

Discipline – Sec. 615(k)
Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)

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<p>weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or</p> <p>(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.</p> <p>(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A) -</p> <p>(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or</p> <p>(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.</p> <p>(2) AUTHORITY OF HEARING OFFICER</p> <p>A hearing officer under this section may order</p>	<p>to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.</p> <p>(D) SERVICES- A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--</p> <p>(i) continue to receive educational services, as provided in section 612(a)(1), 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</p> <p>(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p>	

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<p>a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer –</p> <p>(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;</p> <p>(B) considers the appropriateness of the child's current placement;</p> <p>(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and</p> <p>(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).</p> <p>(3) DETERMINATION OF SETTING</p> <p>(A) IN GENERAL The alternative educational setting described</p>		

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<p>in paragraph (1)(A)(ii) shall be determined by the IEP Team.</p> <p>(B) ADDITIONAL REQUIREMENTS Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall -</p> <p style="padding-left: 20px;">(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and</p> <p style="padding-left: 20px;">(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.</p> <p>(4) MANIFESTATION DETERMINATION REVIEW</p> <p>(A) IN GENERAL If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a</p>	<p>(E) MANIFESTATION DETERMINATION-</p> <p>(i) IN GENERAL- Except as provided in subparagraph (B), 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 local</p>	

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<p>disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children -</p> <p>(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and</p> <p>(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.</p> <p>(B) INDIVIDUALS TO CARRY OUT REVIEW A review described in subparagraph(A) shall be conducted by the IEP Team and other qualified personnel.</p> <p>(C) CONDUCT OF REVIEW In carrying out a review described in subparagraph (A), the IEP Team may</p>	<p>educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall 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--</p> <p>(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or</p> <p>(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.</p> <p>(ii) MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.</p> <p>(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION- If the local educational agency, the parent, and relevant members</p>	

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<p>determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team -</p> <p>(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including -</p> <p style="padding-left: 40px;">(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;</p> <p style="padding-left: 40px;">(II) observations of the child; and</p> <p style="padding-left: 40px;">(III) the child's IEP and placement;</p> <p style="padding-left: 40px;">and</p> <p>(ii) then determines that -</p> <p style="padding-left: 40px;">(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;</p> <p style="padding-left: 40px;">(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and</p> <p style="padding-left: 40px;">(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.</p>	<p>of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--</p> <p>(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);</p> <p>(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and</p> <p>(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.</p> <p>(G) SPECIAL CIRCUMSTANCES- School personnel may remove a student to an interim alternative educational setting for</p>	

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	<p>not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--</p> <p>(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;</p> <p>(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or</p> <p>(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.</p> <p>(H) NOTIFICATION- Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.</p> <p>(2) DETERMINATION OF SETTING- The</p>	

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	<p>interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.</p> <p>(3) APPEAL-</p> <p>(A) IN GENERAL- The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.</p> <p>(B) AUTHORITY OF HEARING OFFICER-</p> <p>(i) IN GENERAL- A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).</p> <p>(ii) CHANGE OF PLACEMENT ORDER- In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--</p> <p>(I) return a child with a disability to the placement from which the child was</p>	

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<p>(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY</p> <p>(A) IN GENERAL If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title.</p> <p>(B) ADDITIONAL REQUIREMENT If the public agency initiates disciplinary</p>	<p>removed; or (II) order a change in placement of a 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 such child is substantially likely to result in injury to the child or to others.</p>	

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<p>procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.</p> <p>(6) PARENT APPEAL (A) IN GENERAL</p> <p>(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.</p> <p>(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.</p> <p>(B) REVIEW OF DECISION</p> <p>(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).</p> <p>(ii) In reviewing a decision under paragraph</p>		

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<p>(1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).</p> <p>(7) PLACEMENT DURING APPEALS (A) IN GENERAL When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.</p> <p>(B) CURRENT PLACEMENT If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed</p>	<p>(4) PLACEMENT DURING APPEALS- When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—</p> <p>(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and (B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.</p>	

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<p>change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational, setting), except as provided in subparagraph (C).</p> <p>(C) EXPEDITED HEARING</p> <p>(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.</p> <p>(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).</p> <p>(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES</p> <p>(A) IN GENERAL A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violated any rule or</p>	<p>(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES-</p> <p>(A) IN 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 violates a code of student conduct, may assert any of the</p>	

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<p>code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.</p> <p>(B) BASIS OF KNOWLEDGE A local educational agency shall be deemed to have knowledge that a child is a child with a disability if -</p> <ul style="list-style-type: none"> (i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services; (ii) the behavior or performance of the child demonstrates the need for such services; (iii) the parent of the child has requested an evaluation of the child pursuant to section 1414 of this title; or (iv) the teacher of the child, or other personnel of the local educational agency, has 	<p>protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.</p> <p>(B) BASIS OF KNOWLEDGE- A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--</p> <ul style="list-style-type: none"> (i) the parent of the child has 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; (ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly 	

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<p>expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.</p> <p>(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE</p> <p>(i) In general If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).</p> <p>(ii) Limitations</p>	<p>to the director of special education of such agency or to other supervisory personnel of the agency.</p> <p>(C) EXCEPTION- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.</p> <p>(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE-</p> <p>(i) IN GENERAL- If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).</p> <p>(ii) LIMITATIONS- If a request is made for an evaluation of a child during the time period in</p>	

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<p>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 paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. 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 shall provide special education and related services in accordance with the provisions of this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.</p> <p>(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (A) Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent 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.</p>	<p>which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. 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 shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.</p> <p>(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES- (A) RULE OF CONSTRUCTION- Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by</p>	

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<p>(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.</p> <p>(10) DEFINITIONS For purposes of this subsection, the following definitions apply:</p> <p>(A) CONTROLLED SUBSTANCE The term "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)).</p> <p>(B) ILLEGAL DRUG The term "illegal drug" - (i) means a controlled substance; but (ii) does not include such a 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</p>	<p>a child with a disability.</p> <p>(B) TRANSMITTAL OF RECORDS- An agency reporting a crime committed by a child with a disability shall 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.</p> <p>(7) DEFINITIONS- In this subsection:</p> <p>(A) CONTROLLED SUBSTANCE- The term `controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).</p> <p>(B) ILLEGAL DRUG- The term `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.</p>	

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<p>(21 U.S.C. 801 et seq.) or under any other provision of Federal law.</p> <p>(C) SUBSTANTIAL EVIDENCE The term "substantial evidence" means beyond a preponderance of the evidence.</p> <p>(D) WEAPON The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18.</p>	<p>(C) WEAPON- The term `weapon' has the meaning given the term `dangerous weapon' under section 930(g)(2) of title 18, United States Code.</p> <p>(D) SERIOUS BODILY INJURY- The term `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.</p>	

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