



Education Law Center

Making sure that all of Pennsylvania's children
have access to quality public schools

SCHOOL DISCIPLINE FOR CHILDREN WITH DISABILITIES

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

WHAT PUNISHMENT CAN THE SCHOOL IMPOSE ON MY CHILD?

The school cannot punish a child with a disability more harshly than it would punish a child without a disability under the same circumstances. The school must follow the same rules it applies to all children. For example, the school can only punish a child if they break a rule that is listed in the school's code of conduct. You should get a copy of the code of conduct at the start of the year. If you do not have a copy, you should ask to see the copy that is kept in the school's library. Also check your school district's website to see if the code is online. For more information on the rules that school districts must follow for all children, see ELC's Fact Sheets on school discipline at www.elc-pa.org.

Sometimes, the rule that the child broke allows the school to suspend a child, expel her, or transfer her to another school (in Pennsylvania often called alternative education programs for "disruptive youth"). A child with a disability may have extra protections under special education law. The full protections of this law apply only if: (1) the penalty the school district is seeking qualifies as a "change in placement," (2) the behavior was a "manifestation" of the child's disability, and (3) there were no "special circumstances."

Question 1: Is the Proposed Discipline a Change in Placement?

- **Children with mental retardation who attend public school districts and charter schools:** Any suspension, expulsion, or transfer to another school of a child with mental retardation is considered a change in placement - even a one day suspension.

- **Children with other disabilities who have IEPs and who attend public school districts and charter schools:**
 - A suspension of between one (1) and 10 days is not a change in placement, so the school can suspend a child for this length of time without following any special rules. However, remember that the school district must still follow the rules that apply to all children.
 - Any exclusion from school for more than 10 days in a row is an expulsion and a change in placement.
 - Suspensions totaling more than 15 school days throughout the year are a change in placement. For example, if a child has already been suspended for five (5) days, and then again for 10 days, the next day of suspension would be a change in placement.
 - Suspensions totaling between 11-15 days that amount to a "pattern" can also be a "change in placement." To figure out if the child had a "pattern" of suspensions, you should consider if:
 - the child has been suspended for a total of more than 10 days in a school year and another suspension is being proposed;
 - the child is being suspended for behavior that is "substantially similar" to behavior for which the child has previously been suspended;
 - the length of each suspension;
 - the total time the child has been suspended; and
 - how close together the suspensions have been.
 - A transfer to another educational setting (including an alternative school) for more than 10 *school* days in a row OR for more than 15 total *school* days in the school year is also a change in placement.

If the proposed discipline is NOT a change in placement, the public school or charter school may discipline your child using only the rules that apply to children without disabilities.

If the proposed discipline IS a change in placement, the school must hold a manifestation determination meeting.

Question 2: Was the behavior a manifestation of the child's disability?

The school must have a manifestation determination meeting within **10 school days** of its proposed discipline that would constitute a change in placement for a child. While you are waiting for the meeting, the school may not transfer your child to a new school setting unless the child's misbehavior involved drugs, guns, or serious injury to another person, or if a Hearing Officer has found that keeping your child in the same program would be dangerous for the child or others. We discuss these "special circumstances" and the "dangerousness" exception in more detail below.

The parent and any members of the IEP Team that the parent and the school agree are needed must come to the manifestation meeting. The Team should review information from the child's file, the child's IEP, teacher observations, and information from the parent and then ask two questions:

1. Was the child's misbehavior caused by, or directly and substantially related to, the child's disability?

For example: if your child has a hearing impairment and did not follow the teacher's directions to stop talking and sit down because the child could not hear the directions, the Team should decide that the misbehavior meets this test.

2. Was the child's misbehavior a direct result of the school's failure to follow the child's IEP?

For example: A child might have a behavior plan allowing her to go to a cooling off room (like the guidance office) when she is upset. If the child yells at a substitute teacher who has refused to let her go to the guidance office (maybe because the substitute does not know about the behavior plan), then the child's behavior might meet this test.

If the answer to either question is "yes," the Team must conclude that the child's misbehavior was a "manifestation" of her disability. The state's Manifestation Determination Worksheet can be found at:

<http://www.pattan.k12.pa.us/files/Behavior/Manif-DetermWksht1008.pdf>. Print out this worksheet and bring it to your manifestation determination meeting so that everyone will be on the same page about what rules to follow.

