

Discipline Procedures for Students with Disabilities



August 2018

Introduction

The following document is designed to provide a graphical explanation of the laws and regulations pertaining to student discipline in the Individuals with Disabilities Education Act 2004 and its implementing regulations at 34 CFR §300 et.seq., August 14, 2006, as well as to assist with implementation of the requirements of Section 504 of the Rehabilitation Act of 1973.

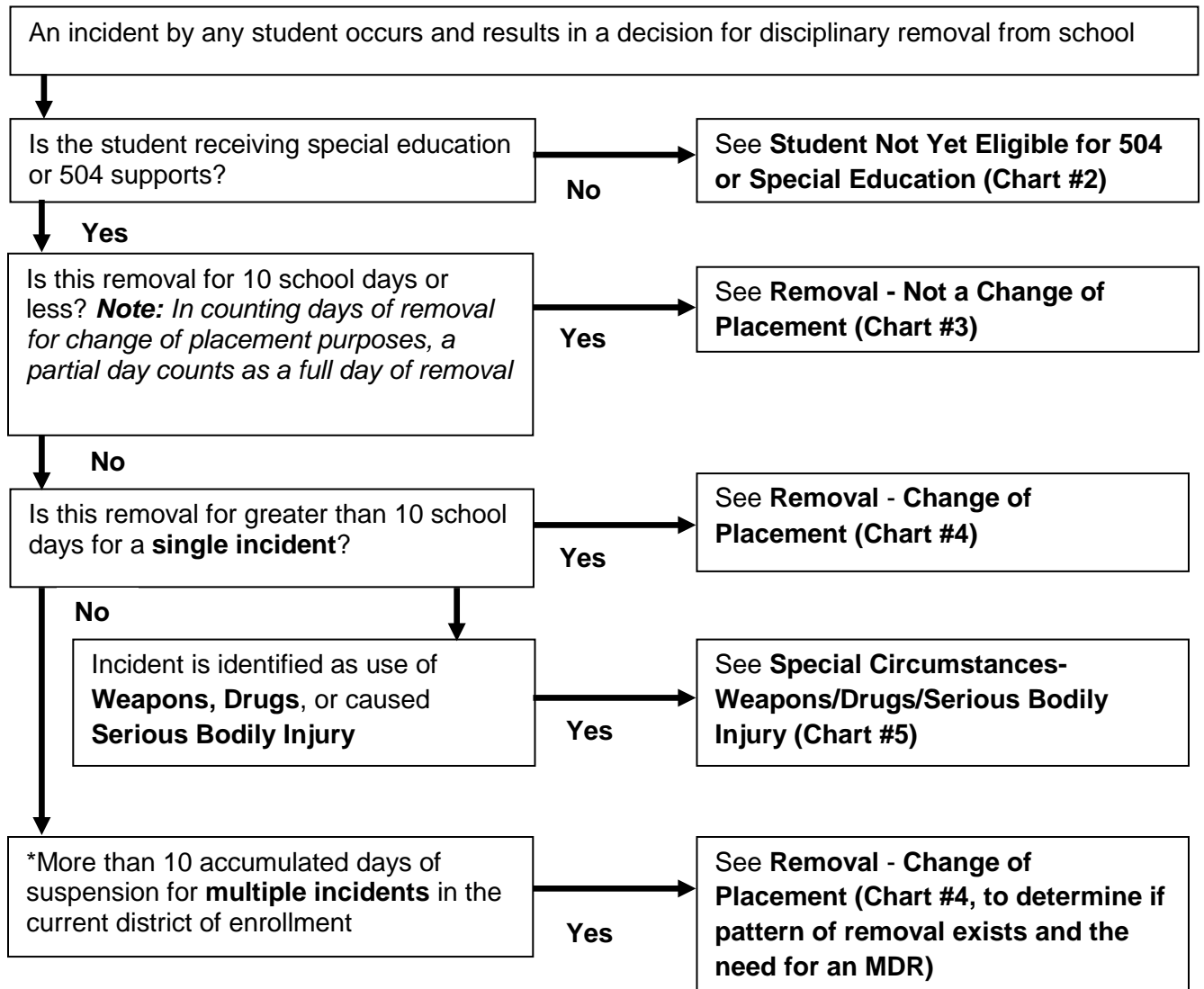
All students are general education students first, although some may receive additional services or supports due to a disability. Most discipline cases involve relatively minor incidents handled with routine policies and procedures, which are applicable to all students. Special education and 504 regulations provide an “extra measure of due process” to assure a review of possible impacts of a student’s disability in a discipline incident. *Application of local general discipline policy should be diligently followed and altered only to the extent indicated by proper consideration of a disability and student’s behavior history as outlined in this document.*

