

DISCIPLINING STUDENTS WITH DISABILITIES: HOW YOU CAN ENSURE COMPLIANCE WITH IDEA AND SECTION 504

KROKIDAS & BLUESTEIN
ATTORNEYS

Presented to the:



MASSACHUSETTS
CHARTER PUBLIC SCHOOL
ASSOCIATION

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Today's Trainers

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Objectives

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Overview of how the Massachusetts Student Discipline Regulations and statutes intersect with IDEA and Section 504:

- ▣ Identifying when IDEA and Section 504 apply
- ▣ Understanding IDEA and Section 504 processes in both standard and emergency discipline situations
- ▣ Recognizing when parents might challenge school decisions



Outline of Today's Webinar

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- **What** is the applicable legal framework?
- **Who** is protected by IDEA and Section 504?
- **How** should a school discipline when IDEA or Section 504 apply?
- **When** and how do parents challenge disciplinary decisions?
- **Where** do missteps tend to happen?



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What is the legal framework?



What is the legal framework?

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Individuals with Disabilities Education Act (IDEA)

All children have a right to Free Accessible Public Education (FAPE)

20 USC § 1412(A)(1)(a); 34 CFR § 300.101(a)

Section 504 of the Rehabilitation Act of 1973 (Section 504)

All children have a right to FAPE

Any program. . . that receives Federal financial assistance is prohibited from excluding from participation, denying benefits to, or otherwise discriminating against certain individuals

34 CFR §§ 104.33(a), 104.4(a)

Massachusetts State Statute and Regulations

“Big 4” Statutes

Student Discipline Regulations

M.G.L. c. 71, §§ 37H, 37H½, 37H¾; 603 CMR 53.00 et seq.

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Who is protected?



What is the legal framework?

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Key Terms:

- **IDEA** - “disability”
 - ▣ Specified list of 13 disabilities
- **Section 504** - “qualified handicapped person”
 - ▣ Physical or mental impairment which substantially limits a major life activity (e.g., learning)

Who is entitled to the disciplinary protections of IDEA?

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□ **IDEA** applies if:

- A child has a disability;
- The child needs special education and related services; and
- The School has **knowledge** of the child's disability.
 - Written concern from parent to School that the child needs services;
 - Parent request for evaluation; or
 - Expressed concern from teacher or other staff to special education director or other supervisor about a pattern of behavior.



Who is entitled to the disciplinary protections of 504?

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□ **Section 504** applies if:

- A child is a “qualified handicapped person”; and
- Either:
 - a Section 504 plan already exists;
 - The child needs special education or related services because of a handicap (even if a Section 504 plan does not yet exist); or
 - The School has **reason to believe** that a child needs services because of a handicap.



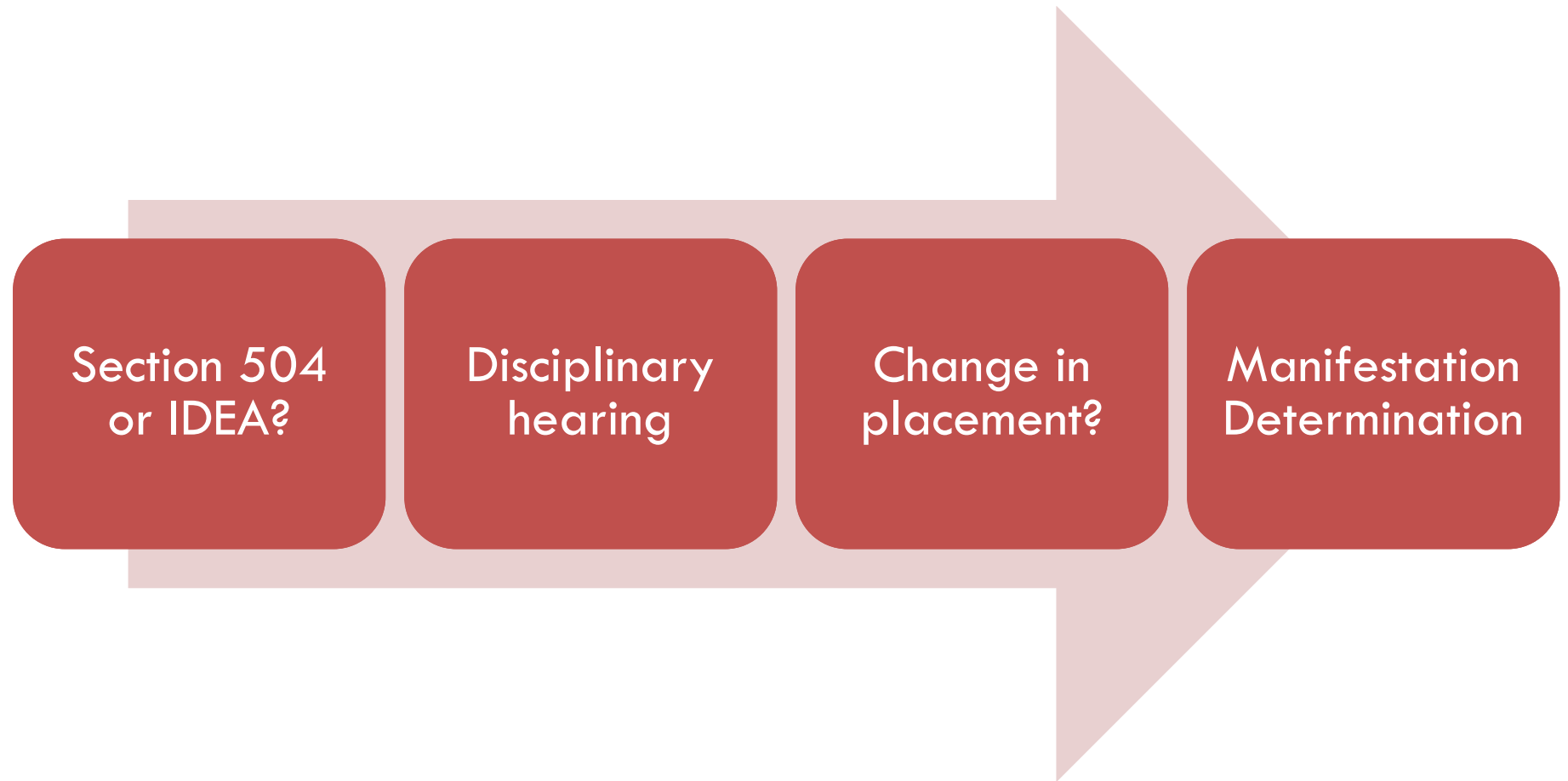
How should a school discipline?

