



SCHOOL DISCIPLINE AND STUDENTS WITH DISABILITIES

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your situation, contact us for a referral or contact an attorney of your choice.

HOW CAN DISCIPLINE PROBLEMS BE AVOIDED?

When the IEP Team writes a child's Individualized Education Program (IEP), it must consider the child's behaviors. The IEP Team should ask two questions: (1) Do the child's behaviors hurt the child's ability to learn? (2) Do the child's behaviors hurt other students' ability to learn? If so, the IEP Team must decide whether there are positive behavioral interventions, supports, and other strategies that should be included in the child's IEP. If the behaviors do not improve, the IEP may need to be changed.

If you think that your child's behaviors are harming her success at school, you should write to the principal and request an IEP Team meeting. If the school will not meet with you or if you have a meeting and you aren't happy with the result, you may need to go to mediation or a hearing to solve the problem. (For more information on these options, see ELC's Fact Sheet entitled, "*How To Resolve Special Education Disputes*." All ELC's Fact Sheets can be found on our website at www.elc-pa.org or you can get them by calling the numbers listed below.)

At the IEP meeting, the family should discuss the problems the child has at school and suggest changes that might help stop the behaviors. You should also ask the school for some suggestions. You can request that your child receive a "functional behavioral assessment" (an evaluation of what things cause the misbehavior) that can be used to write a "Behavioral Intervention Plan" (BIP). You should make sure that the behavior plan is part of your child's IEP and is based on positive measures designed to help, not punish, your child.

***TIP:** Some questions to ask include: how can the teacher be a better "manager" of the classroom; does the child need counseling or a crisis intervention plan; what can be done to prevent disruptive behaviors; and is the teacher gathering on-going data to help figure out if the behavior plan is working?*

For more information on evaluating students' behavioral needs and developing appropriate behavior plans, visit www.pattan.k12.pa.us/teachlead/Behavior.aspx.

WHEN SHOULD A PARENT GET NOTICE THAT THE SCHOOL HAS DECIDED TO DISCIPLINE HER CHILD?

State law requires a school to inform the family and the student whenever it intends to suspend or expel any student from school. (For more information on the timing and form of the notice, see ELC's Fact Sheet "*School Discipline in Pennsylvania*" and other ELC publications on this subject).

Sometimes the school wants to punish the child so severely that it is called a "change in placement" (see below for more information). If it is a change in placement, the school should give the family a Notice of Recommended Educational Placement or NOREP. The school must include a copy of the "Procedural Safeguard Notice" (a document that explains the student's and family's legal rights) with the NOREP. The NOREP tells the family how the school or school district is proposing to discipline the child and why. It also gives the family information on what other options the school or school district considered, and gives the family the opportunity to agree or disagree with the proposal. If you agree, the school can discipline your child. If you disagree, the school must follow the rules outlined

below for a "change in placement."

WHAT PUNISHMENT CAN THE SCHOOL IMPOSE ON MY CHILD?

The school cannot punish a student with a disability more harshly than it would punish a student without a disability under the same circumstances. The school must follow the same rules it applies to all students. For example, the school can only punish a child if they break a rule that is listed in the school's code of conduct. You should get a copy of the code of conduct at the start of the year. If you do not have a copy, you should ask to see the copy that is kept in the school's library.

Sometimes, the rule that the student broke allows the school to expel her, transfer her to another school (in Pennsylvania often called alternative schools for "disruptive students"), or suspend her for a long time. If this is what the school wants to do, then a student with a disability may have extra protections under special education law. To see if these protections apply, you must first figure out if the discipline the school is proposing counts as a "change in placement."

Question 1: Is the Proposed Discipline a Change in Placement?

- **Students with mental retardation at public school districts or charter schools:** Any suspension, expulsion, or transfer to another school is considered a change in placement - even a one day suspension.
- **Other students with IEPs who attend public school districts:** An expulsion is a change in placement. A suspension or transfer to another educational setting (including an alternative school) for more than 10 *school* days in a row OR for more than 15 total *school* days in the school year is also a change in placement.

For example: if your child has already been suspended two times this year for seven days each, the next time the school district wants to suspend your child it will be a change in placement (because it will reach the 15-day mark).

- **Other students with IEPs who attend charter schools:** If a public charter school wants to expel a student or to suspend a student for more than 10 *school* days in a row, it is a change of placement. A "pattern" of suspensions, is also a "change in placement." To figure out if the child had a "pattern" of suspensions, you should ask if: the child has been suspended for a total of more than 10 days in a school year and another suspension is being proposed; the child is being suspended for behavior that is "substantially similar" to behavior for which the child has previously been suspended; the length of each suspension; the total time the child has been suspended; and how close together the suspensions have been.