Regulatory compliance issues are minimized, and student progress is best achieved with the documented use of scientifically based positive behavior support techniques and procedures that avoid the removal of a student from school.

The flowcharts contained in this document give the general sequence of events and timelines associated with the extra measure of due process when considering a student’s disability in the school discipline process. Some limited citations are provided to guide schools and districts to further material in the IDEA regulations. In the more serious cases, a district may prefer to contact a school or special education attorney. The following charts and explanations are included in this document:

- **General Considerations (chart #1)** – A guide to determine which additional section of the document is appropriate for the student, based on the student’s status and disciplinary event.
- **Student Not Eligible for Special Education or 504 (chart #2)** - Even when a student has not been identified as having a disability and is not currently receiving additional services, the district is still responsible to consider the existence of “prior knowledge” regarding a possible disability.
- **Removals - Not A Change of Placement (chart #3)** – These are defined as a single removal of 10 or less school days, or a series of removals totaling 10 or less school days, that do not constitute a pattern.
- **Removals - Change of Placement (chart #4)** - Change of placement is a key concept for lengthy disciplinary exclusions and is defined as either a single removal of more than 10 school days or an ongoing pattern of short-term removals that total more than 10 school days.
- **Special Circumstances – Drugs/Weapons/Serious Bodily Injury (chart #5)** – Describes and outlines the procedures and additional placement authority that schools have to deal with in such cases.

General Considerations: Chart #1



Student Rights in the Discipline Process:

All students have certain substantive and procedural rights in the discipline process:

- Notice of alleged violation of code of conduct, and the basis for the allegation
- Opportunity to explain
- Notice of the proposed disciplinary action
- Sanctions “fit” the degree of seriousness of the infraction
- Right to hearing if sanction involves long-term suspension or expulsion

Definitions:

Interim Alternative Educational Setting (IAES): Given special circumstances discussed below, school personnel may unilaterally remove a student to an IAES for not more than 45 school days, even if the behavior was a manifestation of the student's disability. This is a right of the district in the event of incidents as defined by federal rule.

However, the IEP team has the responsibility at all times to review the student's needs and determine appropriate placement. Districts are cautioned not to use the 45 day placement as a formula for removal of students experiencing discipline issues, as determining individualized programs is always the responsibility of the IEP team.

Manifestation of the Disability 300.530(e): Within *10 school days* of any decision to change placement due to a violation of a code of student conduct, the IEP team including a representative of the district, a parent/guardian or surrogate parent, and other relevant members of the IEP Team, will meet to determine whether the incident was a manifestation of the student's disability. During a manifestation determination review meeting, the Team must consider the relationship between the behavior in question and the student's disability.

The behavior is determined to be a manifestation of the disability *only if* there is a documented:

1. IEP Team review of:
 - a. the IEP,
 - b. teacher anecdotal observations and input,
 - c. relevant information supplied by the parent, and
 - d. other relevant information held by the district or provided by the parent.
2. Determination that *either of the following are true*:
 - a. The conduct in question was caused by, or had a direct and substantial relationship to the student's disability, whether documented or undocumented; *or*
 - b. The conduct in question was the direct result of the district's failure to implement the IEP, including the Positive Behavior Support Plan (PBSP).

