



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – Special Education

Discipline- Expulsion

Introduction

This fact sheet is intended to provide more detail about the expulsion procedures for students with disabilities and provide parents with concrete actions that they may take to protect the educational rights of their children with disabilities.

- Students with disabilities who are eligible for special education are protected from improper discipline by law.
- All schools are required to have policies and procedures on how to approach and handle difficult behaviors.
- Your School District is required to provide you with a copy of its policies on how they will approach student behaviors at least once a year.

Expulsion Basics

- An **expulsion** is a removal of a student from school for more than 10 days in a row.
- A student may be expelled for a definite period of time from 11 days up to 2 years.
- A student with a disability may be expelled for the same reasons as a student without a disability. However, a student with a disability may not be expelled for behavior that occurs as a result of his/her disability.
- If a student with a disability is expelled, the School District is responsible for providing the student with the opportunity to participate in the general education curriculum and make progress on IEP goals.

Before the Expulsion Hearing

- The school must first send you written notice of the behavior for which it believes your child should be expelled. That notice must include the reason the school is considering expelling your child and the date that the Individualized Education Program (IEP) team will meet to discuss the proposed expulsion. This meeting is called the **Manifestation Determination Review (MDR)**. The MDR must be held within 10 school days after the incident that rendered the student eligible for expulsion.
- Unless the expulsion hearing occurs within ten school days after the incident, the School District must first hold the MDR to determine if there is a relationship between your child's disability and his/her behavior. The IEP team is invited to the meeting.
 - At this meeting, the IEP team first reviews your child's current Case Study Evaluation (CSE), IEP and school placement.
 - You may provide any additional information or evaluations.
 - The law also requires that the person(s) making the final discipline decision have a copy of the student's special education and disciplinary records to review and consider.

- Next, the IEP team must determine whether your child's actions resulted because the school did not correctly follow his/her current IEP. This includes determining whether they followed your child's Behavioral Intervention Plan, if one was already developed.
- Then, the IEP team must consider if your child's disability was related to the behavior that led to his/her suspension and referral for expulsion. If the team determines there is a relationship between the behavior and the disability, the IEP team will decide that the behavior was a **manifestation of your child's disability**.
- If the IEP team decides that your child's behavior was a **manifestation of his/her disability**, your child should not be expelled. Your child may still be placed in an alternative school setting (IAES) for 45 days if he/she carried a weapon to school, knowingly possessed or used illegal drugs, or sold or bought a controlled substance while at the school. *If this applies to your child, please see the Suspension & Alternative School Placement in IDEA 2004 fact sheet.*
- If the IEP team determines that your child's behavior was not a **manifestation of his/her disability**, the School District can proceed with the **expulsion hearing**.
- If you disagree with the IEP team's decision that your child's behavior was not a manifestation of his/her disability, you can appeal that decision by requesting an **expedited due process hearing**. *See below for more information about requesting an expedited due process hearing.*
- **Remember, the School District cannot expel your child without first holding a Manifestation Determination Review!**

The Expulsion Hearing

- If the School District decides to expel your child, the School District must send you a notice in writing and by certified mail inviting you to attend the expulsion hearing. This notice must include the time and location of the hearing, the reason for the expulsion, and your right to be represented by an attorney.
- At the hearing, the School District will present the reasons for the expulsion and the date that the expulsion will start.
- You have several **rights** at the expulsion hearing.
 - You have the right to bring an attorney or advocate to represent you at the hearing.
 - You have the right to call witnesses, present evidence and cross-examine the School District's witnesses at the hearing.
- The expulsion hearing is your opportunity to give the reasons why your child should not be expelled. If you believe that there has been a mistake and your child did not commit the act of misconduct, your child can tell his/her "side of the story." You can present witnesses and evidence to prove that he/she did not do what the School District alleges occurred.
- Even if your child committed the act(s) of misconduct, you can argue that there are other reasons why your child should not be expelled. This is called **mitigation**. There are several points that you can argue as **mitigation**. For example,
 - you can argue that your child's act of misconduct was not bad enough to deserve expulsion;
 - you can argue that your child should not be expelled because this is your child's first instance of serious misconduct at the school;

- you can argue that your child's behavior did not disrupt the education of the other students in the school;
- you can argue that expulsion is not in the best interests of your child with a disability.
- After the hearing, a decision will be made whether to expel your child. In many districts, the hearing is conducted by a hearing officer who makes a recommendation to the school board or the chief educational officer, who then makes the final decision whether or not to expel your child. In other districts, the board of education conducts the hearing and makes the final decision. Sometimes this wait can be very long and difficult. If you have not received a decision in several weeks, you should contact the School District and inquire into the progress of the decision.
- If the School District decides to expel your child after the expulsion hearing, you may appeal the decision by going to state court. You should consult an attorney about how to file an appeal in state court.
- The Chicago Public Schools has a special program that the hearing officer can recommend as an alternative to expulsion. *If your child attends Chicago Public Schools, please see Equip for Equality's Expulsion in Chicago Public Schools fact sheet.*