TIP: *It is not always clear when a suspension is part of a "pattern." So, if you think your child has had a "pattern" of suspensions, tell the charter school that you think the rules for a change in placement must be followed. If the charter school doesn't agree, you can request a mediation session or a special education hearing. (See ELC's Fact Sheet, "How To Resolve Special Education Disputes.")*

If the proposed discipline is NOT a change in placement

The public school or charter school may discipline your child using the rules that apply to students without disabilities. (For information on the discipline rules for all students, see ELC's Fact Sheet "*School Discipline in Pennsylvania*" and other ELC publications on this subject. Philadelphia students have special rights and a separate ELC fact sheet.)

If the proposed discipline IS a change in placement

If the discipline is a change in placement, the school must hold a manifestation determination meeting.

Question 2: Was the behavior a manifestation of the child's disability?

The school must have a manifestation determination meeting within 10 school days of its proposal to change the child's placement. While you are waiting for the meeting, the school may not transfer your child to a new school setting or force you to keep your child at home unless the child's misbehavior involved drugs, guns, or serious injury to another person, or if a Hearing Officer has found that keeping your child in the same program would be dangerous for the child or others. We discuss these "special circumstances" and the "dangerousness" exception in more detail below.

The parent and any members of the IEP Team that the parent and the school agree are needed must come to the manifestation meeting. The Team should review information from the child's file, the child's IEP, teacher observations, and information from the parent and then ask if the child's misbehavior was a "manifestation" of her disability. The Team should ask two questions:

1. Was the child's misbehavior caused by, or directly and substantially related to, the child's disability?

For example: if your child has a hearing impairment and did not follow the teacher's directions to stop talking and sit down because the child could not hear the directions, the Team should decide that the misbehavior meets this test.

2. Was the child's misbehavior a direct result of the school's failure to follow the child's IEP?

For example: A child might have a behavior plan allowing her to go to a cooling off room (like the guidance office) when she is upset. If the child yells at a substitute teacher who has refused to let her go to the guidance office (maybe because the substitute does not know about the behavior plan), then the child's behavior might meet this test.

If the answer to either question is "yes," the Team must conclude that the child's misbehavior was a "manifestation" of her disability.

If all the team members agree the child's behavior WAS a "manifestation" of her disability:

If the school and the family agree that the student's misbehavior was a manifestation of the student's disability, the student **CANNOT** be suspended, expelled, or transferred to a new school setting as punishment for the misbehavior. (The only exceptions are if the child's misbehavior involved drugs, weapons, or serious injury to another person - see the "special circumstances" rules below). In addition, the IEP Team must conduct a functional behavioral assessment for the child unless one has already been done. The school must also either develop a behavior intervention plan or review and revise the plan that already exists.

If all Team members agree that the child's conduct was NOT a "manifestation" of her disability:

The school can discipline the child the same way it disciplines students who do not have disabilities. This includes a long-term transfer to a new school or an alternative school, or even an expulsion by the local School Board. (To review the rules for suspension and expulsion of all students, see ELC's Fact Sheet "*School Discipline in Pennsylvania*" and other publications on this subject.) However, even if the child is expelled from school, she must still receive special education services (more below).

What happens if the school decides that the child's conduct was NOT a manifestation of her disability and the parent disagrees?

If the school decides that the behavior was not a "manifestation" of the disability, it may discipline the child. The parent can request a special education hearing to challenge this decision. The hearing must be concluded within 20 school days, and the Hearing Officer must reach a decision in 10 more school days. If the

Hearing Officer agrees with the parent that the child's behavior was a manifestation of the disability, he must order the school to return the child to the placement she was in before the misbehavior. If the Hearing Officer disagrees with the parents, the school can suspend or even expel the child, or transfer her to an alternative school.

Question 3: What happens if my child's misbehavior involved drugs, a weapon, or serious injury to someone (special circumstances)?

A student's misbehavior is a "special circumstances" if it involves illegal drugs, weapons, selling prescription drugs, or serious bodily harm to another person at school or a school-related activity. "Serious bodily injury" must be really serious to count - pushing someone (even a teacher) or scratching them should not be enough. Call us if you have questions about this rule. If your child's misbehavior is one of these "special circumstances," the school can immediately move your child to an alternative educational setting (alternative school) for up to 45 *school* days **even if the child has mental retardation, and even if the school agrees with the parent that the misbehavior was a "manifestation" of the student's disability.**

For example, if your child has mental retardation and a teacher finds a marijuana joint in your child's pocket, the school can immediately transfer your child to an alternative school for up to 45 school days. The school must still have a "manifestation" meeting within 10 school days. If the Team decides that having the joint was a manifestation, it must conduct a functional behavior assessment and/or revise your child's behavior plan, but your child can still be forced to stay in the alternative school for the rest of the 45 days.

Are there other ways that a school can send my child to (or force my child to stay in) an alternative school without my permission?

Remember, a school can always transfer a child with a disability to an alternative school if the parent agrees. Remember also, even when the parent disagrees, the school can transfer the child to an alternative school if either (1) the behavior is not a manifestation of the disability and the school's published discipline rules allow the child to be transferred for his misbehavior, or (2) the

behavior involved drugs, a weapon, or serious injury to another person.

