCHEDULING OF GHB IN CONTROLLED SUBSTANCES ACT Pub. L. 106-172, Secs. 2, 3(a), Feb. 18, 2000,

114 Stat. 7, 8, provided that: "SEC. 2. FINDINGS. "Congress finds as follows: "(1) Gamma hydroxybutyric acid (also called G, Liquid X, Liquid Ecstasy, Grievous Bodily Harm, Georgia Home Boy, Scoop) has become a significant and growing problem in law enforcement. At least 20 States have scheduled such drug in their drug laws and law enforcement officials have been experiencing an increased presence of the drug in driving under the influence, sexual assault, and overdose cases especially at night clubs and parties. "(2) A behavioral depressant and a hypnotic, gamma hydroxybutyric acid ('GHB') is being used in conjunction with alcohol and other drugs with detrimental effects in an increasing number of cases. It is difficult to isolate the impact of such drug's ingestion since it is so typically taken with an ever-changing array of other drugs and especially alcohol which potentiates its impact. "(3) GHB takes the same path as alcohol, processes via alcohol dehydrogenase, and its symptoms at high levels of intake and as impact builds are comparable to alcohol ingestion/intoxication. Thus, aggression and violence can be expected in some individuals who use such drug. "(4) If taken for human consumption, common industrial chemicals such as gamma butyrolactone and 1,4-butanediol are swiftly converted by the body into GHB. Illicit use of these and other GHB analogues and precursor chemicals is a significant and growing law enforcement problem. "(5) A human pharmaceutical formulation of gamma hydroxybutyric acid is being developed as a treatment for cataplexy, a serious and debilitating disease. Cataplexy, which causes sudden and total loss of muscle control, affects about 65 percent of the estimated 180,000 Americans with narcolepsy, a sleep disorder. People with cataplexy often are unable to work, drive a car, hold their children or live a normal life. "(6) Abuse of illicit GHB is an imminent hazard to public safety that requires immediate regulatory action under the Controlled Substances Act (21 U.S.C. 801 et seq.). "SEC. 3. EMERGENCY SCHEDULING OF GAMMA HYDROXYBUTYRIC ACID AND LISTING OF GAMMA BUTYROLACTONE AS LIST I CHEMICAL. "(a) Emergency Scheduling of GHB. - "(1) In general. - The Congress finds that the abuse of illicit gamma hydroxybutyric acid is an imminent hazard to the public safety. Accordingly, the Attorney General, notwithstanding sections 201(a), 201(b), 201(c), and 202 of the Controlled Substances Act [21 U.S.C. 811(a)-(c), 812], shall issue, not later than 60 days after the date of the enactment of this Act [Feb. 18, 2000], a final order that schedules such drug (together with its salts, isomers, and salts of isomers) in the same schedule under section 202(c) of the Controlled Substances Act as would apply to a scheduling of a substance by the Attorney General under section 201(h)(1) of such Act (relating to imminent hazards to the public safety), except as follows: "(A) For purposes of any requirements that relate to the physical security of registered manufacturers and registered distributors, the final order shall treat such drug, when the drug is manufactured, distributed, or possessed in accordance with an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)] (whether the exemption involved is authorized before, on, or after the date of the enactment of this Act [Feb. 18, 2000]), as being in the same schedule as that recommended by the Secretary of Health and Human Services for the drug when the drug is the subject of an authorized investigational new drug application (relating to such section 505(i)). The recommendation referred to in the preceding sentence is contained in the first paragraph of the letter transmitted on May 19, 1999, by such Secretary (acting through the Assistant Secretary for Health) to the Attorney

General (acting through the Deputy Administrator of the Drug Enforcement Administration), which letter was in response to the letter transmitted by the Attorney General (acting through such Deputy Administrator) on September 16, 1997. In publishing the final order in the Federal Register, the Attorney General shall publish a copy of the letter that was transmitted by the Secretary of Health and Human Services.

"(B) In the case of gamma hydroxybutyric acid that is contained in a drug product for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] (whether the application involved is approved before, on, or after the date of the enactment of this Act [Feb. 18, 2000]), the final order shall schedule such drug in the same schedule as that recommended by the Secretary of Health and Human Services for authorized formulations of the drug. The recommendation referred to in the preceding sentence is contained in the last sentence of the fourth paragraph of the letter referred to in subparagraph (A) with respect to May 19, 1999.

