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# *OSPI Special Education Technical Assistance Paper No. 2 (TAP 2) Revised*

## **The Individuals with Disabilities Education Act: Discipline Requirements for Students Who Receive Special Education Services**

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Note: All TAPS are posted on OSPI's Web site at <https://www.k12.wa.us/student-success/special-education/special-education-resource-library>

### **Purpose**

The purpose of this technical assistance paper (TAP) is to review special education discipline requirements for students who are eligible for special education, and those students who are deemed to be eligible for special education. The regulations that address discipline procedures for eligible students are contained in WAC 392-172A-05140 – 05175. These state regulations are based on the federal regulations contained in 34 CFR Part 300. Both the federal and state rules implement the Individuals with Disabilities Education Act of 2004 (IDEA), Part B. Definitions of relevant terms are provided within the topical sections.

This TAP is organized as follows:

- I. Overview
- II. Providing Educational Services during Removals
- III. Removals under Special Circumstances: Drugs, Weapons, or Serious Bodily Injury
- IV. Manifestation Determinations
- V. Disagreements about a Manifestation Determination, Disciplinary Placement or Services during Removals and Due Process Hearings
- VI. Protections for Students Not Yet Eligible for Special Education Services
- VII. Conclusion

Appendix A: State Special Education Regulations by Topic

Appendix B: Resources

### **I. Overview**

#### ***Suspension and Expulsion Rules for All Students***

Washington State's discipline regulations governing conduct for all students are located at chapter 392-400 WAC. School districts must follow these regulations for all students. When school districts impose disciplinary removals of students who are eligible for special education, or are deemed eligible, they must also follow special education discipline protections. This means that there can be two processes involved for students eligible for special education: 1) general education discipline rules and procedures to address whether the student actually engaged in the misconduct, including any decisions about the length and type of removal; and 2) special education discipline rules to make decisions about whether a student will be removed from his or her current placement, and if so, the services that will be provided to the student.

Except for emergencies, schools may not suspend or expel any student unless the school district has first attempted to address the student's behavior using other forms of corrective action. When there is a suspension or expulsion under general education rules, school districts must provide students with the protections offered under those rules, and follow the school district's procedures for appeals if applicable to the type or length of suspension. The regulations place limits on the number of days a student may be suspended during a semester or trimester. For example: for kindergarten through fourth grade, a student may not be removed for more than 10 school days during any single semester or trimester, and his or her grades may not be affected by as a result of the suspension (WAC 392-400-245(4)).

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The state regulations define suspensions and expulsions. A **suspension** is a removal from any single subject, class period, or full schedule of classes for a known period of time (WAC 392-400-205(2)). An **expulsion** is a removal from any single subject, class period, or full schedule of classes for an indefinite period of time (WAC 392-400-205(5)).

### **Student Behavior**

School districts should monitor any student's behavior when that behavior interferes with the student's or another's educational process. School districts should also consider having procedures and strategies in place to address a student's behavior before it leads to a suspension or expulsion, including supports for the student or teacher. For students eligible for special education, school districts must consider a student's behavioral needs when developing his or her individualized education program (IEP). In the case of a student whose behavior impedes his or her learning or that of others, the school district must consider the use of positive behavioral interventions and supports to address the behavior (WAC 392-172A-03110). Other ways to address behavior, when appropriate for the student are:

- Developing behavioral IEP goals when the student requires specially designed instruction;
- Providing related services necessary to achieve those behavioral IEP goals;
- Providing modifications;
- Providing support to the student's teachers;
- Conducting a functional behavioral assessment and developing a behavioral intervention plan.

### **Discipline Related Special Education Protections**

Students who receive, or may be eligible to receive, special education services:

- May be disciplined in the same way as students without disabilities if the disciplinary removal does not constitute a change of placement;

- May not be disciplined for misconduct that results in a change of placement if the behavior was caused by, or had a direct and substantial relationship to a student's disabilities or, if the school district failed to implement the student's IEP; and
- Must continue to receive services that allow the student to continue to participate in the general education curriculum and progress toward meeting their annual IEP goals during removals that are considered a change of placement.

