



**Statutory Overview of School Suspension Proceedings**  
Prepared for the NYS Leadership Summit on School-Justice Partnerships: Keeping Kids in School and Out of Court

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**34 CFR Part 300**

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- §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.

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## §300.530(b)(1) General

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- 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).

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## §300.530(b)(2)

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- 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.

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### §300.530(c) *Additional Authority*

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- 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..., 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.

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### §300.530(d) **Services**

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- (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.

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## §300.530(d) Services

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- (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.

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## 8 NYCRR 201.10: Provision of Services During Suspension

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- **(a) During any period of suspension, a student with a disability shall be provided services to the extent required under this section and paragraph (e) of subdivision 3 of section 3214 of the Education Law. Nothing in this section shall be construed to confer a greater right to services than is required under Education Law, section 3214(3)(e) and Federal law and regulations.**
- **(b) During suspensions or removals for periods of up to 10 school days in a school year that do not constitute a disciplinary change in placement, students with disabilities of compulsory attendance age shall be provided with alternative instruction pursuant to Education Law, section 3214(3)(e) on the same basis as non disabled students. Students with disabilities who are not of compulsory attendance age shall be entitled to receive services during such suspensions only to the extent that services are provided to non disabled students of the same age who have been similarly suspended.**
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## 8 NYCRR 201.10: Provision of Services During Suspension

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- **(c) During subsequent suspensions or removals for periods of 10 consecutive school days or less that in the aggregate total more than 10 school days in a school year but do not constitute a disciplinary change in placement, regardless of the manifestation determination, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP and to receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in meeting the goals set out in the student's IEP.**

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## 8 NYCRR 201.10: Provision of Services During Suspension

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- (d) During suspensions or other disciplinary removals, including suspensions or removals pursuant to section 201.7(e) of this Part, for periods in excess of 10 school days in a school year which constitute a disciplinary change in placement, regardless of the manifestation determination, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum, to progress toward meeting the goals set out in the student's IEP, and to receive, as appropriate, pursuant to section 201.3 of this Part, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. The IAES and services shall be determined by the CSE.

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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- (a) *Parental notice of disciplinary removal.* No later than the date on which a decision is made to change the placement of a student with a disability to an IAES pursuant to subdivision (e) of this section or pursuant to section 201.8 of this Part, or a decision is to impose a suspension or removal pursuant to this Part that constitutes a disciplinary change in placement, the parent shall be notified of such decision and shall be provided the procedural safeguards notice in accordance with section 200.5(f) of this Title.

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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- (b) *Five school day suspension or removal.* Except as otherwise provided in subdivision (d) of this section, the trustees or board of education of any school district, a district superintendent of schools or a building principal with authority to suspend students pursuant to Education Law, section 3214(3)(b) and (g), shall have authority to order the placement of a student with a disability into an appropriate interim alternative educational setting, another setting or suspension for a period not to exceed five consecutive school days, and not to exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior.

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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- **(c) *Ten school day suspension or removal.*** Except as otherwise provided in subdivision (d) of this section, a superintendent of schools, either directly or upon recommendation of a hearing officer designated to conduct a superintendent's hearing pursuant to Education Law, section 3214(3)(c) and (g), may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension for up to 10 consecutive school days, inclusive of any period in which the student has been suspended or removed pursuant to subdivision (b) of this section for the same behavior, where the superintendent determines in accordance with the procedures set forth in Education Law section 3214(3)(c) that the student has engaged in behavior that warrants a suspension, provided that the duration of any such suspension or removal shall not exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior. Except as otherwise provided in subdivision (d) of this section, a superintendent of schools may order additional suspensions of not more than 10 consecutive school days in the same school year for separate incidents of misconduct.

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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- **(d) *Exception for pattern of suspensions or removals.*** A student with a disability may not be removed pursuant to subdivision (b) or (c) of this section if imposition of the 5 school day or 10 school day suspension or removal would result in a disciplinary change in placement based on a pattern of suspensions or removals as determined by school personnel in accordance with the criteria set forth in section 201.2(e)(2) of this Part, except where the manifestation team pursuant to section 201.4 of this Part has determined that the behavior was not a manifestation of such student's disability, or the student is placed in an IAES as authorized under subdivision (e) of this section.

