



School Expulsions, Suspensions, and Disciplinary Actions

One of the most stressful educational experiences that a parent can face is when his or her child has been involved in a disciplinary situation at school. These actions can range from a one day in school suspension to situations where the parent is preparing to defend his or her child in an expulsion hearing. Depending on the situation and facts, many parents do have options and many schools are willing to work with parents on finding a solution. It is very important for parents to be aware of their options, be properly advised, and have a good hold on the disciplinary process.

Education law varies from state to state and in Indiana disciplinary procedures can vary from district to district. The information below will provide you with some very basic information and help answer some frequently asked questions, but the information on this website is not legal advice and is not meant to be a substitution for seeking the advice of competent legal counsel. Your case is unique and you need legal advice that is specifically tailored to fit your needs. Our Hollingsworth & Zivitz, PC team is here to provide you with the advice you need to make decisions that will have a lasting impact on your life.

SCHOOL DISCIPLINARY ACTIONS – General Information

Suspension

A suspension is a period of time ranging between 1 day and 10 days in which a child is removed from the general educational setting. If a suspension is longer than 10 days it would be considered an expulsion and prior to the expulsion a hearing must be held. A suspension can take place both in school, called an in-school suspension or out side of school in which the child is required to remain at home. During an in-school suspension the child remains in a separate classroom or in-school suspension room for the entire school day, and works on his or her school assignments.

Expulsion

An expulsion is a removal from school for longer than 10 days. The child cannot attend that public school during the period of expulsion. Prior to the expulsion the school must conduct a hearing and if the child has special needs, must first conduct a manifestation determination and then the hearing.

Drugs and Weapons Issues

A child may be immediately removed for any injury to another student or having drugs on their person at or near the school campus. The school will then have an expulsion hearing in that matter. If the student is a special needs student, the school may remove them and put them in an interim placement for 45 days while decisions regarding his or her placement are being made. The school

may also call the police to report the incident which can additionally result in a criminal action against the student.

Sports Team Removal

A child may be removed from a sports team for disciplinary violations that violate the school handbook and in many districts for violations that they consider violate the "good conduct" clause in the sports contract they sign. This can include drinking at off campus parties, off-campus arrests, or other behavior deemed inappropriate.

How a Hollingsworth & Zivitz, PC Attorney Can Assist You

When your child has a disciplinary action at school it is important to discuss this issue with an outside party with an understanding of the law and the procedures. The Education Law Team at Hollingsworth & Zivitz, PC is experienced in handling sensitive child-related issues that occur in disciplinary situations. Mostly, our team recognizes that our education clients are experiencing some of life's difficult challenges. We are dedicated to giving cost-effective advice, tailor-made for your unique issues, with the ultimate goal of getting you to the next best stage in your life.

Hollingsworth & Zivitz, PC serves clients throughout the state of Indiana. Call 317-569-2200 and ask to speak with an Education Law attorney.

SCHOOL DISCIPLINARY ACTIONS – FAQs

What steps should I take if I find out my child has been involved in a disciplinary matter at school?

Sit down calmly with your child and discuss all the details of the incident that gave rise to the disciplinary matter. The most essential part at this time is getting a true and accurate accounting of what took place. If you object to the suspension or sports team removal you need to immediately take action. In the case of suspension it is likely that your child will still have to serve the time, but you may be able to get it removed from his or her permanent record, depending on the facts, if you take action quickly by contacting the school or an education law attorney to discuss options. If your child is up for expulsion you need to move quickly as the expulsion hearing is usually scheduled within 10 days of the conduct. If your child has special needs and is classified under Special Education, the school must conduct a manifestation determination prior to proceeding with expulsion.

I believe my son has a learning disability– can they suspend him or expel him from school?

Special needs children have a lot more rights when it comes to possible suspensions or expulsions than do regular education children. If your child's grades have been bad, he or she hasn't passed some or all of ISTEP and is having trouble behaviorally or emotionally, it's possible that your child has a disability that would trigger many more rights and protections in an expulsion situation. In other words, if the school knew or should have known that your child had a disability, it had an affirmative duty to attempt to perform a psycho educational evaluation of your child to ascertain if your child has special needs. If the school failed to do this but your child should have been found eligible for special education and related services but was not, your child is still entitled to all the legal protections of a student who had properly been evaluated and found eligible in regard to how the school handles the suspension/expulsion.

IMPORTANT: If your school has suspended your child and is threatening to expel him/her and you believe that your child might have undiagnosed disabilities, you can file for an Article 7 due process hearing before the expulsion hearing and most likely will be able to keep your child in school (unless your child brought weapons or drugs to school and that is the basis for the suspension/expulsion).