- ❑ The change in placement trigger
- ❑ The manifestation determination: timing, procedures, and outcomes
- ❑ Special circumstances and emergencies



How to discipline

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How to discipline:

change in placement (IDEA and Section 504 compared)

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IDEA

A removal for more than 10 consecutive days

A removal that is part of a pattern of removals

- More than 10 days total
- Due to substantially similar behavior
- Other factors
 - Length of each removal
 - Proximity of removals to each other

Section 504

A removal for more than 10 consecutive days

A removal that is part of a pattern of removals

- More than 10 days total
- Other factors
 - Length of each removal
 - Proximity of removals to each other

How to discipline: the **manifestation determination considerations**

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□ IDEA

- Was the conduct caused by, or did it have a substantial and direct relationship to, the child's disability?
- Was the conduct a direct result of the failure to implement the IEP?

□ Section 504

- Was the conduct caused by the child's handicapping condition?



How to discipline:

the manifestation determination considerations

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IDEA

Conduct caused by
disability or
relationship between
disability and conduct

Conduct caused by
failure to implement
the IEP

Section 504

Conduct caused by
child's handicapping
condition

How to discipline:

manifestation determination timing

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- ❑ IDEA – MDR must occur within 10 days of the decision to change the child's placement
- ❑ Section 504 – MDR must occur prior to the significant change in placement
 - Prior to the first day of a more than 10-day suspension
 - Before a non-consecutive series of suspensions becomes a pattern, which occurs on the 11th day of suspension

Practice tip: : Hold manifestation determination immediately following the hearing. In general, a change in placement may not be implemented before the manifestation determination review occurs.



How to discipline:

manifestation determination procedures (IDEA)

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- Parent/guardian opportunities to attend
 - Mutually agreeable time and place
 - Individual/conference calls, or video conferencing, if parents unable to attend
 - Document all efforts to ensure parent participation
- “Relevant members” of IEP team, which may include:
 - One gen ed teacher, if applicable
 - One special ed teacher or provider
 - School special ed teacher or supervisor, who knows the school’s curriculum and resources
 - Someone who can interpret the evaluation results
 - Others with knowledge or expertise regarding the child, at school’s discretion
 - The child, as appropriate

How to discipline:

manifestation determination procedures (Section 504)

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- Section 504 Participants
 - Parents/guardians
 - Persons knowledgeable about the child
 - Trained and knowledgeable persons
 - CANNOT include persons responsible for regular disciplinary procedures



How to discipline:

manifestation determination outcomes and next steps (IDEA)

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- Outcome 1: If the conduct was caused by or had a substantial and direct relationship to the child's disability
 - ▣ Conduct a functional behavioral assessment and implement a behavioral implementation plan (BIP)
 - ▣ If BIP is already in place, review and modify as needed
 - ▣ No discipline, return child to placement
- Outcome 2: If the conduct was a result of the school's failure to implement the IEP
 - ▣ Take immediate steps to remedy deficiencies
 - ▣ No discipline, return child to placement



How to discipline:

(conti.)

manifestation determination outcomes and next steps (IDEA)