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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- **(e) Change in placement to an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances.**
- **(1) A superintendent of schools, either directly or upon recommendation of a hearing officer designated to conduct a superintendent's hearing pursuant to Education Law, section 3214(3)(c), may order the change in placement of a student with a disability to an appropriate IAES, to be determined by the CSE, for up to 45 school days, but not to exceed the period of suspension ordered by the superintendent in accordance with Education Law, section 3214(3), where the student:**
  - **(i) has inflicted serious bodily injury, as defined in section 201.2(m) of this Part, upon another person while at school, on school premises or at a school function under the jurisdiction of the educational agency;**
  - **(ii) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the educational agency; or**
  - **(iii) 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 the educational agency.**
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## 8 NYCRR 201.7: General procedures for suspensions and removals of students with disabilities

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- **(2) The period of suspension or removal ordered by the superintendent may not exceed the amount of time that a nondisabled student would be suspended for the same behavior.**
- **(f) 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 Part is appropriate for a student with a disability who violates a school district's code of student conduct.**

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### §300.530(e)(2): MDR cont.

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- 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.**

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### §300.530(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 FBA 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 LEA agree to a change of placement...

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## §300.530(g) Special circumstances

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- 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.

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## NY Educ. Law §4402: Duties of School Districts

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- (j) [Eff. until June 30, 2015, In accordance with the regulations of the commissioner and..[federal law] and the implementing federal regulations, to conduct a functional behavioral assessment, to review, or revise, as appropriate or necessary, and implement a behavioral intervention plan, to develop appropriate behavioral interventions and to review and revise, as appropriate or necessary, the implementation of a behavioral intervention plan, to address the behavior of a student with a disability who is alleged to have engaged in misconduct, to the extent required by federal law and regulations.
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## NY Educ. Law §4402: Duties of School Districts

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- **(3)(k) [Eff. until June 30, 2015.. In accordance with the regulations of the commissioner and ...[federal law], to determine the setting and services to be provided in the interim alternative educational setting for a student with a disability who carries or possesses a weapon to or at school, on school premises, or to or at a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function or who has inflicted serious bodily injury upon another person as defined in federal law and the setting and services to be provided to a student with a disability in an interim alternative educational setting or other setting who is removed because of behavior that has been determined not to be a manifestation of the student's disability.**

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## NY Educ. Law §4402: Duties of School Districts

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- (3)(l) In accordance with the regulations of the commissioner and the provisions of subsection (k) of section fourteen hundred fifteen of title twenty of the United States code, and the implementing federal regulations, to conduct expedited evaluations under the circumstances specified in such federal law and regulations and to conduct such reviews and make such determinations regarding students presumed to have a disability for discipline purposes as defined in subdivision three of section thirty-two hundred fourteen of this chapter as are required under the federal individuals with disabilities education act and implementing regulations.

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## 8 NYCRR 201.4: Manifestation Determinations

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- **(a) *General requirement for manifestation review.* A review of the relationship between the student's disability and the behavior subject to disciplinary action to determine if the conduct is a manifestation of the disability must be made immediately, if possible, but in no case later than 10 school days after:**
  - **(1) a decision is made by a superintendent of schools to change the placement of a student to an interim alternative educational setting pursuant to section 201.7(e) of this Part;**
  - **(2) a decision is made by an impartial hearing officer to place a student in an interim alternative educational setting pursuant to section 201.8 of this Part; or**
  - **(3) a decision is made by a board of education, district superintendent of schools, building principal or superintendent pursuant to section 201.7(a) or (b) of this Part to impose a suspension that constitutes a disciplinary change in placement.**
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## 8 NYCRR 201.4: Manifestation Determinations

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- **(c) *Conduct of review.*** The manifestation team shall 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 if:
  - **(1) the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or**
  - **(2) the conduct in question was the direct result of the school district's failure to implement the IEP.**

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## 8 NYCRR 201.4: Manifestation Determination

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- **(d) Determination.**
- **(1) The conduct must be determined to be a manifestation of the student's disability if the manifestation team determines that a condition in either paragraph (c)(1) or (2) of this section was met.**
- **(2) If the manifestation team determines that the conduct was a manifestation of the student's disability, the CSE shall:**
- **(i) conduct a functional behavioral assessment and implement a behavioral intervention plan for such student in accordance with section 201.3 of this Part; and**
- **(ii) except as provided in section 201.7(e) of this Part, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.**
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## 8 NYCRR 201.4: Manifestation Determination

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- **(e) Deficiencies in IEP. If the manifestation team determines the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate steps to remedy those deficiencies.**

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## §300.532: Appeal

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- (a) The parent of a child with a disability who disagrees with any decision regarding placement under §300.530 or §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. (Impartial hearing)

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## §300.532: Appeal, cont.

