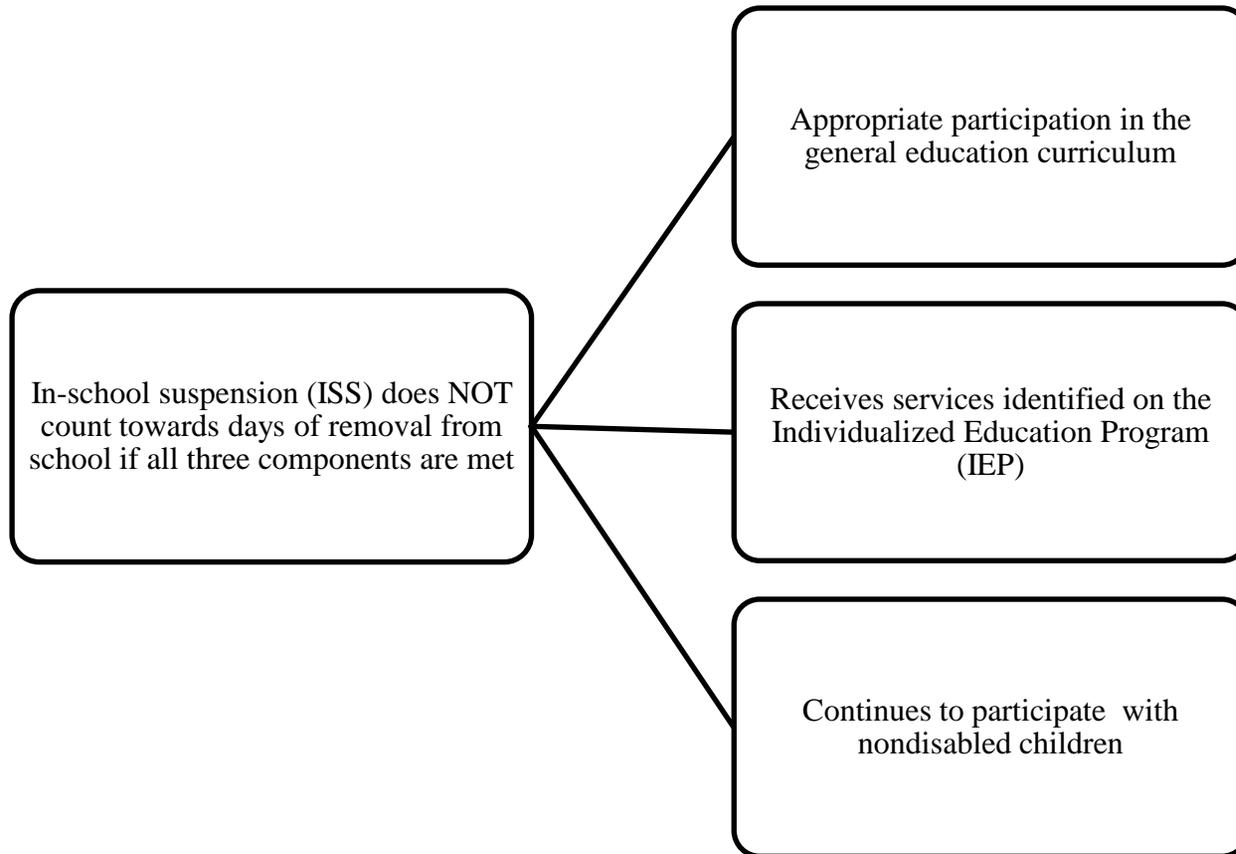


Figure 1. IDEA considerations flow chart



Removal of not more than 10 (cumulative) school days in a school year
 Student may be disciplined in the same way as students who do not have disabilities; no educational services must be provided (Includes partial day removals that when added together equal a full school day and full-day suspensions)

Student With A Disability Violates A Code Of Conduct 34 CFR 300.530-300.537

Current Removal When Added To Previous Removals Is Greater Than 10 (Cumulative) School Days In a School Year

Removal For More Than 10 Consecutive School Days (in CT, called an expulsion, see CGS 10-233a(e))

CHANGE IN PLACEMENT

CHANGE IN PLACEMENT

NOT A CHANGE IN PLACEMENT

A manifestation determination must be performed for expulsion, removal to special circumstances IAES (see page two) and any other change in placement

Determination by the school personnel that current removal *is change in placement* because the following criteria are met:
 (1) Removal 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; and
 (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.

Determination made by school personnel that current removal *is not a change in placement: criteria not met*. No manifestation determination is required and student may be disciplined in same manner as students without disabilities. If current removal is not more than 10 school days, school personnel in consultation with at least one of the child's teachers, determine the extent to which educational services are needed 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. The student shall also receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Criteria for MD:
 (1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 (2) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

Who performs the MD:
 The LEA, the parent and relevant members of the IEP team.
 CGS 10-233d(i) requires PPT team to make the MD when an expulsion is being considered.

