



## **DISCIPLINING CHILDREN WITH SPECIAL NEEDS**

### **Why is Special Education important if my child is suspended or expelled?**

The Individuals with Disabilities Education Act (IDEA) is a federal law giving disabled students a legal right to a free, appropriate public education, and procedural protections against school discipline. IDEA also requires schools to provide services that address behavior issues of disabled students.

### **Who is a "disabled" student?**

According to the IDEA, a disabled student is a child who receives special education services as part of an Individual Education Plan (IEP). A student can be considered disabled even if the school has not tested or identified the child as disabled. If the school "knew or should have known" of the child's disability, the student may still be protected by special education law (see below).

### **Why do disabled students receive more protections in discipline matters?**

By giving disabled students added protections, Congress is trying to strike a balance between maintaining safe schools and safeguarding the education of students with learning disabilities. There are strict procedures that must be followed before a school district can remove a special education student from school. The law also tries to ensure that a child is not disciplined for conduct related to a disability.

### **Can my disabled child be suspended or expelled?**

An expulsion or a suspension for more than 10 days is considered a "change in placement" for which the IDEA provides increased protection. If the misconduct that led to the disciplinary action was a "manifestation" of the child's disability, the school district may not be able to suspend or expel the child at all. Even if a disabled student is suspended or expelled, they are still entitled to school services.

### **What if my disabled child was suspended for fewer than 10 days?**

If the suspension is for fewer than 10 days, but the total number of days that the child has been suspended in the school year is 11 or more, the student may be entitled to the IDEA's increased protection if there is a "pattern" of suspensions. However, a school may order a suspension or another educational setting for fewer than 10 days in the same way those disciplinary measures would apply to students without disabilities. However, suspension for even one day for conduct related to the disability may be considered illegal discrimination.

### **If my child is not identified as disabled is s/he entitled to these IDEA protections?**

Maybe. Students who are suspected of being disabled should be treated like disabled students for purposes of discipline. Students with disabilities, whether or not they have been identified, are entitled to protection if the school "had knowledge" that the child has a disability. A school system is deemed to have "knowledge" if, before the incident:

- a parent expressed concern in writing that the child needs special education or related services unless

parent is unable to write; OR

- the child's behavior or performance demonstrated the need for such services; OR
- the parent had requested a special education evaluation; OR
- the child's teacher or other school system personnel has expressed concern about the child's behavior or performance to other school system staff.

If any one of the four conditions listed above exists, the child is immediately entitled to IDEA protections and if the parent requests that the school conduct an evaluation to determine whether the child is disabled and eligible for special education services, it must be completed as soon as possible. After the evaluation is complete, a TEAM meeting should be held to discuss the results of the evaluation. If, at the TEAM meeting, the child is found eligible for special education, s/he continues to be entitled to the increased protections from suspension or expulsion. While all evaluations and proceedings are being completed the school must provide the child with educational services.

### **What basic rights do disabled students have when they are being disciplined?**

If a disabled child's placement changes because of school discipline for more than 10 cumulative days in a school year the child is entitled to:

**An IEP Meeting:** the school must convene an IEP meeting, with full consideration of the child's needs, evaluation data, current program and placement, and placement options, to determine whether the placement continues to be appropriate. If a child is already identified as a disabled student, the IEP meeting must be held either before or within 10 days of ordering the suspension or expulsion.

**Parental Participation:** the school must ensure parental participation at the IEP meeting.

**Notice:** the school must provide written notice of the school's proposed change to the student's placement prior to the change occurring. This notice should include: the reasons for the proposed action; a description of the alternatives the school considered, along with an explanation of why those were rejected; a description of each evaluation procedure, test, record or report the school system used as a basis for its proposal; and an explanation of all the procedural rights the student and the parent have.

**Functional Behavioral Assessment:** for students who have been suspended for more than 10 schooldays in a school year or when a child is subject to long-term discipline, a Functional Behavioral Assessment must be completed not later than 10 business days from the first day of suspension. A functional behavioral assessment should include: 1) identification of the primary problem behavior, 2) identification of the behavior in concrete terms, 3) identification of the factors that contribute to the behavior, and 4) a determination of the conditions in which the behavior usually occurs.

**Behavior Intervention Plan:** After the Functional Behavioral Assessment is completed, the IEP team must reconvene as soon as possible to develop a Behavior Intervention Plan (BIP) aimed at minimizing the problem behavior. The BIP must be implemented as soon as it is developed. If the child already has a BIP, the IEP team must meet to review and change the plan to address the child's problem behavior. If a behavior plan is in place, a review of the plan must take place after every new suspension.

**Manifestation Determination:** A school cannot suspend or expel a disabled student when the student's behavior was a "manifestation" of his/her disability. A student's behavior is a "manifestation" of the disability when it can be shown that the disability caused or contributed to the student's behavior. To make this determination, a special education Team meeting must be held within 10 days of the date the discipline was imposed. Very specific factors outlined by law about the child's situation must be considered by the Team. If the Team finds that the behavior was caused by the student's disability, then the child

cannot be suspended, expelled or otherwise disciplined. Except in cases involving drugs or weapons, (see below) the child should return to his original educational placement. The manifestation review can be held at the same meeting that the Behavior Intervention Plan is developed. Parents must be notified of the right to a manifestation determination by the date that the decision to suspend is made.

**Appeal:** You can appeal the results of the Manifestation Determination, or decisions about special education eligibility or placement by requesting a hearing at the Bureau of Special Education Appeals. All evaluations and other information to be used at the hearing should be given to you three days prior to the hearing. We recommend that you obtain legal assistance for such a hearing.

**Stay-Put:** The student's right to "Stay-put" is his/her right to remain in the current school placement while all hearings or manifestation determinations proceed. In most cases, school personnel can suspend the child or place him/her in an "interim alternative educational setting" for up to 10 days. If the child has carried a weapon to school or to a school function, possessed, sold, or tried to purchase drugs while at school or at a school function this period may be for up to 45 days (see below).

The "interim alternative educational setting" must still provide the services required by the IEP as well as any services and modifications designed to address the behavior so that it does not occur again.

Additionally, it must be selected to allow the child to continue to participate in the general curriculum, although in another setting.

#### **What if a disabled student's suspension is related to a weapon or drugs?**

School personnel unilaterally can place a child in an "appropriate interim alternative education setting" (home tutoring may not be a permissible interim setting) for the same amount of time a non-disabled child would be subject to discipline, but for not more than 45 days, if the child:

- "carries" certain dangerous weapons to a school or school function
- knowingly possesses or uses illegal drugs at school or a school function
- sells or attempts to sell a controlled substance at school or a school function

#### **What if a disabled student's conduct is extremely dangerous?**

If a child's conduct is dangerous, the school cannot, on its own, immediately change the child's placement. The school must file for a hearing at the Bureau of Special Education Appeals and ask a hearing officer to remove the child to a temporary alternative education setting. To win at hearing, the school must show that:

- keeping the child in the current placement is substantially likely to result in injury to the child or others;
- AND
- reasonable efforts to minimize the risk of harm in the current placement will not be effective; AND
  - the proposed interim alternative education setting meets the requirements of the law

The previously discussed rules about functional behavior assessments and behavioral intervention plan also apply.