**The Pupil Fair Dismissal Act**

**121A.40 Citation**

Minnesota Statutes Sections 121A.40 to 121A.56 may be cited as “The Pupil Fair Dismissal Act.”

**121A.41 Definitions**

Subdivision 1. **Applicability.** As used in sections 121A.40 to 121A.56, the terms defined in this section shall have the meanings assigned them.

Subd. 2. **Dismissal.** “Dismissal” means the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not include removal from class.

Subd. 3. **District.** “District” means any school district.

Subd. 4. **Exclusion.** “Exclusion” means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.

Subd. 5. **Expulsion.** “Expulsion” means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled.

Subd. 6. **Parent.** “Parent” means (a) one of the pupil's parents, (b) in the case of divorce or legal separation, the parent or parents with physical custody of the pupil, including a noncustodial parent with legal custody who has provided the district with a current address and telephone number, or (c) a legally appointed guardian. In the case of a pupil with a disability under the age of 18, parent may include a district-appointed surrogate parent.

Subd. 7. **Pupil.** “Pupil” means any student:
(1) without a disability under 21 years of age; or
(2) with a disability under 21 years old who has not received a regular high school diploma or for a child with a disability who becomes 21 years old during the school year but has not received a regular high school diploma, until the end of that school year; and
(3) who remains eligible to attend a public elementary or secondary school.

Subd. 8. **School.** “School” means any school defined in section 120A.05, subdivisions 9, 11, 13, and 17.

Subd. 9. **School board.** “School board” means the governing body of any school district.

Subd. 10. **Suspension.** “Suspension” means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. Consistent with section 125A.091, subdivision 5, the readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of readmission. The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.

Subd. 11. **Alternative educational services.** “Alternative educational services” may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center under section 123A.05 selected
to allow the pupil to progress toward meeting graduation standards under section 120B.02 although in a different setting.

121A.42 Policy
  No public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion.

121A.43 Exclusion and expulsion of pupils with a disability
  (a) Consistent with federal law governing days of removal and section 121A.46, school personnel may suspend a child with a disability. When a child with a disability has been suspended for more than five consecutive school days or 10 cumulative school days in the same school year, and that suspension does not involve a recommendation for expulsion or exclusion or other change of placement under federal law, relevant members of the child’s individualized education program team, including at least one of the child’s teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child’s individualized education program. That meeting must occur as soon as possible, but no more than 10 days after the sixth consecutive day of suspension or the tenth cumulative day of suspension has elapsed.

  (b) A dismissal for one school day or less is a day or a partial day of suspension if the child with the disability does not receive regular or special education instruction during that dismissal period. The notice requirements under section 121A.46 do not apply to a dismissal of one day or less.

  (c) A child with a disability shall be provided alternative educational services to the extent a suspension exceeds five consecutive school days.

  (d) Before initiating an expulsion or exclusion under sections 121A.40 to 121A.56, the district, relevant members of the child’s individualized education program team, and the child’s parent shall, consistent with federal law, determine whether the child’s behavior was caused by or had a direct and substantial relationship to the child’s disability and whether the child’s conduct was a direct result of a failure to implement the child’s individualized education program. When a child with a disability who has an individualized education program is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the child’s disability, the district shall continue to provide special education and related services during the expulsion or exclusion.

121A.44 Expulsion for possession of firearm
  (a) Notwithstanding the time limitation in section 121A.41, subdivision 5, a school board must expel for a period of at least one year a pupil who is determined to have brought a firearm to school except the board may modify this expulsion requirement for a pupil on a case-by-case basis. For the purposes of this section, firearm is as defined in United States Code, title 18, section 921.

  (b) Notwithstanding chapter 13, a student’s expulsion or withdrawal or transfer from a school after an expulsion action is initiated against the student for a weapons violation under paragraph (a) may be disclosed by the school district initiating the expulsion proceeding. Unless the information is otherwise public, the disclosure may be made only to another school district in connection with the possible admission of the student to the other district.

121A.45 Grounds for dismissal
  Subdivision 1. Provision of alternative programs. No school shall dismiss any pupil without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property.

  Subd. 2. Grounds for Dismissal. A pupil may be dismissed on any of the following grounds:

  (a) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;
(b) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or
(c) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school.

Subd. 3. **Parent Notification and Meeting.** If a pupil's total days of removal from school exceeds 10 cumulative days in a school year, the school district shall make reasonable attempts to convene a meeting with the pupil and the pupil's parent or guardian prior to subsequently removing the pupil from school, and with the permission of the parent or guardian, arrange for a mental health screening for the pupil. The district is not required to pay for the mental health screening. The purpose of this meeting is to attempt to determine the pupil's need for assessment or other services or whether the parent or guardian should have the pupil assessed or diagnosed to determine whether the pupil needs treatment for a mental health disorder.

**121A.46 Suspension procedures**

Subd. 1. **Informal administrative conference before suspension.** The school administration shall not suspend a pupil from school without an informal administrative conference with the pupil. The informal administrative conference shall take place before the suspension, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension.

Subd. 2. **Administrator notifies pupil of grounds for suspension.** At the informal administrative conference, a school administrator shall notify the pupil of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the pupil may present the pupil's version of the facts.

Subd. 3. **Written notice of grounds for suspension.** A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of sections 121A.40 to 121A.56, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's parent or guardian by mail within 48 hours of the conference. The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following suspension. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the pupil and the pupil's parent or guardian within 48 hours of the suspension. Service by mail is complete upon mailing.

Subd. 4. **Suspension pending expulsion or exclusion.** Notwithstanding the provisions of subdivisions 1 and 3, the pupil may be suspended pending the school board's decision in the expulsion or exclusion hearing; provided that alternative educational services are implemented to the extent that suspension exceeds five days.

**121A.47 Exclusion and expulsion procedures**

Subd. 1. **Requiring a hearing; pupil may waive hearing.** No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent.

Subd. 2. **Written notice.** Written notice of intent to take action shall:
(a) be served upon the pupil and the pupil's parent or guardian personally or by mail;
(b) contain a complete statement of the facts, a list of the witnesses and a description of their testimony;
(c) state the date, time, and place of the hearing;
(d) be accompanied by a copy of sections 121A.40 to 121A.56;
(e) describe alternative educational services accorded the pupil in an attempt to avoid the expulsion proceedings; and
(f) inform the pupil and parent or guardian of the right to:
(1) have a representative of the pupil's own choosing, including legal counsel, at the hearing.
The district shall advise the pupil's parent or guardian that free or low-cost legal assistance may
be available and that a legal assistance resource list is available from the department of education;

(2) examine the pupil's records before the hearing;
(3) present evidence; and
(1) confront and cross-examine witnesses.

Subd. 3. Hearing schedule. The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed five days, is requested for good cause by the school board, pupil, parent or guardian.

