

§ 300.533

34 CFR Ch. III (7–1–18 Edition)

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with §300.514.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

§ 300.533 Placement during appeals.

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting 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.

(Authority: 20 U.S.C. 1415(k)(4)(A))

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007]

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

(a) *General.* A child who has not been determined to be 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 (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(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 pursuant to §§300.300 through 300.311; or

(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.

(c) *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 pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) *Conditions that apply if no basis of knowledge.* (1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) 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 consistent with paragraph (d)(2) of this section.

(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 under §300.530, 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, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§300.530 through 300.536 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))