

# Special Education Discipline Process

## Frequently Asked Questions

### 1. Question:

What should I do if my child has been suspended?

#### Answer:

If this is the first suspension and it is for less than 10 days, the child serves his suspension the same as if he were not a child with a disability. You should keep track of the suspensions and removals. If they total more than 10 days in a school year, you should request a new Individualized Education Program (IEP) meeting for the purpose of making changes related to behavior and possibly revising the behavior plan to address the behavior that caused the student to be suspended. All of the appeal rights described in the general discipline process applies to students receiving special education services.

### 2. Question:

Do I have to pick my child up if the school calls me because of a behavior problem?

#### Answer:

You do not have to pick up the child, but you may want to. If you decide to pick the child up because you fear that the problem may get worse, ask for something in writing from the school stating that your child is being sent home due to behavior. Explain to the school that due to truancy laws, you want to be protected if anyone accuses you of keeping your child out of school. If the school calls you to pick up your child often and it's accumulated to be 10 days or more, the school must meet to revise your child's IEP and do a Functional Behavioral Assessment (FBA)

### 3. Question:

Who writes the behavior plan for my child?

#### Answer:

The Behavior Plan is written by a team of people at the school that should include the teachers who will be responsible for implementing the plan, the parent and any other school personnel with special knowledge about the child and behavior strategies.

### 4. Question:

How can I get my child's school records?

#### Answer:

You should make a written request to review and obtain copies of your child's records. Make sure to ask for any disciplinary records and any records contained in a separate special education folder in addition to the records in the cumulative file. You may not want copies of everything in the file, since the school can charge you for each page requested. It's important to review these records and ask that any inaccurate information be removed. Remember to make all requests in writing. You may request a hearing to

correct or challenge misleading or inaccurate information. It's a good idea to review all educational records when preparing for an IEP meeting or discipline hearing. Read the **Family Educational Rights and Privacy Act (FERPA)** for more information.

**5. Question:**

My child is not in Special Education, but he does have a behavior problem, can they suspend him?

**Answer:**

The school can suspend your child if he violates the Student Code of Conduct. However, if you have made a written request to the school that you have concerns about your child's behavior interfering with his/her learning, the school must implement behavioral interventions to help with that behavior. All of the protections related to behavior in the Individuals with Disabilities Education Act (IDEA) apply to your child. Also, if you have already signed to have your child evaluated and that evaluation is not yet completed, IDEA protections apply to your child. It's also important to understand that if the evaluation has been completed and you have refused special education services, the school does NOT have to apply the IDEA protections to your child for future violations of the Student Code of Conduct.

**6. Question:**

How long can my child be removed from school?

**Answer:**

A student can be removed from school for up to **10** days in a school year without the continuation of educational services. If there has been a pattern of removals related to behavior that show a pattern, the IEP team must meet, there should be a Functional Behavioral Assessment (FBA) and a Manifestation Determination Review (MDR) to determine if the behavior is related to the child's disability. If the student brought *illegal* drugs, a weapon to school, or if they committed "serious bodily injury", the child can be removed to an Interim Alternative Setting for **45** days. If after a MDR it is determined that the behavior was NOT a manifestation of the student's disability, the student may be removed in the same manner as a student without a disability. However, the student's educational services must continue. Parents are a part of the MDR team.

**7. Question:**

What is "serious bodily injury"?

**Answer:**

Serious Bodily Injury involves a 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 faculty (18 USC Section 1365 (3)(h)).

**8. Question:**

How can I get my child back in school?

**Answer:**

A child with a disability should never be out of school past 10 days in one school year unless the removal involves drugs, weapons and serious bodily injury. You should contact the school district's compliance officer and let them know that your child's placement was changed without reviewing and revising the IEP and doing a MDR. You should contact an advocate to help in this process.

**9. Question:**

Should all of my child's teachers have a copy of his IEP?

**Answer:**

Each of your child's teachers should have access to his IEP. Also, if the student has behavior problems and has a behavior plan, the teacher should help to develop that plan.

**10. Question**

Can I bring someone with me to an expulsion hearing?

**Answer:**

Yes, you can bring an advocate or anyone you feel you need to help support you and your child in the expulsion hearing. It's also important to bring witnesses to the incident.

**Frequently Asked Questions about School Arrests:**

**Q:** What are my child's rights if he/she is arrested at school?

**A:** Your child has basically all the same rights if arrested at school as in the community. This means that police officer arresting your child must inform your child of his/her **Miranda rights**. Miranda Rights include:

1. **Right to remain silent.** Your child has the right to **not** give any information to school officials, police, security, or anyone else until he/she has talked to a lawyer. Tell your child to request a lawyer if he/she is ever facing arrest. Once a lawyer is requested the police **have** to stop their questioning.
2. **Right to not sign anything.** As part of the right to remain silent, your child does not have to sign any papers until a lawyer is consulted.
3. **Right to an attorney.** Your child has the right to a lawyer. This lawyer can be hired by you, if you can afford it, or the court will

appoint a public defender in the event that you can't afford a lawyer.

**Q:** What should I do if the school calls to tell me my child is being arrested?

**A:** Here are some suggestions.

1. **If possible, go to the school.** Do not reprimand your child in front of law enforcement or school officials.
2. **Tell your child to remain silent.** Tell police and school officials that your child will choose whether or not to speak with them after consultation with a lawyer.
3. **Do not sign anything** until you consult with a lawyer. Your child will be assigned a lawyer once they are booked. This person can help you.
4. If your child is receiving Special Education service, be sure to tell your child's lawyer!

**Q:** Is the school required to call me if my child is being arrested?

**A:** Yes, if the child is **under** 17 years old. If your child is 17 or older, the school **is not** required to notify you.