



## ADVOCATES FOR JUSTICE AND EDUCATION (AJE)

### Know Your Rights: Suspension and Expulsion of Students with Disabilities

#### Additional Procedural Protections for Students with Disabilities

Please see our other handouts covering procedural rights provided to all students facing suspensions and expulsions in D.C. Public Schools (DCPS) and D.C. public charter schools. For students with disabilities, both DCPS and D.C. public charter schools must provide the additional procedural protections described in this resource unless otherwise indicated.

- The Individuals with Disabilities Education Improvement Act (IDEIA) is a federal law that ensures all children with disabilities receive an appropriate public education. It requires additional procedural protections for students with disabilities (under certain circumstances) who are facing suspension or expulsion from school.
- If a school wants to exclude students for more than ten (10) school days, then additional protections apply.
- If a student has been subjected to a series of removals that total more than ten (10) school days in a school year for similar behavior that constitutes a pattern, then additional protections apply.
- Because expulsions are permanent exclusions, students with disabilities facing expulsion should always receive these additional protections.
- Removals (or patterns of them) for more than ten (10) school days are considered a change in the student's placement due to discipline. In these cases, the school must apply the following additional procedural protections:

#### Hold a Manifestation Determination Review Meeting (MDR)

- After notifying the parent or guardian of the student with a disability of the proposed change in placement, the school must also provide them with a copy of a document called "procedural safeguards."
- The school must also have a meeting within 10 school days called a Manifestation Determination Review (MDR).
- At the MDR, the necessary members of the student's Multi-disciplinary Team (i.e. Individualized Education Program (IEP) or 504 Team) must discuss and determine whether the reported misbehavior is primarily the result of the student's disability. **Note: The Team discussion is—if the student behaved as the school reported that he or she did—was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability?**
- The student's Team must also determine at the MDR whether the reported misbehavior was the direct result of the school's failure to provide the services, instruction, and behavioral support listed in the student's IEP, 504 Plan or Behavior Intervention Plan (BIP) (if they have one).
- During the MDR, the team must at least review and consider the student's evaluation and diagnostic results, information provided by parents, observations of the student, and the contents of the student's IEP, 504 Plan and any BIP's.
- If the student's reported behavior is determined to be a manifestation of (in other words, the primary result of) the student's disability or disabilities, then the school must allow the student to return to school, except under special circumstances.\*
- If the behavior is determined to be the result of a failure of the school to follow the student's IEP (or 504 Plan) or BIP, then the school must allow the student to return to school, except under special circumstances.\*
- If either of the above two conditions are met then the Team must either conduct a Functional Behavioral Assessment (FBA) and implement a BIP, or if a behavioral assessment or plan has already been developed, review and modify it as necessary to address the behavior.

## \*Special Circumstances

Regardless of the outcome of the MDR, Students with disabilities can be suspended and moved to another educational placement for up to 45 days if any of these special circumstances exist.

1. The student carries or possesses a weapon on school grounds;
2. The student knowingly possesses, uses or sells drugs at school; or
3. The student has inflicted serious bodily injury while at school.

**Please call AJE or consult an education attorney if your disciplinary matter involves any of these special circumstances. There are specific legal definitions for each of these circumstances.**

## Protections for Students with Disabilities attending DCPS Schools

Students with disabilities (or suspected disabilities) attending DCPS schools have additional protections. The Student's Team cannot allow the suspension to move forward unless **all** of the following are true:

- The IEP and school placement were appropriate.
- Special education services, supplementary aides and services, and behavior intervention strategies were provided consistent with the student's IEP and placement.
- The student's disability **did not impair** the ability of the student to understand the impact and consequences of the behavior that caused the suspension.
- The student's disability **did not impair** the ability of the student to control the behavior subject to the disciplinary action.

DCPS schools may be able to remove students with disabilities, despite the MDR result, under the "special circumstances" listed in this resource.

## Additional Rights of Suspended Students with Disabilities

- If the Team conducts a proper MDR and decides the suspension is appropriate, then the student may be suspended similar to students without disabilities. However, students with disabilities still have additional rights.
- While suspended, students with disabilities are entitled to an opportunity to continue to progress toward their IEP goals and to access their school work. IEP Teams are required to determine the appropriate setting for this to occur, and to make the services and setting available before the student is suspended more than ten (10) school days in one school year.
- The student's parent or guardian can file an administrative complaint called a Due Process Complaint to request that the student be allowed to return to school. The hearing for this complaint will be expedited. While the complaint is pending, the student must be provided educational services in the setting determined by the IEP Team.

## Rights of Students Suspected of Having a Disability/ Section 504

- Once a parent or guardian has requested an evaluation for special education or a school is otherwise on notice that the student may have a disability, the student is afforded all protections provided to students with disabilities under IDEA. The school must be on notice of the student's suspected disability prior to imposing the school discipline in order for this rule to apply. Note: It is best to provide all requests for evaluations in writing so that the date of the request can be documented.
- If a parent requests a special education evaluation *after* the school suspends the student, the school must conduct an evaluation in an expedited manner. If the student is found to have a disability under IDEA, then he or she gets all the protections provided to students with disabilities, including an MDR.
- Students with 504 Plans have at least the same protections as students with IEPs, including MDRs.

**Need Additional Help?** Call or visit Advocates for Justice and Education (AJE): (202) 678-8060 • 25 E Street, NW, 4<sup>th</sup> Floor • Washington, D.C. 20001. Mary's Center Intake on Tuesdays and Thursdays at 3912 Georgia Avenue, NW, Washington, DC 20011