QUICK GUIDE: SCHOOL DISCIPLINE FOR SPECIAL EDUCATION STUDENTS

If a child has an Individualized Education Program (IEP) in place or has been referred for testing to determine if the student qualifies for special education services, the student has added protections from suspension or expulsion from school. The chart below summarizes those rights.

SCHOOL IMPOSES SUSPENSION ON STUDENT

Suspension for 10 days or less

Student is treated like regular education student; no extra protections exist.

Exception: When suspensions add up to more than 10 days total and form a “pattern” (e.g., same type of conduct led to suspension), school must treat it like a suspension of more than 10 days.

Suspension for more than 10 days

Student can be treated like regular education student for first 10 days of suspension.

But, school must hold Manifestation Determination Review (MDR), which is a specialized IEP team meeting, before student can be excluded for more than 10 days.

What Happens at the MDR?

IEP team, including parent, answers the following questions:

- Was the conduct caused by, or directly and substantially related to, the disability?
  - Example: If student gets in a fight and has only a learning disability in math, the conduct is probably not caused by the disability. But if that student has a conduct disorder, the conduct probably was caused by the disability.

- Was the conduct a direct result of the school’s failure to implement the student’s IEP?

If the team determines that the answer to either question is “yes,” then the conduct was a “manifestation.”

(See following page for suggestions on how to prepare for an MDR)

If conduct is not a “manifestation”:

- School can impose suspension.
- Student can appeal finding that conduct was not a manifestation, but suspension stands pending appeal.
- School must still provide “a free appropriate public education” to student during period of suspension.
- School must establish “behavior intervention plan.”
- School should perform “functional behavioral assessment.”

If conduct is a “manifestation”:

- Suspension cannot be imposed beyond 10 days.
- IEP team can change services provided to student.
- IEP team can change student’s placement.
- School must establish “behavior intervention plan.”
- School must perform “functional behavioral assessment.”

Note: “Free appropriate public education,” “behavior intervention plan,” and “functional behavioral assessment” are explained on the next page.

Note: Regardless of whether conduct was a “manifestation,” a student can be removed from school for 45 days if the student brought drugs or a weapon to school or caused serious bodily injury by their conduct. The student, however, must still be provided a “free appropriate public education” during the 45 days.
Definitions of some common terms:

**Behavioral Intervention Plan(s)** is defined as a written, specific, purposeful, and organized plan which describes positive behavioral interventions and supports and other strategies that will be implemented to address goals for a student’s social, emotional, and behavioral development. In addition, for students whose behavior prompts disciplinary action, the behavioral intervention plan addresses the behavior of concern.

**Change in Placement** occurs under the following circumstances: (1) the removal is for more than ten consecutive school days; or (2) the child has been subjected to a series of removals that constitute a pattern. 41.536(1)

**Expulsion**, defined as the result of "school board action resulting in the removal of a student 'from the rolls' of a district (unless a student has an IEP and requires continuing services) for disciplinary reasons."

**Functional Behavioral Assessment(s)** enhances an understanding of the purpose and function of a student's behaviors and subsequently provides information leading to interventions and needed supports. For a student who becomes subject to disciplinary action a functional behavioral assessment is used to develop a behavior intervention plan within the context of the IEP process.

**In-School Suspension** is defined as "instances in which a child is temporarily removed from his/her regular classroom(s) for disciplinary purposes but remains under the direct supervision of school personnel. Direct supervision means school personnel are physically in the same location as students under their supervision." OSEP Data Fact Sheet - Discipline (October 2006), p. 3

**Interim Alternative Education Settings** are outside of the school. In this setting the child must receive the following:
- Educational services that enables the child to participate in the general education curriculum and progress toward meeting their IEP goals.
- As appropriate, a functional behavioral assessment and behavior intervention plan that addresses the behavior(s) of concern. 41.530(4)

**Out-of-School Suspension** is defined as "instances in which a child is temporarily removed from his/her regular school for disciplinary purposes to another setting (e.g., home, behavior center). This includes both removals in which no IEP services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IEP." OSEP Data Fact Sheet - Discipline (October 2006), p. 3

**Pattern** refers to removals of a child that constitute a pattern based on:
- a series of removals of more than 10 school days in a year,
- the behavior that caused the removal is similar to the behavior that caused previous removals, and
- additional factors such as the length, time and proximity of the series of removals. 41.536(1)

**Removal**. Disciplinary actions will not be considered removals if all three of the following questions are YES:
- Will the student be able to appropriately participate in the general education curriculum?
- Will the student be able to receive the services specified in the student's IEP?
- Will the student be able to participate with students without disabilities to the extent provided in the student's current placement? 41.536(3)