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- (b)(2)(i)...the hearing officer may [r]eturn 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 MDR.
- (b)(2)(ii)....the hearing officer may [o]rder a change of placement of the child with a disability to an appropriate IAES 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.

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### §300.533: Placement during appeals

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- When an appeal under §300.532 has been made...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) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

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### §300.534 Protections for children not determined eligible for special education and related services

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- (a) **Child find: A child who has not been determined to 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 that the child was a child with a disability before the behavior** that precipitated the disciplinary action occurred.

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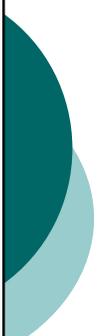


## §300.54(b)(1): Child Find

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- (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...
- (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.

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## 300.534 (c): Child find, cont.

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- 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 or
- (ii) has refused services...
- (2) The child has been evaluated and determined to not be a child with a disability...

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### §300.534(d) Conditions that apply if no basis of knowledge (of disability)

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- (1) If a public agency does not have knowledge that a child is a child with a disability...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...
- (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..., 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, the agency must provide special education and related services...

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### 8 NYCRR 201.5: Students presumed to have a disability for discipline purposes

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- (a) General provision. The parent of a student who has violated any rule or code of conduct of the school district and was not identified as a student with a disability at the time of such behavior may assert any of the protections set forth in this Part, if the school district is deemed to have had knowledge as determined in accordance with subdivision (b) of this section, that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. Where the school district is deemed to have had knowledge that the student was a student with a disability before such behavior occurred, such student is a "student presumed to have a disability for discipline purposes."

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## 8 NYCRR 201.5: Students presumed to have a disability for discipline purposes

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- (b) *Basis of knowledge.* Except as otherwise provided in subdivision (c) of this section, a school district shall be deemed to have knowledge that such student had a disability if prior to the time the behavior occurred:
  - (1) the parent of such student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the student that the student is in need of special education, provided that such expression of concern may be oral if the parent does not know how to write or has a disability that prevents a written statement;
  - (2) the parent of the student has requested an evaluation of the student pursuant to section 200.4 or 200.16 of this Title; or
  - (3) a teacher of the student, or other personnel of the school district, has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education of the school district or to other supervisory personnel of the school district.
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## 8 NYCRR 201.5: Students presumed to have a disability for discipline purposes

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- (c) *Exception.* A student is not a student presumed to have a disability for discipline purposes if, as a result of receiving the information specified in subdivision (b) of this section:
  - (1) the parent of the student has not allowed an evaluation of the student pursuant to section 200.4 of this Title; or
  - (2) the parent of the student has refused services under this Part; or
  - (3) it was determined that the student is not a student with a disability pursuant to section 200.4 or 200.16 of this Title.

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## 8 NYCRR 201.5: Students presumed to have a disability for discipline purposes

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- (d) *Responsibility for determining whether a student is a student presumed to have a disability.* If it is claimed by the parent of the student or by school district personnel that the school district had a basis for knowledge, in accordance with subdivision (b) of this section, that the student was a student with a disability prior to the time the behavior subject to disciplinary action occurred, it shall be the responsibility of the superintendent of schools, building principal or other school official imposing the suspension or removal to determine whether the student is a student presumed to have a disability.

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## 8 NYCRR 201.5: Students presumed to have a disability for discipline purposes

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- (e) *Conditions that apply if there is no basis for knowledge.* If the superintendent of schools, building principal or other school official imposing the disciplinary removal determines that there is no basis for knowledge that the student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as any other nondisabled student who engaged in comparable behaviors. However, if a request for an individual evaluation is made while such nondisabled student is subjected to a disciplinary removal, an expedited evaluation shall be conducted in accordance with section 201.6 of this Part.

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## 8 NYCRR 201.6: CSE responsibilities for expedited evaluations

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- a) If a request for an individual evaluation is made during the period that a non disabled student, who is not a student presumed to have a disability for discipline purposes, is suspended pursuant to Education Law section 3214 or is subjected to a removal as defined in section 201.2(l) of this Part if imposed on a student with a disability, the evaluation must be conducted in an expedited manner in accordance with this section.

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## 8 NYCRR 201.6: CSE responsibilities for expedited evaluations

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- (b) An **expedited evaluation shall be completed no later than 15 school days after receipt of parent consent** for evaluation, and shall be conducted in accordance with the procedural requirements of sections 200.4 and 200.5 of this Title. **The CSE shall make a determination of eligibility of such student in a meeting held no later than five school days after completion** of the expedited evaluation.