"(2) Failure to issue order. - If the final order is not issued within the period specified in paragraph (1), gamma hydroxybutyric acid (together with its salts, isomers, and salts of isomers) is deemed to be scheduled under section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)] in accordance with the policies described in paragraph (1), as if the Attorney General had issued a final order in accordance with such paragraph."

PLACEMENT OF PIPRADROL AND SPA IN SCHEDULE IV TO CARRY OUT OBLIGATION UNDER CONVENTION ON PSYCHOTROPIC SUBSTANCES

Section 102(c) of Pub. L. 95-633 provided that: "For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1-dimethylamino-1,2-diphenylethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substances Act [this section and section 811 of this title], place such drugs in schedule IV of such Act [see subsec. (c) of this section]." Provision of section 102(c) of Pub. L. 95-633, set out above, effective on the date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of this title.

-FOOTNOTE- (1) Revised schedules are published in the Code of Federal Regulations, Part 1308 of Title 21, Food and Drugs. (!2) So in original. Probably should be "Alphacetylmethadol." (!3) So in original. Probably should be capitalized.

Appendix D

18 USC Sec. 1365 01/03/05 TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES CHAPTER 65 - MALICIOUS MISCHIEF -HEAD- Sec. 1365.
Tampering with consumer products -STATUTE-

(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall - (1) in the case of an attempt, be fined under this title or imprisoned not more than ten years, or both; (2) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both; (3) if serious bodily injury to any individual results, be fined under this title or imprisoned not more than twenty years, or both; and (4) in any other case, be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or foreign commerce, shall be fined under this title or imprisoned not more than three years, or both.

(c)(1) Whoever knowingly communicates false information that a consumer product has been tainted, if such product or the results of such communication affect interstate or foreign commerce, and if such tainting, had it occurred, would create a risk of death or bodily injury to another person, shall be fined under this title or imprisoned not more than five years, or both. (2) As used in paragraph (1) of this subsection, the term "communicates false information" means communicates information that is false and that the communicator knows is false, under circumstances in which the information may reasonably be expected to be believed.

(d) Whoever knowingly threatens, under circumstances in which the threat may reasonably be expected to be believed, that conduct that, if it occurred, would violate subsection (a) of this section will occur, shall be fined under this title or imprisoned not more than five years, or both.

(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined under this title or imprisoned not more than ten years, or both.

(f)(1) Whoever, without the consent of the manufacturer, retailer, or distributor, intentionally tampers with a consumer product that is sold in interstate or foreign commerce by knowingly placing or inserting any writing in the consumer product, or in the container for the consumer product, before the sale of the consumer product to any consumer shall be fined under this title, imprisoned not more than 1 year, or both. (2) Notwithstanding the provisions of paragraph (1), if any person commits a violation of this subsection after a prior conviction under this section becomes final, such person shall be fined under this title, imprisoned for not more than 3 years, or both. (3) In this subsection, the term "writing" means any form of representation or communication, including hand-bills, notices, or advertising, that contain letters, words, or pictorial representations.

(g) In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture,

respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

(h) As used in this section - (1) the term "consumer product" means - (A) any "food", "drug", "device", or "cosmetic", as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or (B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use; (2) the term "labeling" has the meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m)); (3) the term "serious bodily injury" means bodily injury which involves - (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and (4) the term "bodily injury" means - (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary.

-SOURCE- (Added Pub. L. 98-127, Sec. 2, Oct. 13, 1983, 97 Stat. 831; amended Pub. L. 101-647, title XXXV, Sec. 3544, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), (O), (Q), (S), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 107-307, Sec. 2, Dec. 2, 2002, 116 Stat. 2445.) -COD- CODIFICATION Another section 1365 was renumbered section 1366 of this title. -MISC1- AMENDMENTS 2002 - Subsecs. (f) to (h). Pub. L. 107-307 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. 1994 - Subsec. (a)(1). Pub. L. 103-322, Sec. 330016(1)(O), substituted "fined under this title" for "fined not more than \$25,000". Subsec. (a)(2), (3). Pub. L. 103-322, Sec. 330016(1)(S), substituted "fined under this title" for "fined not more than \$100,000". Subsec. (a)(4). Pub. L. 103-322, Sec. 330016(1)(Q), substituted "fined under this title" for "fined not more than \$50,000". Subsec. (b). Pub. L. 103-322, Sec. 330016(1)(L), substituted "fined under this title" for "fined not more than \$10,000". Subsecs. (c)(1), (d), (e). Pub. L. 103-322, Sec. 330016(1)(O), substituted "fined under this title" for "fined not more than \$25,000". 1990 - Subsec. (g)(1)(A). Pub. L. 101-647 inserted opening quotation marks before "device". SHORT TITLE OF 2002 AMENDMENT Pub. L. 107-307, Sec. 1, Dec. 2, 2002, 116 Stat. 2445, provided that: "This Act [amending this section] may be cited as the 'Product Packaging Protection Act of 2002'." SHORT TITLE Section 1 of Pub. L. 98-127 provided: "That this Act [enacting this section and section 155A of Title 35, Patents] may be cited as the 'Federal Anti-Tampering Act'."

