

NASET's Resolving Disputes with Parents Series

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The Child's Placement During the Appeal Process

The “default” placement during an appeal is the interim alternative educational setting (IAES). IDEA states that the child must remain in the IAES chosen by the IEP team until the hearing officer makes his or her decision on the appeal—or the time period specified in §300.530(c) or (g) expires, whichever comes first, unless the parent and the SEA or LEA agree otherwise.

To What Time Periods Is IDEA Referring?

It's important to be specific here.

Time period in §300.530(c). The circumstances being described are 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. In such a case, the time period would be whatever local policy dictates be applied to children without disabilities being disciplined for a similar violation of the code of student conduct as that made by the child with a disability at issue in this disciplinary appeal, **except that** the services provisions in §300.530(d) would apply to the child with a disability. The child must continue to receive educational services so as to enable him or her 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. The child must also 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.

If the time period expires before the hearing officer makes his or her determination on the appeal, then the child with a disability would be returned to the original placement from which he or she was removed as a result of the violation of the conduct code (unless the parent and the SEA or LEA agree otherwise).

Time period in §300.530(g). Here, IDEA is referring to violations involving the special circumstances (weapons, drugs, or serious bodily injury). In these circumstances, school personnel may remove a child to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability.

So, a child subject to a disciplinary removal for misconduct that is not a manifestation of the child's disability but that is a special-circumstances violation may be removed to an IAES for no more than 45 school days. If that time period expires before the hearing officer makes his or her determination on the appeal—which must be decided on an expedited basis, unless the parent and the SEA or LEA agree otherwise—the child with a disability would be returned to the original placement from which he or she was removed as a result of the violation of the conduct code.

Which Time Period Applies?

We have two time periods to consider. Which applies in the situation of a given child? The answer is—whatever time period is associated with how the child was disciplined. Was the child disciplined under circumstances pursuant to §300.530(c) (a disciplinary change of placement for misconduct that is determined not to be a manifestation of the child’s disability)—or under circumstances pursuant to §300.530(g) (for weapons or drugs violations, or serious bodily injury)? The answer to that question will help you determine the relevant time period to be applied.

In Conclusion

Thus, under IDEA, during appeals under §300.532 by either the parent or the LEA (which are subject to the procedures for expedited due process hearings), the child must remain in the IAES pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) (for removals of children disciplined for misconduct not related to their disability) or §300.530(g) (for drugs or weapons violations or serious bodily injury), whichever occurs first, unless the parents and the SEA or LEA agree otherwise.

If procedures for appeals under §300.532 are repeated, the procedures for expedited due process hearings apply, and §300.533, as described above, governs the child’s placement during the appeal.