



RESOURCE BOOK:

STUDENT DISCIPLINE AND NEW YORK CHARTER SCHOOLS: DISCUSSION AND TRAINING

June 19, 2013

Note: The following statutory, regulatory and authorizer materials were distributed in connection with the above training. The Institute intends the materials to be a useful resource for handling issues related to student discipline rather than an exhaustive list.

NY Charter Schools Act of 1998

NY Education Law § 2851(2)(h): “The rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities.”

NY Education Law § 2853(4)(a): “Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider. Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools.”

SUNY Charter Agreement

(available at: <http://www.newyorkcharters.org/schoolsCompliOverview.htm>)

3.9 Student Disciplinary Codes. Each school shall maintain and implement written rules and procedures for student discipline including guidelines for suspension and expulsion, and shall disseminate those procedures to students and parents. Such guidelines and procedures must be consistent with applicable law including, but not limited to, requirements for due process, provision of alternative instruction and federal laws and regulations governing the discipline and placement of students with disabilities. In the first year of operation of any school, the school's discipline policy must be consistent with the discipline policy set forth in the school's charter application in the Terms of Operation. Thereafter, the Education Corporation shall have the authority to make such modifications to the student disciplinary code of any school as it deems

necessary and appropriate, and such modifications shall not require the permission of the Trustees or be deemed to constitute a revision to the Charter, except that material modifications of the disciplinary code shall be approved by the Education Corporation Board prior to such modifications becoming effective, and shall be reported as part of each School's annual report as required by section 6.1 of the Charter Agreement.

3.17 Special Education and Funding of Services. (a)The Education Corporation shall provide services and accommodations to students with disabilities as set forth for each school in the Terms of Operation and in accordance with the Special Education Assurances set forth in Exhibit C hereto, the Individuals with Disabilities Education Act (20 U.S.C. § 1401 *et seq.*) (the “**IDEA**”), the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) (the “**ADA**”) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (“**Section 504**”) and all applicable regulations promulgated pursuant to such federal laws including providing services to attending students with disabilities in accordance with the individualized education program (“**IEP**”) recommended by the committee or subcommittee on special education of the student's school district of residence or as assigned by such district (“**CSE**”). Pursuant to Education Law § 2853(4)(a), each school shall provide such appropriate and required services either directly, cooperatively with another school operated by the Education Corporation or by contract with another provider, and, to the extent not otherwise indicated in the Terms of Operation, the Education Corporation may, elect to have certain services provided by a student’s school district of residence. The Education Corporation may seek reimbursement from a student’s district of residence for special education and related services provided by the Education Corporation, pursuant to a student’s IEP or Section 504 plan, to the extent permitted under Education Law § 2856 and the New York Laws of 2002, chapter 83, part H, § 102.

SUNY Guidance

Guidance from SUNY Application Kit *Guidance Handbook* dated January 25, 2013 and available at: <http://www.newyorkcharters.org/documents/Draft2013RFPGuidanceHandbook.docx>.

(b) Discipline Policy (general education) [p. 29]

- The discipline policy must specify the following: (i) the substantive acts for which a child may be disciplined; (ii) the consequences (or range of consequences) resulting from committing each such act (including suspension or expulsion); (iii) the due process procedures that the school will follow in applying its discipline policy (in accordance with federal law); and (iv) the individuals responsible for carrying out the discipline policy and any appeals therefrom. In addition, please indicate how the school staff will be educated about, and trained to implement, the policy.
- A charter school, like its district public school counterparts, is obligated to provide alternative instruction to students who are suspended or expelled (whether in-

school or out-of-school) as part of New York's compulsory education law from which charter schools are not exempt. A school should provide alternative instruction to students as soon as practicable. In general, a school is required to provide such instruction by no later than the day after the suspension or expulsion is effective. Such instruction can be at a location and time of the school's choosing, so long as each is reasonable (i.e., it may be in school or out of school). The school must provide alternative instruction in person (live instruction) by a certified or NCLB highly qualified teacher. Homework packets do not in and of themselves constitute alternative instruction. It is the Institute's view that except for the brief time it would take for a student to re-enroll in another public school, charter schools do not have to, but may, provide alternative instruction for expelled students.