## **II. Providing Educational Services during Removals**

### **Definition of a change of placement**

Whether a school district is required to provide services to eligible students, and decisions about where the student receives services, depends on how long a student will be removed from his or her classes due to discipline and whether the removal is considered a change of placement. The regulations define a change of placement as a disciplinary removal meeting one of the following conditions:

1. The removal is for more than 10 consecutive school days; or
2. The school district determines that the removals demonstrate a pattern because:
  - a. The series of removals total more than 10 school days in the same school year;
  - b. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - c. Of consideration given to other factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

School personnel determine whether a series of removals demonstrate a pattern on a case-by-case basis. They may also consider any unique circumstances on a case-by-case basis when determining whether a change of placement

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is appropriate for a student eligible for special education.

***When the student has been removed 10 or fewer days***

School authorities may remove students from their current educational placement for up to 10 school days in a school year for violations of a code of student conduct. A school does not have to provide educational services to an eligible student for the first 10 school days he or she is removed in a school year if the school would not provide educational services to a student without disabilities.

***When the student has been removed more than 10 school days and the removal IS NOT a change of placement***

If the school district believes that a series of removals exceeding 10 school days is not a change of placement, school personnel in consultation with one or more of the student's teachers, determine the extent to which services and placement are needed during the removal for the student to continue to participate in the general education curriculum and to continue to progress toward meeting their IEP goals.

***When the student has been removed more than 10 school days and the removal IS a change of placement***

The school district must:

1. Inform the parents that the student is being removed from school and the reason for the removal (on the same day the decision is made to remove the student from school);
2. Provide the parents with a copy of the Notice of Procedural Safeguards, which includes information about:
  - a. The rights of students who receive special education services;
  - b. The rights of their parents;
  - c. Procedures a school district must follow when a student who receives special education services is disciplined; and
  - d. How a parent can challenge discipline related decisions made by their school

district; and

3. Hold a manifestation determination meeting within 10 school days of a decision that the removal is a change of placement.

**III. Removals under Special Circumstances: Drugs, Weapons, or Serious Bodily Injury**

School personnel may remove an eligible student to an interim alternative educational setting (IAES) determined by the student's IEP team, regardless of whether the student's behavior was a manifestation of his or her disability for up to 45 school days if he or she:

1. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the authority of a school district;
2. Knowingly has or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or,
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

An **IAES** is a temporary placement used when a student is removed from his or her current placement due to a violation of a code of student conduct. The IEP team must select an IAES that allows the student to continue to progress in the general education curriculum and receive services and modifications that will allow the student to work toward meeting his or her IEP goals.

A **weapon** means as a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length (18 U.S.C. 930(g)(2)).

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A **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)).

**Serious bodily injury** means a bodily injury that involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or faculty (18 U.S.C. 1365(h)(3)).

In addition, if a school believes that maintaining the current placement of an eligible student is substantially likely to result in injury to the student or others, the school may request a due process hearing and ask that an administrative law judge (ALJ) remove a student to an IAES for not more than 45 school days.

#### **IV. Manifestation Determinations**

A **manifestation determination** is a decision made by the school district and relevant members of the student's IEP team at a meeting to decide whether or not a student's misconduct was caused by, or had a direct and substantial relationship to, the student's disability, or, the conduct in question was the direct result of the school district's failure to implement the IEP. Parents and school districts select the relevant member of the IEP team. Manifestation determination meetings are required any time the student's removal is a change of placement. Within 10 school days of a removal that is a change of placement, the school district and relevant members of the IEP team must hold a meeting to make a decision about whether the student's behavior is a manifestation of his or her disability. The team reviews the student's behavior and all relevant information in the student's file including the IEP, any teacher observations, and input provided by the parents to make this decision. The student's behavior is a manifestation of the student's disability if the conduct was either:

- Caused by, or had a direct and substantial

- relationship to, the student's disability; or
- The direct result of the school district's failure to implement student's IEP.