Subd. 4. Convenient time and place of hearing. The hearing shall be at a time and place reasonably convenient to pupil, parent or guardian.

Subd. 5. Closed or open hearing. The hearing shall be closed unless the pupil, parent or guardian requests an open hearing.

Subd. 6. Impartial hearer. The hearing shall take place before:
(1) an independent hearing officer;
(2) a member of the school board;
(3) a committee of the school board; or
(4) the full school board;
as determined by the school board. The hearing shall be conducted in a fair and impartial manner.

Subd. 7. Creating hearing record. The school board shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.

Subd. 8. Access to pupil's records. At a reasonable time prior to the hearing, the pupil, parent or guardian, or representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based.

Subd. 9. Pupil's right to compel testimony. The pupil, parent or guardian, or representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system.

Subd. 10. Pupil's right to present evidence and testimony. The pupil, parent or guardian, or representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.

Subd. 11. Pupil not compelled to testify. The pupil cannot be compelled to testify in the dismissal proceedings.

Subd. 12. Hearer's recommendation limited to evidence at hearing; service within two days. The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and must be made to the school board and served upon the parties within two days of the end of the hearing.

Subd. 13. Basis of school board decision; opportunity for comment. The school board shall base its decision upon the recommendation of the hearing officer or school board member or committee and shall render its decision at a meeting held within five days after receiving the recommendation. The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's recommendations provided that neither party presents any evidence not admitted at the hearing. The decision by the school board must be based on the record, must be in writing, and must state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

(a) A school administrator shall prepare and enforce an admission or readmission plan for any pupil who is excluded or expelled from school. The plan may include measures to improve the pupil's behavior, including completing a character education program, consistent with section

1 The list may be found electronically at http://education.state.mn.us.
120B.225, Sub. 1, and require parental involvement in the admission or readmission process, and may indicate the consequences to the pupil of not improving the pupil's behavior.

(b) The definition of suspension under Minnesota Statute Section 121A.41, subdivision 10, does not apply to a student's dismissal from school for one school day or less, except as provided under federal law for a student with a disability. Each suspension action may include a readmission plan. A readmission plan must provide, where appropriate, alternative educational services, which must not be used to extend the student's current suspension period. Consistent with Minnesota Statute Section 125A.091, subdivision 5, a readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student as a condition of the administration of a psychotropic drug or to consent to a psychiatric evaluation, screening, or examination of the student as a ground, by itself, to prohibit the student from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect or medical or education neglect.

121A.48 Good faith exception

A violation of the technical provisions of the Pupil Fair Dismissal Act, made in good faith, is not a defense to a disciplinary procedure under the act unless the pupil can demonstrate actual prejudice as a result of the violation.

121A.49 Appeal

A party to an exclusion or expulsion decision made under sections 121A.40 to 121A.56 may appeal the decision to the commissioner of education within 21 calendar days of school board action. Upon being served with a notice of appeal, the district shall provide the commissioner and the parent or guardian with a complete copy of the hearing record within five days of its receipt of the notice of appeal. All written submissions by the appellant must be submitted and served on the respondent within ten days of its actual receipt of the transcript. All written submissions by the respondent must be submitted and served on the appellant within ten days of its actual receipt of the written submissions of the appellant. The decision of the school board must be implemented during the appeal to the commissioner.

In an appeal under this section, the commissioner may affirm the decision of the agency, may remand the decision for additional findings, or may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional provisions;
2. in excess of the statutory authority or jurisdiction of the school district;
3. made upon unlawful procedure, except as provided in section 121A.48;
4. affected by other error of law;
5. unsupported by substantial evidence in view of the entire record submitted; or
6. arbitrary or capricious.

The commissioner or the commissioner's representative shall make a final decision based upon the record. The commissioner shall issue a decision within 30 calendar days of receiving the entire record and the parties' written submission on appeal. The commissioner's decision shall be final and binding upon the parties after the time for appeal expires under section 121A.50.

121A.50 Judicial review

The decision of the commissioner of education made under sections 121A.40 to 121A.56 is subject to judicial review under sections 14.63 to 14.69. The decision of the commissioner is stayed pending an appeal under this section.

121A.51 Reports to service agency

The school board shall report any action taken pursuant to sections 121A.40 to 121A.56 to the appropriate public service agency, when the pupil is under the supervision of such agency.

121A.52 Nonapplication of compulsory attendance law

The provisions of section 120A.22, subdivision 5, shall not apply to any pupil during a dismissal pursuant to sections 121A.40 to 121A.56.
121A.53 **Report to the commissioner of education**

Subdivision 1. **Exclusions and expulsions.** The school board must report through the department electronic reporting system each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report must include a statement of alternative educational services given the pupil and the reason for, the effective date, and the duration of the exclusion or expulsion. The report must also include the student's age, grade, gender, race and special education status.

Subd. 2. **Report.** The school board must include state student identification numbers of affected pupils on all dismissal reports required by the department. The department must report annually to the commissioner summary data on the number of dismissals by age, grade, gender, race, and special education status of the affected pupils. All dismissal reports must be submitted through the department electronic reporting system.

121A.54 **Notice of right to be reinstated**

Whenever a pupil fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the pupil and the pupil's parents by mail of the pupil's right to attend and to be reinstated in the public school.

121A.55 **Policies to be established**

(a) The commissioner of education shall promulgate guidelines to assist each school board. Each school board shall establish uniform criteria for dismissal and adopt written policies and rules to effectuate the purposes of sections 121A.40 to 121A.56. The policies shall emphasize preventing dismissals through early detection of problems and shall be designed to address students' inappropriate behavior from recurring. The policies shall recognize the continuing responsibility of the school for the education of the pupil during the dismissal period. The alternative educational services, if the pupil wishes to take advantage of them, must be adequate to allow the pupil to make progress towards meeting the graduation standards adopted under section 120B.02 and help prepare the pupil for readmission.

(b) An area learning center under section 123A.05 may not prohibit an expelled or excluded pupil from enrolling solely because a district expelled or excluded the pupil. The board of the area learning center may use the provisions of the Pupil Fair Dismissal Act to exclude a pupil or to require an admission plan.

(c) Each school district shall develop a policy and report it to the commissioner on the appropriate use of peace officers and crisis teams to remove students who have individualized education plans from school grounds.

121A.56 **Application**

Subdivision 1. **Prohibition against discrimination remains in effect.** Sections 121A.40 to 121A.56 shall not be deemed to amend or otherwise affect or change section 363.03, subdivision 5, clause (2).

Subd. 2. **Portions of school program for credit.** Sections 121A.40 to 121A.56 shall apply only to those portions of the school program for which credit is granted.
121A.06 Reports of Dangerous Weapon Incidents at School:

Subdivision 1. Definitions.