- Alternative instruction for suspended students must be of sufficient duration to enable a student to cover all class material, take all tests and quizzes, keep pace with other students, and progress to the next grade level. The State Education Department has opined that one hour of alternative instruction per day is sufficient for students in Kindergarten through 6th grade, and two hours for students in 7th - 12th grades. Except for the brief time it would take for a student to re-enter another public school, charter schools do not have to, but may, provide alternative instruction for expelled students.
- Charter schools must comply with the federal Gun Free Schools Act, 20 U.S.C. § 7151. Please include its mandatory penalties in the proposed discipline policy. These requirements are available at: <http://www2.ed.gov/legislation/ESEA/sec14601.html>.
- The discipline policy must set forth the 14th Amendment due process protections for both short-term suspensions of 10 or fewer days based on U.S. Supreme Court case law (*Goss v. Lopez*, 419 U.S. 565 (1975)), namely, a student's (parent's) right to know the reason and evidence for the suspension and the right to tell his or her side of the story prior to or shortly after commencement of the suspension, and the greater protections for longer term suspensions (over 10 days) and expulsions including the right to counsel, to confront and present witnesses, and to challenge and present evidence. Please note that charter schools are free to define long- and short-term suspensions differently (i.e., a different number of days) so long as the minimum federal due process protections are in place. Charter schools are not required to follow state law or Commissioner of Education rules or regulations on discipline including the five day demarcation of long- and short-term suspension.
- While charter schools may impose penalties on students for not wearing uniforms, they may not indefinitely withhold students from class for not wearing a complete uniform. Brief trips to an office to record demerits or pick up missing uniform parts coupled with a return to class would be permissible, but placing students in a

detention hall until a full uniform is available would not. If the school wants to prevent children from attending regular classes without a full uniform, then the school would have to include the offense in the school's discipline policy and provide both due process and alternative instruction for such suspension.

b) Students with Disabilities [p. 23]

- Education Law § 2851(2)(s) requires that an applicant for a charter school supply the “methods and strategies for serving students with disabilities in compliance with all federal laws and regulations relating thereto.” A New York charter school is, for purposes of the federal Individuals with Disabilities Education Act (IDEA), a school within a local educational agency (LEA), i.e., a school within a school district (or more than one school district if enrolled students with disabilities reside in more than a single school district). The applicant's response should discuss the relationship between the school and the district Committees on Special Education (CSEs).
- A charter school's primary obligation is to work with the school district(s) to ensure provision of services and settings required by each identified or classified student's Individualized Education Program (IEP) either at the charter school or in the district or some combination thereof. While charter schools are not required to offer the full continuum of special education placement options, a charter school's existence now may depend on serving similar percentages of students with disabilities as the schools in its district of location (see Education Law § 2855(1)(e)). If a student requires programs or services not included in the design of the charter school's education program, the charter school could modify its program to include the necessary programs/services (including the necessary staffing and concomitant budget modifications), contract with a third party to provide the IEP required programs or services, or ask the student's district of residence to provide the programs/services. The district is supposed to provide services in and to the charter school to the same extent as provided in and to district schools. This, of course, has budget implications as well.
- IDEA and the implementing federal regulations, 34 CFR § 300 *et seq.*, coupled with §§ 2853(4)(a) and 2856(1), make clear that it is the responsibility of the CSE of each student's district of residence to conduct initial evaluations of students to determine whether they are eligible to receive special education and related service after the parent or the charter school has made a referral. It is also a CSE's responsibility to design, review and revise the IEPs mandated by IDEA with input from relevant charter school personnel (as part of the IEP team) and to have in place the due process procedures available to students and parents in connection with the above.
- A charter school, upon notice to a student's parents, may seek to have a child's IEP reviewed, and possibly revised, by the CSE of the student's district of residence, or