#### ***When the misconduct is a manifestation of the student's disabilities***

The IEP team must conduct a functional behavioral assessment (FBA) if it has not already done so, and implement a behavioral intervention plan (BIP). If a BIP is already in place, then the team must review and revise the existing BIP, as needed, to address the student's behavior. If the school district was not implementing the student's IEP (including an existing BIP) the school district must take immediate action to correct those deficiencies. If the student was removed from his previous placement prior to the manifestation determination, the school district must return the student to his or her current placement unless the parent and school district agree to a different placement as part of the modification of the BIP.

An **FBA** is an organized collection of data related to a student's behavior. The assessment often includes information gathered through observation of the student in different settings and information provided by the parent and teachers or other providers. The assessment is conducted and the results are documented to understand the purpose of a student's undesirable behaviors so that appropriate strategies and interventions can be developed and planned to reduce or eliminate these behaviors.

A **BIP** includes observational and behavioral data from the FBA as the basis for a plan of action for managing a student's challenging behavior. A BIP may include ways to change the student's environment to: 1) prevent the behavior from occurring; 2) provide opportunities for positive reinforcement to promote appropriate behavior; 3) employ planned ignoring to avoid reinforcing inappropriate behavior and; 4) provide supports or planned consequences to reduce a student's problem behavior. When implementing a

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BIP, all staff working with the student must be aware of its content and their roles in implementation. Furthermore, it is important to monitor the quality of implementation over time to ensure that the BIP is implemented in a manner consistent with the way it was intended by the IEP team. The BIP must be implemented for a sufficient amount of time for the team to determine the plan's effectiveness. By monitoring the quality of implementation in this way, members of the IEP team are able to: 1) determine whether the plan works; 2) identify components in need of revision and; 3) ensure that any necessary changes are identified based on data, and not a failure to adequately implement the BIP.

***When the misconduct is NOT a manifestation of the student's disabilities***

If the misconduct is not a manifestation of the student's disability, school personnel may use the same discipline procedures, in the same manner and for the same period of time, as it would for a student who does not receive special education services. However, the school must provide educational services to the student in the IAES. The IEP team must determine what services the student needs to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his or her IEP. In addition, if the team determines that it is appropriate, the school district should conduct an FBA and use the results to develop a BIP for the student.

**V. Disagreements about a Manifestation Determination, Disciplinary Placement or Services during Removals**

Parents may request a due process hearing if they disagree with any decisions made related to the disciplinary action, including the placement and services provided to the student during removals, decisions about whether the removal is a change of placement, and disagreements with the manifestation determination. In addition, schools may request due process hearings when they believe maintaining or

returning a student to his or her current placement is substantially likely to result in injury to the student or others. When a parent or school district requests a due process hearing on disciplinary matters, the hearing is expedited. The hearing may be requested using the hearing request form provided by OSPI. On the form, there is a check box for parties to indicate that the hearing involves discipline. [Follow this link to the Due Process Hearing Request form.](#)

***Expedited timelines for discipline related due process hearings***

When a parent requests a due process hearing, the school district must hold a resolution meeting within 7 calendar days of its receipt of the parent's request, unless the parent and school district agree in writing to waive the resolution meeting or use mediation. A resolution meeting provides parents and school districts an opportunity to meet and try to resolve the problems identified in the parent's due process hearing request. The hearing may proceed if the matter is not resolved to the parent's and school district's satisfaction within 15 calendar days of the school district's receipt of the due process hearing request. The due process hearing must occur within 20 school days of the date the hearing is requested. An ALJ must issue a hearing decision within 10 school days after the hearing. More information on timelines for due process hearings, including expedited hearing requests can be found here: [Due Process Hearing Procedures and Timelines.](#)