As used in this section:
1. “dangerous weapon” has the meaning given it in section 609.02, subdivision 6;
2. “school” has the meaning given it in section 120A.22 subdivision 4; and
3. “school zone” has the meaning given it in section 152.01 subdivision 14a, clauses (1) and

Subd. 2. Content of Report.

School districts must electronically report to the commissioner of education incidents involving the use or possession of a dangerous weapon in school zones. The form must include the following information:
1. a description of each incident, including a description of the dangerous weapon involved in the incident;
2. where, at what time, and under what circumstances the incident occurred;
3. information about the offender, other than the offender's name, including the offender's age; whether the offender was a student and, if so, where the offender attended school; and whether the offender was under school expulsion or suspension at the time of the incident;
4. information about the victim other than the victim's name, if any, including the victim's age; whether the victim was a student and, if so, where the victim attended school; and if the victim was not a student, whether the victim was employed at the school;
5. the cost of the incident to the school and to the victim; and
6. the action taken by the school administration to respond to the incident.

The commissioner shall provide an electronic reporting format that allows school districts to provide aggregate data.

Subd. 3. Filing requirements.

By July 31 of each year, each public school shall report incidents involving the use or possession of a dangerous weapon in school zones to the commissioner. The reports must be submitted using the electronic reporting system developed by the commissioner under subdivision 2. The commissioner shall compile the information it receives from the schools and report it annually to the commissioner of public safety and the legislature.

120A.20 Admission to public school

Subdivision 1. Age limitations; pupils. All schools supported in whole or in part by state funds are public schools. Admission to a public school is free to any person who resides within the district that operates the school, who is under 21 years of age, and who satisfies the minimum age requirements imposed by this section. Notwithstanding the provisions of any law to the contrary, the conduct of all students under 21 years of age attending a public secondary school is governed by a single set of reasonable rules and regulations promulgated by the school board. No person shall be admitted to any public school (1) as a kindergarten pupil, unless the pupil is at least five years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences; or (2) as a 1st grade student, unless the pupil is at least six years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences or has completed kindergarten; except that any school board may establish a policy for admission of selected pupils at an earlier age.

Subd. 2. Education and residence of homeless.

(a) Notwithstanding subdivision 1, a district must not deny free admission to a homeless person of school age solely because the district cannot determine that the person is a resident of the district.
(b) The school district of residence for a homeless person of school age shall be the school district in which the homeless shelter or other program, center, or facility assisting the homeless person is located. The educational services a school district provides to a homeless person must allow the person to work toward meeting the graduation standards under section 120B.02.

Subd. 3. Pupils, at least 21 years of age. In addition to those admitted under subdivision 1, admission to a public secondary school is free to a person who is eligible under this subdivision. In order to be eligible, a person must be:
(1) at least 21 years of age;
(2) a resident of the district where the secondary school is located; and
(3) eligible under section 124D.68, subdivision 2.

Free admission is limited to two school years or the equivalent, or until the pupil completes the courses required to graduate, whichever is less. A district that admits a person to school under this section must have a reasonable expectation that the person can obtain a diploma within two years.

120A.22 Compulsory Instruction.
Subd. 7. Education records.
(a) A district, a charter school, or a nonpublic school that receives services or aid under sections 123B.40 to 123B.48 from which a student is transferring must transmit the student's educational records, within ten business days of a request, to the district, the charter school, or the nonpublic school in which the student is enrolling. Districts, charter schools, and nonpublic schools that receive services or aid under sections 123B.40 to 123B.48 must make reasonable efforts to determine the district, the charter school, or the nonpublic school in which a transferring student is next enrolling in order to comply with this subdivision.

(b) A closed charter school must transfer the student's educational records, within ten business days of the school's closure, to the student's school district of residence where the records must be retained unless the records are otherwise transferred under this subdivision.

(c) A school district, a charter school, or a nonpublic school that receives services or aid under sections 123B.40 to 123B.48 that transmits a student's educational records to another school district or other educational entity, charter school, or nonpublic school to which the student is transferring must include in the transmitted records information about any formal suspension, expulsion, and exclusion disciplinary action under sections 121A.40 to 121A.56. The district, the charter school, or the nonpublic school that receives services or aid under sections 123B.40 to 123B.48 must provide notice to a student and the student's parent or guardian that formal disciplinary records will be transferred as part of the student's educational record, in accordance with data practices under chapter 13 and the Family Educational Rights and Privacy Act of 1974, United States Code, title 20, section 1232(g).

(d) Notwithstanding section 138.17, a principal or chief administrative officer must remove from a student's educational record and destroy a probable cause notice received under section 260B.171, subdivision 5, or paragraph (e), if one year has elapsed since the date of the notice and the principal or chief administrative officer has not received a disposition or court order related to the offense described in the notice. This paragraph does not apply if the student no longer attends the school when this one-year period expires.

(e) A principal or chief administrative officer who receives a probable cause notice under section 260B.171, subdivision 5, or a disposition or court order, must include a copy of that data in the student's educational records if they are transmitted to another school, unless the data are required to be destroyed under paragraph (d) or section 121A.75.

120A.22, Legitimate exemptions from school attendance.
Subd. 12. A parent, guardian, or other person having control of a child may apply to a school district to have the child excused from attendance for the whole or any part of the time school is in session during any school year. Application may be made to any member of the board, a truant officer, a principal, or the superintendent. The school district may state in its school attendance policy that it may ask the student's parent or legal guardian to verify in writing the reason for the child's absence from school. A note from a physician or a licensed mental health professional
stating that the child cannot attend school is a valid excuse. The board of the district in which the child resides may approve the application upon the following being demonstrated to the satisfaction of that board:

1. that the child's physical or mental health is such as to prevent attendance at school or application to study for the period required which includes:
   (i) child illness, medical, dental, orthodontic, or counseling appointments;
   (ii) family emergencies;
   (iii) the death or serious illness or funeral of an immediate family member;
   (iv) active duty in any military branch of the United States;
   (v) the child has a condition that requires ongoing treatment for a mental health diagnosis; or
   (vi) other exemptions included in the district's school attendance policy;
2. that the child has already completed state and district standards required for graduation from high school; or
3. that it is the wish of the parent, guardian, or other person having control of the child, that the child attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction conducted and maintained by some church, or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof. This school for religious instruction must be conducted and maintained in a place other than a public school building, and it must not, in whole or in part, be conducted and maintained at public expense. However, a child may be absent from school on such days as the child attends upon instruction according to the ordinances of some church.

**125A.515 Placement of students; approval of education program.**

Subd. 10. Students unable to attend school but not covered under this section.

Students who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, and placed at home or in facilities not licensed by the Departments of Corrections or Human Services are entitled to regular and special education services consistent with this section or Minnesota Rules, part 3525.2325. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center.

