

SPECIAL EDUCATION STUDENTS AND PARENTS!**

Know Your Rights Regarding School Discipline

**Special education students have all the procedural rights of non-special education students. The rights discussed in this flier are only those which specifically apply to special education students. This information is not a substitute for competent legal advice on the facts of a particular case. If you have questions, please contact one of the legal organizations listed below.

Protected Students:

Special education protections apply to students who are in special education programs or who the school district knows should be evaluated for special education. The school district knows a student should be evaluated for special education when:

1. the student's parents have expressed a concern **in writing** to supervisory or administrative personnel of the school district that the student requires special education services; or
2. the student's parents specifically requested a special education evaluation; or
3. the student's teacher has expressed **specific** concerns about the student's behavior to the district's special education director or other special education personnel.

Protection against Discrimination:

As a part of their right to be free from disability discrimination, special education students have the right not to be disciplined for behavior related to their disabilities. Some conditions apply to this right:

1. Within ten days of imposing or proposing an exclusion **for more than 10 days**, relevant members of the Individualized Educational Program ("IEP") team must meet and determine whether the student's misconduct was related to his or her disability. This determination is called a "manifestation determination."
2. If the IEP team decides that the student's misconduct was related to his or her disability, then the student may not be disciplined unless certain emergency circumstances exist and the student is removed to an interim alternative educational setting for no more than 45 days. (See below for more information).
3. If the misconduct was NOT a result of the student's disability, the school may discipline the student in the same manner as it would a general education student so long as educational services are provided in an interim alternative educational setting during the period of exclusion. (See below for more information).

Protection Against Complete Removal From School:

Schools can discipline special education students for misconduct unrelated to their disabilities and, in some circumstances, even for conduct that may be related to their disability. However, there are major restrictions:

1. Schools may not completely deny special education students educational services for more than 10 school days in a school year.
2. Special education students can be sent to an interim alternative educational setting (IAES) only under certain circumstances..
 - First, schools can require special education students to attend alternative educational settings regardless of whether the behavior was a result of the child's disability for up to 45 school days if 1) the student had a weapon at school or on school premises, 2) the student knowingly possessed or used illegal drugs at school or on school premises, or 3) the student inflicted serious bodily injury on another person during school or on school premises.
 - Second, students can also be removed to an interim alternative educational setting for up to 45 school days if a hearing officer determines that maintaining the student's current placement is substantially likely to result in injury to the student or others.
 - Third, students whose behavior is determined not to be a result of their disability can be disciplined in the same manner as general education students, but they must be provided with services in an interim alternative educational setting during the period of exclusion.
 - NOTE: the interim alternative education setting must be determined by the IEP team and must allow the student to participate in the general education curriculum and to progress towards meeting the IEP goals.

School's Duty to Prevent Problems:

If at the manifestation determination meeting it is determined that the student's misconduct was a result of the child's disability, the IEP team must take action to address the behaviors. The IEP team must either 1) conduct a functional behavior assessment (an evaluation of what the problematic behaviors are for the student and what triggers them) and implement a behavior intervention plan OR 2) if a behavior intervention plan already exists, review the plan and modify it in order to address the behavior. If the school does not develop or modify a behavior plan and later tries to suspend or expel the student, the student may have a defense to the suspension or expulsion.

Appeal Rights:

If a parent disagrees with the IEP team's decisions regarding whether the misconduct was a manifestation of the student's disability and/or placement in an interim alternative educational setting, the parent may request a due process hearing. In these situations, the student and parent may wish to consult with an attorney about the due process hearing procedures.

Protections around the Use of Aversive Therapy:

Schools may not use physical restraints or time out rooms to discipline students unless such procedures are pre-approved by the IEP team and are safe and reasonable.

If you have any questions about special education rights you can call:

Statewide (Except in King County)

CLEAR intake line: 1-888-201-1014 (weekdays 9:30 a.m. to 12:15 p.m., and Tuesdays from 3:30 p.m. until 6:15 p.m.)

King County

Northwest Justice Project 1-888-201-1012 206-464-1519

Or for more information about special education and general education, download the [Education Advocacy Manual](#) written by TeamChild – www.teamchild.org

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, August 2007.

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