***Student placement during discipline related due process hearings***

When a student is in an IAES, the student remains in that setting pending the ALJ's decision, or until the expiration of the time period for the disciplinary removal, whichever occurs first, unless the parent and school district agree to a different placement. An ALJ can order that a student be returned to his or her placement if the ALJ finds the school violated discipline procedures, including a determination that the student's behavior was not a manifestation of the student's disability

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(which can include a determination that the student's IEP was not implemented). The ALJ may also order a student to an IAES if the ALJ finds that maintaining in or returning a student to his or her placement is substantially likely to result in injury to the student or others.

A school district may request additional hearings and the process may be repeated if it believes returning the student to his or her placement is substantially likely to result in injury to the student or others.

## **VI. Protections for Students Not Yet Eligible for Special Education Services**

Parents may challenge disciplinary actions on behalf of students who are not yet determined eligible for special education if they believe the school district should have known the student would be eligible for special education. A school district must be deemed to have knowledge that a student is eligible for special education if, before the behavior that brought about the disciplinary action occurred:

- The parent expressed concern in writing to supervisory or administrative personnel of the school district, or to one of the student's teachers that the student needed special education and related services;
- The parent requested an evaluation related to eligibility for special education and related services; or
- The student's teacher, or other school district personnel, expressed directly to the school district's director of special education, or to other supervisory personnel of the school district, specific concerns about a student's demonstrated pattern of behavior.

A school district will not be deemed to have knowledge if the parent did not provide consent for an evaluation of the student, or has refused to provide consent or has revoked consent for special education services. The school district will also not be deemed to have knowledge if they already evaluated the student and

determined that he or she was not eligible for special education services and the school district notified the parent of the evaluation results. If a school district is not deemed to have knowledge that the student is eligible and a parent requests an evaluation during the disciplinary removal, the school must evaluate the student in an expedited manner. The student remains in the placement chosen by school authorities, pending completion of the evaluation.

## **VII. Conclusion**

School district personnel should review and follow state rules and their procedures addressing discipline for all students. In addition, staff must be knowledgeable about special education disciplinary rules and protections. Remember that both the rules for general education and special education apply when imposing disciplinary removals. School personnel at the school district level should work closely with special education personnel to track behavior and disciplinary removals, in order to ensure that students are afforded the protections available to them under IDEA. Parents are encouraged to track any disciplinary actions or problem behaviors that are occurring at school, and to communicate with school personnel about possible interventions to address problem behaviors. When a suspension or removal occurs, parents need to carefully read any notices provided to them so they are aware of both: 1) the processes at the school district level for raising disagreements about the appropriateness of the discipline itself, and the proposed length of removal; and, 2) the protections under IDEA addressing placement, decisions about whether the conduct is a manifestation of the student's disability and any decisions about services when a student is placed in an IAES.

This TAP provides guidance about discipline requirements contained in IDEA, Part B and state regulations. It should not be interpreted to provide legal advice and it does not replace careful review of the rules and implementation

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of school district disciplinary procedures.

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*PO Box 47200*  
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*email: [speced@k12.wa.us](mailto:speced@k12.wa.us)*

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*Equity and Civil Rights*  
*P.O. Box 47200*  
*Olympia, WA 98504-7200*  
*(360) 725-6162*