to have the child's status as a special education student re-evaluated by the CSE. Many charter schools undertake a systematic effort to have students' IEPs reviewed, believing that in many instances the IEPs in place at the time that children are first enrolled in the charter school are overly restrictive and do not maximize the child's ability to receive a free and appropriate public education in the least restrictive environment. Indicate if the school intends to undertake such a program and describe in general terms the contours of such program. Please remember that the CSE of the classified or identified student's districts of residence conducts such re-evaluations. The charter school does not conduct re-evaluations. At the same time guidance from the State Education Department has stated that CSEs are supposed to take the unique settings, class ratios and other programmatic elements of charter schools into account in structuring an IEP that could allow the student to remain in the charter school. To that end, the proposal should describe any services or settings the school would offer and the special education students in district school settings that the charter school believes it will be able to serve in its settings. For example, a charter school that would have a classroom with 15 students, a lead teacher, a novice teacher and a paraprofessional might describe how it believes the school could accommodate students with 12:1:1 IEPs.

- Note that the applicant must provide assurances that the school will be in compliance with the IEPs of its students as determined by the requirements of federal law.
- The federal regulations implementing the IDEA, 34 CFR § 300 *et seq.*, are available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2C>.

Additional information regarding charter schools and special education services is available at: <http://www.emsc.nysed.gov/psc/specialed.html>.

(c) Special Education Discipline Policy [p.30]

- Charter schools are subject to federal laws and regulations governing the discipline of students with disabilities including in particular the requirements of the IDEA and the U.S. Department of Education's implementation regulations, 34 CFR § 300 *et seq.* The policy should address topics such as the discipline of students who have a Behavioral Intervention Plan (BIP) in their IEP and also detail how classroom teachers would be knowledgeable about such plans.
- These regulations are highly specific as to discipline and the additional due process protections afforded affected students and parents. Accordingly, please review sections 530-536 of Part 300 of Title 34 of the Code of Federal Regulations, 34 CFR § 300.530-36. These provisions and other information are available online, please visit:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C6%2C>

In crafting the proposed discipline policy, remember that the student's district of residence forms the committee on special education (CSE) and that the charter school must work through and with that CSE. For example, a charter school cannot suspend a student with an IEP for more than 10 cumulative days in a school year without a manifestation determination by the CSE.

- Remember also that 34 CFR § 300.534 provides due process protections for a student who has yet to be evaluated by a CSE, but who the school knows may be eligible for referral to a CSE or who is undergoing evaluation at the time of the incident requiring discipline under the charter school's policy.
- Certain aspects of the IDEA regulations are permissive (describing the limit of school authority) such as the provision of the removal to an interim alternative educational setting (that must be determined in conjunction with the CSE) of certain special education students that have engaged in certain types of activity as set forth in 34 CFR 530(g). In other cases the IDEA regulations describe a minimum standard to which all schools must adhere, but the school is free to implement a higher standard. For example, the first ten days of suspension for a student with an IEP need not provide all settings and services thought the school is free to still provide them. The policy should discuss whether the school intends to use these provisions or whether it would have a different approach.

Case Summary:

Goss v. Lopez, 419 U.S. 565 (1975)

Facts: Students in Ohio were suspended out of school for up to 10 days without notice or any type of hearing or process. They appealed the suspensions through the courts based on the Due Process Clause of the 14th Amendment of the US Constitution, and sought to have the suspensions expunged from their student records, and enjoin future suspensions handled in the same manner. Ohio is a state, like NY, where there is free education and compulsory education between certain ages.

Discussion: The school district argued "that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system." The Court rejected this argument as follows:

- "The Fourteenth Amendment forbids the State to deprive any person of life, liberty, or property without due process of law."
- Based on of state law, the students" plainly had legitimate claims of entitlement to a public education."
- "[S]uspensions may not be imposed without any grounds whatsoever."