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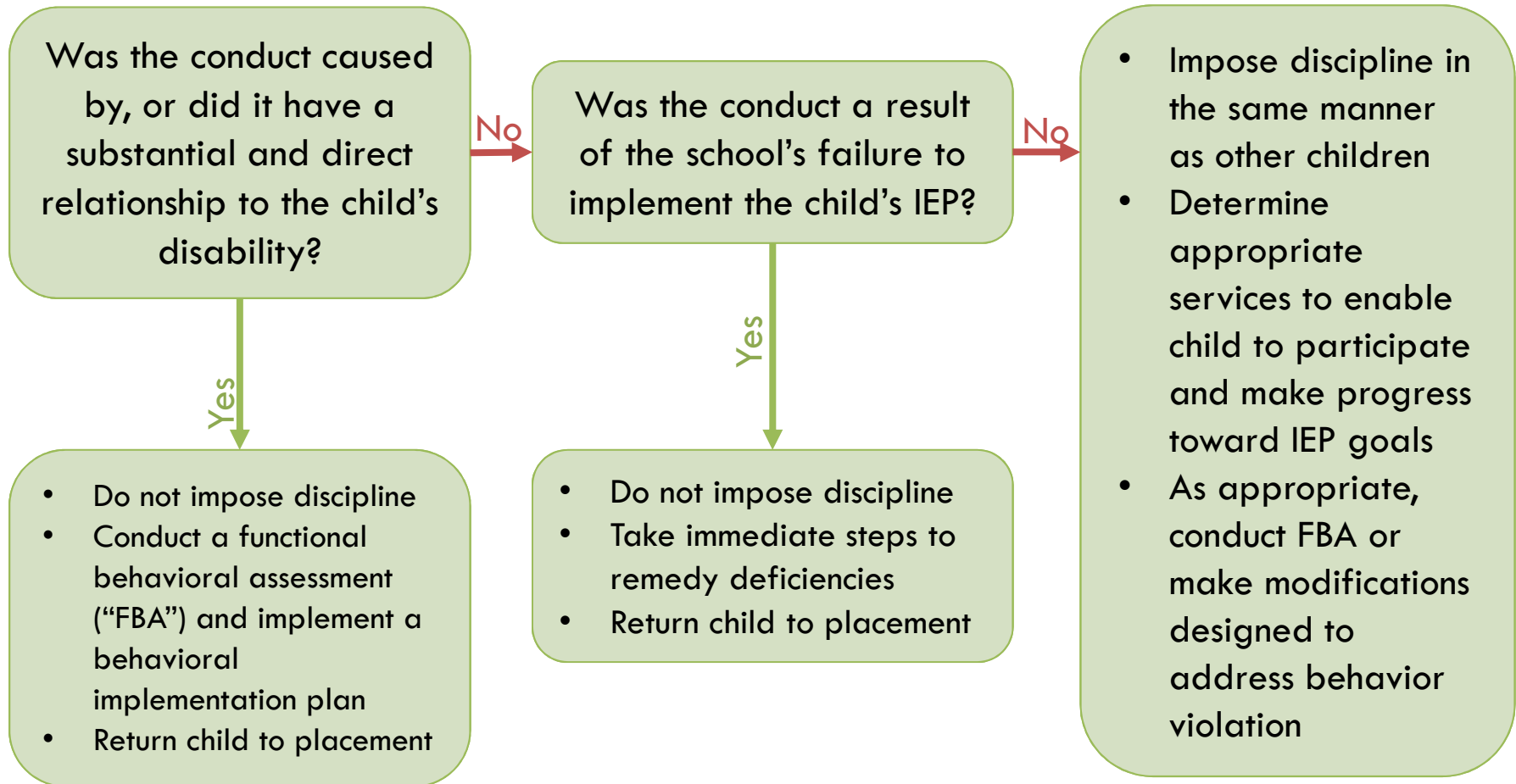
- Outcome 3: If the conduct was not a manifestation of child's disability or the result of an IEP failure
 - Impose discipline in the same manner as other children
 - Determine appropriate services to enable the child to participate and make progress toward IEP goals while removed
 - As appropriate, functional behavioral analysis or modifications designed to address the behavior violation



How to discipline:

manifestation determination outcomes and next steps (IDEA)

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How to discipline:

manifestation determination outcomes and next steps (Sect 504)