## Appendix A: State Special Education Regulations by Topic

Discipline	State Regulations by Topic	
<b>Removal: Not a change in placement</b>	Removals for 10 or fewer consecutive school days	School personnel may remove a student eligible for special education from his or her current placement for not more than 10 consecutive school days. The school district is not required to provide services unless they do so for students not eligible for special education. <i>See WAC 392-172A-05145(2)(a)</i>
	Additional removals for not more than 10 consecutive school days	School personnel may remove a student eligible for special education from his or her current placement for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement. <i>See WAC 392-172A-05145(2)(a)</i>  School personnel, in consultation with at least one of the student’s teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP. <i>See WAC 392-172A-05145(4)(e)</i>
<b>Removal: Change of placement</b>	Unique circumstances when considering change of placement	School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a student eligible for special education. <i>See WAC 392-172A-05145(1)</i>
	Definition:	A change of placement occurs if: <ol style="list-style-type: none"> <li>1. the removal is for more than 10 consecutive school days; or</li> <li>2. the student has a series of removals that constitute a pattern because: <ol style="list-style-type: none"> <li>a. the series of removals totals more than 10 school days;</li> <li>b. the behavior is substantively similar to previous incidents; and</li> <li>c. of factors such as the length of each removal, amount of time and proximity suggest similarity in behavior.</li> </ol> </li> </ol> <i>See WAC 392-172A-05155</i>



**Appendix A: State Special Education Regulations by Topic**

Discipline	State Regulations by Topic	
<b>Removal: Change of placement</b>	Manifestation determination meeting	<p>Within 10 school days of any decision to change the student’s placement, the school district, the parent and relevant members of the student’s IEP team must review all relevant information in the student’s file including the IEP, any teacher observations and any relevant information provided by the parents to determine if:</p> <ol style="list-style-type: none"> <li>1. the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability, or</li> <li>2. the conduct was the direct result of the school district’s failure to implement the IEP.</li> </ol> <p><i>See WAC 392-172A-05145(5)</i></p>
	Behavior is a manifestation of disability- Required services	<p>If the student’s behavior is a manifestation of the student’s disability, the school district must take steps to address deficiencies, and, conduct a functional behavioral assessment (FBA), unless it has already been conducted, and implement a behavioral intervention plan (BIP). Or, if the student already has a BIP, review it and modify it as needed to address the behavior.</p> <p>The student must also be returned to the placement from which he or she was removed unless, the parents and school district agree to a different placement as part of the BIP, or, the student has been removed for weapons, drugs, or serious bodily injury.</p> <p><i>See WAC 392-172-05145(5)(c), (6)</i></p>
	Behavior is <b>not</b> a manifestation of disability- Required Services	<p>If the student’s behavior is not a manifestation of the student’s disability, the school may apply discipline (such as long term suspensions or expulsions) in the same manner and for the same duration as it would for a student who is not eligible for special education. However, the student must continue to receive educational services that provide FAPE and continue to allow the student to participate in the general education curriculum and progress towards meeting the goals in the IEP, as determined by the IEP team. These services may be provided in an interim alternative educational setting (IAES). In addition, if the relevant IEP team members determine it is appropriate the school district may conduct a FBA and implement a BIP.</p> <p><i>See WAC 392-172A-05145(4)(a), (4)(b), and (4)(f)</i></p>

**Appendix A: State Special Education Regulations by Topic**

Discipline	State Regulations by Topic	
<b>Removal: Change of placement</b>	Removals for special circumstances	<p>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 student’s disability, if while at school, on school premises, or at a school function under the jurisdiction of a school district, the student:</p> <ol style="list-style-type: none"> <li>1. Carries a weapon to or possesses a weapon;</li> <li>2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or</li> <li>3. Has inflicted serious bodily injury upon another person.</li> </ol> <p><i>See WAC 392-172A-05145(7)</i></p>
<b>Appeals related to discipline</b>	By parents	<p>Parents may appeal:</p> <ol style="list-style-type: none"> <li>1. Any decision regarding the student’s placement made under WAC 392-172A-05145 and WAC 392-172A-05155; or</li> <li>2. The manifestation determination made under WAC 392-172A-05145(5).</li> </ol> <p><i>See WAC 392-172A-05160(1)</i></p>
	By school districts	<p>School districts may appeal:</p> <ol style="list-style-type: none"> <li>1. The decision to maintain the student’s current placement if they believe that maintaining it is substantially likely to result in injury to the student or others.</li> <li>2. The decision to return the student to their original placement if they believe it is substantially likely to result in injury to the student or others.</li> <li>3. The process described above may be repeated.</li> </ol> <p><i>See WAC 392-172A-05160(1), (2)(c)</i></p>
	ALJ decisions	<p>An ALJ may order:</p> <ol style="list-style-type: none"> <li>1. The student’s return to the placement from which they were removed if it is determined their removal was a violation of WAC 392-172A-05145 through -05155, or if the behavior was a manifestation of their disability; or</li> <li>2. A change of placement to an IAES for not more than 45 school days if the student’s current placement is substantially likely to result in injury to the student or others.</li> </ol> <p><i>See WAC 392-172A-05160(2)(b)</i></p>
	A student’s placement pending the due process decision	<p>The student will remain in the IAES pending the ALJ’s decision or until the expiration of the disciplinary removal, whichever occurs first, unless the parent and school district agree otherwise.</p> <p><i>See WAC 392-172A-05165</i></p>

