

Q&A: Expulsion

What are grounds for expulsion under Colorado School Discipline Laws?

A student may be expelled for:

- Continued willful disobedience;
- Willful destruction or defacing of school property;
- Behavior on or off school property that is detrimental to the welfare or safety of the other students or school personnel;
- Habitually disruptive behavior;
- Repeated interference with the school's ability to provide educational opportunities for other students;
- Carrying a firearm or firearm facsimile; or
- False accusation against an employee of the educational entity to law enforcement or the school district.¹

Each school district adopts their own Board policies, which include reasons why a student may be expelled. These policies may provide more detail and different language than the Colorado statute. It is important to look up your own District's policies when preparing for an expulsion hearing.

What factors should be considered before expelling a student?

The school should consider the age of the student, disciplinary history, whether the student has a disability, the seriousness of the violation, whether the violation threatened the safety of any student or staff member, and whether a lesser intervention would properly address the violation. C.R.S. § 22-33-106(1.2). Failure to consider the student's disability throughout the disciplinary process, including expulsion, could result in a violation of the student's rights under federal law.

Can a student with a disability be expelled?

It depends. A student with a disability eligible under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Individuals with Disabilities Education Act (IDEA) may not be expelled if the behavior was a manifestation of the student's disability or disabilities. If the student has a disability and has not yet been identified, behavior incidents may trigger the need to evaluate the student. If the school had knowledge that the student may be eligible under Section 504 or the IDEA, the student has the same disciplinary protections as a student who was already identified as eligible. See [Eligibility Fact Sheet](#) and [Evaluation Fact Sheet](#) for more information.

If the behavior was **not** a manifestation of the student's disability and the student engaged in behavior that would warrant expulsion under the school's generally applicable student code of conduct, then the student may be expelled.

School staff should keep in mind that missing school is harmful to children for a multitude of reasons,² so the focus should be on supporting the student through various support systems,

¹ Colorado law mandates expulsion only if a student is adjudicated delinquent or convicted because of possession of a dangerous weapon, used, possessed, or sold a controlled substance, or committed an act that would be considered robbery or assault if committed by an adult.

² [Out-from-The-Shadows-1.pdf \(ndrn.org\)](#).

including creation of a behavior intervention or support plan. See [FBAs and BIPs Fact Sheet](#) for more information. Expulsion should only be used as a last resort.

When is a behavior a manifestation of a disability?

A behavior is a manifestation of a disability when the misconduct was caused by, or substantially related to, the student's disability or disabilities or if the behavior was a result of the school failing to implement the student's IEP or 504 plan. A behavior may be a manifestation of a disability even if the student knows right from wrong, acted intentionally, or was aware of their behavior.

What are some issues that may come up in the manifestation determination process?

- There were behavior challenges that the IEP or 504 team did not address prior to the MDR. The team did not conduct an FBA, update the BIP, or did not consider or provide mental health services and accommodations. See [Q&A: Functional Behavior Assessments and Behavior Intervention Plans](#) for more information.
- The review team did not include relevant members of the Section 504 or IEP team. Relevant can mean qualified, has knowledge of the student, interacts with the student, and/or has knowledge of the disciplinary incident.
- The team did not review all relevant files and observations, including input from the parent.
- The team did not allow or consider information from the student's outside providers when determining how the conduct relates to the disability.
- The team focused on the disability category rather than how the disability manifests in the student.
- The team only considered the student's primary disability rather than all disabilities of the student (whether or not those disabilities are identified on their 504 plan or IEP).
- The parent was not provided with sufficient notice of the MDR to prepare or invite others.
- The parent was not provided with notice of the purpose of the meeting and the possibility of a change of placement.
- The review team concluded prior to the meeting occurring that the behavior was not a manifestation of the disability and that they would proceed to expulsion. For example, if a parent receives notice that the student is being expelled prior to the MDR being conducted.

What if I don't agree with the manifestation determination outcome?

Under IDEA, you have a right to file a Due Process complaint. A complaint that concerns a disciplinary change of placement will be expedited. [CDE's Q&A for Due Process Complaints](#) has information on how to file a complaint. Alternatively, you may be able to file a State Complaint if you believe there were procedural errors regarding how the manifestation determination review was conducted. More information about this process is available at [CDE's Q&A for State Complaints](#). You may also be able to resolve your concerns through [Mediation](#).