MI Mandatory Expulsion: MI law, MCL §380.1311(2), requires that a school board shall expel a student permanently from the district if the student commits any of the following:

- Possession, in a weapon-free school zone, of a weapon that constitutes a dangerous weapon (see definition below)
- Commits arson in a school building or on school grounds
- Commits criminal sexual conduct in a school building or on school grounds

If the student with a disability is expelled under MI Mandatory Expulsion statute, the district must follow procedures for a change of placement and provide FAPE, unless the behavior was determined to be a manifestation of the student's disability. If the incident meets the federal rules for a weapon, drugs or serious bodily injury, then follow procedures for special circumstances and IAES.

Pattern of Removals/Behavior: A district administrator and the student's teacher are required to determine whether a pattern of removals, which amount to more than 10 days in a school year, constitutes a "change of placement". §300.536

All of the following factors must be considered in any decision regarding a pattern:

- Recurrence of substantially similar behavior in a series of removals subject to discipline
- Length of each removal
- Total amount of time removed
- Proximity of removals to each other

Prior Knowledge: Even when a student has not been identified as having a disability and is not receiving additional services, the district is still responsible to consider the existence of “prior knowledge” of a possible disability when considering issues related to a change of placement.

Prior knowledge exists if:

1. A parent expressed concerns *in writing* to school administrative staff or the student's teacher
2. Parent request for special education evaluation, or an evaluation is otherwise in process prior to incident
3. *Teacher or other personnel have expressed concern directly to the Director of Special Education or supervisory personnel*

Prior knowledge does not exist if:

1. The parent has not allowed a special education evaluation
2. The parent has otherwise refused special education services
3. A previous evaluation has found the student to be ineligible

Provision of FAPE: *Beginning with the 11th day of removals in a school year*, the student with an IEP shall receive educational services designed to enable continued participation in the general curriculum and to progress toward annual IEP goals.

Services are determined by:

- Not a change of placement - school personnel in consultation with at least one of the child's teachers
- Change of placement - the IEP team, 300.530(d)(4)

Resources for procedures and documentation for the provision of such services can be found at the Kent ISD website under Special Education (Guidelines, Manuals & Forms).

Removals - Not A Change of Placement:

- A single removal of 10 or less school days or
- A series of removals totaling 10 nonconsecutive school days or less, in a school year

A series of removals may subsequently require the provision of educational services if at any time during the course of a school year the days of removal accumulates to greater than 10 nonconsecutive school days and school staff have determined the removals are NOT a “pattern of behavior/removal”.

Removals - Change of Placement:

- A single removal for more than 10 school days or
- A series of removals that constitute a pattern and which total more than 10 nonconsecutive school days

When school staff have determined a change of placement, it is then the IEP Team's responsibility to determine the relationship between a student's disability and the behavior precipitating a disciplinary action, through a manifestation determination review.

Return to Pre-incident Placement: Unless there are special circumstances, as defined below, if the student's behavior is determined to be a manifestation of the disability, the student must return to the pre-incident placement:

1. General disciplinary removals are terminated.
2. The student returns to the placement in the current IEP, or other placement determined by the IEP Team, including the parent/guardian or surrogate parent.
3. The IEP Team *must* either initiate a Functional Behavior Assessment (FBA) and/or Positive Behavior Support Plan (PBSP), or review an existing FBA/PBSP to address the behavior.
4. Deficiencies, if any, to implement the previous IEP, including the PBSP, are remedied

Special Circumstances: Special Circumstances related to (1) drugs, (2) weapons, (3) serious bodily injury, or a belief of the district that return to pre-incident placement be substantially likely to result in injury to the student or others, shall result in consideration of a long term removal (Interim Alternative Educational Placement) even if the behavior was considered a manifestation of the student's disability.

