



STUDENT DISCIPLINE

Do students with disabilities have protections when being disciplined at school?

YES! Multiple studies show that students with disabilities are at a much higher risk for suspension, expulsion or police involvement due to zero tolerance policies. Schools are supposed to provide special accommodations for students with disabilities when it comes to discipline, but sometimes schools do not do this. It is important for you to know what these accommodations are so that your child does not miss out on their education. If you feel like your child's rights have been violated, call your advocate or local chapter of The Arc.

Which laws protect my child's right to an education?

Students with disabilities have a right to a free appropriate public education (FAPE) to further opportunities in education, employment and independent living according to the Individuals with Disabilities Education Act (IDEA). Students have the right to equal access to education, employment, health care and community services (Section 504 of the Rehabilitation Act). Students have the right to services that are designed to meet their unique needs (IDEA).

What is a suspension/removal?

Anytime the school removes a child from the school based upon the child's misconduct, this is considered a suspension/removal. Additionally, a suspension from the bus may be considered a suspension from school if transportation is a related service under the child's IEP and the District does not provide alternative transportation. If the student is removed from the classroom but not the school, it is not considered a suspension if the student has the opportunity to continue to:

- 1) appropriately participate in the general curriculum;
- 2) receive the services specified on the child's IEP; and
- 3) participate with nondisabled children to the same extent.

Even if the school does not call it a suspension or record it on the student's record but it meets the definitions discussed above, it may still be considered a suspension. Parents/guardians are advised to keep written records of the number of times their child is sent home early because of behavior.

Can the school suspend my child if they have a disability? How long?

For students in early childhood education programs through third grade, suspension from school is reserved for only the most severe behaviors impacting staff or student safety.

Schools can suspend a student grades three through graduation for discipline infractions for 10 cumulative or consecutive school days or less. However, on or before the 10th day, the school must conduct a manifestation determination. Once your child has reached the 11th day of a suspension, under the IDEA the school must provide your child with appropriate special education services.

I believe the misconduct was a result of my child’s disability. How can I show/prove this?

The Individualized Education Program (IEP) team that is determined by the parents and the school should think about what they know about the child and their disability and ask whether the behavior is rooted in your disability. For example, a student with ADHD is said to have poor impulse control may respond abruptly to a situation without consideration of consequences/alternatives.

What kind of notice should I receive if my child is removed from school longer than 10 days?

If the school decides to remove your child for longer than 10 days, that is considered a change in placement and you should receive **prior written notice** regarding that decision. The **prior written notice** must include your procedural safeguards in case you would like to dispute this decision. After that, but not longer than 10 days after the removal, a **manifestation determination review (MDR)** meeting must be set to determine if the disability was related to the behavior that caused the policy violation. Once a date for a manifestation determination review meeting is set to discuss the disciplinary removal, you should receive a **notice of meeting** that must include:

1. Purpose of the meeting,
2. Time of the meeting,
3. Location of the meeting,
4. Who will attend the meeting, and
5. **Notice that parents can invite others to the meeting.**

Both notices, **prior written notice and notice of meeting**, must be written in way that will enable you to meaningfully participate in the manifestation determination review meeting.

What is a Manifestation Determination Review meeting?

Before a student is suspended or expelled for more than ten consecutive or cumulative days in a school year, the parent, student if appropriate and relevant members of the IEP team must meet to determine whether the misconduct was: a manifestation of the child’s disability; or, a result of the school’s failure to implement your IEP or the 504 Accommodation Plan.

- If behavior was a manifestation of their disability, then the child:
 - May Not be expelled
 - Return to school or whichever placement they were removed from
 - May receive a functional behavioral assessment, behavioral intervention plan or review/modify current behavioral intervention plan
- If behavior was not a manifestation of your disability,
 - Your child may be disciplined in the same manner as a student without a disability
 - If your child is eligible under IDEA the school district must continue to provide appropriate educational services
 - If your child is eligible under Section 504 your child may be disciplined in the same manner as a student without a disability

What if I disagree with the outcome of the manifestation determination?

If you believe that the school is not meeting their legal obligation under the state and federal law you should contact **your advocate**. If your child is eligible under IDEA, you can request an expedited due process hearing. Send this to the director of Special Education for the district in which you are enrolled in and; and

Dispute Resolution Office
Colorado Department of Education
Exceptional Student Leadership Unit
1560 Broadway, Suite 1175
Denver, CO 80202

If your child is eligible under Section 504 and you believe that the school failed to implement Section 504 procedures or discriminated against discriminated against your you may file a complaint directly with the:

Office for Civil Rights, US Department of Education
1244 N. Speer Blvd. Suite 300
303-844-5695

My child has been kept out of school for longer than 10 days; are my child's rights being violated?

It is true that all students with disabilities that are out of school for longer than ten days have a right to a free appropriate public education and the school must arrange for this. However, there are special circumstances where a school district can remove a student for more than 10 days. This is when the student is in possession of a weapon, use or possession or solicits the sale of drugs or causes a serious bodily injury. In this circumstance, your child can be placed in an *Interim Alternative Educational Setting* (IAES) for 45 school days.

Things to watch out for if you feel like your child's rights are being violated:

A suspension by law is any time your child is sent home due to behavior. Track these!

The school should conduct a Functional Behavioral Assessment and develop, and implement a Behavior Intervention Plan (BIP) to address problem behaviors. A BIP should be designed to be able to identify the problem behavior and replace it with a positive behavior so the problem behavior doesn't happen again. Sending your child home does not fix the root of the problem and your child ends up missing out on their education if it happens a lot.

Students with disabilities, are at a much higher risk to be disciplined for an action that may be a part of their disability or for a minor infraction. A small misbehavior might end up on your child's school discipline record and may target your child as a "problem student" for future teachers and schools that can see your school discipline record. Make sure you access your child's record to see what is written about you every time he/she has gotten in trouble and contact **your advocate** if you feel like discipline records are inaccurate, misleading or don't reflect who your child is as a person and as a student.