

§ 300.521

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug*—

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1), (10))

§ 300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing—

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child’s current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child’s special education teacher, meets the requirements of § 300.522(b).

(e) As used in this section, the term *substantial evidence* means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k)(2), (10))

§ 300.522 Determination of setting.

(a) *General*. The interim alternative educational setting referred to in

34 CFR Ch. III (7–1–02 Edition)

§ 300.520(a)(2) must be determined by the IEP team.

(b) *Additional requirements*. Any interim alternative educational setting in which a child is placed under §§ 300.520(a)(2) or 300.521 must—

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§ 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

§ 300.523 Manifestation determination review.

(a) *General*. If an action is contemplated regarding behavior described in §§ 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under § 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in § 300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child’s disability and the behavior subject to the disciplinary action.

(b) *Individuals to carry out review*. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) *Conduct of review*. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child’s disability only if the IEP team and other qualified personnel—