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## 8 NYCRR 201.6: CSE responsibilities for expedited evaluations

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- (c) Until the expedited evaluation is completed, the nondisabled student shall remain in the educational placement determined by the school district, which can include suspension.
- (d) If, as a result of an expedited evaluation, the student is determined to be a student with a disability, the school district shall provide special education to the student pursuant to Part 200 of this Title and the provisions of this Part relating to students with disabilities shall apply.

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## Family Court Act §255

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- **It is hereby made the duty of, and the family court or a judge thereof may order, any state, county, municipal and school district officer and employee to render such assistance and cooperation as shall be within his legal authority, as may be required, to further the objects of this act provided, however, that with respect to a school district an order made pursuant to this section shall be limited to requiring the performance of the duties imposed upon the school district and board of education or trustees thereof pursuant to sections four thousand five, forty-four hundred two and forty-four hundred four of the education law, to review, evaluate, recommend, and determine the appropriate special services or programs necessary to meet the needs of a handicapped child, but shall not require the provisions of a specific special service or program, and such order shall be made only where it appears to the court or judge that adequate administrative procedure to require the performance of such duties is not available.**

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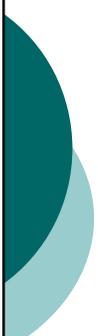


## §300.535: Referral to and action by law enforcement and judicial authorities.

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- (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 FERPA 20 USC 1415(k)(6)

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## 20 USC §7151(b)(1) (NCLB)

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- Each State receiving Federal funds under any subchapter of this chapter **shall** have in effect a State law requiring LEAs 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...**except** that such State law **shall** allow the chief administering officer of a LEA to **modify such expulsion** requirement for a student on a **case by case basis** if such modification is in writing.

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## Federal Definition of “firearm”: 18 USC §921(a)(3)

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- **(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.

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## Federal LEA program requirements: 20 USC §7114 (NCLB)

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- (d) An application submitted by a LEA under this section shall contain
- (7) an assurance that the applicant has, or the schools to be served have, a plan for keeping schools safe and drug-free that includes—
- **(A)** appropriate and effective school discipline policies that prohibit disorderly conduct, the illegal possession of weapons, and the illegal use, possession, distribution, and sale of tobacco, alcohol, and other drugs by students;
- **(B)** security procedures at school and while students are on the way to and from school;
- **(D)** a crisis management plan for responding to violent or traumatic incidents on school grounds; and

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## Federal LEA program requirements: 20 USC §7114 (NCLB), cont.

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- (d)(7)(E) a code of conduct policy for all students that clearly states the responsibilities of student, teachers, and administrators in maintaining a classroom environment that—
- (iii) has consequences that are fair, and developmentally appropriate;
- (iv) considers the student and the circumstances of the situation; and
- (v) is enforced accordingly.

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## NY Educ. Law § 3214: Student placement, suspensions and transfers.

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- (3) (a)[The local school district] **may** suspend the following pupils from required attendance upon instruction: A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.
- (b)(1)Where a student is suspended for a period not to exceed five school days, the pupil shall receive notice of the charged misconduct. If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension. The pupil and person in parental relation shall, on request, be given an opportunity for an informal conference with the principal at which the pupil/guardian shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses.

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## NY Educ. Law § 3214: Student placement, suspensions and transfers.

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- (3)(b)(1) Where a student is suspended for a period not to exceed five school days, the pupil shall receive notice of the charged misconduct. If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension. The pupil and person in parental relation shall, on request, be given an opportunity for an informal conference with the principal at which the pupil/guardian shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses.

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## NY Educ. Law § 3214: Student placement, suspensions and transfers.

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- (3)(c)(1) No pupil may be suspended for a period in excess of 5 school days unless the pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf....

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## NY Educ. Law § 3214: Student placement, suspensions and transfers.

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- (3)(d). Consistent with [federal law], any public school pupil who is determined...to have brought a weapon to school shall be suspended for a period of not less than one calendar year...A superintendent of schools...shall have the authority to modify this suspension requirement for each student on a case-by-case basis. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article 89 of this chapter.

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## NY Educ. Law § 3214: Student placement, suspensions and transfers.

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- (3)(g). Discipline of students with disabilities and students presumed to have a disability for discipline purposes.

