

F. PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES (34 CFR §300.534)

1. General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the LEA had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

2. Basis of knowledge for disciplinary matters

A LEA must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

- a. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of appropriate educational agency, or a teacher of the child;
- b. The parent request an evaluation related to eligibility for special education and related services under Part B of the IDEA; or
- c. The child's teacher, or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other supervisory personnel of the LEA.

3. Exception

A LEA would not be deemed to have such knowledge if:

- a. The child's parent has not allowed an evaluation of the child or refused special education services; or
- b. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

4. Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a LEA does not have knowledge that a child is a child with a disability, as described above under the sub-headings *Basis of knowledge for disciplinary matters* and *Exception*, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, 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.

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. If the child is

determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA, and information provided by the parents, the LEA must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.