
EQUAL JUSTICE

Community Legal Aid Society, Inc. is an Affirmative Action Agency.

For assistance or information please call or write:

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Wilmington, DE 19801
Phone: 302-575-0660
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Disabilities Law Program
840 Walker Road
Dover, DE 19904
Phone: 302-674-8503 (voice/TTY)

Sussex County

Disabilities Law Program
144 E. Market Street
Georgetown, DE 19947
Phone: 302-856-3742 (voice/TTY)

Website: www.declasi.org

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DISABILITIES LAW PROGRAM

Community Legal Aid
Society, Inc.
Equal Access to Justice

School Discipline

&

Special Education Students



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Has your special needs child been suspended, expelled, or transferred to another school?

A school cannot punish a student with a disability more harshly than it would punish a student without a disability under the same circumstances.

If your child has an Individual Education Program (IEP) and the school wishes to **change the child's placement** for more than 10 school days, your child has specific rights under the Individuals with Disabilities Education Act (IDEA).

What is a "change in placement?"

A "change in placement" occurs when the school:

- Expels a child;
- Transfers a child to an alternative school;
- or suspends a child for more than 10 school days.

What is a Manifestation Determination meeting?

At the Manifestation Determination meeting, the child's IEP team must determine, based upon the child's history, IEP, teacher observations, and other relevant information **whether the misbehavior was a "manifestation" of her disability?** Specifically, the IEP team should ask:

- Was the child's misbehavior caused by, or directly and substantially related to, the child's disability?; and
- Was the child's misbehavior a direct result of the school's failure to follow the child's IEP?

School Discipline & Special Education Law

What happens next?

If all IEP team members agree that the child's misbehavior was a manifestation of a disability—the student **CANNOT** be suspended, expelled, or transferred to a new school as punishment (note: there are exceptions regarding misbehaviors involving drugs, a deadly weapon, or serious injury to another person).

When must a Manifestation Determination meeting occur?

The Manifestation Determination meeting must occur within 10 school days of the school's proposal to change your child's placement. While you wait for this meeting, the school may not transfer your child to another school or force your child to stay at home for more than 10 days, unless the child's misbehavior involved:

- Drugs
- A deadly weapon, or
- Serious injury to another person.

What if your child's misbehavior involved drugs, a deadly weapon, or serious injury to another person?

A student's misbehavior is called a "special circumstance" if it involves drugs, weapons, or serious bodily harm to another person.

If your child's misbehavior is one of these "special circumstances," the school can **immediately** remove your child to an alternative placement for up to 45 school days **even if the child has a disability, and even if the school and parent agree that the misbehavior was a "manifestation" of the child's disability.**

What happens if the school determines the child's misbehavior was a manifestation of his or her disability?

If the misbehavior was a manifestation, the school must conduct a Functional Behavioral Assessment (FBA).

The FBA identifies trigger behaviors and helps the IEP team select interventions to directly address the problem behavior. In addition to an FBA, the school must develop a Behavior Intervention Plan (BIP) or review and revise the prior plan to appropriately handle misbehaviors.

What happens if the school determines the child's misbehavior was NOT a manifestation of his or her disability and you disagree, what can you do?

As a parent you may request a special education hearing, or a due process hearing to challenge this finding. In the meantime, the school may discipline the child.

A due process hearing must be concluded within **20 school days**, and the Hearing Officer must make a decision within **10 more school days**.

If the Hearing Officer rules that the child's conduct was a manifestation of their disability, the school must return the child to the placement they were in before the misbehavior.

Will my child still receive special education services if they have been suspended, expelled, or transferred to another school?

Yes, your child's IEP must remain in place along with all necessary aides and services.

In addition, if your child's removal from school results in a change in placement, your child's IEP team must meet to determine appropriate services to progress towards the IEP goals in a different setting.

What if my child is not yet eligible for special education services and has been disciplined?

The Individuals with Disabilities Education Act (IDEA) provides that a child who has not yet been identified as eligible for special education can "access any of the protections" available to special education students **if**:

The parent has previously expressed concern **in writing** to school officials that the child needs special education;

The parent has requested a **special education evaluation**; or

The teacher or other school staff has **expressed concern** about the behavior of the child to special education officials.

What if my child does not have an IEP, but instead has a Section 504 Plan—what are my child's rights regarding school discipline?

Section 504 of the 1973 Rehabilitation Act provides accommodations for students who have disabilities and need extra assistance at school, but who do not qualify for special education services under the IDEA.

As long as your child has some type of diagnosed disability (either from a health care provider, therapist, or psychologist), your child is probably eligible for a Section 504 Plan.

If your child was disciplined and has a Section 504 Plan in place, the school must hold a Manifestation Determination meeting.

However, if your child's misbehavior involved drugs, their Section 504 Plan **will not** protect them against school disciplinary actions.