If the Team decides the child's behavior WAS a "manifestation" of her disability, the child **CANNOT** be suspended, expelled, or transferred to a new school setting as punishment for the misbehavior. (Again, the only exceptions are if the child's misbehavior involved drugs, weapons, or serious injury to another person - see the "special circumstances" rules below). In addition, the IEP Team must conduct a functional behavior assessment for the child unless one has already been done. The school must also either develop a behavioral intervention plan or review and revise the plan that already exists.

If the Team decides that the child's behavior was NOT a "manifestation" of her disability, the school can discipline the child the same way it disciplines children who do not have disabilities. This could include a long-term transfer to a new school or an alternative school, or even an expulsion by the local School Board. However, even if the child is expelled from school, she must still receive special education services (more below).

What happens if the school decides that the child's conduct was NOT a manifestation of her disability and the parent disagrees?

If the school decides that the behavior was not a "manifestation" of the disability, it may discipline the child. The school should give the family a Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN that explains the change in placement. The school must include a copy of the "Procedural Safeguard Notice" (a document that explains the child's and parents' legal rights) with the NOREP/PWN. The NOREP/PWN tells the family how the school or school district is proposing to discipline the child and why. It also gives the family information on what other options the school or school district considered, and gives the family the opportunity to agree or disagree with the proposal. If the family disagrees, they can request mediation or a special education hearing (a due process hearing).

If the parent requests a due process hearing to challenge the manifestation determination, the hearing must be concluded within **20 school days**, and the Hearing Officer must reach a decision in **10 more school days**. If the Hearing Officer agrees with the school that the child's behavior was not a manifestation of the child's disability, then the disciplinary change of placement stays in effect. If the Hearing Officer agrees with the parent that the child's behavior was a manifestation of the disability, he must order the school to return the child to the placement she was in before the misbehavior. **However, in the meantime the school district can move the child to an alternative educational setting.**

Question 3: What happens if my child's misbehavior involved drugs, a weapon, or serious injury to someone (special circumstances)?

A child's misbehavior is a "special circumstance" if it involves illegal drugs, weapons, selling prescription drugs, or serious bodily harm to another person at school or a school-related activity. "Serious bodily injury" must be really serious to count - pushing someone (even a teacher) or scratching them should not be enough. Otherwise, if your child's misbehavior is one of these "special circumstances," the school can immediately move your child to an alternative educational setting (an alternative school) for up to 45 *school* days **even if the child has mental retardation, and even if the school agrees with the parent that the misbehavior was a "manifestation" of the child's disability.** Of course, even in a case involving a special circumstance, you can ask your child's school to allow her to stay where she is, and you can request an IEP Team meeting to talk about other ways to deal with her behavior (such as modifying her behavior plan or providing counseling in school) instead of moving her.

For example, if your child has mental retardation and a teacher finds a marijuana joint in your child's pocket, the school can immediately transfer your child to an alternative school for up to **45 school days**. The school must still have a "manifestation" meeting within **10 school days**. If the Team decides that having the drug was a manifestation of the child's disability, it must conduct a functional behavior assessment and/or revise your child's behavior plan, but your child can still be forced to stay in the alternative school for the rest of the 45 days.

Are there other ways that a school can send my child to (or force my child to stay in) an alternative disciplinary school without my permission?

Remember, a school can always transfer a child with a disability to an alternative disciplinary school if the parent agrees. The school can also transfer the child to an alternative school if either (1) the school district has concluded or both parties agree that the behavior is not a manifestation of the disability and the school's published discipline rules allow the child to be transferred for her misbehavior, or (2) the behavior involved drugs, a weapon, or serious injury to another person.

In addition, a school can ask a Hearing Officer to transfer the child to an alternative school for up to **45 school days**. To get such an order the school must prove to the Hearing Officer that keeping the child in the current placement "is substantially likely to result in injury to the child or to others." If the school cannot prove this to the Hearing Officer, then the child may not be transferred.

If your child has already been transferred to an alternative school for 45 days because her misbehavior involved drugs, weapon, or serious injury to another person, a school can ask a Hearing Officer to order that she stay in the alternative school for another **45 school days**. To get such an order the school must prove to the Hearing Officer that it would be dangerous to return the child to her previous school setting.

If my child has been suspended, expelled, or transferred to another educational placement, will she still receive special education services?