- **Drugs** - Violations involving drugs refer to when a student knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a SEA or a LEA.
- **Weapons: state and federal definitions** -
 - **State definition:** The term "dangerous weapon" means a firearm, dirk, dagger, stiletto, iron bar, knife with a blade over 3 inches in length (note: see federal definition below), pocket knife opened by a mechanical device, and brass knuckles [MCL 380.1313(4)]. The definition of "firearm" in section 380.1311 refers to the definition of that term in the federal *Gun-Free Schools Act of 1994* which in turn refers to another section of federal law which defines "firearm" as:
 - Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive;
 - The frame or receiver of any such weapon;
 - Any firearm muffler or firearm silencer; or
 - Any destructive device.
 - **Federal definition:** The term dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.
- **Serious Bodily Injury** - The term "serious bodily injury" is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean a bodily injury that involves:
 - a substantial risk of death, extreme physical pain,
 - protracted and obvious disfigurement, or,
 - protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [615(k)(7)(D)].
- **Other Cases:** In other cases, if the district believes that returning the student to the pre-incident placement will likely result in injury to the student or others, the district may seek a court injunction or hearing officer decision to unilaterally place the student in an IAES

Additional Cautions Regarding Removals from School:

1. Conditional returns: When the student return is conditional (school requires a parent meeting, private evaluation, counseling, etc.), each day missed, until conditions are met, is a day of removal.

2. Parent removals: When a parent chooses to remove a child from school or instruction, it is not considered a day of removal. Such removals should be well documented.

3. Transportation: Days missed because of removal from special transportation which is *written in an IEP*, is considered a removal from school. For removal from general transportation provided without special education support, districts should follow the same procedures as for nondisabled peers.

4. In-school suspension: For purposes of determining a change of placement, days served in in-school suspension do not count as removal **IF all of the criteria listed below are met.**

The student:

- is afforded the opportunity to continue to participate in the general education curriculum
- receives all services specified in the IEP
- participates with nondisabled peers to the extent specified in the IEP
- is attended in the same physical location by a certified teacher, or a paraprofessional working under the supervision of a teacher as allowed by MDE policy (p. 9) in *Utilization of Noncertified Personnel in Elementary and Secondary Schools (MDE, March 2006)*. (Note: Use of noncertified personnel in an ISS setting while counting it as instruction is difficult and requires that instruction by the teacher has already occurred for each hour that the student is placed in ISS.)

For purposes of state reporting, all days of in-school suspension must be reported.

5. State (MSDS) reporting: MSDS definitions for days counted are for data reporting purposes *only* and do not define days counted for procedural considerations. The following table describes the primary differences in the counting of days when determining a change of placement or pattern of removals.

Change of Placement and MDE Suspensions

Situation	Change of Placement Count	MSDS Count
Partial Day	Counts as a full day	Removals of ½ day or longer
Transfer student days	Removals from all districts in the same school year	Only what occurs in district
Parent removal	Not counted as long as not district prompted or encouraged	
Days in ISS	Count if all criteria are not met	All are counted as suspensions

Please note that as of July 2017, days of removal for both general education AND special education students must be reported to MSDS.

6. What parents should know when considering revoking consent for Special Education eligibility and services:

Once a parent/guardian/student who is the age of majority has revoked consent, the student will no longer be entitled to protections received when identified as a child eligible for special education programs or services, including:

- Rights to request a Section 504 plan
- Disciplinary protections afforded children with disabilities, including manifestation determinations and IAES Placements.
- Rights to receive instruction while suspended from school.