Expedited Due Process Hearing

- If you disagree with the IEP team's decision and believe that your child's behavior was a **manifestation of his/her disability**, or you disagree with the school's decision to remove your child from his/her current placement, you may request an **expedited due process hearing**.
- Put your request in writing and send it, return receipt requested, to the superintendent of the student's School District. Include in your letter:
 - why you believe the action taken by the school is not supported by substantial evidence;
 - all documents you have to support your position;
 - whether you are represented by an attorney or intend to obtain an attorney;
 - the matters you disagree with;
 - the specific relief you seek (what you want to happen);
 - the names of all witnesses you intend to call to testify at the hearing;
 - contact information of the student, parents, and/or guardian;
 - the school your child is currently attending; and
 - your signature and the date you are signing the letter.
- When the School District receives your request, it must arrange for an **expedited due process hearing**.
- The School District arranges for the **expedited due process hearing** by forwarding the request to the Illinois State Board of Education (ISBE) within 5 days of receiving your request. While you do not have a legal obligation to do so, you should send a copy of your expedited due process hearing request to ISBE in an effort to speed up the process.
- Upon receipt of the request, the ISBE appoints a hearing officer from a rotating appointment system. The hearing officer will contact you 1 day after he/she is appointed. A hearing must be held within 20 school days of the date the hearing is requested, and the hearing officer must make his/her decision within ten school days after the hearing.

- The parties (generally the parent/guardian and the School District) must disclose any evidence that is intended to be submitted into the hearing record no later than 2 days before the hearing. Be sure to be forthright regarding your evidence and witnesses or you may not be allowed to present them at the hearing. The same rule applies to the School District. The length of the hearing will not exceed 2 days unless there is a good reason.
- During the hearing, the parties have the right to:
 - Be represented by legal counsel (at their own expense);
 - Present evidence and cross-examine witnesses;
 - Request certain witnesses be excluded from the hearing until called to testify, unless the exclusion serves to exclude an individual designated to assist that party or its representative in the presentation of the case (your expert, for example, may not be excluded);
 - Obtain a written or electronic verbatim record of the proceedings (the hearing);
 - Obtain a written decision within 2 days after the conclusion of the hearing.
- Until the hearing is complete, your child will remain in the alternative school setting unless you and the school come to some other agreement about placement.
- Whether or not due process procedures have been completed, your child will return to his/her prior school placement (e.g. return to school) after 45 school days in the **IAES**. If the School District believes that it is dangerous for your child to return to school, at that time, it may request an **expedited due process hearing**.
- If you do not understand the hearing officer's decision, you may write to the hearing officer to request clarification. The request must be submitted within 5 days of receiving the decision. Your request must specify the portions of the decision for which clarification is sought, and must be mailed to all parties involved in the hearing, including ISBE. The hearing officer must respond to the request for clarification within 10 days.
- The parent/guardian/student and School District have the right to appeal the decision to the state or federal court.
- Nothing in the law prohibits the School District from getting a court injunction to have your child removed from school, if the School District concludes that your child is a danger to him/herself or others. In this event, you are entitled to notice and a hearing before a judge, before the decision is made.

Due Process

If you disagree with your child's IEP or the decisions made about your child's school placement and/or services, or want to change any part of your child's IEP then you can:

- File an internal complaint;
- Ask for mediation; or
- Request a due process hearing.

You may do this by writing to:

Illinois State Board of Education
 Special Education Compliance Division
 100 North First Street
 Springfield, IL 62777-001

For more information, please see Equip for Equality's fact sheets on the remedies available to you under the IDEA.

Special Education Resources:

- The Illinois State Board of Education (ISBE) website is: www.isbe.state.il.us
- ISBE's telephone numbers for information and technical assistance:
1-866-262-6663 (Springfield) or 1-312-814-2220 (Chicago)



DO YOU HAVE A QUESTION?

Contact Equip for Equality's Special Education Clinic Helpline
1-866-KIDS-046 (voice) or 800-610-02779 (TTY)
SpecialED@equipforequality.org
www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Special Education Helpline seeks to empower parents to advocate effectively. The Special Education Clinic, Helpline, and these publications were made possible by grants from the Chicago Bar Foundation, The Field Foundation, Illinois Bar Foundation, Illinois Equal Justice Foundation, Polk Bros Foundation, and the State of Illinois Department of Human Services. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the grantors.

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