Appendix E

§ 300.507 Filing a due process complaint. (a)

General. (1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section. (b) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if— (1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1415(b)(6))

§ 300.508 Due process complaint. (a) *General.* (1)

The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process

complaint must forward a copy of the due process complaint to the SEA. (b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include— (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. (c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. (d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section. (2) Within five days of receipt of

notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if— (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. (4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint. (e) *LEA response to a due process complaint.* (1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes— (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure,

assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) A description of the other factors that are relevant to the agency's proposed or refused action. (2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate. (f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§ 300.509 Model forms. (a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms. (b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b)

for filing a State complaint. (Authority: 20 U.S.C. 1415(b)(8))

§ 300.510 Resolution process. (a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that— (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. (2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if— (i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in § 300.506. (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. (b) *Resolution period.* (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may

occur. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (c) *Adjustments to 30-day resolution period.* The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) If both parties

agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is— (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537. (e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution. (Authority: 20 U.S.C. 1415(f)(1)(B))

§ 300.511 Impartial due process hearing. (a)

General. Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510. (b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the SEA or the

public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA. (c) *Impartial hearing officer.* (1) At a minimum, a hearing officer— (i) Must not be— (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. (3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. (d) *Subject matter of due process hearings.* The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise. (e) *Timeline for*

requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law. (f) *Exceptions to the timeline.* The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to— (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. (Approved by the Office of Management and Budget under control number 1820-0600) (Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D))

§ 300.512 Hearing rights.

(a) *General.* Any party to a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to— (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the

introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. (b) *Additional disclosure of information.* (1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. (c) *Parental rights at hearings.* Parents involved in hearings must be given the right to— (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents. (Authority: 20 U.S.C. 1415(f)(2), 1415(h))

§ 300.513 Hearing decisions. (a) *Decision of hearing officer on the provision of FAPE.* (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received

FAPE must be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies— (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536. (b) *Construction clause.* Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available. (c) *Separate request for a due process hearing.* Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (d) *Findings and decision to advisory panel and general public.* The public agency, after deleting any personally identifiable information, must— (1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and (2) Make those findings and decisions available to the public. (Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§ 300.514 Finality of decision; appeal; impartial review. (a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516. (b) *Appeal of decisions; impartial review.* (1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must— (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. (c) *Findings and decision to advisory panel and general public.* The SEA, after deleting any personally identifiable information, must— (1) Transmit the findings and

decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.167; and (2) Make those findings and decisions available to the public. (d) *Finality of review decision.* The decision made by the reviewing official is final unless a party brings a civil action under § 300.516. (Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§ 300.515 Timelines and convenience of hearings and reviews.

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)— (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review— (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. (Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

§ 300.516 Civil action. (a) *General.* Any party aggrieved by the findings and decision made under §§ 300.507 through 300.513 or §§

300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under § 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (b) *Time limitation.* The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law. (c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court— (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate. (d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy. (e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990,

title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

§ 300.517 Attorneys' fees.

(a) *In general.* (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to— (i) The prevailing party who is the parent of a child with a disability; (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (2) Nothing in this subsection shall be construed to affect section 327 of the District of

Columbia Appropriations Act, 2005. (b) *Prohibition on use of funds.* (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part. (2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act. (c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following: (1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph. (2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if— (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (B) The offer is not accepted within 10 days; and (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. (ii) Attorneys' fees may not

be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506. (iii) A meeting conducted pursuant to § 300.510 shall not be considered— (A) A meeting convened as a result of an administrative hearing or judicial action; or (B) An administrative hearing or judicial action for purposes of this section. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that— (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due

process request notice in accordance with § 300.508. (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act. (Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

§ 300.518 Child's status during proceedings. (a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special

education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency. (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section. (Authority: 20 U.S.C. 1415(j))



Wayne RESA

33500 Van Born Road
P.O. Box 807
Wayne, MI 48184-2497
734.334.1300
734.334.1620 FAX
www.resa.net

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