

281—41.536(256B,34CFR300) Change of placement because of disciplinary removals.

41.536(1) General. For purposes of removals of a child with a disability from the child's current educational placement under rules 281—41.530(256B,34CFR300) to 281—41.535(256B,34CFR300), a change of placement occurs under the following circumstances:

- a.* The removal is for more than ten consecutive school days; or
- b.* The child has been subjected to a series of removals that constitute a pattern based on the following:
 - (1) The series of removals total more than ten school days in a school year;
 - (2) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (3) Additional factors, such 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.

41.536(2) Rules of construction.

- a.* The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- b.* This determination is subject to review through due process and judicial proceedings.
- c.* Nothing in this rule shall be construed to prohibit LEAs from establishing policies that a change of placement occurs on the eleventh cumulative day of removal, regardless of the factors set forth in paragraph 41.536(1) "b."

41.536(3) In-school suspensions and other actions. In determining whether an in-school suspension or other disciplinary action is to be considered a removal for purposes of this rule, an in-school suspension or other disciplinary action will not be considered a removal if all three of the following questions are answered in the affirmative:

- a.* Will the child be able to appropriately participate in the general education curriculum?
- b.* Will the child be able to receive the services specified in the child's IEP?
- c.* Will the child be able to participate with children without disabilities to the extent provided in the child's current placement?

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