

School Discipline:
**Comparison of the Rights of General Education,
Section 504, and
Special Education Students**

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General Education Discipline Procedures

- Laws prescribed by the state
- Each district adapts state law to own procedures
- General due process requirements
- Alternatives to school removal encouraged

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Disciplinary Actions

- Any teacher or staff member may impose discipline
- Discipline imposed if:
 - Student disrupts normal classroom activities
 - Student abuses, insults, willfully disobeys, uses abusive or foul language, violates school rules, defaces school property
- May include: oral or written reprimand, written notification to parent, suspension, expulsion

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Teacher Disciplinary Actions

- Teachers may exclude a disruptive student for the remainder of that class and for up to the following two days from their class without conferring with the principal or designee
- The teacher must have first tried other corrective actions
- The student may not go back to that teacher's class without the consent of the teacher unless the teacher and administrator have conferred and another disciplinary action has been imposed.

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Grievance Procedures for General Discipline

- Student has right to informal conference with principal or designee
- Subsequent to discipline with 2 school business days notice—right to present written and/or oral grievance to superintendent or designee
- If not resolved—2 school business days notice—appeal to board or designee
- Board notifies with response within 10 school business days
- Discipline continues pending appeal

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Suspension

- Nature and circumstances of violation must reasonably warrant the discipline imposed
- Not for first time offense unless exceptional misconduct
- Look first to another form of corrective action reasonably calculated to modify conduct
- Short term—up to and including 10 consecutive school days
- Long term—more than 10 days

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Expulsion

- Denial of attendance for an indefinite period of time
- Denial of admission or entry onto real and/or personal property of the district
- Nature and circumstances must reasonably warrant the discipline imposed
- Other corrective action or punishments reasonably calculated to modify conduct tried and failed or good reason to believe they would fail
- Student must be allowed to apply for readmission under specified standards

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Appeal Rights

- Written notice to student or parents of discipline and appeal rights
- Written request for hearing received by designated district employee by end of **THIRD** school business day after receipt of notice
- District to schedule hearing within 3 school business days after receipt of request

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Appeal Rights, continued

Student (and the District) has the right to:

- Inspect in advance documentary and other physical evidence
- Be represented by counsel
- Question and confront witnesses UNLESS District can document:
 - Good faith effort to produce the witness and witness does not show
 - Not advisable for student to appear due to fears of retaliation

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Appeal Rights, continued

Student Rights, continued

- Present own explanation
- Present witnesses and documentary evidence
- Have unbiased hearing officer
- Have hearing tape-recorded or verbatim report
- Receive a written report

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Emergency Expulsion

- Immediate removal from a class or from school property pending review
- Imposed if student poses immediate and continuing threat of substantial disruption or danger
- Continues only until danger or threat ceases OR
- Principal imposes other discipline
- Principal or designee must meet with student as soon as reasonably possible

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Emergency Expulsion

NEW LAW:

- An expulsion or suspension cannot be for an indefinite period of time
- If an expulsion or suspension will be longer than 10 days, it must have an end date of not more than one calendar year from the time of the corrective action
- Emergency expulsions must end or be converted to another action within ten school days
- Notice and due process rights must be provided when the emergency expulsion is converted

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Emergency Expulsion Hearing

- Same rights as above BUT
- Parents and student notified in writing within 24 hours through hand delivery with signature or certified mail
- Request for hearing received by end of TENTH school business day
- Hearing held by end of third school business day after receipt of request
- Hearing decision within one school business day after hearing concludes

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Appeals

- If appeal not heard by School District Disciplinary Council, then appeal to the Council
- Notice by end of third school business day after receipt of decision
- If appealed, discipline continues
- Informal hearing held within 10 school business days after receipt

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Appeals, continued

- Student allowed right to be heard, present witnesses and testimony as council deems reasonable
- Council then decides one of following:
 - Study record and other submitted material and tender decision within 10 school business days
 - Hear further arguments and render decision within 15 school business days
 - Hear case *de novo* within 10 school business days of informal decision

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Appeals, continued

- Further appeals to Superior Court, 30 days to appeal
- Whether decision is postponed pending appeal is discretionary to district unless court orders otherwise

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Re-Engagement Plan

- School districts are to make efforts to have suspended or expelled students return to an educational setting as soon as possible
- School districts should convene a meeting with the student and parents within 20 days of the student's long-term suspension or expulsion, but no later than five days before the student's enrollment to discuss a Re-Engagement Plan.
- A Re-Engagement Plan should consider shortening the length of time the student is suspended or expelled, other forms of corrective action, and supportive interventions to aid the student's academic success and keep the student on track towards graduation

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Special Education Students— IDEIA 04

- Discipline—if in-school, not a change of placement BUT:
- Look for denial of FAPE—must have opportunity to appropriately participate in general education curriculum even if in another setting, and receive and progress in IEP services
- Look for 10 days or less

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IEP Consideration of Special Factors

The IEP Team shall:

- In the case of a student whose behavior impedes the student's learning or that of others, *consider when appropriate*, strategies, including positive behavioral interventions, strategies, and supports to address that behavior

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IDEIA 2004 and IDEA 1997

- Provide for positive behavioral interventions and supports, and other strategies to address that behavior
- Retained from IDEA 97 basic rights of FAPE, Manifestation Determination, Functional Behavior Assessment, and Behavior Intervention Plan

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IDEIA 2004 and IDEA 1997 , continued