Under Section 504, if you believe your child has been discriminated against you have a right to file a complaint with the U.S. Department of Education's Office for Civil Rights (within 180 days of the alleged discrimination) or the U.S. Department of Justice. See [OCR Complaints](#) for more information. You may also be able to resolve your concerns through informal mediation or negotiation with the District. See [Section 504 Coordinators, Notice of Non-discrimination, and](#)

[Grievance Procedures](#) for more information regarding who to contact when you have concerns related to Section 504. See [MDR Fact Sheet](#) for more information on the Right to a Manifestation Determination Review (MDR).

[What rights do students have regarding expulsion hearings?](#)

The student is entitled to advanced notice of the charges and evidence against him, a fair opportunity to be heard, and an impartial decision maker. A student may knowingly and voluntarily waive a hearing in writing. The student must be permitted the assistance of a lawyer in major disciplinary hearings. A student's statement about acts that result in a mandatory expulsion cannot be used unless the statement is signed by the student in the presence of a guardian. A student must be given the opportunity to defend himself and permitted to confront and cross-examine the witnesses against him. ***The student must not be punished except based on substantial evidence.***

[What happens at the expulsion hearing?](#)

A hearing officer, who is someone the school district has hired, will hear from a representative of the school why expulsion is being sought. The student and student's parents are allowed to ask questions of the witnesses and present evidence on the student's behalf. If the student is not being expelled for a mandatory reason, the student may provide character evidence and evidence of other school behavior to assist the hearing officer in determining if expulsion is warranted. At the end of the hearing, the hearing officer will make a recommendation to the superintendent who will decide if the student will be expelled and for how long.

[What should I do to prepare for my child's expulsion hearing?](#)

- Make sure the school has provided you with **notice of the charges** against your child and what **evidence** they have against him/her.
- Ask your child what happened and write down their version of the incident. Ask them what they have said to school district personnel and ask if they have given a written statement. *As a note of caution, however, your child should not be making any statements about the allegations if they have been charged for the conduct at issue.*
- Collect your child's records, including IEPs/504 plans, MDR paperwork, and disciplinary history. Request your child's records from the school in writing.
- **Determine your argument(s).** Look through your child's records and consider why your child should not be expelled. Were there procedural violations? Was the behavior a manifestation of their disability? Did the school investigate the incident? Was this their first behavioral incident? Do other students engage in the same behavior without similar consequences? Has the school tried alternatives such as putting a behavior plan in place? Is there a lesser consequence that could address this behavioral concern?
- **Find witnesses.** Who else saw the incident? Who knows your child well and would make a good character witness?
- At the hearing:
 - Present your child's side of the story (if different).
 - Present your main argument(s) against expulsion.
 - Question witnesses (both the school's and yours). Emphasize your argument(s).

Is the expulsion decision final?

The parent has the right to appeal the expulsion decision to the school board within 10 days of the decision. The board's decision is final, unless the parents challenge the board's decision in court. The parent must notify the board in writing within 5 days of receiving notice of their decision that the parent wants judicial review. The board must issue a statement of the reason for the board's actions to the parents. Within 10 days of the board's response, the student or parent can file a petition in state court requesting that the board's order be set aside. After a petition is filed, the court must notify the board, set the matter for hearing, and review the hearing decision. A district court will have authority to review the actions of a board of education for an abuse of discretion.

What happens if my child is expelled?

Under the IDEA, a student who is expelled is still entitled to a free appropriate public education (FAPE). The IEP Team would meet to determine appropriate services for the student during the period of expulsion, which includes specially designed instruction, related services, and participation in the general curriculum. The programming should allow the student to make progress on IEP goals and receive socio-emotional support so that the behavior does not happen again. In addition, when appropriate, the IEP team would complete a functional behavior assessment and either create or update a behavior intervention plan.

Under Section 504, there are no provisions requiring FAPE when a student is expelled. However, if services would be provided to nondisabled students who are expelled, they must also be provided to disabled students who are expelled.

What options do I have if I have other concerns regarding the process the school followed in determining FAPE for my child?

See the [K-12 Dispute Resolution Fact Sheet](#) for more information.