If my child has just been expelled do I have options?

You do. The expulsion can be appealed to the school board and then into court. However, there are timelines associated with this, and failure to act promptly will waiver your right to object.

Who makes disciplinary decisions?

The principal at the school has the authority to suspend students and to recommend expulsion. The expulsion examiner is normally someone from the school district who makes the final decision as to the expulsion. In cases with special needs children, these decisions can be argued in a due process hearing as well, and these decisions are then recorded as due process decisions by a hearing officer. Below are some decisions in regard to suspensions/expulsions for children with special needs.

Disciplinary change of placement

When a student is subjected to a disciplinary change of placement (unilateral removal from the current placement for more than ten consecutive instructional days), the CCC is required to conduct a manifestation determination in accordance with 511 IAC 7-29-6 (d). With limited exception the disciplinary change of placement may not continue or otherwise occur if the CCC determines that the student's behavior is caused by a manifestation of the student's disability, deficiencies in the student's IEP or its implementation, or an inappropriate placement. If the parent disagrees with the school's position that the behavior is not a manifestation of the student's disability, the parent may request an expedited due process hearing. The due process hearing is expedited because an immediate change of placement is at stake.

Suspensions same as short-term removals

Complaint No. 1778.01 -- Due to behavior, a six-year-old student was often sent home early during the first half of a school year. The school did not maintain records to indicate how often this occurred, nor did it consider that these actions constituted "suspensions" for Article 7 purposes. Under 511 IAC 7-29-1 (a), a suspension is defined as a "unilateral temporary removals of a student from the student's current placement by the public agency." Short-term removals pursuant to a student's IEP are not considered suspensions. These removals were not pursuant to the IEP. As a result, each removal constituted a "suspension."

Suspension for more than 10 school days must continue to receive FAPE Interim alternative educational setting

Letter to Anonymous, 30 IDELR 604 (OSEP 1993). IDEA requires that a student with a disability who is suspended for more than ten (10) school days in a school year or expelled from school or placed in an interim alternative educational setting continue to receive a FAPE, even if the conduct is not a manifestation of the student's disability or placement. In ensuring the provision of FAPE, IDEA emphasizes participation of the student in the general curriculum.

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Suspensions constitute change in placement if happen often enough

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Complaint No. 1719.01 State law does not grant a public agency "ten free days" to suspend a student before honoring a request by a parent to reconvene the CCC to assess whether a behavior is a manifestation of the student's disability or placement. Following the sixth suspension, the parent requested the CCC convene. The director declined, stating that a CCC meeting is not necessary until the student has been suspended at least ten instructional days. The so-called "ten day" rule, however, establishes a requirement for when a CCC must convene. There is no limitation on the CCC convening to assess such causality/nexus/manifestation at any time.

Complaint No. 1692.01 Student was suspended from school on October 13th pending expulsion. The parent initiated an educational evaluation on November 10th. However, the school did not convene the CCC until 40 instructional days later (January 25th of the following year). This constituted a violation of Article 7, which requires evaluations under these circumstances to be expedited (CCC convened within 20 instructional days from receipt of parent's written consent for evaluation of a student expelled from school).

Suspensions/expulsions in federal law:

Federal law says a student can "suffer multiple suspensions for separate offenses that accumulate to more than ten school days in a school year so long as no single suspension exceeds ten school days." However, for all days in excess of ten in a school year the student must receive FAPE although in an alternative setting which must provide services to the extent necessary to allow the child to progress appropriately in the general curriculum and in achieving his IEP goals. [34 C.F.R. Secs. 300.520(a)(ii) and 300.121(d)]

Comments to the federal regulations published by OSERS indicate that the alternative setting "need not provide *all* services set forth in the IEP, due to the short-term nature of the suspension." (up to 10 days). School personnel, in consultation with the student's special education teacher (not an IEP team) determine the setting. [34 C.F.R. 300.121(d)(3)(i)].

Federal regulations do provide an appeal from the determination of the alternative setting described above, however, since the placement would not exceed ten days, the placement would be terminated before any appeal could be concluded. The only effective relief would be compensatory education for needed services that were not provided during this brief time period (e.g. if the student's IEP sets forth counseling which is not provided in the alternative setting).

A series of suspensions that accumulate to more than ten days per school year may constitute a change of placement without an IEP. If they represent a pattern because of such factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another, the series of suspensions would be in violation of 34 C.F.R. Sec. 300.519(b). If this is the case, the student must be returned to his pre-suspension school placement with full IEP services. While this does involve compliance issues that could be addressed by a compliance complaint, it would probably be better addressed through a due process hearing, which is better suited to resolving factual issues that may be involved. It also places the student back in school immediately pending resolution of the matter.