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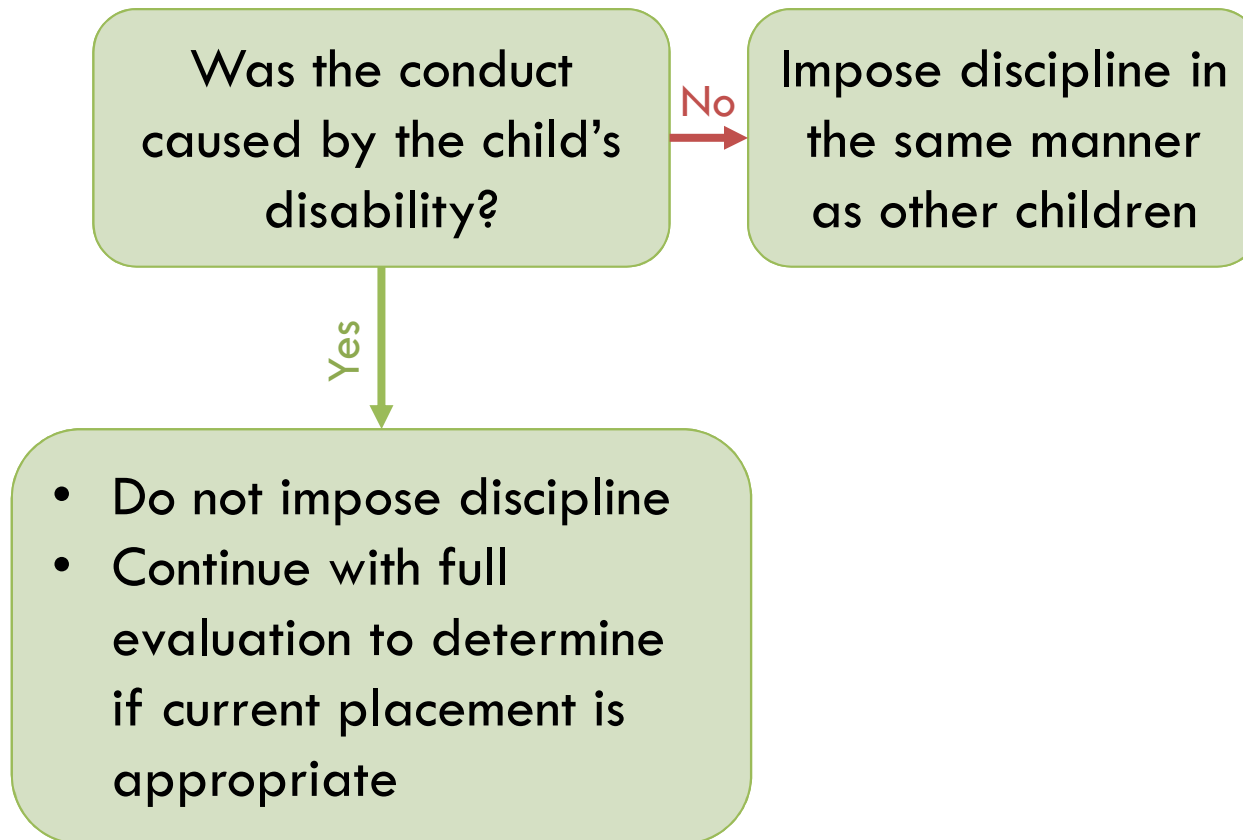
- Outcome 1: If the conduct was caused by the child's handicapping condition
 - Continue the evaluation to determine whether the current placement is appropriate
 - No discipline
- Outcome 2: If the conduct was not a manifestation of the child's disability
 - Impose discipline in the same manner as other children
 - Educational services to make academic progress (MA Student Discipline Regulations)



How to discipline:

manifestation determination outcomes and next steps (504)

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How to address special circumstances and emergencies (IDEA)

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1. Weapons, drugs, or child has inflicted bodily injury to others at school, on school premises, or at a school function

- ▣ Immediate removal to an interim alternative educational setting;
- ▣ Up to 45 school days; and
- ▣ Without manifestation determination

Practice tip : Massachusetts Student Discipline Regulations “Emergency Removal” rules apply

How to address special circumstances and emergencies (IDEA)

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2. Child poses a threat to the health or safety of him/herself or others

- Request BSEA hearing officer to determine:
 - That current placement is likely to result in injury to child or others
 - Interim alternative educational setting for up to 45 school days
 - Separate manifestation determination might not be required
- “Stay put” applies pending BSEA decision

