



CHILDREN'S LAW CENTER
OF MASSACHUSETTS

PROTECTIONS FOR
SPECIAL EDUCATION
STUDENTS WHO ARE BEING
DISCIPLINED BY SCHOOL OFFICIALS

Children's Law Center of Massachusetts
298 Union Street
Lynn, MA 01901
(781) 581-1977

May 2005

WHY IS SPECIAL EDUCATION IMPORTANT IF A CHILD IS SUSPENDED OR EXPELLED?

The Individuals with Disabilities Education Act (IDEA) is a federal law that gives disabled students a legal right to a **Free, Appropriate Public Education** (FAPE) in the **Least Restrictive Environment**, and procedural protections against school discipline. IDEA also requires schools to provide services that address behavior issues of disabled students including behavior that violates the school discipline code.

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). (Please see our guide entitled “*Special Education in Massachusetts*” for a summary of a student’s right to special education services.)

A student also may 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 and other 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 A DISABLED CHILD BE SUSPENDED OR EXPELLED?

An expulsion or a suspension from school for more than 10 days is considered a “change in educational placement” for which the IDEA provides increased protection. As a result, when a child is removed from school for more than 10 days, parents and disabled children must be given all the procedural protections they would be provided if the school wanted to change the child’s educational placement for non-disciplinary reasons.

If the misconduct which 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. Most importantly, even if a disabled student is suspended or expelled, they are still entitled to school services during the period of removal from school.

WHAT IF A DISABLED CHILD WAS SUSPENDED FOR LESS THAN 10 DAYS?

A school may order a suspension or another educational setting for fewer than 10 days in the same way that disciplinary measures would apply to students without disabilities. However, if

the suspension is for less 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 because of a "pattern" of suspensions. A suspension for even one day for conduct related to the disability may be considered illegal discrimination.

IF A CHILD IS NOT RECEIVING SPECIAL EDUCATION SERVICES IS S/HE ENTITLED TO THESE IDEA PROTECTIONS?

Maybe. Some students who may be disabled should be treated like disabled students for purposes of discipline.

Even after being subject to disciplinary action, a child may argue that he or she has a disability and is entitled to protection under IDEA. The child will be given IDEA protection (and the right to a free and appropriate public education) if the local educational agency knew or had reason to know that the child had a disability before the child was involved in the alleged incident. Automatically, the law determines that the agency knew or should have known that the child had a disability if, before the conduct occurred:

- The parent of the child wrote to the child's teacher or to supervisory or administrative personnel of the school district, expressing concern that the child was in need of special education and related services;
- The child's parent requested an evaluation of the child; or
- The child's teachers or other school personnel have expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the special education director or other supervisory school personnel.

Exception- a school is not deemed to have known that the child is a child with a disability if

- The parent of the child has refused to allow a child to be evaluated;
- The parent of the child has refused special education services; or
- The child was previously evaluated and it was determined that the child was ineligible for special education and related services.

If the school is "deemed to have knowledge" of the child's disability, the child is immediately entitled to IDEA protections, including the right to an education, and, if the parent requests an evaluation to determine the child's eligibility for special education services, it must be completed in an "expedited" manner.

After the evaluation is complete, a Team meeting should be held to discuss the results of the evaluation and determine eligibility consistent with the IDEA. 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:

A Free and Appropriate Public Education: every child who is identified as a disabled child or who the school should have known is disabled, is entitled to receive educational services that will meet the child's unique needs and allow him or her to make progress in the general curriculum.

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.

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 notice of and participation at the IEP meeting.

Functional Behavioral Assessment: for students who have been suspended for more than 10 school days 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.

Within ten days of any decision to change a child’s placement (including by suspension) for more than 10 days in a school year, the school district, parent, and “relevant” members of the IEP Team (as determined by the parent and district) shall meet and hold a Manifestation Determination meeting. At the meeting, the Team shall review all relevant information in the student’s file, including the student’s IEP, teacher observations, and information provided by the parents to determine:

- 1) If the conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or
- 2) If the conduct in question was a direct result of the local educational agency’s failure to implement the IEP.

If either of the two items above is found to be true, then the student’s conduct is deemed to be a manifestation of his or her disability. In that case, the school shall conduct a functional behavioral assessment; implement a behavior plan; and, unless otherwise agreed upon by the parents and district, return the child to the placement from which s/he was removed.

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: A parent 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 the parent prior to the hearing. We recommend that you obtain legal assistance for such a hearing.

DURING A DISPUTE OR APPEAL WHAT EDUCATIONAL SERVICES WILL A CHILD RECEIVE?

Generally, a school cannot change a child’s educational placement without notice to and consent of a parent. However, school personnel may remove the child from school for disciplinary incidents in limited circumstances and for limited periods. School personnel may:

- Consider any unique circumstances of the child when determining whether to change a placement for a child with a disability.
- Suspend the disabled student for violation of the school discipline code for *no more than 10 days* in a school year.
- If the conduct that is a violation of the school discipline code is not determined to be a manifestation of the child’s disability, the child can be disciplined in the same way as non-disabled children would, except that the child must still receive a free and appropriate public education (a program with services that meet his educational goals in the least restrictive setting.)

ARE THERE ANY SITUATIONS IN WHICH A SCHOOL CAN CHANGE A CHILD'S PLACEMENT WITHOUT NOTICE TO OR CONSENT OF THE CHILD'S PARENTS?

Yes. School personnel may:

- 1) Suspend the disabled student for violation of the school discipline code for *no more than 10 days* in a school year (Note: the child must be given due process and a right to be heard consistent with the requirements of state and federal constitutional due process.)
- 2) Remove a student to an interim alternative educational setting for not more than 45 school days if the child:
 - a) Carries or possesses a weapon to or at school, on school premises, or at a school function; or
 - b) Knowingly possesses or uses illegal drugs, sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
 - c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

If the school district believes that maintaining the child's placement is substantially likely to result in injury to the child or others, it may request a hearing before a hearing officer.

WHAT SERVICES MUST A DISABLED CHILD RECEIVE DURING THE PERIOD S/HE IS REMOVED FROM HIS OR HER CURRENT EDUCATIONAL PLACEMENT?

The child must continue to receive a **Free and Appropriate Public Education** while in the interim alternative educational setting. This means that the child shall:

- Continue to receive educational services described in his or her IEP so that the child will be able to continue to participate in the general education curriculum, although in another setting, and make progress toward meeting the goals set out in the child's IEP.
- Receive a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the conduct so that it does not recur.
- Continue to participate in the general curriculum, although in another setting.

After 45 school days, if there has been no accepted change in the child's IEP, the child is entitled to return to the placement listed in his or her last accepted IEP.

CAN THE PARENT APPEAL ANY DISCIPLINARY DETERMINATIONS?

Yes. Among other things, a parent may appeal the results of 1) the manifestation determination and 2) the appropriateness of an interim alternative setting (i.e. its failure to provide FAPE and/or to meet the provisions of the student's IEP).

During these appeals, the child must remain in the interim alternative setting for 45 school days or until the hearing officer decides otherwise, whichever occurs first.

***See pamphlets “*School Suspension and Expulsion*”, regarding school discipline, and “*Special Education in Massachusetts*” regarding student rights to special education. ***

For more information call:

Children’s Law Center
298 Union Street
Lynn, MA 01901
781-581-1977 (tel); 781-598-9364 (fax)
Phone Assistance Hours
Tuesday & Thursday 2 pm to 4pm
1-888-KIDLAW8 (1-888-543-5298)

**This agency is supported in part by the
Massachusetts Legal Assistance Corporation
and
UNITED WAY of Mass Bay**