Chart #2: Student Not Eligible for Special Education or 504

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

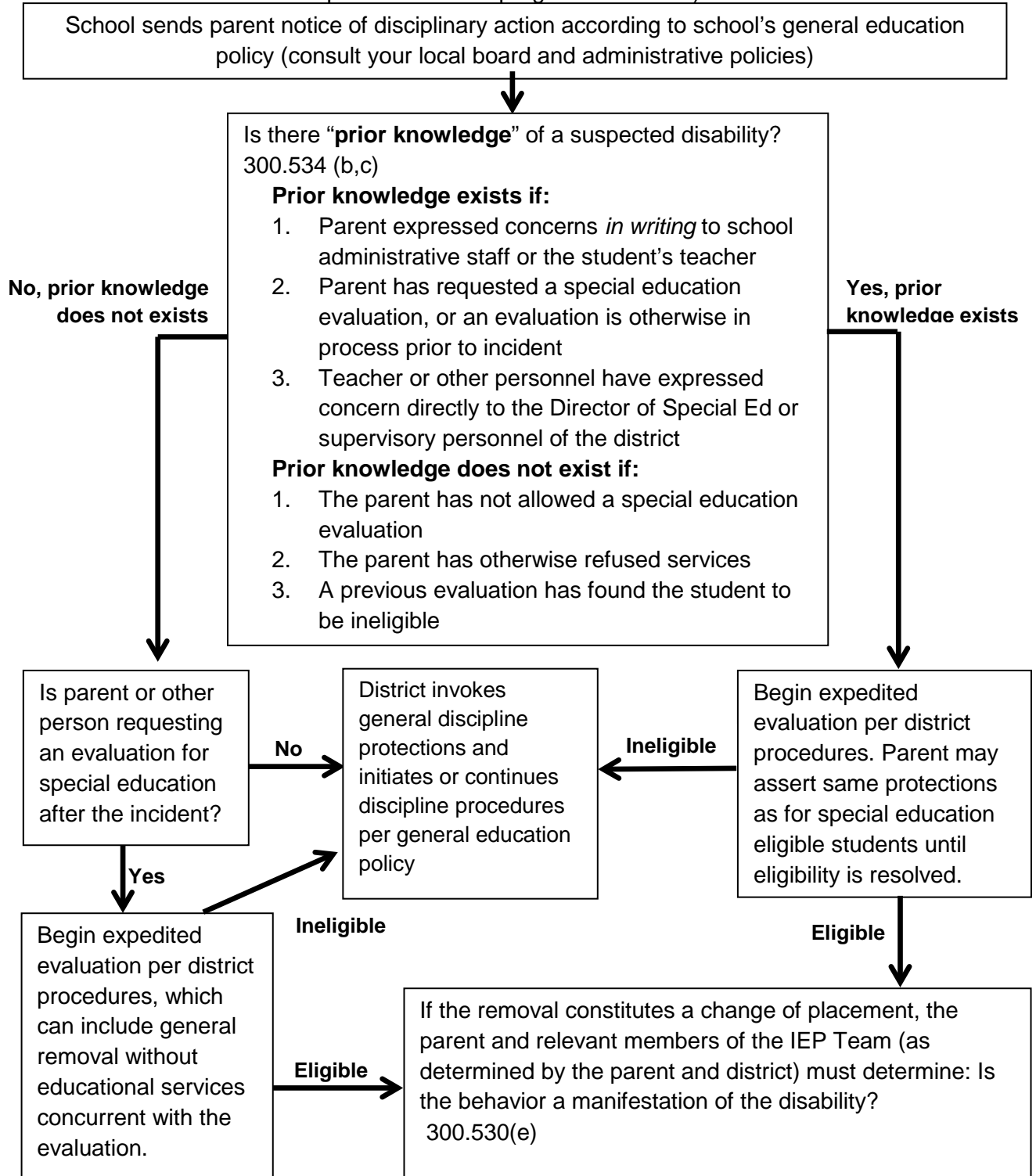


Chart #3: Removals – Not a Change of Placement