**Minn. R. 3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS CHILDREN WITH DISABILITIES AND REGULAR STUDENTS PLACED IN CENTERS OUTSIDE THE NORMAL SCHOOL SITE FOR CARE AND TREATMENT.**

Subpart 1. When education is required. The district in which a facility is located must provide regular education, special education, or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility, or in the student's home for care and treatment. All children with disabilities and regular education students in kindergarten through grade 12 who are placed for care and treatment in the student's home or in any facility, center, or program must receive regular education, special education, or both.

A. Education services must be provided to a pupil child with a disability or regular education student who is: whenever the child or student is either prevented from attending or predicted to be absent from the normal school site for 15 or more intermittent or consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or a court-appointed authority.

A. prevented from attending the pupil's or student's normal school site for 15 consecutive school days; or
B. predicted to be absent from the normal school site for 15 consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or other court-appointed authority; or
C. health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent school days.

A pupil or regular education student shall begin receiving instruction as soon as practicable under treatment conditions. Special education services must be provided as required by a pupil's IEP, and to the extent that treatment considerations allow the pupil to participate.
Subp. 6. Placement, services, and due process requirements for pupils children with disabilities.

C. If a pupil child with a disability is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil child with a disability in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2550 to 3525.4770. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to Minnesota Statutes, sections 121A.40 to 121A.56, and the district's discipline policy.

121A.22 Administration of drugs and medicine

Subd. 5. Children with a disability. For drugs or medicine used by children with a disability, administration may be as provided in the individual education plan.2

125A.091 Procedures for decisions

Subd. 5(b). A parent, after consulting with health care, education, or other professional providers, may agree or disagree to provide the parent's child with sympathomimetic medications unless section 144.344 applies.

121A.575 Alternatives to pupil suspension

Notwithstanding any law to the contrary and in accordance with sections 121A.40 to 121A.56, after a school administration notifies a pupil of the grounds for suspension, the school administration may, instead of imposing the suspension, do one or more of the following:

1. strongly encourage a parent or guardian of the pupil to attend school with the pupil for one day;
2. assign the pupil to attend school on Saturday as supervised by the principal or the principal's designee; and
3. petition the juvenile court that the student is in need of services under chapter 260C.

121A.58 Corporal punishment.

Subd. 1. Definition. For the purpose of this section, "corporal punishment" means conduct involving:

1. hitting or spanking a person with or without an object; or
2. unreasonable physical force that causes bodily harm or substantial emotional harm.

Subd. 2. Corporal punishment not allowed. An employee or agent of a district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.

Subd. 3. Violation. Conduct that violates subdivision 2 is not a crime under section 645.241, but may be a crime under chapter 609 if the conduct violates a provision of chapter 609.

121A.582 Student Discipline; Reasonable Force


(a) A teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

2 See: Minn. Stat. § 125A.091.
(b) A school employee, school bus driver, or other agent of a district, in exercising the person’s lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

(c) Paragraphs (a) and (b) do not authorize conduct prohibited under sections 121A.58 and 121A.67.

Subd. 2. Civil Liability.
(a) A teacher or school principal who, in the exercise of the person’s lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a civil action for damages under section 123B.25.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person’s lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a civil action for damages under section 123B.25.

Subd. 3. Criminal Prosecution.
(a) A teacher or school principal who, in the exercise of the person’s lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a criminal prosecution under section 609.06, subdivision 1.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person’s lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a criminal prosecution under section 609.06, subdivision 1.

Subd. 4. Supplementary Rights and Defenses. Any right or defense in this section is supplementary to those specified in section 121A.58, 121A.67, 123B.25, or 609.06, subdivision 1.

124D.03 Enrollment Options Program
Subdivision 1. Establishment.
(a) An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations in this section.

(b) A district may refuse to allow a pupil who is expelled under section 121A.45 to enroll during the term of the expulsion if the student was expelled for:
   (1) possessing a dangerous weapon, as defined by United States Code, title 18, section 930, paragraph (g)(2), at school or a school function;
   (2) possessing or using an illegal drug at school or a school function;
   (3) selling or soliciting the sale of a controlled substance while at school or a school function;
   or
   (4) committing a third-degree assault as described in section 609.223, subdivision 1.

121A.60 Definitions
Subdivision 1. Removal from class. "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a pupil from attending a class or activity period for a period of time not to exceed five days, pursuant to procedures established in the school district discipline policy adopted by the school board pursuant to section 121A.61.

Subd. 2. Class period. "Class period" or "activity period" means a period of time as defined in the district’s written discipline policy.

Subd. 3. School site mediation board. "School site mediation board" means a board representative of parents of students in the building, staff, and students that shall have the responsibilities as defined in section 121A.62. The principal or other person having general control and supervision of the school, shall serve as an ex officio member of the board.

Subd. 4. School-based ombudsperson. "School-based ombudsperson" means an administrator, a teacher, a parent, or a student representative who shall have the responsibilities as outlined in section 121A.63.

121A.61 Discipline and removal of students from class
Subdivision 1. Required policy. Each school board must adopt a written districtwide school discipline policy which includes written rules of conduct for students, minimum consequences for violations of the rules, and grounds and procedures for removal of a student from class. The policy must be developed in consultation with administrators, teachers, employees, pupils,
parents, community members, law enforcement agencies, county attorney offices, social service agencies, and such other individuals or organizations as the board determines appropriate. A school site council may adopt additional provisions to the policy subject to the approval of the school board.

Subd. 2. **Grounds for removal from class.** The policy must establish the various grounds for which a student may be removed from a class in the district for a period of time under the procedures specified in the policy. The policy must include a procedure for notifying and meeting with a student’s parent or guardian to discuss the problem that is causing the student to be removed from class after the student has been removed from class more than ten times in one school year. The grounds in the policy must include at least the following provisions as well as other grounds determined appropriate by the board:

(a) willful conduct that significantly disrupts the rights of others to an education, including conduct that interferes with a teacher’s ability to teach or communicate effectively with students in a class or with the ability of other students to learn;
(b) willful conduct that endangers surrounding persons, including school district employees, the student or other students, or the property of the school; and
(c) willful violation of any rule of conduct specified in the discipline policy adopted by the board.