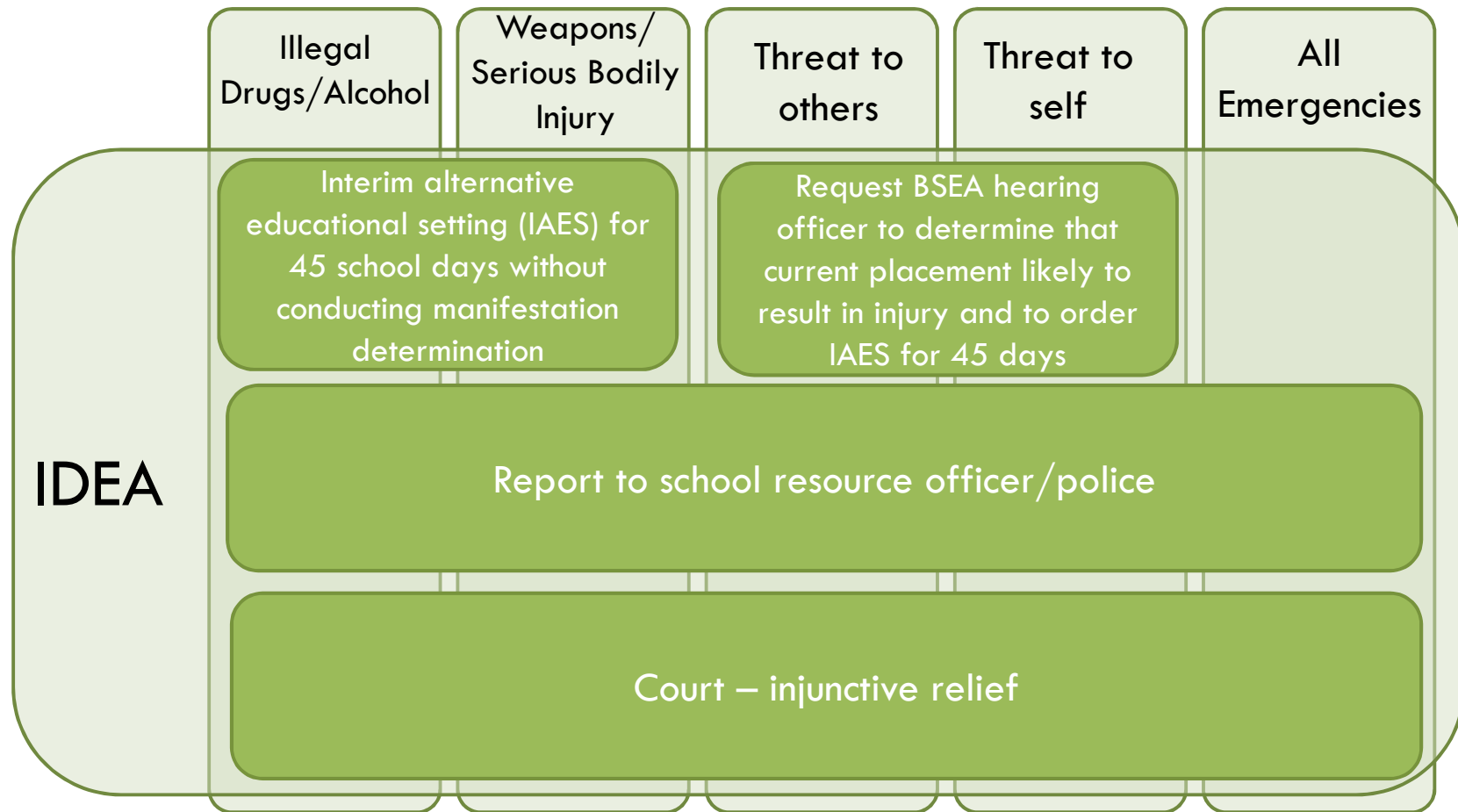
3. All emergencies

- Report to school resource officer/police
- Court – injunctive relief

Practice tip : Massachusetts Student Discipline Regulations “Emergency Removal” rules apply

How to address special circumstances and emergencies (summary –IDEA)

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How to address special circumstances and emergencies (Section 504)

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1. Illegal use of drugs or alcohol

- Regular discipline procedures permitted

2. Child poses a “direct threat” to the health or safety of others

- “Direct threat” = “a significant risk to health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services”
- Manifestation determination required
- Child may be removed regardless of manifestation determination result

