

Are Services Provided During Disciplinary Removals?

September 2010

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, the school system must provide services to the student during any subsequent days of removal, to the extent required under §300.530(d).



And what does **§300.530(d)** require? That is the subject of this article.

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Which Services, Under Which Circumstances, and Who Decides?

The services that a school system must provide to a student with a disability under disciplinary removal and the extent to which any services need to be provided will depend on many factors and sometimes a combination of factors, including but not limited to:

- whether the child’s behavior infraction was determined to be a manifestation of his or her disability;
- whether educational services are provided to children without disabilities removed for the first 10 days or less in a school year;
- how long the disciplinary removal is supposed to last;
- how many days of removal the child has already been subject to in this school year as part of other disciplinary actions; and
- the nature of the child’s infraction (e.g., did it involve a weapon, drugs, or serious bodily injury).

Obviously, the “extent of services” question can have many possible answers. This is reflected in the provisions at §300.530(d), which can be characterized by their “if-this, then-that” nature. Perhaps the easiest way to understand the extent to which services must be provided to a child with a disability under disciplinary removal is by looking at the clearcut, straightforward cases first. There are three.

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When Removals Total No More Than 10 School Days in a School Year

When the total number of days a child with a disability has been removed from his or her current placement is 10 school days or less in a school year, the school system is only required to provide services to that child if it

provides services to children without disabilities who are similarly removed [§300.530(d)(3)].

Note, however, that, once a child's cumulative days of removal in a school year exceed 10 school days, beginning with the 11th cumulative day and during any subsequent days of removal, the school system must provide services in keeping with §300.530(d).

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For Children Whose Manifestation Determination is “No” and for Violations Involving Special Circumstances

A student with a disability must continue to receive educational services when his or her disciplinary removal is for either:

- behavior determined **not** to be a manifestation of his or her disability, or
- offenses involving weapons, drugs, or serious bodily injury, the child must continue to receive educational services.

This includes children who are either suspended or expelled for behavior determined not to be a [manifestation](#) of their disability, and children who have been placed in an interim alternative educational setting (IAES) because of violations involving [“special circumstances”](#)—drugs, weapons, or serious bodily injury.

Since these removals are a disciplinary change of placement, the **IEP team** determines what services will be provided to the child, if they will be provided in an IAES, and, if so, what that IAES will be [§300.530(d)(1) and (5) and §300.531]. The IEP team must keep in mind that the services are 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 that child's IEP [§300.530(d)(1)(i)].

Note that the school system is *not* required to replicate in another setting the exact services included in the IEP. (More on this in a moment...)

In addition, a student whose removal corresponds to either circumstance (a “no” manifestation or because of “special circumstances”) must receive, as appropriate, an functional behavioral analysis (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. See §300.530(d)(1)(ii).

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When Removal is a Change of Placement

When a child's removal for disciplinary reasons is considered a change of placement under §300.536, the child's **IEP team** determines what services are for the child to receive. Again, these are services to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to progress toward meeting IEP goals [§300.530(d)(5)]. The IEP team also determines if the child will be placed in an IAES to receive those services and what the IAES will be.

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Combining Factors

Arguably, the most complicated circumstance in §300.530(d) is found at (d)(4). This provision combines total number of removals, current removal time, and the qualifier that this removal is not considered a change of placement. It reads:

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. [§300.530(d)(4)]

Scary confusing! But clearly very important. The provision addresses the extent to which schools must provide services when a child's removal is:

- for a short period of time, and
- not a change in placement.

Services are not always required when a child has accumulated more than 10 removal days in a school year but is now to be removed for just a few days in a row (no more than 10) .

Who determines if the child needs services to be provided during a short removal? This decision is made by: Appropriate school personnel, in consultation with at least one of the child's teachers.

On what basis is the determination made? The Department's comments are quite illuminating:

We believe the extent to which educational services need to be provided and the type of instruction to be provided would depend on the length of the removal, the extent to which the child has been removed previously, and the child's needs and educational goals.

For example, a child with a disability who is removed for only a few days and is performing near grade level would not likely need the same level of educational services as a child with a disability who has significant learning difficulties and is performing well below grade level. The Act is clear that the public agency must provide services to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child's IEP. (71 Fed. Reg. 46717-18)

Pivotal words. A pivotal aspect in decision making regarding "extent of services" can be found in the last line of the Department's discussion and in §300.530(d)(4) itself—services must be provided to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child's IEP.

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When Services Are Provided to Children Removed for Disciplinary Reasons

Section 300.530(d) broadly addresses the provision of services to children with disabilities under disciplinary action. But what types of services are we talking about? A replica of the special educational program described in a child's IEP, including all the related services and supplementary aids and supports?

According to the Department, no. The Department states that it would generally not be feasible for a school district to provide a child removed for disciplinary reasons with every aspect of the services that would be received in his or her chemistry or auto mechanics classroom, as "these classes generally are taught using a hands-on component or specialized equipment or facilities" (71 Fed. Reg. 46716).

The amount of time a child is removed from his or her regular placement for disciplinary reasons may also affect the nature and extent of services provided during the time of removal. For example:

...a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to meet this standard as a child who is removed from his or her regular placement for 45 days under §300.530(g) or §300.532 and not performing at grade level. (*Id.*)

And what of children who have been suspended or expelled from school? If they are removed for more than 10 school days in a school year for disciplinary reasons, they must continue to receive FAPE—which includes services. However:

An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. (71 Fed. Reg. 46716)

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