Subd. 3. **Policy components.** The policy must include at least the following components:

(a) rules governing student conduct and procedures for informing students of the rules;
(b) the grounds for removal of a student from a class;
(c) the authority of the classroom teacher to remove students from the classroom pursuant to procedures and rules established in the district's policy;
(d) the procedures for removal of a student from a class by a teacher, school administrator, or other school district employee;
(e) the period of time for which a student may be removed from a class, which may not exceed five class periods for a violation of a rule of conduct;
(f) provisions relating to the responsibility for and custody of a student removed from a class;
(g) the procedures for return of a student to the specified class from which the student has been removed;
(h) the procedures for notifying a student and the student's parents or guardian of violations of the rules of conduct and of resulting disciplinary actions;
(i) any procedures determined appropriate for encouraging early involvement of parents or guardians in attempts to improve a student's behavior;
(j) any procedures determined appropriate for encouraging early detection of behavioral problems;
(k) any procedures determined appropriate for referring a student in need of special education services to those services;
(l) the procedures for consideration of whether there is a need for a further assessment or of whether there is a need for a review of the adequacy of a current individual education plan of a student with a disability who is removed from class;
(m) procedures for detecting and addressing chemical abuse problems of a student while on the school premises;
(n) the minimum consequences for violations of the code of conduct;
(o) procedures for immediate and appropriate interventions tied to violations of the code;
(p) a provision that states that a teacher, school employee, school bus driver, or other agent of a district may use reasonable force in compliance with section 121A.582 and other laws; and
(q) an agreement regarding procedures to coordinate crisis services to the extent funds are available with the county board responsible for implementing sections 245.487 to 245.4888 for students with a serious emotional disturbance or other students who have an individualized educational plan whose behavior may be addressed by crisis intervention.

**121A.62 School site mediation board**

Subdivision 1. **Board allowed.** A school district or school site council may establish a school site mediation board. The board must consist of equal numbers of staff and parents and, in the case of secondary schools, student representatives. Members shall be representative of the
school community and must be selected by a method as determined in the district's discipline policy.

Subd. 2. **Purpose and duties.** The board must mediate issues in dispute at the school site related to the implementation of district and school site codes of conduct under sections 121A.60 to 121A.64, and the application of the codes to a student.

**121A.63 Ombudsperson service**

A school district or school site council may establish an ombudsperson service for students, parents, and staff. The service must consist of an administrator, a student, a parent, and a teacher. The school site must notify students, parents, and staff of the availability of the service. The service must provide advocacy for enforcement of the codes of conduct and the procedures to remediate disputes related to implementation of the code of conduct and the goals of the school in maintaining an orderly learning environment for all students.

**121A.64 Notification; teachers’ legitimate educational interest**

(a) A classroom teacher has a legitimate educational interest in knowing which students placed in the teacher’s classroom have a history of violent behavior and must be notified before such students are placed in the teacher’s classroom.

(b) Representatives of the school board and the exclusive representative of the teachers shall discuss issues related to the model policy on student records adopted under Laws 1999, chapter 241, article 9, section 50, and any modifications adopted under this act for notifying classroom teachers and other school district employees having a legitimate educational interest in knowing about students with a history of violent behavior placed in classrooms. The representatives of the school board and the exclusive representative of the teachers also may discuss the need for intervention services or conflict resolution or training for staff related to placing students with a history of violent behavior in teachers’ classrooms.³

**121A.65 Review of policy**

The principal or other person having general control and supervision of the school, and representatives of parents, students, and staff in a school building shall confer at least annually to review the discipline policy and to assess whether the policy has been enforced. A school board must conduct an annual review of the districtwide discipline policy.

**121A.66 Definitions**

Subdivision 1. **Application.**

For the purposes of providing instruction to children with a disability under sections 125A.03 to 125A.24, 125A.26 to 125A.48, 125A.65, this section, and section 121A.67, the following terms have the meanings given them.

Subd. 2. **Aversive procedure.**

"Aversive procedure" means the planned application of an aversive stimulus.

Subd. 3. **Aversive stimulus.**

"Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

Subd. 4. **Deprivation procedure.**

"Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the person would otherwise receive.

Subd. 5. **Emergency.**

"Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury or to prevent serious property damage.

Subd. 6. **Positive behavioral interventions and supports.**

"Positive behavioral interventions and supports" means those strategies used to improve the school environment and teach pupils skills likely to increase pupil ability to exhibit appropriate behaviors.

³ The Model Policy on Staff Notification of Violent Behavior by Students can be found electronically at www.ipad.state.mn.us.
Subd. 7. **Time-out.**

"Time-out" means:

1. a contingent observation, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate for a period of time, but to observe the activity and listen to the discussion from a time-out area within the same setting;

2. an exclusionary time-out, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate in or observe the classroom activity, but to go to another area from which the pupil may leave; or

3. a locked time-out, which is a regulated intervention, and involves involuntarily removing the pupil from the school activity during the school day and placing the pupil in a specially designed and continuously supervised isolation room that the pupil is prevented from leaving.

**121A.67 School locker policy**

Subd. 2. **Removal by peace officer.**

If a pupil who has an individual education plan is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the pupil's individual education program team must meet to determine if the pupil's individual education plan is adequate or if additional evaluation is needed.

Subd. 2. **Dissemination.** The locker policy must be disseminated to parents and students in the way that other policies of general application to students are disseminated. A copy of the policy must be provided to a student the first time that the student is given the use of a locker.
121A.03 Model policy
Subdivision 1. Model policy. The commissioner shall maintain and make available to school boards a model sexual, religious, and racial harassment and violence policy. The model policy shall address the requirements of subdivision 2, and may encourage violence prevention and character development education programs, consistent with Minnesota Statute § 120B.225, Subd. 1, to prevent and reduce policy violations.
Subd. 2. Sexual, religious, and racial harassment and violence policy. A school board must adopt a written sexual, religious, and racial harassment and sexual, religious, and racial violence policy that conforms with sections 363.01 to 363.15. The policy shall apply to pupils, teachers, administrators, and other school personnel, include reporting procedures, and set forth disciplinary actions that will be taken for violation of the policy. Disciplinary actions must conform with collective bargaining agreements and sections 121A.41 to 121A.56. The policy must be conspicuously posted throughout each school building, given to each district employee and independent contractor at the time of entering into the person's employment contract, and included in each school's student handbook on school policies. Each school must develop a process for discussing the school's sexual, religious, and racial harassment and violence policy with students and school employees.

121A.0695 School board policy, prohibiting intimidation and bullying.
Each school board shall adopt a written policy prohibiting intimidation and bullying of any student. The policy shall address intimidation and bullying in all forms, including, but not limited to, electronic forms and forms involving Internet use.

121A.05 Policy to refer firearms possessor
Each school board shall have a policy requiring the appropriate school official to, as soon as practicable, refer to the criminal justice or juvenile delinquency system, as appropriate, any pupil who brings a firearm to school unlawfully.

121A.035 Crisis Management Policy
Subdivision 1. Model policy. The commissioner shall maintain and make available to school boards and charter schools a model crisis management policy that includes, among other items, school lock-down and tornado drills, consistent with subdivision 2, and school fire drills under section 299F.30.
Subd. 2. School district and charter school policy. A school board and a charter school must adopt a crisis management policy to address potential violent crisis situations in the district or charter school. The policy must be developed cooperatively with administrators, teachers, employees, students, parents, community members, law enforcement agencies, other emergency management officials, county attorney offices, social service agencies, emergency medical responders, and any other appropriate individuals or organizations. The policy must include at least five school lock-down drills, five school fire drills consistent with section 299F.30, and one tornado drill.

