



The Protection and Advocacy System for South Carolina

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P&A FACT SHEET

EXPULSION AND MANIFESTATION MEETING

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and South Carolina law tell school administrators what steps must be taken when they are considering expelling a student with a disability. If a student has an Individual Education Program (IEP) or a 504 plan, then the school must follow special procedures. A student with a 504 plan has similar protections as a student with an IEP, but there are differences. This fact sheet first tells about the rights of students in Special Education and then about the rights of students with 504 plans.

(See also Protection and Advocacy’s fact sheet, “Discipline of Students with Disabilities.”)

STUDENTS IN SPECIAL EDUCATION

Expulsion is the most severe discipline that a school administrator can hand down. Under IDEA, before a student in special education can be expelled, the parent, a school representative and other relevant¹ members of the student’s IEP team must meet. This meeting is called a “manifestation determination” meeting because the group must decide whether the student’s behavior was a “manifestation” of the student’s disability. The question they must decide is whether there is a relationship between the student’s disability and the behavior that led to the recommendation for expulsion. They also look to see if the school was following the child’s IEP. If the behavior was a manifestation of the disability, the school cannot expel the student.

A manifestation meeting must be held within 10 school days of the school’s decision to remove the student from school (the current school placement).

¹ What other members of the IEP team are needed is determined by the parent and the school representative.

WHAT HAPPENS AT THE MANIFESTATION MEETING?

IDEA has several requirements for the manifestation meeting.

First: All relevant information in the student's file must be considered including the child's IEP, any teacher observations, and any relevant information provided by the parents.

Second: The following two questions must be answered to determine whether the behavior was a manifestation (a result) of the student's disability:

- (1) Was the conduct in question caused by, or did the conduct have a direct and substantial relationship to, the child's disability; **or**
- (2) Was the conduct in question the direct result of the school district's failure to implement the IEP?

WHAT HAPPENS IF THE BEHAVIOR WAS A MANIFESTATION?

If the answer to either of the above questions is YES, the behavior was related to the student's disability and the behavior was a "manifestation" of the disability. Then the student CANNOT be expelled. The school and parents then work together to improve the IEP to prevent future behavior problems. Additionally, once it is found that the behavior was a manifestation of the child's disability the IEP team has to either:

1. Conduct a functional behavioral assessment (FBA), unless one had been completed before the behavior that resulted in the expulsion recommendation, and implement a behavior intervention plan (BIP); **or**
2. If a behavior intervention plan (BIP) already has been developed, the IEP team must review the BIP to see if it needs to be modified to address the behavior,

The student should then be returned to the original placement he or she was removed from. However, the parent and the team may also agree to a different placement as part of the modification to the child's behavior plan.

SPECIAL CIRCUMSTANCES

There are certain situations where a school district can remove a student for up to 45 school days to an alternative educational setting even if the behavior is considered a manifestation of the student's disability. These special circumstances include incidents involving drugs, weapons, or serious injury to someone at the school or a school function. An independent hearing officer could also send a child to an alternative educational setting for not more than 45 school days, if the hearing officer finds the child's current placement is substantially likely to result in injury to the student or others. The actual setting of the alternative placement should still be determined by the IEP team.

WHAT HAPPENS IF THE BEHAVIOR WAS NOT A MANIFESTATION OF THE STUDENT'S DISABILITY?

If it is determined that the behavior was NOT a manifestation of the student's disability, the student can be expelled like any regular education student. However, even if expelled, a child with an IEP must still receive educational services so that he/she can continue to make progress toward meeting IEP goals. The child should also be given access to the general curriculum. The IEP team will need to meet to decide where the student will get these educational services, which could be at an alternative school or through home services.

