

## **DISCIPLINE IN THE SPECIAL EDUCATION SETTING**



### **CAN MY CHILD BE DISCIPLINED IN SCHOOL IF HE/SHE HAS AN INDIVIDUALIZED EDUCATION PLAN (IEP)?**

- Yes, your child can be disciplined or expelled for violating written rules regarding student conduct
- However, if misconduct is related to your child's disability or the result of the school failing to implement the IEP, discipline is limited
- Normally, a school can only remove a student for 10 school days or less without holding a manifestation determination review (MDR) (discussed in detail below), but a student may be removed for a maximum of 45 school days if he/she brings a weapon or illegal drugs to school, or if he/she seriously injures another person

### **WHAT IS THE SCHOOL'S RESPONSIBILITY AFTER MY CHILD WHO IS ON AN IEP IS SUSPENDED OR EXPELLED?**

- Even if your child is suspended or expelled, the school is still required to provide a free appropriate education (see *The Legal Center's handout on FAPE for more information on what constitutes a free appropriate education*)
- However, during the initial 10 (or less) day suspension or expulsion, the school is not required to provide services
- If a student on an IEP is removed for more than 10 days, an MDR must be held (discussed in detail below) because removal is considered a change of placement
- If there is a change of placement, the school must: (1) conduct a manifestation determination review, (2) provide an educational program, and (3) as appropriate, conduct a functional behavioral assessment and intervention services/modification

### **WHAT IS A MANIFESTATION DETERMINATION REVIEW?**

- A meeting that is required when a student who is on an IEP is removed from school for more than 10 school days

*Turn over for additional information.*

- Participants: school district, parent(s), and relevant members of the student's IEP team – including outside therapists or people invited by parents or the school district
- If the behavior is related to the student's disability or determined to be the result of the school district's failure to implement the IEP, then the student is returned to current placement, though the team may agree to an alternate placement and/or may have a Functional Behavioral Assessment (FBA) done to help effectively work with the student's behavior
- If the behavior is not related to the student's disability or determined to be the result of the school district's failure to implement the IEP, then the student may be disciplined in the same manner as a student without a disability for the same behavior, but the school must continue providing a free appropriate public education, though it may be in an alternate location

**WHAT HAPPENS AFTER THE SCHOOL DISTRICT  
DECIDES TO DISCIPLINE MY CHILD FOLLOWING AN MDR?**

- The school district must provide notification to the student's parents of the disciplinary action taken and the procedural safeguards available to the student in the disciplinary process
- If you disagree with the decision of the school district, you may request a hearing
- Under the Individuals with Disabilities Education Act, you are entitled to an expedited hearing, meaning that the hearing must occur within 20 school days of the date you requested a hearing
- The hearing officer must make a decision within 10 school days after the hearing
- The hearing officer may (1) return the student to his/her placement before the dispute arose or (2) order that the student's placement be changed to an interim alternative educational setting (but this may not be for more than 45 school days) so the IEP team can make a new placement decision
- During the appeals process, the student will remain in the interim alternative educational setting until either (1) the hearing officer makes a decision, or (2) the time period that would apply to students without disabilities expires

**\*\*\* DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. \*\*\***

References:

The Everyday Guide to Special Education Law: A Handbook for Parents, Teachers, and Other Professionals by *Randy Chapman, Esq.*

Randy Chapman's Ability Law Blog, <http://randychapman.wordpress.com/>

Disability Law Colorado – [www.disabilitylawco.org](http://www.disabilitylawco.org)

Colorado Department of Education – [www.cde.state.co.us](http://www.cde.state.co.us)