

## SPECIAL ED STUDENTS AND EXPULSIONS: WHAT EVERY PARENT SHOULD KNOW

### **1. Is my child's education protected under the laws of special education?**

- Yes. If your child is receiving special education services, her education is protected by state and federal law - it cannot be terminated or taken away. All special education students are entitled to an individualized education program (IEP). Even if they are suspended or expelled, special education students always have the right to a curriculum that allows them to advance in their IEPs.

### **2. How long can my child be suspended from school for her behavior?**

- When your child breaks a school rule, she can be punished like non-special education students for *up to 10 days*. She is not entitled to special education protections during those 10 days.

- However, in California, students cannot be suspended for more than five consecutive days unless they are being recommended for expulsion.

- If your child has been suspended for more than a total of 10 school days during a school year, she must receive special education services necessary for her to advance in her IEP during any later suspensions that year.

### **3. What happens if the school wants to remove my child for more than 10 days?**

- First, the school *must notify you immediately*.

- Within those first 10 days of removal, the school must also have what is called a manifestation determination with you and relevant members of the IEP Team to decide whether there is a relationship between the child's disability and the behavior that led to the disciplinary action. You and the school decide which members of the IEP Team should attend the manifestation determination.

### **4. How will the IEP Team decide whether my child's behavior was a manifestation of her disability?**

- The group making the manifestation determination must consider all relevant information in your child's file, teacher observations, and any relevant information you provide.

- Your child's behavior can be determined to be a manifestation of your child's disability if either: 1) the behavior was caused by, or had a "direct and substantial relationship" to the disability, or 2) the behavior was a "direct result" of the school's failure to follow your child's IEP.

### **5. What if the IEP team determines that her behavior *is not* a manifestation of her disability?**

- Your child will be subject to the same disciplinary measures as any other student. This means that your child **CAN BE EXPELLED FROM HER SCHOOL DISTRICT**.

- But, she is still entitled to special services to help her advance in her IEP.

- You have the right to disagree with the school's decision, see #9.

### **6. What if the IEP team decides that her behavior *is* a manifestation of her disability?**

- She cannot be expelled, and generally has a right to return to her school.

- *Even if her behavior is a manifestation of her disability, she can be placed in an interim alternative educational setting (interim placement) for up to 45 school days under certain circumstances (see # 8 below).*

### **7. What is an interim placement?**

- Interim placements allow students to continue their education in a different school. The alternative school must provide comparable services to meet your child's special needs.

### **8. When can my child be placed in an interim placement?**

- Your child can be placed in an interim placement for up to 45 school days if:
  1. She brings a weapon or illegal drugs to school or any school event.
  2. She sells illegal drugs at school or any school event.
  3. She inflicts serious bodily injury on another person at school or any school event.
  4. A hearing officer decides that she is likely to be a danger to herself or others at her current school.
  5. You agree in writing that she can be placed in an interim placement. *Before signing any papers at a manifestation determination, you should consult a lawyer or an advocate.*
- Your child must return to her old school at the end of the 45 days. However, if your child is in an interim placement because a hearing officer has decided that she is a danger to herself or others, the school may ask the hearing officer to place your child in an interim placement for another 45 days if it would still be dangerous for your child to return to her old school.

### **9. What if I do not agree with the determination about my child's behavior?**

- If you feel that your child's behavior was not a manifestation of her disability or you believe the school wrongfully removed your child from her original school for more than 10 days, you have the right to request a due process hearing from the state. You may also request a mediation conference from the district instead of a hearing.
- After you file for a due process hearing, you may enter mediation with the district. If you decline mediation, you still must attend a "resolution session" before you can have a hearing. At this session, the district cannot bring a lawyer unless you bring one, too. If you and the district come to an agreement at the end of the resolution session, you can still change your mind about the agreement within 3 days.
- Generally, your child has the right to remain in her current school placement during the appeal process (*the "stay-put" rule*). However, if your child has been placed in an interim placement, as explained in #8, she will remain in that placement for up to 45 days; after 45 days, if the appeal is still in process, your child *must be returned to her original school* unless you agree to let her stay or a hearing officer orders her to remain in the interim placement because it is still dangerous for her to go back to her old school.

### **10. How long does an appeal take?**

- The hearing must take place no more than 20 school days after your request an appeal, and the state hearing office must mail you a written decision within 10 school days after the hearing.

### **11. What if my child was not eligible for special education when she got in trouble, but I think she should have been?**

- If the school knew that your child might be eligible, special education protections may still apply to your child. The school had knowledge if: 1) you asked the school in writing to evaluate your child *before* the behavior occurred, 2) you wrote a letter expressing your concern that your child needed special education to your child's teacher or to the school, or 3) your child's teacher made a special education referral to an administrator. The school does not have knowledge if you refused to allow an evaluation of your child, you refused special education services offered to your child, or your child had already been evaluated and had no disability.
- If the school had no knowledge that your child might be eligible, regular disciplinary policies apply.
- If the first time you request an evaluation is *after* your child gets in trouble, then she must receive special education services if and when the school determines she is eligible for special education.

### **12. Does the school have to assist my child with her behavior problems?**

- If "appropriate," the IEP Team must conduct a behavioral assessment and develop a behavioral plan to prevent your child from misbehaving again. Your child's current school, or her new school if she is in an interim placement, must provide behavioral services according to this plan.