**Appendix A: State Special Education Regulations by Topic**

Discipline		State Regulations by Topic
<b>Appeals related to discipline</b>	School district is deemed to have knowledge	<p>A student not eligible for special education may assert discipline protections if, before the behavior that resulted in a disciplinary removal:</p> <ol style="list-style-type: none"> <li>1. The parent of the student expressed concern in writing to supervisory or administrative personnel of the school, or a teacher of the student, that the student needed special education and related services;</li> <li>2. The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or</li> <li>3. The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.</li> </ol> <p><i>See WAC 392-172A-05170(2)</i></p>
<b>Students not eligible for special education</b>	School district does not have knowledge	<p>A student not eligible for special education may not assert discipline protections if:</p> <ol style="list-style-type: none"> <li>1. The parent has not provided consent for an evaluation of the student;</li> <li>2. The parent has refused to provide or has revoked consent for special education services; or</li> <li>3. The student has been evaluated and determined to not be eligible for special education services.</li> </ol> <p><i>See WAC 392-172A-05170(3)</i></p> <p>The school district can apply the same disciplinary measures against the student as they would for students without disabilities. <i>See WAC 392-172A-05170(4)(a)</i></p>
	Request for an evaluation after a removal, and a school district is not deemed to have knowledge	<p>If an evaluation request is made, the evaluation must be conducted in an expedited manner and the student will remain in a placement determined by school authorities. <i>See WAC 392-172A-05170(4)(b)</i></p> <p>If the student is determined to be eligible for special education services, taking into consideration information from the evaluation and information provided by the parents, the school district must provide special education and related services and follow the discipline requirements, including the provision of a FAPE for students suspended or expelled from school. <i>See WAC 392-172A-05170(4)(b)</i></p>

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## Appendix B: Resources

OSPI Special Education Homepage - <https://www.k12.wa.us/student-success/special-education>

Dispute Resolution - <https://www.k12.wa.us/student-success/special-education/dispute-resolution>

For Families - <https://www.k12.wa.us/student-success/special-education/guidance-families-special-education-washington-state>

All TAPs - <https://www.k12.wa.us/student-success/special-education/special-education-resource-library>

Chapter 392-172A WAC - <http://apps.leg.wa.gov/wac/default.aspx?cite=392-172A>

Discipline Rules for All Students - <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-400>

IDEA Part B - <http://idea.ed.gov/explore/home>

Discipline: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalArea%2C6%2C>

Controlled Substances Definition: [http://www.law.cornell.edu/uscode/html/uscode21/usc\\_sec\\_21\\_00000812----000-.html](http://www.law.cornell.edu/uscode/html/uscode21/usc_sec_21_00000812----000-.html)

Dangerous Weapon Definition: [http://www.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00000930----000-.html](http://www.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000930----000-.html)

Serious Bodily Injury Definition: [http://www.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00001365----000-.html](http://www.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001365----000-.html)