- “Having chosen to extend the right to an education to [students] generally, Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred.”
- “The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad, must be exercised consistently with constitutional safeguards.”

The court made the following findings:

- Students have a “legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.”
- Charges of misconduct in students’ records “could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment.” i.e., the students had a reputational interest at stake.

The school district also argued that “even if there is a right to a public education protected by the Due Process Clause generally, the Clause comes into play only when the State subjects a student to a “severe detriment or grievous loss,” and “[t]he loss of 10 days . . . is neither severe nor grievous and the Due Process Clause is therefore of no relevance.” The Court rejected that argument stating that the first it looks at *whether* process is required and then it looks at severity of the deprivation of an interest to determine *what* process is required. The Court found that “total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child.”

The Court then turned to the question of what process was due. The Court stated:

The fundamental requisite of due process of law is the opportunity to be heard," a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given *some* kind of notice and afforded *some* kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.

Holding: “Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less,

[1] that the student be given oral or written notice of the charges against him and,

[2] if he denies them, an explanation of the evidence the authorities have and

[3] an opportunity to present his side of the story.”

The Court stated, “In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred.”

The Court also agreed with the school district that “Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable . . .”

Lastly, the Court expressly limited its holding to short-term suspensions stating, “We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.” For this reason the full Due Process protections mentioned in the opinion are applied to long-term suspensions and expulsions. Those rights were listed as “the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident.”

IDEA Regulations

34 CFR § 300.17 Free appropriate public education

Free appropriate public education or FAPE means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CA%2C300%252E17%2C.>)

34 CFR § 300.101(a) 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 Sec. 300.530(d).

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CB%2C300%252E101%2C.>)

34 CFR § 300.111 Child Find

(a) General.

(1) The State must have in effect policies and procedures to ensure that--

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(c) Other children in child find. Child find also must include--

(1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CB%2C300%252E111%2C.>)

34 CFR § 300.321(a) IEP Team

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes--

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the public agency who--

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CD%2C300%252E321%2C.>)

34 CFR § 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 [34 CFR § 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 [18 USC § 1365(h)(3)].

[(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.]

(4) Weapon has the meaning given the term "dangerous weapon" under [18 USC § 930(g)(2)]

["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."]

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CE%2C300%252E530%2C.>)

34 CFR § 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 Sec. Sec. 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.

(Available at:

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CE%2C300%252E536%2C.>)

Federal Statutes

Section 504 of the Rehabilitation Act of 1973, 29 USC § 794

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in [29 USC § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) “Program or activity” defined

For the purposes of this section, the term “program or activity” means all of the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in [20 USC § 7801]), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the **Americans with Disabilities Act of 1990** (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

20 U.S.C. § 7151 Gun-Free Schools Act

(b) Requirements

(1) In general

Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

(2) Construction

Nothing in this subpart shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

(3) Definition

For the purpose of this section, the term "firearm" has the same meaning given such term in [18 USC § 921(a)].

(c) Special rule

The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act [20 USC § 1400 *et seq.*].

(d) Report to State

Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under any subchapter of this chapter shall provide to the State, in the application requesting such assistance--

(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b) of this section; and

(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b) of this section, including--

(A) the name of the school concerned;

(B) the number of students expelled from such school; and

(C) the type of firearms concerned.

(e) Reporting

Each State shall report the information described in subsection (d) of this section to the Secretary on an annual basis.

(f) Definition

For the purpose of subsection (d) of this section, the term "school" means any setting that is under the control and supervision of the local educational agency for the purpose of student activities approved and authorized by the local educational agency.

(g) Exception

Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.

(h) Policy regarding criminal justice system referral

(1) In general

No funds shall be made available under any subchapter of this chapter to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

(2) Definition

For the purpose of this subsection, the term "school" has the same meaning given to such term by [18 USC § 921(a)].