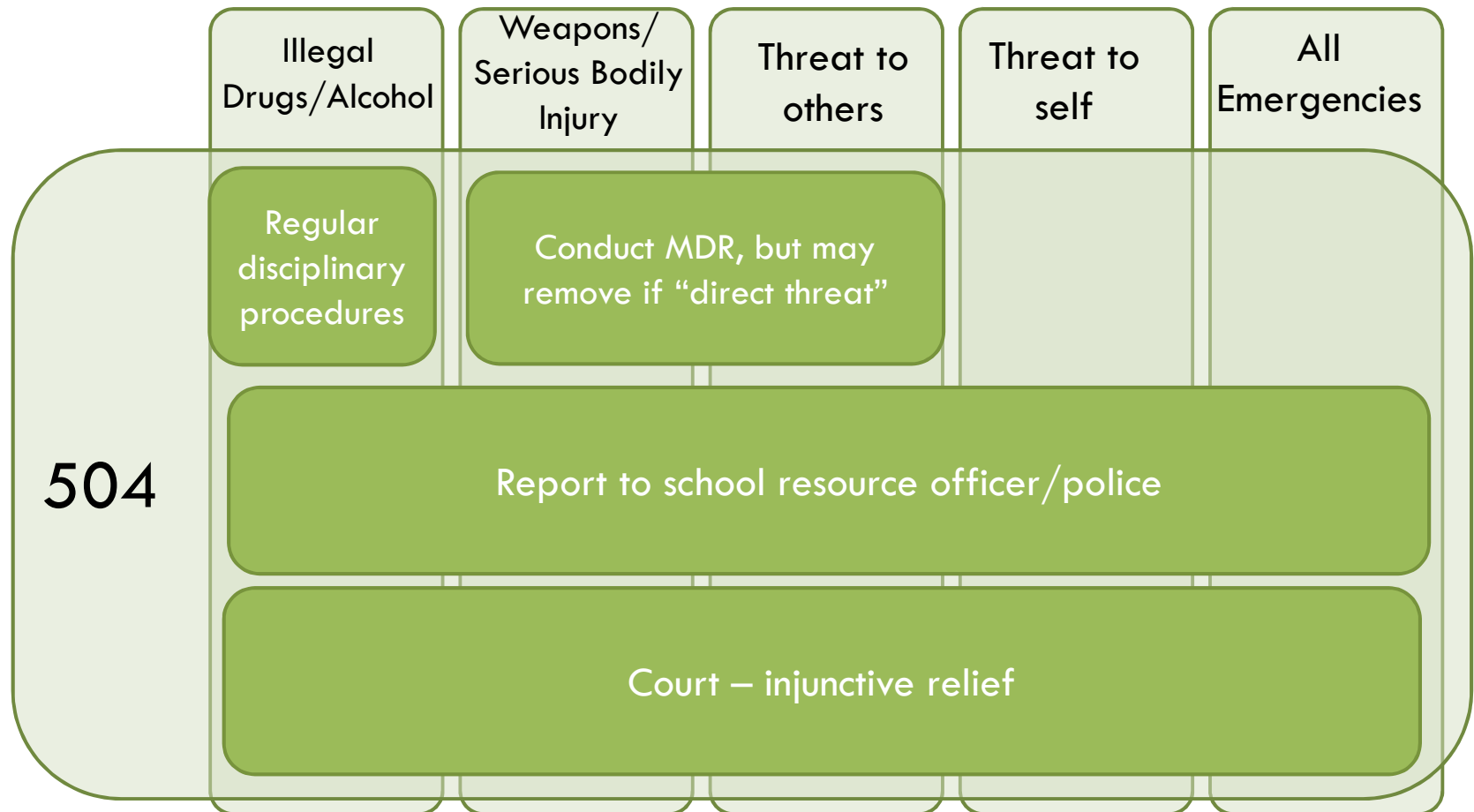
3. All emergencies

- Report to school resource officer or police
- Court – injunctive relief may be available

Practice tip: : Massachusetts Student Discipline Regulations “Emergency Removal” rules apply

How to address special circumstances and emergencies (summary – 504)

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When parents challenge school decisions

- ❑ Determinations that children are entitled to IDEA or Section 504 protections
- ❑ Results of the manifestation determinations
- ❑ School discipline decisions



When parents challenge school decisions

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- ❑ Mediation
- ❑ School discipline appeals
- ❑ Board of trustee complaints
- ❑ School grievance procedures
- ❑ DESE complaints
- ❑ BSEA Due process
- ❑ US DOE Office of Civil Rights
- ❑ Private Rights of Action

When parents challenge school decisions:

mediation

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- IDEA - School must implement mediation procedures
 - Parents not required to participate
 - School may bring counsel
 - School may object to presence of parents' counsel or other third parties
 - Resolution must be in writing
 - Discussions are confidential and cannot be used as evidence in any subsequent proceeding
- Section 504 mediation may be offered by School, OCR, or BSEA



When parents challenge school decisions: student discipline appeals

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- Changes in placement = long-term suspensions
- Massachusetts Student Discipline Regulations
 - Right to appeal long-term suspension to “superintendent”
 - Written notice of appeal within 5 days of effective date of the suspension
 - Superintendent will hold hearing within 3 days of receiving notice
 - Within 5 days of hearing, superintendent to issue decision

When parents challenge school decisions:

board of trustee complaints

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- Board of Trustee complaint process
 - Applies to any violation of federal or state law, including IDEA and Section 504
 - Procedures
 - Board of Trustees must conduct investigation upon receipt of complaint
 - Board of Trustees must respond within 45 days of receipt
 - Check bylaws for additional procedures
- Unsatisfied parent may complain directly to Commissioner
- Charter conditions or revocation may result



When parents challenge school decisions: school grievance procedures

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- ❑ IDEA does not require grievance procedures
- ❑ Section 504 requires
 - Grievance procedures for schools that employ 15 or more persons
 - Appropriate due process standards
 - Prompt and equitable resolution of complaints
 - Notice to parents
 - Any evaluation or placement decision
 - Right to review educational records
 - Right to appeal any evaluation or placement