121A.69 Hazing policy
Subdivision 1. Definitions.
(a) "Hazing" means committing an act against a student, or coercing a student into committing an act, that creates a substantial risk of harm to a person in order for the student to be initiated into or affiliated with a student organization.
(b) "Student organization" means a group, club, or organization having students as its primary members or participants.
Subd. 2  **Model policy.** The commissioner of education shall maintain and make available to school boards a model policy on student or staff hazing that addresses the requirements of subdivision 3.

Subd. 3  **School board policy.** Each school board shall adopt a written policy governing student or staff hazing. The policy must apply to student behavior that occurs on or off school property and during and after school hours. The policy must include reporting procedures and disciplinary consequences for violating the policy. Disciplinary consequences must be sufficiently severe to deter violations and appropriately discipline prohibited behavior. Disciplinary consequences must conform with section 121A.41 to 121A.56. Each school must include the policy in the student handbook on school policies.
Federal Regulations about the
Discipline of Special Education Students

Subpart B – State Eligibility

§ 300.101 Free appropriate public education (FAPE).
(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

§ 300.174 Prohibition on mandatory medication.
(a) General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part.
(b) Rule of construction. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).
(Authority: 20 U.S.C. § 1412(a)(25))

Subpart C – Local Educational Agency Eligibility

§ 300.209 Treatment of charter schools and their students.
(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.
(Authority: 20 U.S.C. § 1413(a)(5))

§ 300.229 Disciplinary information.
(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child’s records must include both the child’s current IEP and any statement of current or previous disciplinary action that has been taken against the child.
(Authority: 20 U.S.C. § 1413(i))

Subpart D – Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

§ 300.323 When IEPS must be in effect
(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--

4 See also Minn. Stat. § 121A.4, Subd. 10; Minn. Stat. § 121A.47, Subd. 14(b).
(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.


§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP.

(2) Consideration of special factors. The IEP Team must--

(i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and …

Subpart E – Procedural Safeguards
Due Process Procedures for Parents and Children

§ 300.500 Responsibility of SEA and other public agencies.

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of § 300.500 through 300.536.

(Authority: 20 U.S.C. § 1415(a))

§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under § 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

…

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).

(Authority: 20 U.S.C. § 1415(d))

§ 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))

5 See Minn. Stat. § 125A.08(a)(1) regarding a student with ADD or ADHD; and 34 C.F.R. § 300.530(f), discussion page 46721.
§ 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.

§ 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))

Discipline Procedures

§ 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 § 300.530(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.

6 See 34 C.F.R. § 300.510 for more information about the resolution process.

7 Minn. Stat. § 125A.091, Subd. 19, establishes the state time lines for an expedited due process hearing.
(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 § 300.530, 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))

Relevant Guidance from the U.S. Office of Special Education Programs (OSEP) regarding in-school suspensions, suspensions for a portion of a school day, and bus suspensions.

In-School suspension

It has been the Department’s long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with

8 See also Minn. Stat. § 13.32, Subd. 3(i), which is part of the Minnesota Data Practices Act.
nondisabled children to the extent they would have in their current placement. This continues to be our policy.

Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536. 300.530


**Bus Suspension**

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child’s IEP. If the bus transportation were a part of the child’s IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child’s IEP, a bus suspension is not a suspension under § 300.530. In those cases, the child and the child’s parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child’s behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child. Because the determination as to whether an in-school suspension or bus suspension counts as a day of suspension under § 300.530 depends on the unique circumstances of each case, we do not believe that we should include these policies in our regulations. 300.530 IDEA See 71 Fed. Reg. 46715 (August 14, 2006) (discussion).

**Federal Definitions for the three types of disciplinary incidences when a student can be placed in an interim alternative placement as set forth in 34 C.F.R. § 300.520 (g);(l).**

**United States Code, title 18, section 921**

(3) The term “Firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term “Destructive device” means (A) any explosive, incendiary, or poison gas- (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses; (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter, and; (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

**United States Code, title 18, section 930, subsection (g), paragraph (2)**

(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.
United States Code, title 21, section 812: Schedules of controlled substances

(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


(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-methylenedioxyamphetamine. (2) 5-methoxy-3,4-methylenedioxyamphetamine. (3) 3,4,5-trimethoxyamphetamine. (4) Bufotenine. (5) Diethyltryptamine. (6) Dimethyltryptamine. (7) 4-methyl-2,5-diamethoxyamphetamine. (8) Ibogaine. (9) Lysergic acid diethylamide. (10) Marijuana. (11) Mescaline. (12) Peyote. (13) N-ethyl-3-piperydyl benzilate. (14) N-methyl-3-piperydyl 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 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.


(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) Chorhexadol. (3) Glutehimide. (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


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.

18 U.S.C § 1365(h)(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.

Subpart F – Monitoring, Enforcement, Confidentiality, and Program Information
Monitoring, Technical Assistance, and Enforcement

§ 300.601 State performance plans and data collection.
(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State’s efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(b) Data collection.
(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(Authority: 20 U.S.C. § 1416(b))

§ 300.642 Data reporting.
(a) Protection of personally identifiable data. The data described in section 618(a) of the Act and in § 300.641 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.

(Authority: 20 U.S.C. § 1418(b))

§ 300.646 Disproportionality.
(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Other Data Collection Disciplinary and Reporting Regulations
Under Subpart B

§ 300.157 Performance goals and indicators.
The State must—
(a) Have in effect established goals for the performance of children with disabilities in the State that—

(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. § 6311; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

(Authority: 20 U.S.C. § 1412(a)(15))
§ 300.170 Suspension and expulsion rates.
(a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
   (1) Among LEAs in the State; or
   (2) Compared to the rates for nondisabled children within those agencies.
(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.
(Authority: 20 U.S.C. § 1412(a)(22))

Subpart A – General; Purposes and Applicability

§ 300.2 Applicability of this part to State and local agencies.
(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.
(b) Public agencies within the State. The provisions of this part--
   (1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:
      (i) The State educational agency (SEA).
      (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
      (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).
      (iv) State and local juvenile and adult correctional facilities.
(Authority: 20 U.S.C. § 1412)

§ 300.10 Core academic subjects.
Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.
(Authority: 20 U.S.C. § 1401(4))

§ 300.11 Day; business day; school day.
(a) Day means calendar day unless otherwise indicated as business day or school day.
(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).
   (c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.
   (2) School day has the same meaning for all children in school, including children with and without disabilities.
   (c)(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.
   (2) School day has the same meaning for all children in school, including children with and without disabilities.
   (Authority: 20 U.S.C. § 1221e-3)

§ 300.29 Native language.
(a) Native language, when used with respect to an individual who is limited English proficient, means the following:
   (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
   (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. § 1401(20))

§ 300.30 Parent.