A parent also has the right to appeal a manifestation decision by requesting a due process hearing. To request a hearing, the parent needs to file (in writing) a due process complaint. The due process complaint has to include certain information: name of the child, residence of the child, name of the school, description of the problem, facts relating to the problem, and a proposed resolution of the problem. When a parent has filed a due process complaint because the parent does not agree with the manifestation determination, the school district is responsible for arranging what is known as an "expedited due process hearing." This hearing must occur within 20 school days from the date the complaint was filed. For more information on filing a due process complaint and timelines for filing a complaint, ask your school district for a copy of the procedural safeguards available to parents of children with disabilities.

Before any student (disabled or non-disabled) can be expelled, the district must also conduct an expulsion hearing. At this hearing the school district must present evidence to the school's hearing officer 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/her at the hearing and also has a right to question the witnesses who present evidence. A hearing officer could find that the student did not violate the school code or, that based the student's prior record, the incident does not warrant expulsion. However, if the hearing officer approves expulsion, a student may appeal the expulsion to the school board. State law then allows a student to file a lawsuit in court to appeal the school board's decision.

NOTE: Some districts hold the expulsion hearing BEFORE the Manifestation Determination meeting. Others hold the Manifestation Determination meeting first.

IF MY CHILD IS EXPELLED, CAN I ENROLL HIM/HER IN ANOTHER SCHOOL DISTRICT?

If a student is expelled from one school district that expulsion will usually keep the student from enrolling in any school district in South Carolina. However, according to state law, expulsion does not preclude enrollment and attendance in any adult or night school.

STUDENTS WITH 504 PLANS

MY CHILD HAS A SECTION 504 PLAN, DO THE SAME RULES APPLY?

In general terms, yes; however, there are several major differences between the rights of students with Section 504 plans and those with IEPs. If a 504 student is involved with either alcohol or illegal

drugs, he/she can be expelled even if the conduct was a manifestation of disability. Also, if a 504 student is expelled, there is no right to education services during the expulsion.

Unlike IDEA, the Section 504 regulations do not specifically require a manifestation determination meeting. However, the 504 regulations require an evaluation before a change in a student's placement. Expulsion from school would be a "significant change in placement." Therefore, the Office of Civil Rights has found that the first step in doing an evaluation for a change in placement for misconduct is a determination whether the misconduct was caused by the student's disability. This is similar to the right to a manifestation determination under IDEA.

Unlike IDEA, the Section 504 regulations do not have a list of specific questions that must be answered in deciding if the behavior was a manifestation of the disability; however, parents can suggest that the same questions from IDEA be used: (1) was the conduct caused by or have a direct and substantial relationship to the child's disability and (2) whether the school had been complying with the 504 plan.

Section 504 does not have a list of specific individuals who must participate in the making the manifestation determination. Section 504 requires only that placement decisions be made by persons knowledgeable about the student. Normally, whoever was part of the team that put together the student's 504 plan will be involved in a meeting about a manifestation determination. This should include teacher(s) and possibly guidance counselors. Information from the student's doctors should also be included. Parents are usually included in the determination although Section 504 requires only that they have input to the decision. Parents should request they be included in a meeting.

Sources for the information in this fact sheet:

IDEA of 2004, 20 USC § 1414(d)(1)(C)

IDEA of 2004, 20 USC § 1415(k)(1)(E) & (F) & (G)

IDEA of 2004, 20 USC § 1415(k)(2) & (3)(B)(ii)(II)

IDEA of 2004, Regulation §300.504, §300.530, §300.531, §300.532

Section 504 of the Rehabilitation Act of 1973, 34 CFR 104.35(c) & 104.36.

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

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

29 U.S. Code Section 705 (20)(C)(iv), exclusion of alcohol/drug offenses from 504 protections

Greenville (Texas) Independent School District, OCR Southern Div. 06-12-1356 (2013) 113 LRP 27897

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. This publication is funded in part by the U.S. Department of Health and Human Services (Administration on Intellectual and Developmental Disabilities and the Substance Abuse and Mental Health Services Administration), and by the U. S. Department of Education (Rehabilitation Services Administration). It does not necessarily represent the official views of the funding authorities.

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Education June 2016