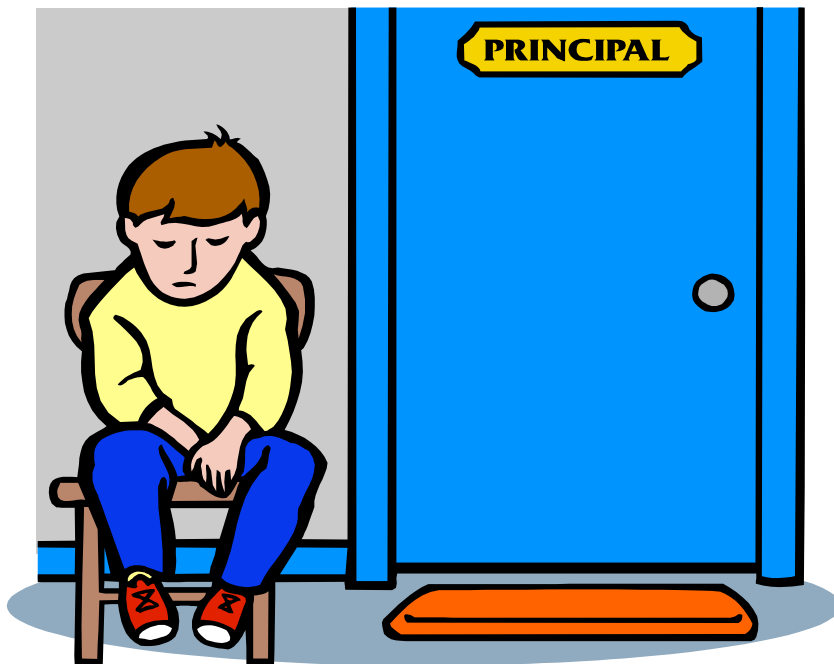




EDUCATION IS FOR ALL CHILDREN
A Guide for Parents



DISCIPLINE



**1010 Common Street
Suite 2600
New Orleans, La. 70112**

**Phone (504) 522-2337
Toll Free (800) 960-7705
TTY (866) 935-7348
Fax (504) 522-5507**

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This booklet is dedicated to Lee Ann Vaught.

After Glow

I'd like the memory of me
to be a happy one.
I'd like to leave an after glow
of smiles when life is done.
I'd like to leave an echo
whispering softly down the ways,
Of happy times and laughing times
and bright and sunny days.
I'd like the tears of those who grieve,
to dry before the sun
of happy memories
that I leave when life is done.

Anonymous

Lee Ann Vaught was a positive force for good, who worked tirelessly on behalf of the children she represented. She was a born advocate and teacher.

In fact, Lee began her career as a teacher. After graduating from the University of Mississippi with a major in journalism and English, Lee taught language arts at the middle school level and later taught English and Journalism at the high school level. After teaching at Dominican High School in New Orleans for eight years, Lee felt that she could continue to affect the lives of students in a positive but different way by becoming a lawyer/advocate.

After graduating from Loyola School of Law in 1996, Lee went to work for the New Orleans Legal Assistance Corporation as a Staff Attorney. In the Fall of 1998, Lee joined the staff of the Advocacy Center where she was able to get fully immersed in Special Education law. She had come back to her first love- helping children to reach their full potential through advocacy that was based on solid legal principles and a warm heart. Not very long after Lee joined the Advocacy Center's staff, she was promoted from Staff Attorney to Managing Attorney and took over leadership of AC's Special Education Issue Group. Lee took her work seriously and worked long hours on behalf of her young clients.

Yet, she never let the seriousness of the work she did cloud her days. Everyone at the Advocacy Center, where she worked for over ten years, envied those who were part of Lee's Special Education Issue Group because, whenever they met, the rest of us could hear loud and raucous laughter echoing through the office.

Lee died an untimely death, from cancer and related complications, at age 47 on August 4, 2008. In the sentiment of the poem quoted above, Lee Ann Vaught would want those of us left behind to remember her with happy memories. No problem, Lee. You brought happiness and laughter to all the lives you touched during your short stay on this earth. We dedicate this booklet to you.

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DISCIPLINE

INTRODUCTION

Under Louisiana law, school officials have the right to discipline students for inappropriate behavior that occurs in the school, on the school playground, on the school bus, and during any intermission or recess. In the case of students with disabilities, school officials are required to follow certain steps before taking any disciplinary action.