When parents challenge school decisions: DESE Problem Resolution System

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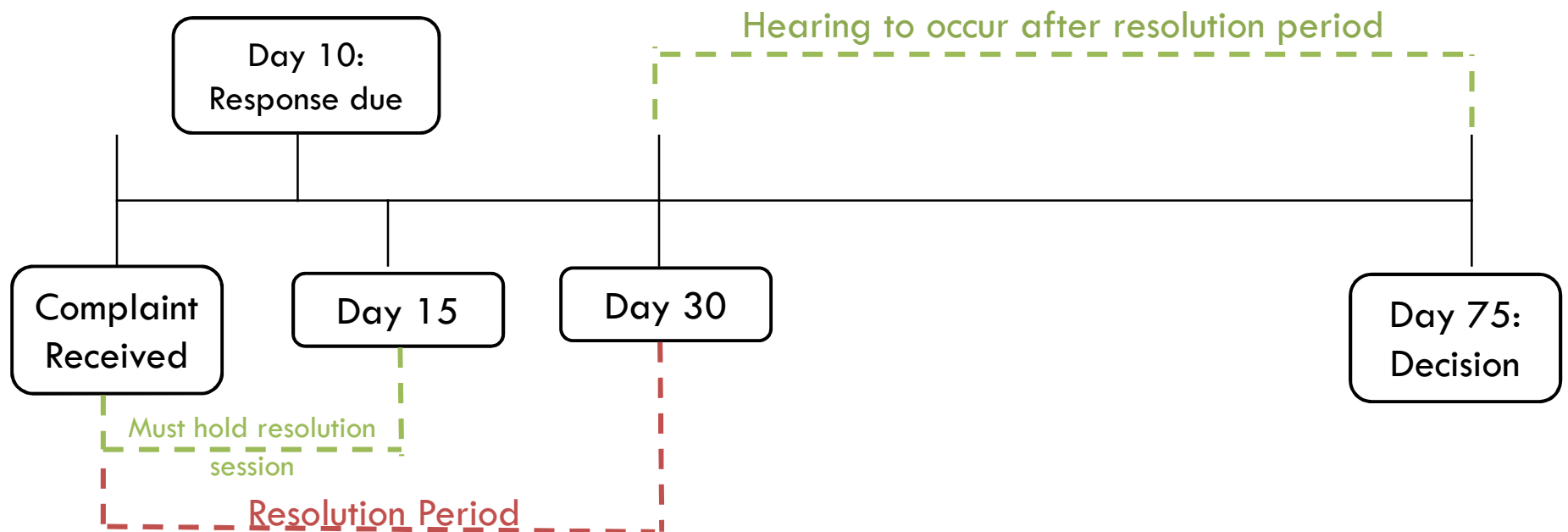
- Complaints of individual or systematic noncompliance
- Statute of limitations – 1 year
- DESE decision within 60 calendar days. Exceptions:
 - Exceptional circumstances, but not:
 - staff shortages
 - heavy workload
 - vacations
 - Complainant and respondent decide to mediate or other alternate dispute resolution
- Broad flexibility to determine appropriate remedy



When parents challenge school decisions: BSEA due process hearing

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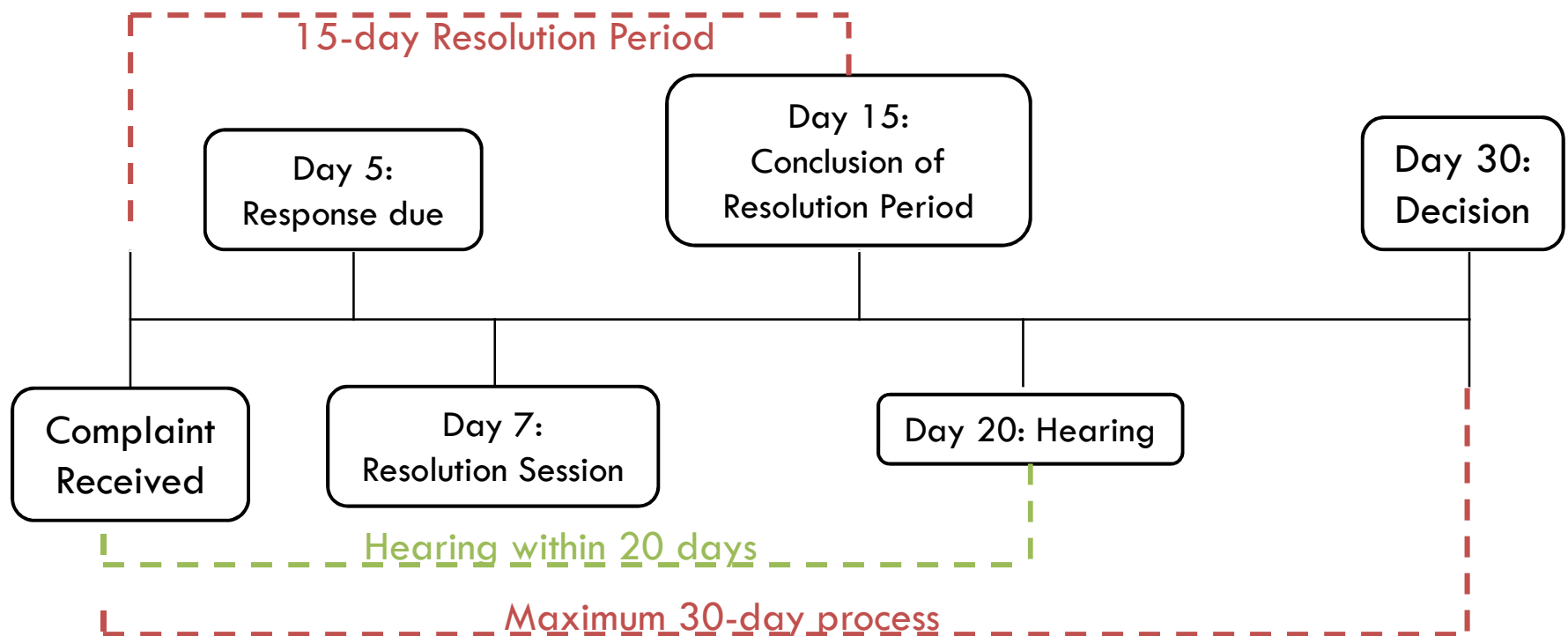
- ❑ Required under IDEA, permissive under Section 504
- ❑ Statute of Limitations – 2 years