Any child who is suspended has the right to make up the school work she misses. This state law applies even if the suspension is so short that it doesn't count as a "change in placement."

If a school "changes the placement" of a child with a disability, federal law requires the school to provide her with enough educational services to participate in the general education

curriculum (what all children in her grade are learning) and to make progress on her IEP goals. This is true even if the child has been expelled or transferred to an alternative school. In addition, when the school "changes the placement" of a child for discipline reasons, it must hold an IEP meeting to schedule a functional behavior assessment for the child (if one hasn't already been done). This assessment should give the IEP Team information on the things that "trigger" the child's misbehavior and give the Team suggestions on how to prevent the misbehavior. The IEP Team should also write or revise the child's behavior plan.

What if I think my child has a disability, but she does not have an IEP?

The rules in this chapter apply if the school "had knowledge" *before the child's misconduct* that the child had a disability - even if your child didn't have an IEP. The law says that a school district or a charter school is considered to have "knowledge" that the child has a disability in three situations:

1. Prior to the incident, the parents had expressed a concern that the child needed special education in writing to the child's teacher or school administrator; or
2. Prior to the incident, the parent had requested an evaluation; or
3. Prior to the incident, the teacher or other school staff expressed specific concerns about the child's pattern of behavior to the director of special education or other supervisory personnel of the school.

If none of these rules apply to your situation, your child can be punished by the school under the rules that apply to children who do not have disabilities. However, if you ask for an evaluation while your child is being punished (for example, you put in your request *after* your child was sent to an alternative school or expelled), the school must conduct the evaluation quickly. If your child is found eligible for services, the school must meet with you to develop an IEP.

It is important to note that a school does not have to treat the child as eligible and follow the special education discipline rules if: (1) the parent has refused to allow the school to evaluate the child in the past, (2) the parent has refused special education services for the child in the past, or (3) the school evaluated the child in the past and concluded that the child did not have a disability.

Can the school report my child with a disability to the police?

Special education law does not stop a charter school or school district from reporting a crime to the police. With the parents' (and in some cases the older child's) consent, the school

must forward the child's discipline and special education records to those authorities. If the child has a positive behavior support plan, the school must do an updated functional behavior assessment and develop a new positive behavior support plan if a child is referred to the police.

Do the same rules apply when a child is "suspended" from the school bus or is placed in in-school suspension?

The same rules that apply to out-of-school suspensions apply to in-school suspensions if the child will be removed from her special education program or placement. A proposed suspension from the school bus is also subject to the same rules as a proposed out-of-school suspension if transportation is listed on the child's IEP.

For example, if your child acts out on the bus, the school may want to suspend your child from the bus for three weeks. If so, you need to check to see if bus transportation is listed as a related service on your child's IEP. If it is, then removing your child from the bus for three weeks counts as a "change in placement" (since it is for more than **10 school days** in a row). The school must hold a manifestation determination meeting within **10 school days** and also must have an IEP meeting to arrange for a functional behavior assessment (if not already done) and draft or revise a behavior plan for your child on the bus. If your child's behavior IS a manifestation of his disability, then the school cannot change your child's placement (so, after **nine (9) school days**, your child must be allowed back on the bus!). Remember that even one day of school or bus exclusion is a "change in placement" for a child with mental retardation.

Does the law prohibit any forms of discipline?

State law prohibits public school districts from ever using the following types of discipline for children with disabilities:

- corporal punishment
- punishing a child for behavior that is a manifestation of the child's disability
- using "noxious" substances (for example, pepper spray or mace)
- withholding meals, fresh air, or water
- serial suspensions
- electric shock
- locking or keeping the child in a room, space, or box from which she cannot easily

leave, and

- any treatment that is demeaning.

What happens if the parent cannot reach agreement with school officials about discipline issues?

If the family and school officials cannot agree on any of the issues discussed in this section, the parents can use the Special Education Procedural Safeguard System. For more information on the procedural safeguard system, see ELC's fact sheet, "How to Resolve Special Education Disputes," at www.elc-pa.org. Examples of the types of issues that may require a hearing include: what should be in the child's behavior support plan; was the misbehavior a "manifestation" of the child's disability; did the school have "knowledge" that a child without an IEP had a disability before the misbehavior; or was there a safety issue that justifies putting the child in an alternative setting over the family's objection.

Funding for this brochure was provided by:

Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

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