In addition, a school also has the power to ask a Hearing Officer to transfer the child to an alternative school for up to 45 school days - even if the child has not done anything wrong at school. The school must prove to the Hearing Officer that keeping the child in the current placement is dangerous. (The test is whether keeping the child in her current school "is substantially likely to result in injury to the child or to others.") If the school cannot prove this to the Hearing Officer, then the child may not be transferred.

If your child has already been transferred to an alternative school for 45 days because her misbehavior involved a "special circumstance" (drugs, weapon, or serious injury to another person), a school can ask a Hearing Officer to order that she stay in the alternative school for another 45 school days. The school must prove that it would be dangerous to return the child to her old IEP setting.

If my child has been suspended, expelled, or transferred to another educational placement, will she still receive any special education services?

Any student who is suspended has the right to make up the school work she misses. This State law applies even if the suspension is so short that it doesn't count as a "change in placement."

If a school "changes the placement" of a child with a disability, federal law requires the school to provide her with enough educational services to participate in the general education curriculum and make progress on her IEP goals. This is true even if the child has been expelled or transferred to an alternative school. In addition, when the school "changes the placement" of a child for discipline reasons, it must hold an IEP meeting to schedule a functional behavior assessment for the child (if one hasn't already been done). This assessment should give the IEP Team information on the things that "trigger" the child's misbehavior and give the Team suggestions on how to prevent the misbehavior. The IEP Team should also write or revise the child's behavior plan.

What if I think my child has a disability, but she does not have an IEP?

The rules in this Fact Sheet apply if the school "had knowledge," *before the student's misconduct*, that the child had a disability - even if your child didn't have an IEP. The law says that a school district or a charter school is considered to have "knowledge" that the child has a disability in three situations:

1. The parents have expressed a concern that the child needs special education in writing to the child's teacher or school administrator; or
2. The parent has requested an evaluation; or
3. The teacher or other school staff expressed specific concerns about the child's pattern of behavior to the director of special education or other supervisory personnel of the school.

If none of these rules apply to your situation, your child can be punished by the school under the rules that apply to students who do not have disabilities. However, if the parent requests an evaluation while the child is being punished (for example, after your child has been sent to an alternative school or expelled), the school must conduct the evaluation quickly. If your child is found eligible for services, the school must meet with you to develop an IEP (see ELC's Fact Sheet entitled "*Developing the Special Education Program*"). For the rest of your child's punishment (while she is expelled or in the alternative school), your child must be given enough services to participate in the general curriculum and progress toward her IEP goals.

It is important to note that a school does not have to follow the special education discipline rules if: (1) the parent has refused to allow the school to evaluate the child in the past, (2) the parent has refused special education services for the child in the past, or (3) the school evaluated the child in the past and concluded that the child did not have a disability.

Can the school report my child with a disability to the police?

Special education law does not stop a charter school or school district from reporting a crime to the police. With the parents' (and in some cases the

student's) consent, the school must forward the child's discipline and special education records to those authorities.

Do the same rules apply when a child is "suspended" from the school bus or is placed in in-school suspension?

The same rules that apply to out-of-school suspensions apply to in-school suspensions if the student will be removed from her special education program or placement. A proposed suspension from the school bus is also subject to the same rules as a proposed out-of-school suspension if transportation is listed on the student's IEP.

For example, if your child acts out on the bus, the school may want to suspend your child from the bus for three weeks. If so, you need to check to see if bus transportation (sometimes called "door to door" transportation) is listed as a related service on your child's IEP. If it is, then removing your child from the bus for three weeks counts as a "change in placement" (since it is for more than 10 school days in a row). The school must hold a manifestation determination meeting within 10 school days and also must have an IEP meeting to arrange for a functional behavior assessment (if not already done) and draft or revise a behavior plan for your child on the bus. If your child's behavior IS a manifestation of his disability, then the school cannot change your child's placement (so, after 9 school days, your child must be allowed back on the bus!).

Does the law prohibit any forms of discipline?

State law prohibits public school districts from ever using the following types of discipline for students with disabilities:

- corporal punishment
- punishing a student for behavior that is an outgrowth of the student's disability
- using "noxious" substances (for example, pepper sauce or mace)

- withholding meals, fresh air, or water,
- serial suspensions
- electric shock
- locking or keeping the student in a room, space, or box from which he or she cannot easily leave, and
- any treatment that is demeaning.

What happens if the parent cannot reach agreement with school officials?

If the family and school officials cannot agree on any of the issues discussed in this section, the parents can use the Special Education Procedural Safeguard System described in ELC's Fact Sheet "*How To Resolve Special Education Disputes.*" Examples of the types of issues that may require a hearing include: what should be in the child's behavior program; was the misbehavior a "manifestation" of the child's disability; did the school have "knowledge" that a child without an IEP had a disability before the misbehavior; or was there a safety issue that justifies putting the child in an alternative setting over the family's objection.

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