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

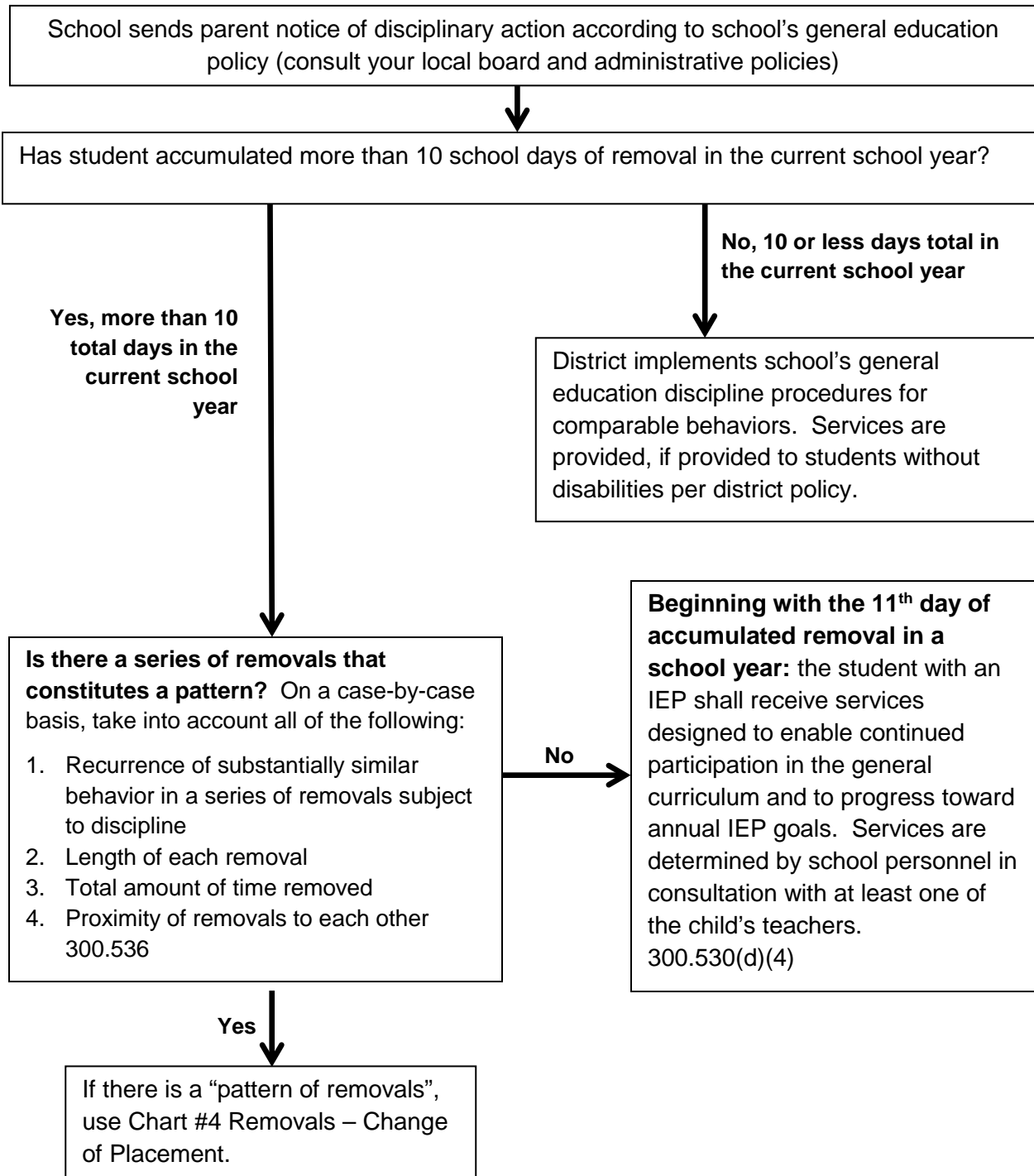


Chart #4: Removals – Change of Placement

10 or more days per incident, or pattern of removals constituting a change of placement –
300.536