(a) Parent means--

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

(Authority: 20 U.S.C. § 1401(23))

§ 300.32 Personally identifiable.

Personally identifiable means information that contains--

(a) The name of the child, the child’s parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child’s social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. § 1415(a))
Frequently Asked Questions
Related to Student Dismissals and Positive Behavior Interventions

1. **What should a student’s individualized education plan (IEP) team consider in developing an IEP if a student’s behavior impedes the student’s learning or other students learning?**

   The IEP team should consider the development of strategies, including positive behavioral interventions and supports, and other strategies, to address the behavior. 34 C.F.R. § 300.324(a)(2)(i).

2. **What are positive behavioral interventions and supports?**

   Positive behavioral interventions and supports are designed to help a student acquire appropriate behavior and skills rather than focusing solely on eliminating or reducing problem behaviors. This will enable the student to make progress toward individualized education program (IEP) goals and in the general education curriculum and function as independently as possible in the community. Minn. R. 3525.0850.

3. **Where can I learn more about individual and school-wide positive behavioral intervention and supports (PBIS)?**

   www.pbis.org and http://education.state.mn.us.

4. **What must happen when a special education student is removed for more than five consecutive school days or 10 cumulative, although not consecutive, school days in the same school year?**

   a. Relevant members of the child’s IEP team, including at least one of the child’s teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child’s IEP team. The meeting must occur as soon as possible, but no more than 10 days after the sixth consecutive day of suspension or the 10th cumulative day of suspension has elapsed. Minn. Stat. § 121A.43(a).

   b. School personnel, in consultation with at least one of the student’s teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP. 34 C.F.R. § 300.530(d)(4) (10 cumulative days only).

5. **What is a manifestation determination?**

   A manifestation determination requires the district representative, the special education student’s parent/guardian and other relevant members of the IEP team to review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents to determine –

   a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability; or

   b. If the conduct in question was the direct result of the district’s failure to implement the IEP. 34 C.F.R. § 300.530(e).

6. **When is a manifestation determination meeting required?**

   The student’s IEP team must meet immediately but not more than ten school days from when one of the following occurs:

   a. Prior to the commencement of an expulsion or exclusion (Minn. Stat. § 121A.43 and 34 C.F.R. § 300.530(e)); or
b. Any decision to change the placement of a student because of the student’s behavior (34 C.F.R. § 300.530(e)).

7. **What if the team determines the special education student’s behavior is not related to the student’s disability?**
   If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student’s disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except the student must continue to receive educational services so as to 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; and receive, as appropriate, a functional behavioral assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(a)(2) and (d); Minn. Stat. § 121A.43(d).

8. **May a special education student be removed multiple times for separate disciplinary incidents during the same school year?**
   Yes. School personnel may remove a student with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. 34 C.F.R. § 300.530(b).

9. **What if the team determines the special education student’s conduct in question was the direct result of the school’s failure to implement the IEP?**
   The school must take immediate steps to remedy those deficiencies. 34 C.F.R. § 300.530(c).

10. **What if the team determines the special education student’s behavior is related to the student’s disability?**
    If the team determines the student’s behavior is related to the student’s disability, the IEP team must conduct an FBA, unless the district conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student. If a behavioral intervention plan already has been developed, the IEP team must review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 C.F.R. § 530(f).

11. **When must a Functional Behavior Assessment (FBA) be developed?**
    An IEP team must be convened to develop an FBA when:
    a. a student is removed for more than 10 consecutive school days for conduct that is a manifestation of the student’s disability, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred (34 C.F.R. § 300.530(e)(1), (f));
    b. a student is removed for more than 10 consecutive school days for conduct that is not a manifestation of the student’s disability, if the IEP team determines it is appropriate (34 C.F.R. § 300.530(d)(ii)); or
    c. a student is placed in an interim alternative educational setting for not more than 45 school days for behavior involving a dangerous weapon, illegal drugs or infliction of serious bodily injury, if the IEP team determines it is appropriate (34 C.F.R. § 300.530(d)(iii)).

12. **What is the timeline for completing an FBA?**
After securing parental permission to conduct the FBA, the district must complete the FBA as soon as possible, but not more than 30 school days, after receiving permission. Minn. R. 3525.2550.

13. **What is the district’s responsibility once the FBA is completed?**
The IEP team must develop an appropriate behavioral intervention plan to address the behavior and ensure that those interventions are implemented. 34 C.F.R. § 300.530(f)(1)(i).

14. **What is the district’s responsibility when the student already has an FBA and/or behavior intervention plan (BIP) in place?**
If an FBA and BIP were already in place prior to the behavioral incident that resulted in the change of placement occurred, then the IEP team must review the BIP and modify it as necessary to address the behavior. 34 C.F.R. § 300.530(f)(1)(ii).

15. **When can an expedited hearing be requested?**
An expedited hearing can be requested if:
   a. a parent of a special education student disagrees with the disciplinary placement of the student;
   b. a parent disagrees with the manifestation determination results; or
   c. the district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others. 34 C.F.R. § 300.532(a).

16. **How can a parent or district request an expedited hearing?**
The party requesting an expedited hearing files a due process complaint. 34 C.F.R. § 300.532. Additional information can be found in the procedural safeguard notice.

17. **In a disciplinary action, when is the district required to provide a copy of the procedural safeguards to the parents of a special education student?**
On the same date the district decides to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct. 34 C.F.R. § 300.530(h); 34 C.F.R. § 300.504(a)(3).

18. **What constitutes a change of placement because of disciplinary removals?**
A change of placement because of disciplinary removals occurs if:
   a. The removal is for more than 10 consecutive school days (34 C.F.R. § 300.536(a)(1));
   b. There has been a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year; because the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of 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 (34 C.F.R. § 300.536(a)(2)(i-iii)); or
   c. School personnel removes a student to an interim alternative educational setting for no more than 45 school days for behavior involving a weapon, illegal drugs or infliction of serious bodily injury (see generally, 34 C.F.R. § 300.530(g)).