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## 8 NYCRR 201.9: Due Process

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- (a) *Procedures for suspensions of five school days or less.* In the case of a suspension for five consecutive school days or less pursuant to paragraph b of subdivision 3 of section 3214 of the Education Law and section 201.7(b) of this Part, the parents or persons in parental relation to the student shall be provided an opportunity for an informal conference in accordance with paragraph d of subdivision 3 of section 3214 of the Education Law.

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## 8 NYCRR 201.9: Due Process

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- (b) *Procedures for removals other than suspensions.* **A removal of a student with a disability, as defined in section 201.2(l) of this Part, to which the provisions of paragraphs (a) through (d) of subdivision 3 of section 3214 of the Education Law do not apply, other than a change in placement to an IAES, shall be conducted in accordance with the due process procedures applicable to such removals of nondisabled students, except that school personnel may not impose such removal for more than 10 consecutive days or for a period that would result in a disciplinary change in placement, unless there has been a determination that the behavior is not a manifestation of the student's disability. The removal of a student with a disability to an IAES shall be conducted in accordance with the applicable provisions of section 201.7(e) of this Part and paragraph (c)(3) of this section, or of section 201.8 of this Part.**

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## 8 NYCRR 201.9: Due Process

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- **(c) Procedures for suspensions of more than five school days (superintendent's hearings).** Superintendent's hearings on disciplinary charges against students with disabilities and students presumed to have a disability for discipline purposes shall be bifurcated into a guilt phase and a penalty phase and conducted in accordance with the following procedures:
  - **(1) The superintendent of schools or hearing officer in the superintendent's hearing shall proceed with the guilt phase and determine whether the student is guilty of the alleged misconduct. If it is determined that the student is guilty of the alleged misconduct, the superintendent of schools or hearing officer in the superintendent's hearing shall make a threshold determination of whether a suspension or removal in excess of 10 consecutive school days or that would otherwise constitute a disciplinary change in placement should be considered.**

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## 8 NYCRR 201.9: Due Process

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- If the threshold determination is that such a suspension or removal should be considered, before the superintendent of schools orders or the hearing officer in the superintendent's hearing recommends any such removal, the superintendent's hearing shall be adjourned until a manifestation determination is made by the manifestation team, except as otherwise provided in paragraph (3) of this subdivision. If the superintendent of schools or hearing officer in the superintendent's hearing determines that a suspension or removal that would constitute a disciplinary change in placement should not be considered, the hearing shall proceed to the penalty phase.

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## 8 NYCRR 201.9: Due Process

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- **(2) Upon a determination by the manifestation team that the behavior of a student with a disability was not a manifestation of the student's disability, such student may be disciplined in the same manner as a nondisabled student, except that such student shall continue to receive services in accordance with section 201.10 of this Part. Upon receipt of notice of such determination, the superintendent or hearing officer in the superintendent's hearing shall proceed with the penalty phase of the hearing. If the manifestation team determines that the behavior was a manifestation of the student's disability, the superintendent or hearing officer in the superintendent's hearing shall dismiss the superintendent's hearing, except as otherwise provided in paragraph (3) of this subdivision.**
- .....

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## NY Education Law §2801: Codes of Conduct on School Property

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- (2) The board of education...of every school district within the state...shall adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property, including a school function, which shall govern the conduct of students, teachers, and other school personnel as well as visitors and shall provide for the enforcement thereof. Such code of conduct shall include, at a minimum:
  - a. provisions regarding conduct, dress and language deemed appropriate and acceptable on school property...
  - b. standards and procedures to assure security and safety of students and school personnel.

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## NY Education Law §2801

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- c. provisions for the removal from the classroom and from school property, including a school function, of students and other persons who violate the code;
- d. disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another students civil rights and threats of violence;

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## NY Education Law §2801

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- e. provisions for detention, suspension and removal from the classroom of students, consistent with NY Educ. Law §3214 and other applicable...laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school.

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## NY Education Law §2801

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- f. procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;
- h. provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime
- j. provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition...will be filed.
- k. circumstances under and procedures by which referral to appropriate human service agencies shall be made.

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## NY Education Law §2801

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- l. a minimum suspension period, for students who repeatedly are substantially disruptive of the educational process or substantially interfere with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law....

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## NY Education Law §2801

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- m. a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to NY Educ. Law § 3214(2)(a) provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law.

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## NY Educ. Law §2801-a: School Safety Plans

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- 1. [Local school districts]...shall adopt and amend a comprehensive district-wide school safety plan and building-level school safety plans regarding crisis intervention, emergency response and management...