When the MD must be performed:
 Within 10 school days of any decision to change the placement of a child with a disability. During this time period before the MD is complete, the LEA may remove the child from school through a suspension and must provide educational services. The IEP team determines the setting and the educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

STATE STATUTORY AND REGULATORY CONSIDERATIONS
 CGS Sec. 10-233a. Definitions. Whenever used in sections 10-233a to 10-233g, inclusive:
 "Exclusion" means any denial of public school privileges to a pupil for disciplinary purposes.
 "Removal" means an exclusion from a classroom for all or part of a single class period, provided such exclusion shall not extend beyond ninety minutes.
 "In-school suspension" means an exclusion from regular classroom activity for no more than five consecutive school days, but not exclusion from school, provided such exclusion shall not extend beyond the end of the school year in which such in-school suspension was imposed.
 "Suspension" means an exclusion from school privileges or from transportation services only for no more than ten consecutive school days, provided such exclusion shall not extend beyond the end of the school year in which such suspension was imposed.
 "Expulsion" means an exclusion from school privileges for more than ten consecutive school days and shall be deemed to include, but not be limited to, exclusion from the school to which such pupil was assigned at the time such disciplinary action was taken, provided such exclusion shall not extend beyond a period of one calendar year.

STATE LAW REQUIREMENTS: Connecticut General Statutes (CGS)
 CGS 10-233e: requires notice to parents within 24 hours of the removal.
 CGS 10-233c(d): requires that students who are suspended be provided with an opportunity to complete any missed classwork including examinations.
 CGS 10-233d(d) and (e): sets criteria for offering alternative educational opportunity to students who are expelled (age and offense).
 CGS 10-233d(i) sets criteria for alternative educational opportunity for students who are eligible to receive special education and related services.
 CGS 10-233d(i) requires PPT team to make the MD when an expulsion is being considered.

State Regulations at 10-76d-7 states the following: "Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance."

If conduct IS Manifestation of Child's Disability:
 LEA must conduct an FBA, unless LEA had conducted an FBA before the behavior that resulted in the change of placement had occurred, and implement a BIP for the child; or, if a BIP has already been developed, the BIP must be reviewed and modified as necessary to address the behavior; and, return the child to the placement from which the child was removed unless the parent and LEA agreed to a change in placement as part of the modification of the BIP.

If conduct is NOT a Manifestation of Child's Disability:
 The child may be disciplined in the same manner and for the same duration as a child without disability, BUT child must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress towards meeting the goals and set out in the child's IEP. The IEP team determines the educational services to be received and the setting for those services.

WHEN A CHILD IS NOT ELIGIBLE FOR SPECIAL EDUCATION AT THE TIME OF THE VIOLATION

The child who is not eligible for special education at the time of the violation of the student code of conduct may assert any of the protections of an eligible child if the LEA had knowledge that the child had a disability before the behavior occurred.

BASIS OF KNOWLEDGE:

An LEA will be deemed to have knowledge if before the behavior occurred:

- (1) the parent of the child expressed concern in writing to supervisory or administrative personnel of the LEA or a teacher of the child that the child is in need of special education; ***OR***
- (2) the parent of the child requested an evaluation; ***OR***
- (3) the teacher of the child or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or other supervisory personnel of the LEA.

EXCEPTION TO BASIS OF KNOWLEDGE

An LEA would not be deemed to have knowledge if the parent:

- (1) had not allowed an evaluation of the child or has refused services under the IDEA; or
- (2) the child has been evaluated and found not to be eligible.

IF NO BASIS OF KNOWLEDGE

- (1) The child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.
- (2) If a request is made for an evaluation of a child during the time period the child is subjected to disciplinary measures, evaluation must be conducted in an expedited manner. Until the evaluation is completed the child remains in the educational placement determined by the LEA which can include suspension and expulsion without educational services, except as provided under State requirements. If the child is determined to be a child with a disability, the LEA must provide special education in accordance with these disciplinary provisions as they apply to children with disabilities.

EXPEDITED HEARINGS RELATED TO DISCIPLINARY ISSUES

An expedited hearing may be requested by:

- (1) LEA when parents will not agree to a change of placement when the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- (2) Parents who do not agree with the location of, or the services being provided in a 45-day special circumstances IAES;
- (3) Parents who believe the child's conduct is a manifestation of the child's disability;
- (4) Parents who believe that a removal is a change in placement.
- (5) LEA which seeks to continue the 45-day special circumstances IAES due to the dangerousness of the student.

The hearing must occur within 20 school days of the date the hearing request is filed with the LEA with a copy to the Due Process Unit of the Bureau of Special Education. The hearing officer must make a determination within 10 school days after the hearing.

During the expedited hearing, the child must remain in the IAES pending the decision of the hearing officer or until the expiration of the additional suspensions (not a MD) or 45-day special circumstances IAES unless the parent and the LEA otherwise agree.

SPECIAL CIRCUMSTANCES RESULTING IN REMOVAL OF A STUDENT TO AN IAES*

School personnel may remove a student 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, 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 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 to or at a school function under the jurisdiction of an LEA; or
- (3) has inflicted serious bodily injury upon another person while at school, on school premises, or to or at a school function under the jurisdiction of an LEA.

Educational Services during IAES: child must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress towards meeting the goals set out in the child's IEP. The IEP team determines the educational services to be received and the setting.

* IAES means Interim Alternative Educational Setting

Considerations re: partial day suspensions and in-school suspensions:

Counting partial days to ten school days and consideration of whether partial days constitute a pattern of exclusion

Removals from school include partial day suspensions, transportation suspensions and other partial day removals from school regardless of what they are called. (i.e., asking parent to take student home from school). These partial days must be added together to see if they either total more than 10 school days or constitute a pattern of exclusion which equates to a change in placement.

On counting in-school suspensions towards the cumulative 10 school days of removal:

In the Analysis of Comments to the IDEA 2004 regulations at page 46715: "...an in-school suspension would not be considered a part of the days of suspension...as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement."