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FACT SHEET

Discipline of Students with Disabilities

School administrators are given authority to discipline students. Each school district has a Code of Conduct that informs students of school rules and discipline procedures. The Individual with Disabilities Education Act (IDEA 2004), Section 504 of the Rehabilitation Act, and South Carolina law tell the school administrators what steps must be taken when disciplining a student with a disability. If a student has an Individual Education Program (IEP) or a 504 plan, then there are special procedures that the school district must follow. A student with a 504 plan has similar protections as a student with an IEP, but there are differences.

STUDENTS IN SPECIAL EDUCATION

Students with disabilities can be suspended for up to 10 days like any other students. However, students with disabilities have special rights if the school district wants to suspend them for more than 10 days or expel them. Expulsion and suspensions over 10 days have such an effect on a special education student that they are considered a change in placement.

School services for a child in special education must be decided by the student's whole IEP team. The IEP team includes the child's parent as well as school members. A school district cannot just decide on its own to change a student's placement.

When determining whether a child has been suspended for more than 10 school days, there are two ways to count the days out of school.

Consecutive days of suspension: The rule against being suspended more than 10 days clearly applies when the suspension days are consecutive (that is, they come one after another in a single period). This means a school district cannot give a 15 day suspension to a student in special education without the incident being reviewed by the IEP team.

Cumulative days of suspension: The rule about suspensions can also include cases where the student has been suspended several short periods, each under 10 days, but where the total would go over 10 days if the new suspension were served. (Example: Student was suspended 3 days one time, then 3 more days and now the school district wants to give a 5 day suspension.) When there are several short periods of suspensions totaling over 10 days, the school district must look at certain factors to determine if there is a pattern.

These factors include:

- a) The length of each suspension,
- b) The total time the student is suspended, and
- c) How close in time the suspensions are to each other.

If there is a pattern, then a change of placement has occurred even though no one suspension period went over 10 days. Example: if all the suspensions happened in just one month, the school district should recognize the suspensions make a pattern and all days get counted. If the two earlier ones were 3 days each, for a total of 6, then the most the school district could now suspend the student is 4 more days without the case being reviewed by the IEP team.

Manifestation Meeting

If a school district wants to expel or suspend a student over 10 days, it must call a meeting of the IEP team. This meeting is known as a "manifestation meeting," and it must be held within 10 school days of the school district's notice of suspension over 10 days or expulsion. This meeting is to determine if the behavior was caused by, or had a direct and substantial relationship to the child's disability. The IEP team should also look to see if the child's IEP was being followed.

If the IEP team decides that the behavior was a manifestation of the student's disability, the district cannot expel the student or suspend the student more than 10 days. If the behavior was NOT a manifestation, the district CAN expel or suspend the student for over 10 days¹. The student will still be entitled to educational services while suspended or expelled—see next section.

Expulsion

Expulsion is the most severe discipline that a school administrator can hand down. It usually means that a student is not allowed to go to school for the remainder of the school year.

If the behavior was NOT a manifestation of the disability, the student in special education can be expelled like any other student. A school hearing officer will decide if

¹ Parents can use "Due Process" procedures to appeal a manifestation determination they believe is wrong. 34 Code of Federal Regulations 300.532 (a)

the facts and past record warrant expulsion. However, unlike other expelled students, the district must still provide educational services for the special education student who has been expelled. The school's expulsion hearing officer does not decide where the student will be schooled during expulsion. The IEP team, including the parent, decides where continued school services will be provided, but it could be an alternative school or homebased.

State law requires an expelled student to apply to the school board for readmission at the beginning of the following school year. However, most districts do not enforce this rule or simply let the principle readmit the student.

Note: P&A also has a separate fact sheet on **EXPULSION AND MANIFESTATION**.

Interim Alternative Educational Setting (IAES)

School districts do have some alternatives for disciplining students with disabilities. School authorities can remove a student for not more than 45 school days for the following:

- (a) Carrying a weapon to school OR to a school function²,
- (b) Knowingly possessing or using illegal drugs at school or a school function,
OR
- (c) Inflicting serious bodily injury on another person while at school or a school function.

The student will then have to go to *some* interim alternative educational setting ("IAES"). When there are weapons, drugs, or serious injury, the student can be sent to an IAES even if the IEP team decides the behavior was a manifestation of the student's disability.

School authorities do NOT get to decide which IAES the special education student will attend once they order the student removed from the current school. The child's full IEP team meets to determine **where** the IAES will be.

While the student is in the IAES, the IEP team should be meeting to decide how to improve the IEP and what school placement should follow after the IAES.

In addition to temporary removal for cases involving drugs, weapons or where serious injury has already happened, a school district may also seek to remove a student if it believes that a student's future behavior is "**substantially likely to result in injury of the child or others.**"

² The U.S. Department of Education has interpreted this law to include *having a weapon at school* even if the student did not personally bring it to school. See comments at 64 Federal Register 12416, March 12, 1999.

To do this the district must present the student's case to an outside hearing officer (someone who is not an employee of the district). After a hearing involving both the school and the parents, the hearing officer may: (1) order a change in school placement for not more than 45 school days and (2) designate an IAES for the student. The school district can make requests to the hearing officer for additional 45 day periods in an IAES.

An alternative school setting must still provide a Free Appropriate Public Education including:

- (a) Implementation of the child's IEP,
- (b) Access to the general curriculum, and
- (c) Services to address the child's behavior to prevent the behavior from happening again.

So during the hearing, the parents should express their concerns about the child's needs so that the hearing officer makes appropriate decisions.

Calling the Police

IDEA expressly states that districts may report crimes committed by a student with a disability to appropriate authorities. Districts are not required to report to the police. However, if criminal type offenses are reported, the district must give the police copies of the special education and disciplinary records of the child. The parent should immediately ask for an IEP meeting to improve the IEP and prevent future behavior violations. A copy of the improved IEP should be given to juvenile authorities. They may then decide to drop charges or the judge may be more willing to return the student home and school rather than sending the student to detention facilities.

STUDENTS NOT IN SPECIAL EDUCATION

Students not previously identified as special education students who get suspended or expelled may get the same protection as those who are already in special education. Such students first have to show that the school district had knowledge that the student had a disability before the behavior incident that led to the disciplinary action. (See P&A's fact sheet "**PROTECTIONS FOR STUDENTS NOT YET IDENTIFIED.**")

DISCIPLINE OF STUDENTS WHO HAVE 504 PLANS

Students with 504 plans have similar protections to those with IEPs. The 10 day suspension limit applies to students with 504 plans. There is also a requirement to hold a manifestation determination before suspensions of more than 10 days or expulsions. The major difference between IDEA and 504 is that under 504, if a student's behavior is determined not to be related to his/her disability, the district is not required to provide any education services during the period of long term suspension or expulsion. Further, a 504 student whose offense involves drugs or alcohol and is currently using drugs or alcohol can be suspended or expelled like any other student and has no right to a manifestation determination.

SC Law

South Carolina law states that no student can be suspended from a teacher's class for more than 10 days for any one offense. SC law states that no student can be removed from school for more than 30 days in a school year unless expelled. This applies to both regular education and special education students.

Under South Carolina law, a student may not be suspended from school by an administrator during the last 10 days of a year if the student will not be able to receive credit for the school year. However, if the school board approves the suspension, then the student can be suspended even if he/she will not be able to receive credit for the year. If there is an actual threat to a class or a school then school board approval is not required.

When a student is suspended from a class or a school, the parent or guardian must be notified in writing of the reason for the suspension. (This includes in-school suspension as well as out-of-school suspension.) The discipline notice should also state when and where the school administrator will be available for a conference with the parent or guardian. The conference should be scheduled within 3 days of the date of the suspension. After the conference the parent or legal guardian may appeal the suspension.

IDEA Due Process

The parents of a student with an IEP have a right to request an IDEA due process hearing to challenge decisions regarding their child's placement. This includes manifestation meeting determinations or decisions made by the district that a student should be removed from the current school to an IAES. If a parent files a due process complaint because of a manifestation determination or an assignment to an IAES, the State or school district should arrange an expedited due process hearing. This means a hearing must occur within 20 school days of the date the hearing was requested.

The student must remain in the suspension or alternative setting pending the decision of the due process hearing officer (or until the child's suspension or alternative placement has expired). However, the parent and the school district could come to an agreement otherwise and place the child back in the previous placement pending the decision.

FREQUENTLY ASKED QUESTIONS

My daughter has had five days of In School Suspension (ISS). Is that time included in the 10 day limit for suspensions? Also, what about bus suspensions?

The 10 day limit may include the time a student spends in-school suspension (ISS). ISS is included in the 10 day limit if a student with a disability in ISS does not receive

instruction as required by her IEP or does not receive related services as listed on her IEP.

If transportation is listed on the IEP, school bus suspension days will normally count as part of the 10 day limit. The school cannot simply tell the parents to start providing transportation. Bus suspension days will **not** count as school suspension days though if the school provides alternative transportation (like a taxi or car service). Bus suspension days will also not count as suspension if the school somehow provides the student with the same type school services as she had before she was suspended from transportation. Any new school setting would have to include (1) appropriate participation in the general curriculum, (2) all the other services from the current IEP, and (3) continued participation with other children to the same extent as the current school placement.

The school district says my son is dangerous and likely to hurt other students or himself. They have requested a hearing to remove him from the school setting where he is. They want to place him in an Interim Alternative Education Setting. How will the hearing officer determine if my child is dangerous?

The school district must prove to the hearing officer that the student is “substantially likely to injure him or others” if he stays in the current school placement. Tell the hearing officer if you dispute the facts about past incidents OR if there have been recent changes in your child’s life indicating he is not likely to injure anyone at school. These could be changes like counseling or medication. Remember, if the hearing officer orders a change of placement, the hearing officer will also designate where the alternative school setting will be. If you know reasons why the alternative placement the district is suggesting is NOT appropriate for your son, be sure to tell the hearing officer.

The school district has recommended my son be expelled. What happens next?

As discussed earlier in this fact sheet, before a student with a disability can be expelled, the IEP team must meet to decide if the behavior was or was not related to the student’s disability. If the behavior is unrelated to the student’s disability, then the school district may expel the student.

However, before any student (disabled or non-disabled) can be expelled, the district must conduct a hearing. At this hearing the school district must present evidence to the hearing officer (usually a district administrator) that the student violated the district’s student code of conduct and should be expelled. The student has a right to have someone represent him at the hearing. The student also has a right to question the witnesses who present evidence against him. Parents have the right to appeal to the district’s school board. If the school board upholds the hearing officer’s decision to

expel the student, then the parents can file a law suit in state court. This applies to both special education and regular education students.

If my son is expelled, can I enroll him another school district?

If a student is expelled from one school district, that expulsion will usually keep him from enrolling in any school district in the same state.

I think that the school district did not follow the right procedures when they suspended my daughter. What can I do?

If you feel that the district violated the discipline procedures under the IDEA or state law, then you can file a complaint with the SC State Department of Education. (See P&A fact sheet "FILING A COMPLAINT WITH THE SC DEPARTMENT OF EDUCATION") If your daughter has a 504 plan, then you could file a complaint with the Office of Civil Rights of the U.S. Department of Education. (See P&A fact sheet "FILING A COMPLAINT UNDER SECTION 504")

Sources for the information in this fact sheet:

Individuals with Disabilities Education Act of 2004, and 34 Code of Federal Regulations §300.504, §300.530, §300.531, §300.532, §300.533, §300.536

S.C. Code Ann. §§ 59-63-210 through 59-63-240

SC State Board of Education Regulation 43-243(V.)(B)

29 U.S. Code Section 705 (20)(C)(iv), relating to exclusion of alcohol/drug offenses from

SC Department of Education, Office of Exceptional Children: "Discipline Questions and Answers" <http://ed.sc.gov/agency/offices/ec/page1384.html>

If you need additional information, contact P&A

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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