



# FACT SHEET:

## *School Discipline of Students with Disabilities*

### General Notes

- Students and families maintain their Constitutional rights in schools, with limited exceptions. For example, free speech, privacy, equal protection and due process.
- Schools only have the authority to discipline student behavior when it occurs at school, going to and from school, at school sponsored events, or when the conduct has a substantial impact on school.
- Schools can only punish students if they break rules that are listed in the school's published Code of Conduct.
- Parents and students have a right to copies of the Code of Conduct.
- Parents should read all written correspondence from the school and make sure that they understand and agree with anything they sign.
- Parents and guardians have the right to receive any information regarding discipline in their preferred language.
- Students with disabilities have all the same rights to fair discipline as students without disabilities and additional rights because they are identified as a student with a disability.
- Student with disabilities cannot be punished or disciplined for behaviors that are a manifestation of their disability. Those behaviors must be the subject of an IEP Team meeting to determine the appropriate response to the behavior.
- If your child is being suspended for less than 3 days, you have the right to know when and why your child is being excluded from school. If you do not receive a phone call or written explanation, ask for one by calling your child's school principal.
- If your child is being suspended for more than 3 days but less than 10 days, you have the right to an informal hearing, where you can ask questions about the behavior and the school's response to the behavior and present your own information. When the suspension is for more than three consecutive school days, the school must offer an informal hearing within the first five days of the suspension. Before the informal hearing, schools must provide written notice of the reasons for the suspension and provide enough advance notice of the hearing time and place. The student has the right to bring witnesses and question witnesses present at the hearing.
- When schools fail to meet the legal timelines for hearings and decisions, the student has the right to return to school, except in limited cases.

- If your student with a disability is being bullied or harassed, send a written complaint to your school and convene the IEP Team to discuss how to revise the IEP to address the bullying and harassment. See the [Education Law Center's factsheet](#) for more information. You can also contact the PEAL Center for assistance on managing IEPs.

## Suspensions

A suspension is any exclusion from school for one to ten days in a row. A suspension for a part of the school day should be counted as one day of suspension. Any out-of-school suspension over 10 days in a row is an expulsion, which comes with additional rights for students before punishment can be determined.

### In-School Suspensions

- Before a student may be given an in-school suspension, a parent or guardian must be notified, the student must be told why they received the punishment, and the student must be given the chance to respond.
- A student must continue to receive an education during the in-school suspension.
- If the in-school suspension will be for more than 10 days in a row, then the student must be offered an informal hearing (see below).

### Out of School Suspensions

- Out-of-school suspensions can be from one to ten days. Any out-of-school suspension over ten days in a row is an expulsion.

- Informal Hearings. A school must offer an informal hearing within the first five days of the suspension if the suspension is for more than three consecutive school days. Before the informal hearing, schools must provide written notice of the reasons for the suspension and provide enough advance notice of the hearing time and place. The student has the right to bring witnesses and question witnesses present at the hearing.
- Under certain circumstances, a school may transfer a student to an alternative setting for up to 45 days without the parent's consent. This may occur if the alleged misconduct relates to weapons, drugs, or the infliction of serious bodily injury. Please review the [Education Law Center's factsheet](#) on the specific violations. This type of transfer may be challenged through an expedited due process hearing.

## Expulsions

- Schools must hold a formal expulsion hearing prior to any exclusion over 10 days. A student has the right to return to school until the expulsion hearing unless the school determines that the student is a threat to school safety.
- The school must send you the time and place of the hearing at least 3 days before the hearing by certified mail. Your student has additional rights during and after the hearing. Please review the [Education Law Center's factsheet on expulsions](#) to learn more information about the hearing.

## Students with Disabilities

- In addition to the rights discussed above, students with disabilities have additional protections that must be followed before the school can impose certain types of exclusionary discipline.
- Even if the student does not yet have an IEP, if the parent has requested a special education evaluation, notified the school in writing that the student needs special education, or school staff has expressed concern over the student's behavior to special education officials, then the student may assert the same protections as students with IEPs.
- A student with an intellectual disability cannot be suspended for any amount of time without agreement from the parent, agreement from the state Department of Education, or an order from a hearing officer or judge.
- For students with 504 Plans, before suspending or expelling a student, schools must conduct an evaluation of whether the student's misconduct was caused by the student's disabilities.
- If a school wants to suspend a student with an IEP for more than 10 days in a row or 15 days total in one school year, then the school must follow special rules because the suspension would be considered a "change in placement." A team of people knowledgeable about the student, including the parent, must conduct a manifestation determination review.
  - › The manifestation determination hearing must be held within 10 days of the decision to expel the student and before the discipline is imposed.
  - › If the team decides that the student's conduct was a manifestation of their disability, then the student cannot be expelled, except in the certain circumstances listed above. The IEP team must also conduct a Functional Behavioral Assessment or revise the student's Positive Behavior Support Plan.
  - › If the team decides that the conduct was not a manifestation of the child's disability and the parent disagrees with that decision, the parent may request a special education hearing to challenge the determination.
- If a student with disabilities is expelled, the school must still arrange for the student to receive a free, appropriate, public education in compliance with the student's IEP for the entire time the student is excluded from school.

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*This document was produced by The PEAL Center in collaboration with the Education Law Center. For additional information, please visit the website of the Education Law Center, which offers many factsheets and parent self-advocacy tools related to school discipline.*



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