When parents challenge school decisions: BSEA expedited due process hearing

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- Complaint must state why expedited status should be granted



When parents challenge school decisions: BSEA due process hearing procedures

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- Resolution Session
 - Required unless
 - Parties agree to mediate; or
 - Parties waive resolution session
 - Participants
 - IEP/504 team members with knowledge of facts
 - School representative with decision-making authority
 - Lack of parental cooperation may result in dismissal - document efforts to obtain cooperation
 - School attorney participates only if parents bring attorney
 - If resolution reached, signed, written agreement, voidable by either party for 3 business days
- Decision appealable to state or federal court
- Either party may request extension of time, but hearing officer may not do so unilaterally
- BSEA decision appealable to state or federal court



***When* parents challenge school decisions:**

US DOE Office of Civil Rights

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- ❑ Section 504 only
- ❑ 180 day filing deadline from last act of alleged discrimination, absent good cause
- ❑ Voluntary compliance – corrective action agreement
- ❑ OCR decision may be appealed
- ❑ Enforcement action
 - ▣ Terminate US DOE financial assistance
 - ▣ US Department of Justice proceedings

When parents challenge school decisions: private right of action

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	IDEA	Section 504	M.G.L. c. 76, § 16
Possible Claims	Denial of FAPE	Denial of FAPE Discrimination	Wrongful Exclusion
Available Damages	Compensatory Services Tuition Reimbursement Specific Performance	Compensatory Services Monetary Specific Performance	Monetary

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Where do mistakes happen?



Where do mistakes happen?

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- ❑ Manifestation determination timing
- ❑ Misuse of alternatives
 - ▣ Bus suspensions (might violate IEP or Section 504 plans)
 - ▣ Detentions, in-school suspensions, visits to Principal's office
- ❑ Providing services during removal
 - ▣ IDEA
 - FAPE must be provided to all students, including those who have been suspended or expelled from school
 - Must provide services necessary to allow student to make progress toward IEP goals
 - ▣ 504 – no explicit requirement
 - ▣ All students (MA Student Discipline Regulations, including Big 4)
 - Opportunity to receive education services and to make academic progress toward meeting state and local requirements



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How can schools prepare?



How can schools prepare?

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- ❑ Checklists and forms
- ❑ Grievance procedures (in compliance with federal law)
- ❑ Trainings
- ❑ Chains of authority for questions and supervision

Questions?

What are the required steps around an emergency removal when a student has served more than 10 days out of school for suspensions?

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- MA Student Discipline Regulations
 - General Rule: cannot remove prior to conducting a hearing
 - Potential Exception: (1) student's continued presence (a) poses a danger to persons or property or (b) materially and substantially disrupts order; and (2) no alternatives exist
- IDEA
 - General Rule: cannot remove without conducting manifestation determination review
 - Potential Exception: 45-day IAES with no manifestation determination for weapons, drugs, or serious bodily injury
 - Potential Exception: request expedited due process hearing for BSEA hearing officer to determine if student "is substantially likely to result in injury to the child or others"; HO can order 45-day IAES
- 504
 - General Rule: cannot remove without conducting manifestation determination review
 - Potential Exception: if student is currently using illegal drugs or alcohol
 - Potential Exception: if student poses a "direct threat," must conduct manifestation determination, but may remove regardless of outcome
- May always report to school resource officer or police, or seek injunctive relief from a court

Questions?

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