19. **Does suspension from the bus count against the 10 cumulative days of removal suspension from school?**
Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the student’s IEP. If the bus transportation were a part of the student’s IEP, a bus suspension would be treated as a suspension unless the district provides the bus service in some other way, because that transportation is necessary for the student to obtain access to the location where services will be delivered. If bus transportation is not a part of the student’s IEP, a bus suspension is not a suspension. In those cases, the student and the student’s parent have the same obligations to get the student to school as a nondisabled student who has been suspended from the bus. However, the school should consider whether the behavior on the bus is similar to behavior in a classroom that is
addressed in an IEP and whether the student’s behavior on the bus should be addressed in the IEP or a behavioral intervention plan of the student. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

20. Does in-school suspension count against the 10 cumulative days of removal?
An in-school suspension would not be considered a part of the days of removal/ out-of-school suspension as long as the special education student is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the student’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

21. Are removals or suspensions for part of a school day considered when determining if there is a pattern of removals?
Yes. Portions of a school day that a special education student had been suspended/removed may be considered as a removal in regard to determining whether there is a pattern of removals. 34 C.F.R. § 300.530(b); 71 Fed. Reg. 46715 (Aug. 14, 2006).

22. If a special education student’s placement is changed, does the school have a right to a new 10 days of removal period in the same school year?
No. The days of removal from the special education student’s current placement consistently refers to days of removal in the same school year. 34 C.F.R. § 300.530(b).

23. If a special education student changes school/district, does the school/district have a right to a new 10 days of removal period in the same year?
No. The days of removal from the special education student’s current placement consistently refers to days of removal in the same school year. 34 C.F.R. § 300.530(b).

24. May school personnel ever remove a special education 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 student’s disability?
Yes. School personnel may remove a special education 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 student’s disability if the student:
a. Carries a dangerous weapon to or possesses a dangerous weapon at school, on school premises, or to or at a school function under the jurisdiction of a district or state department of education;
b. 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 district or state department of education;
c. Has inflicted serious bodily injury upon another person while at a school, on school premises, or at a school function under the jurisdiction of a district or state department of education. 34 C.F.R. § 300.530(g); 34 C.F.R. § 300.530(i)(4).

25. How is the term “dangerous weapon” defined?
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 2.5 inches in length. 18 U.S.C. § 930(g)(2).

26. Can school personnel remove a special education student to an interim alternative educational placement for a violation of the district’s discipline policy for possession of cigarettes or alcohol?
No. School personnel may remove a special education student to an interim alternative educational setting for not more than 45 school days if the 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 state or local district. 34 C.F.R. § 300.530(g)(2). 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 (34 C.F.R. § 300.530(i)(1). Alcohol and tobacco are not substances listed in those schedules.

27. What constitutes serious bodily injury that could result in school personnel removing a special education student to an interim alternative educational placement for not more than 45 school days?
Serious bodily injury has the meaning given the term under 18 U.S.C. § 1365(h)(3). 34 C.F.R. § 300.530(i)(3). The term serious bodily injury means bodily injury which 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. 18 U.S.C. § 1365(h)(3).

28. What is the definition of a “suspension”?
A “suspension” is defined under state law as an action by the school administration, under rules promulgated by the school board, prohibiting a student from attending school for a period of no more than 10 school days. Minn. Stat. § 121A.41, Subd. 10.

29. May school administration impose consecutive suspensions against the same student for the same disciplinary infraction that resulted in the initial suspension?
School administration may only impose a consecutive suspension if the student will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion. If the district is in the process of initiating an expulsion, school administration may, with notice to the student and parent, extend the suspension to a total of 15 school days. Minn. Stat. § 121A.41, Subd. 10.

30. Do districts have to provide alternative educational services for special education students that are suspended in excess of five days or regular and special education students that are expelled or excluded?
Yes. The school administration must implement alternative educational services for special education students when the suspension exceeds five school days or when a regular or special education student is expelled or excluded. During a pending expulsion proceeding, regular and special education students must receive alternative educational services to the extent that the suspension exceeds five school days. The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress toward meeting the graduation standards and to help prepare the student for readmission. If the student wishes to take advantage of the alternative educational services, the district is required to implement those services rather than simply notify the student of other educational options, such as nonpublic school or enrollment in another school district. Minn. Stat. § 121A.46, Subd. 4; Minn. Stat. § 121A.55(a).

31. Do districts have to provide alternative educational services for regular education students that are suspended from school?
During a pending expulsion proceeding, regular education students must receive alternative educational services to the extent that the suspension exceeds five school days. For all other suspensions, each school board (public school district or charter school) shall include in its discipline policy the continuing responsibility of the school for the education of the student during the dismissal period. The alternative educational services, if the student wishes to take advantage of them, must be adequate to allow the student to make progress toward meeting the state and local graduation standards and to help prepare the student for readmission. Minn. Stat. § 121A.46, Subd. 4; Minn. Stat. § 121A.55(a).

32. What are alternative education services?
Alternative educational services may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through
33. Can a special education student be expelled or excluded if the team determines the student’s behavior is not related to the student’s disability?
Yes. When a student who has an individual education program is excluded or expelled for misbehavior that is not a manifestation of the student’s disability, the district may expel or exclude the student in the same manner and for the same duration as the expulsion/exclusion procedures would be applied to students without disabilities and must continue to provide special education and related services during the dismissal period. Minn. Stat. § 121A.43(d); Minn. Stat. § 121A.55(a).

34. Who is responsible for providing alternative educational services to a student who is expelled from a charter school?
The charter school is a public school which is obligated to abide by all the provisions of the Pupil Fair Dismissal Act (PFDA). Minn. Stat. § 124D.10, Subd. 8(h). Therefore, the charter school would have the responsibility to provide alternative educational services to a student during the period of an expulsion. Minn. Stat. § 121A.55(a).

35. What happens if a district proposes to expel/exclude a student?
The district must notify the parent/guardian and student in writing that it proposes to expel or exclude the student. The written notice must include a complete statement of the facts, a list of the witnesses, and a description of their testimony. The district cannot expel or exclude a student without a hearing, unless the right to a hearing is waived in writing by the student and parent/guardian. Minn. Stat. § 121A.47.

36. May a student who waives his/her right to an expulsion hearing appeal his/her expulsion to the state?
Yes. If a student waives his or her right to a hearing, he or she still has the right to appeal the district’s subsequent actions to the commissioner of the Minnesota Department of Education based on the record of the district’s action. Minn. Stat. § 121A.49. All expulsion appeals must be submitted to the commissioner of the Minnesota Department of Education within 21 calendar days of the school board’s action to expel.

37. When is the district required to provide a student with a copy of the Pupil Fair Dismissal Act (PFDA)?
When a student is facing disciplinary action, for example a suspension or expulsion/exclusion, the district is required to provide the student and the student’s parent/guardian with a copy of the PFDA. Minn. Stat. § 121A.40 to 121A.56; Minn. Stat. § 121A.46, Subd. 3; Minn. Stat. § 121A.47, Subd. 2(d).

38. Does the PFDA apply to private school students?
No. Under the PFDA, “pupil” means any student who remains eligible to attend a public elementary or secondary school. Minn. Stat. § 121A.41, Subd. 7