On the day on which the decision is made to make a removal due to a violation of a code of student conduct, the school must notify the parent/guardian of the decision and provide them with a copy of the *Special Education Parent Handbook with Procedural Safeguards* 300.530(h)



Within 10 school days of the decision to change the placement due to a violation of a code of student conduct, a representative of the district, parent/guardian or surrogate parent, and other relevant members of the IEP Team (as determined by the parent and district) must determine **if the behavior is a manifestation of the disability** 300.530(e)



Yes, the behavior is a manifestation of the disability

Special circumstances: Did the incident involve: (1) drugs, (2) weapons, or (3) serious bodily injury? [300.530(g)] Or does the district believe that the student's return to pre-incident placement be substantially likely to result in injury to the student or others?



No

Return to pre-incident placement:

1. General disciplinary removals are terminated.
2. The student returns to the placement in the current IEP, or other placement determined by the IEP Team.
3. The IEP Team *must* either initiate an FBA/BIP, or review an existing plan and modify, as necessary, to address the behavior.
4. Deficiencies, if any, to implement the previous IEP, including PBSP, are remedied.

Yes



No, the behavior in question is not a manifestation of the disability



District may use general discipline procedures and:

1. must provide and document services on the 11th day of removal in a school year that are designed to enable continued participation in the general curriculum and progress toward annual IEP goals.
2. Setting and services are determined by the IEP Team.
3. Immediately initiate, if appropriate, an FBA and BIP, or review and modify an existing FBA/BIP to address the problem behavior.

Special circumstances – drugs, weapons, serious bodily injury; or other dangerous situations [300.530(g)]

Use Chart #5

Chart #5: Special Circumstances – Weapons/Drugs/Serious
Bodily Injury §300.530(g)

On the day on which the decision is made to make a removal due to a violation of a code of student conduct due to possession of weapons, drugs, or causing serious bodily injury, the school must notify the parent/guardian of the decision and provide them with a copy of the *Special Education Parent Handbook with Procedural Safeguards 300.530(h)*



The district may use general discipline procedures and place the student in an interim alternative educational setting (IAES) for up to 45 school days.

1. Setting and services in the IAES are determined by an IEP Team.
2. If the parent contests the IAES, the student remains in the IAES determined by the district until the outcome of an expedited due process hearing. 300.532(a)
3. If it is believed that maintaining the student in the current placement is substantially likely to result in injury to the student or others, the district must obtain a court injunction or hearing officer decision to unilaterally use an IAES for up to *45 school days*.
4. **Within 10 school days** of the decision to change the placement due to a violation of a code of student conduct, for possession of weapons, drugs, or causing serious bodily injury, a representative of the district, parent/guardian or surrogate parent, and other relevant members of the IEP Team (as determined by the parent and district) must determine **if the behavior is a manifestation of the disability** 300.530(e)

**Yes, behavior is a
manifestation of the
disability**



District may return student to pre-incident placement, or keep the student in the IAES for up to the entire 45 school days.

1. The IEP Team *must* either initiate an FBA/BIP, or review an existing plan and modify, as necessary, to address the behavior.
2. Deficiencies, if any, to implement the previous IEP, including PBSP are remedied.

**No, behavior is not a
manifestation of the
disability**



District may use general discipline procedures:

1. Immediately initiate, if appropriate, an FBA and BIP, or review and modify an existing FBA/BIP to address the problem behavior.
2. Student may remain in the IAES for the entire 45 school days.
3. The district must provide services for general disciplinary removal extending beyond the exhaustion of the IAES.

