

SCHOOL DISCIPLINE: KNOW YOUR RIGHTS

Definitions:

1. **Short Term Suspension:** A suspension for up to 10 days.

2. **Long Term Suspension:** A suspension for more than 10 days.

3. **Expulsion:** The discontinuation of educational services or the discontinuation of the payment of educational services for a student. (student may still be entitled to alternative placement, and expulsion cannot occur unless due process and appropriate educational services in the form of home instruction or an alternative education program have already been provided)

NOTE: New legislation taking effect 2017-18 school year prohibits schools from suspending/expelling students from preschool through grade 2, except in circumstances involving weapons or conduct of a violent or sexual nature that endangers children



My child received a short-term suspension; what are we entitled to?

- Parents should receive oral or written notice before the end of the school day
- Student should have an informal meeting with the school administrator before student is removed
- Child must receive academic instruction within 5 days of suspension



My child received a long-term suspension; what are we entitled to?

- Parents and student must receive same notice and informal meeting as required for short term suspension
- Parents should also receive written notice within 2 days of suspension
- Child must receive academic instruction within 5 days of suspension
- Board hearing within 30 calendar days of suspension
- A list of witnesses and their statements at least five days prior to board hearing
- A written decision within five school days after the hearing



When is a school permitted to search my child?

- A school cannot conduct a suspicion less search
- A school search must be based on reasonable suspicion and be conducted in an appropriate manner
- Strip search not allowed



When is my child entitled to home instruction for disciplinary reasons?

- 5 days after student has been suspended
- When a court order requires home instruction
- When placement in an alternative education program is required, but not immediately available

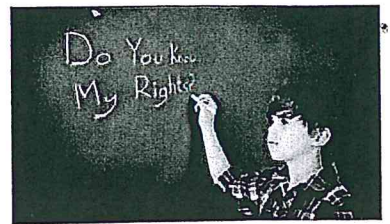
What does proper home instruction entail?

- 10 hours per week + 10 hours of guided learning experiences
- One-on-one with an instructor OR in a small group
- Provided on at least 3 separate days of the week
- Delivered in home or in another suitable setting



To learn about additional entitlements for children who have been suspended and have special needs, [see page 2](#).

SCHOOL DISCIPLINE: SPECIAL EDUCATION RIGHTS



My child was suspended and has special needs; what are we entitled to?

Short-term Suspension: A school may suspend a child with a disability for up to 10 consecutive school days, as long as suspension doesn't constitute a "change in placement"

Long-term Suspension: A school may impose a long-term suspension of more than 10 consecutive days on a child with a disability if:

1. the child's IEP does not provide otherwise AND
2. the child's conduct is determined not to be "manifestation" of child's disability

What is a change in placement?

When a child is suspended for more than 10 consecutive days or if the child is subject to a series of suspensions that constitute a pattern.

When does a series of suspensions constitute a pattern?

- Series of suspensions totals more than ten school days in a school year;
- The child's behavior is substantially similar to behavior in previous incidents that resulted in series of suspensions; and
- Consideration of additional factors: length of each suspension, total days suspended, how close in time suspensions were to one another

What is a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP)?

A child is entitled to receive an FBA and a BIP when:

- A school seeks to change a child's placement (see above) for more than 10 days and the behavior is determined not to be a manifestation of the child's disability; OR
- When a child is suspended under the **45-day exception** rule

What is a manifestation determination?

A meeting must be convened within 10 school days from the date of suspension to determine:

- If the child's conduct was a manifestation (expression) of the child's disability
- If conduct is determined not to be a manifestation, child may be suspended more than 10 days
- If conduct is determined to be a manifestation, child must return to school placement immediately, unless **45-day exception** applies (see below)

What is the 45 day exception?

A school may place a child with a disability in an alternative educational setting for 45 days, even when the behavior was a **manifestation** of the child's disability, for the following behaviors:

- possession of a weapon;
- knowing possession or use of illegal drugs
- infliction of serious bodily injury upon another person

SCHOOL DISCIPLINE: ADVOCATING FOR AN EXCLUDED CHILD

How can you challenge your child's exclusion from school?

1. Meet with school officials to offer explanation or defense
2. Write a letter or email to superintendent and copy principal
3. Ask the school about their process for appealing the suspension and take action
4. Pay attention to time limits

*A particularly important time limit: one has 90 days to file an appeal to State Commissioner from a final district action

Helpful Tips

TIPS FOR PARENTS

- Keep your cool
- DOCUMENT, DOCUMENT, DOCUMENT
- Stay informed and know your rights
- Attend all meetings and hearings
- Bring an advocate, if possible
- Come prepared and take notes

BEWARE: action CAN take place in your absence

ADDITIONAL RESOURCES:

- Statewide Parent Advocacy Network: <http://www.spanadvocacy.org/>
- Education Law Center's Student Discipline Rights Guide: http://www.edlawcenter.org/assets/files/pdfs/publications/StudentDisciplineRights_Guide_2012.pdf
- Education Law Center's Special Education Rights Advocacy Guide: http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide.pdf
- Ariana Fink, Esq., Rutgers School of Law: ariana.fink@rutgers.edu, (973) 353-3007