- Allows school personnel to determine on a case-by-case basis, unique circumstances when ordering a change in placement for a disabled student who violated the school code of conduct
- Adds prohibition on mandatory medication as a condition to attending school, receiving an evaluation, or receiving services

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Special Education Students and Suspension

- School may suspend or remove a disabled student who violates a code of student conduct for no more than 10 school days
- Note: IDEA 97 Allowed for a series of short-term suspensions UNLESS the series of removals constitute a pattern—look to length of each removal, total amount of time, proximity of removals to one another

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Special Education Students and Suspension, continued

- If more than 10 days then:
 - Considered Change of Placement
 - Must complete Manifestation Determination

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Discrimination Issues:

- Applying sanctions under uniform disciplinary policy when conduct is related to disability
- Applying different, harsher, sanctions to student with a disability than nondisabled students with same or similar offense

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Manifestation Determination

- Evaluation of relationship between student's disability and act of misconduct
- Completed by IEP team or other qualified personnel within 10 days of the removal
- Required by both IDEIA and 504
- If manifestation found, discrimination to apply discipline

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Manifestation Determination, continued

- Now have a 2-part standard of relatedness—misconduct related to disability if:
 - The conduct in question was caused by or had a direct and substantial relationship to the student's disability **OR**
 - The conduct in question was the direct result of a failure to implement the IEP

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No Manifestation Found

If behavior is **NOT** related to disability:

- District may impose discipline if not discriminatory and is in the same manner and for same duration as nondisabled students
- 504 students are then disciplined through general discipline procedures—no services required unless provided to nondisabled students
- For Special Education students obligation to provide IEP services not ended—District must provide FAPE
- Continuation of FAPE—sufficient services to progress in (not participate in) general education curriculum and IEP program

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Determination of Manifestation

District then must:

- Conduct or Review a Functional Behavioral Assessment
- Implement or Review a Behavior Intervention Plan
- Unless there are special circumstances OR agreement of IEP team, return student to previous placement

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Special Circumstances

School Personnel MAY remove a disabled student to an Interim Alternative Education Setting (IAES) WITHOUT regard to manifestation IF:

- Carries or possesses a weapon
- *Knowingly* possesses, uses, sells, or solicits controlled substance at school, on school grounds, or at school function
- Inflicts serious bodily injury

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Special Circumstances, continued

Serious Bodily Injury Defined at 18 U.S.C. 1365(h)(3) as:

- Substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement or
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty

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Interim Alternative Education Setting IAES

- No more than 45 *school* days
- Must be appropriate:
 - Allow student to participate in general curriculum, although in another setting
 - Progress towards meeting goals and objectives on IEP
 - Receive a Functional Behavioral Assessment and Behavior Intervention Plan
 - Provide services and modifications to address behavior which triggered removal to insure the behavior does not recur

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Parent Appeal

Parents in disagreement with decision regarding Manifestation, Placement, or any other decision of team may:

- Request administrative hearing
- Hearing is expedited to occur within 20 school days of request and result in decision within 10 school days
- Parent bears burden of proof (case law)
- Stay put will apply to Interim Setting (change in law)

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District May Request Hearing

- District may request change of placement for a student whose behavior is substantially likely to result in injury to the student or to others

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Hearing Officer

Hearing Officer May:

- Return the disabled student to previous setting
- Order a change of placement of student to IAES for 45 school days IF maintaining the student's placement is substantially likely to result in injury to the student or to others

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Functional Behavior Analysis (FBA)

- Variety of techniques and strategies to diagnose cause and identify interventions to address problem behaviors
- Identify target behaviors, antecedents, consequences, hypotheses, interventions

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Functional Behavior Analysis, continued

Required under IDEIA when:

- Not already conducted **AND**
- District takes any of following disciplinary actions:
 - Removal for more than 10 school days in any school year
 - Removal that constitutes a change of placement
 - Placement in IAES

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Behavior Intervention Plan (BIP)

- Required when behavior impedes learning of student or others
- Based on FBA
- Data taken across settings
- Must include positive behavioral interventions, strategies, and supports that address the behavior
- Specify target behaviors to increase or decrease
- Specify intervention

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Non-Special Education Students

- If district had knowledge that student was a student with a disability before the behavior that precipitated the discipline occurred—then IDEIA requirements apply
- If no basis for knowledge, conduct expedited evaluation, but discipline continues as if general education student

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Non-Special Education Students, continued

- District deemed to have knowledge if:
 - Parent expressed concern **IN WRITING** that student in need of special education services **TO** supervisor, administrator, or student’s teacher
 - Parent requested evaluation
 - Teacher or other personnel expressed specific concerns about a pattern of behavior directly to director of special education or other supervisor
 - **NO KNOWLEDGE** if parent did not allow an assessment

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Section 504 Students

- If removal is more than 10 days, district required to conduct manifestation determination
- If behavior unrelated to disability, student is disciplined as any non-disabled student
- If behavior is manifestation of disability, discipline may not change placement (more than 10 days)

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Section 504 Students, continued

- Behavior management plans are required if behavior significantly impacts education
- Behavior plan pre-empts regular discipline
- Sanctions may not be harsher than for non-disabled students
- OCR will review series of short term suspensions in same way as under IDEA
- Services to properly removed student only provided if also provided to non-disabled students
- In-school suspensions reviewed as under IDEA

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Key Points to Remember

- Timelines are short and fixed—appeal in time to not lose your rights!
- Document everything IN WRITING and keep copies!
- For students with disabilities—follow both general education and special education tracks to appeal
- When in doubt—ASK!

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