For District Review and Development

District Procedures:

To be determined by district administration. The following are examples of possible district procedures:

1. The School Administrator implements due process and fact finding prior to making determination of disciplinary action to be taken.
2. School Administrator (or appointed staff) notifies parent/guardian of disciplinary action according to general education policy and if disciplinary action constitutes a **change of placement**, written notice, general education protections, and *Procedural Safeguards* must be provided to parent/guardian (document date, time, and method of delivery).
3. If disciplinary actions (not limited to only removals) are implemented frequently for a student with a disability, building staff will notify the Special Education Administrator, who will determine along with other school staff, if a Functional Behavioral Assessment (FBA) is needed and if a Behavior Intervention Plan (BIP) should be developed.
4. If any disciplinary action of a student with a disability includes the use of removal or suspension/expulsion, the building Principal or other staff member acting on his/her behalf, will notify the Special Education Administrator immediately and provide the following information:
 - a. Student name
 - b. Description of behavior/incident
 - c. Total days of removal (ISS or OSS) including start/end dates
 - d. What general education and special education provisions have already been arranged,
 - i. Work was sent home for OSS?
 - ii. Student provided general ed. instruction/access for ISS?
 - iii. Student provided special ed. instruction/access for ISS?
 - iv. Other...
5. The Special Education Administrator (or other assigned staff) will be charged with tracking/documenting student removals using the "Pattern of Behavior/Removals" Kent ISD Document. Relevant school staff will determine if removals constitute a "pattern" by meeting all of the following criteria areas, (more than 10 school days in a school year, recurrence of similar behavior, length of each removal, total time removed and proximity of removals to each other).
 - a. Functional Behavioral Assessments (FBA) and Behavior Intervention Plans (BIP) should be developed and implemented early on for students with frequent, severe behaviors, or a history of behavior difficulties requiring multiple removals or discipline actions.
6. If a "pattern of behavior/removals" is not determined, then relevant IEP Team members along with at least one teacher will determine services to be to be implemented for each removal exceeding or following the initial 10 days of removal.
 - a. Special education and general education instruction/supports/services provided to a student for days of removal exceeding 10 school days. Services

are calculated in order for the student to have access to the general education curriculum and to be able to progress with IEP goals and objectives in order to receive educational benefit. Services are determined on an individual student basis and may not be the same for every student.

7. If or when a “pattern of behavior/removals” is determined or if removal exceeds 10 consecutive days, parent/guardian will be notified by either the Principal or Special Education Administrator that removal/s constitutes a **change of placement** and provide Parent/Guardian with written notice, general education protections, and Procedural Safeguards. Services are determined and implemented after the student’s 10th day of removal. Within 10 school days of **change of placement** the IEP Team must determine through a **manifestation determination** if the behavior is a manifest of the student’s disability. FBA/BIP is initiated or reviewed.
 - a. If “Yes” behavior is a manifestation of student’s disability, the student returns immediately to the pre-incident placement. FBA/BIP is initiated or reviewed.
 - b. If “No” behavior is not a manifestation of student’s disability district may use general discipline procedures to determine discipline action taken. The IEP Team may determine other placement and services if appropriate. FBA/BIP is initiated or reviewed.
 - c. For special circumstances such as drugs, weapons, serious bodily injury. The district may use general discipline procedures and unilaterally place the student in an IAES immediately for up to 45 school days. Setting and services in the IAES are determined by the IEP Team (see above). Within 10 school days of IAES placement relevant IEP Team Members and Parent/Guardian must conduct **manifestation determination**.
 - i. If “Yes” behavior is manifest of disability, student may return to pre-incident placement or remain in the IAES for the 45 school days. FBA/BIP is initiated or reviewed.
 - ii. If “No” behavior is not a manifest of disability, then general discipline procedures are used, the IEP Team initiates or reviews FBA/BIP, student may remain in IAES for entire 45 school days, and the district must provide services for general disciplinary removal extending beyond the exhaustion of the IAES.
 - iii. See IDEA Regulations, Michigan Statute, MDE Guidelines, and regarding expulsion procedures as related to students’ with/with-out disabilities.

References:

IDEA Regulations
Michigan Statute
Discipline Flow Chart: LaPointe & Butler, PC
KRESA Discipline Procedures