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## 8 NYCRR 100.2(l): School conduct and discipline

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- [E]ach school district shall adopt and implement a written policy on school conduct and discipline designed to promote responsible behavior... Such a policy shall be developed locally in consultation with teachers, administrators, other school service professionals, students and parents and shall include:
  - a bill of rights and responsibilities of students which focuses upon positive student behavior, and which shall be publicized and explained to all students on an annual basis;
  - a discipline code for student behavior setting forth prohibited student conduct and the range of penalties which may be imposed for violation of such code, which shall be publicized and explained to all students and provided in writing to all parents on an annual basis. Such code shall describe the roles of teachers, administrators, board of education members, and parents;

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## 8 NYCRR 100.2(l): School conduct and discipline

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- strategies and procedures for the maintenance and enforcement of public order on school property which shall govern the conduct of all persons on school premises, in accordance with section 2801 of the Education Law and accepted principles of due process of law;
- procedures within each building to involve pupil service personnel, administrators, teachers, parents and students in the early identification and resolution of discipline problems. For students identified as having a disability, such policy shall include procedures for determining when a student's conduct shall constitute a reason for referral to the committee of special education for review and modification if appropriate of the student's individualized education program;

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## 8 NYCRR 100.2(l): School conduct and discipline

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- alternative educational programs appropriate to individual students needs;
- disciplinary measures for violation of the school policies developed in accordance with subparagraphs (ii) and (iii) of this paragraph. Such measures shall be appropriate to the seriousness of the offense and where applicable to the previous disciplinary record of the student. Any suspension from attendance upon instruction may be imposed only in accordance with section 3214 of the Education Law; and
- guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline

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## NCLB State Grants: 20 USCA 7115: Authorized Activities

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- (b)(1) a LEA shall use funds made available under 7114...to develop, implement, and evaluate comprehensive programs and activities, *which are coordinated with other school and community-based services and programs*, that shall—
- (A) foster a safe and drug-free learning environment that supports academic achievement

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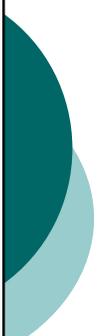


## 20 USCA 7115(b)(1)(C)

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- be designed to—
- (i) prevent or reduce violence; the use, possession and distribution of illegal drugs; and delinquency; and
- (ii) create a well disciplined environment conducive to learning, which includes consultation between teachers, principals, and other school personnel to **identify early warning signs of drug use and violence and to provide behavioral interventions as part of classroom management efforts;**

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## 20 USCA 7115(b)(2)

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- Each LEA...that receives a subgrant under this subpart may use such funds to carry out activities that comply with the principles of effectiveness described in subsection (a) of this section, such as the following:
- (E) Drug and violence prevention activities that **may** include the following:
- (i) Community-wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.
- (ii) Acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies.

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## 20 USCA 7115(b)(2)

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- (E)(iii) Reporting criminal offenses committed on school property.
- (iv) Developing and implementing comprehensive school security plans...
- (v) **Supporting safe zones of passage activities that ensure that students travel safely to and from school**, which may include bicycle and pedestrian safety programs.

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## 20 USCA 7115(b)(2)

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- (E)(vi) The hiring and **mandatory training....of school security personnel (including school resource officers) who interact with students in support of youth drug and violence prevention activities...**that are implemented in the school.
- (vii) **Expanded and improved school-based mental health services related to illegal drug use and violence**, including early identification of violence and illegal drug use, assessment, and direct or group counseling services provided to students, parents, families, and school personnel **by qualified school-based mental health service providers.**

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## 20 USCA 7115(b)(2)

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- (E)(viii) **Conflict resolution programs, including peer mediation programs** that educate and train peer mediators and a designated faculty supervisor...
- (ix) **Alternative education programs or services** for violent or drug abusing students **that reduce the need for suspension or expulsion or that serve students who have been suspended or expelled** from the regular educational settings, **including programs or services to assist students to make continued progress** toward meeting the State academic achievement standards **and to reenter the regular education setting.**

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## Uninterrupted Scholars Act, S.3472, 2013 amending FERPA 20 USC 1232g(b)(1)(L)

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- No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records...of students without the written consent of their parents to any individual, agency, or organization, other than to the following----

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## Uninterrupted Scholars Act, S.3472, 2013 amending FERPA 20 USC 1232g(b)(1)(L)

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- **an agency caseworker or other representative of a State or local child welfare agency**, or tribal organization...who has the right to access a student's case plan, as defined and determined by the State or tribal organization, **when such agency or organization is legally responsible**, in accordance with State or tribal law, **for the care and protection of the student**, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.