Both federal and state law contain certain requirements that school systems must follow prior to imposing a disciplinary action on students with disabilities. Section 504's regulations concerning change in placement further pertain to disciplinary actions.

EXCLUSIONS OF STUDENTS WITH DISABILITIES FROM SCHOOL

If certain procedural safeguards are followed correctly, children with disabilities can be subject to disciplinary procedures to the extent that such procedures would be applied to children without disabilities. School personnel may consider any unique circumstances on a case-by-case basis when determining whether the child's placement should change as the result of a violation of a code of student conduct. While a school system may be able to discipline a child with a disability and change her or her placement, *once a child with a disability has been removed for 10 days in a school year, the child must be provided educational services during any subsequent terms of removal.*

Short Term Removals – 10 Days or Less

When a child with a disability violates a code of student conduct, school personnel may remove that child from his/her current placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than 10 consecutive school days. Additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct may also take place, as long those the removals do not constitute a change in placement.

The extent to which services will be provided during short term removals will be determined by school personnel, in consultation with at least one of the child's teachers. The services should be designed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Change in Placement – More than 10 Consecutive Days, or Series of Removals

A change in placement occurs when a removal is more than 10 consecutive school days, or there has been a series of removals that constitute a pattern. One of the factors to be considered in determining whether the removals constitute a pattern is the “cumulative effect” of the subsequent periods of suspension. This means is there a traceable pattern to the exclusions. For example, if a student gets suspended before every field trip, this could be a pattern constituting a change in placement.

IDEA lists three factors in determining the “cumulative effect” of exclusions that would constitute a change of placement. They are:

- (1) The length of each removal,
- (2) The total amount of time the child is removed, and
- (3) The proximity of removals to one another.

These factors and the maximum allowable exclusion time will be determined on a case-by-case basis by the school, and are subject to review through due process and judicial proceedings.

When a removal is a change of placement because it is a removal for more than 10 consecutive school days or because it is a series of removals that constitutes a pattern, the child’s IEP team must be convened to determine appropriate services. The child must receive, as appropriate, a functional behavioral assessment, behavior intervention services and modifications that are designed to address the behavior violation so that the behavior that led up to the disciplinary action does not happen again.

Special Circumstances – 45-Day Removals

School personnel have unilateral authority to remove a student to an interim alternative educational setting, such as placement in an alternative school, a smaller classroom, or by providing services at home, for up to 45 school days, in cases where:

- (a) The student carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- (b) The student knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances, while at school, on school premises, or to or at a school function; or
- (c) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Definitions:

A *weapon* is defined as a “weapon, device, instrument, material or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length. (18 U.S.C. 930(g)(2))

A *controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(C) of the Controlled Substances Act (21 U.S.C. 812(c)).

An *illegal drug* is a controlled substance, but *does not* include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal Law.

Serious Bodily Injury means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. 1365 (h)(3).

Note: *Bruises, scratches, or other minor injuries would not fall into this category of “serious bodily injury”*

Change in Placement by a Hearing Officer

A hearing officer has the authority to order a change in the placement of a child with a disability to an appropriate interim educational setting for not more than 45 school days, if the hearing officer, through an expedited due process hearing, determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

Notification

Not later than the date on which the decision to take disciplinary action is made, the local education agency shall notify the parents of that decision, and notification of all procedural safeguards must be provided.

Note: Any interim alternative educational setting must be selected so as to allow the student to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications designed to address the behavior so that it does not recur.

DETERMINING RELATION OF BEHAVIOR TO THE DISABILITY

Relatedness Decision = Manifestation Review

A manifestation determination or manifestation review is an assessment of the student's behavior and how it relates to or is influenced by the student's disability. It is only required if a school is implementing an exclusion or series of exclusions that constitute a change of placement. It is designed to determine if the behavior that warranted the exclusion was caused by (a "manifestation" of) the student's disability.

IDEA refers to this determination as a "manifestation review." It requires that the IEP team and other qualified personnel carry out the review to determine whether or not the behavior was related to the child's disability.

The IEP team must consider all relevant information in the student's file, including:

- The child's IEP;
- Any teacher observations; and
- Any relevant information provided by the parents.

The IEP team must determine whether:

- The conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- The conduct in question was the direct result of the local education agency's failure to implement the IEP.

If the local education agency, the parent, and relevant members of the IEP Team determine that either or both of these conditions apply, the conduct shall be determined to be a manifestation of the child's disability.

Court cases have said that the determination process should take into account the whole student, not just his or her label. A student does not have to be classified as Emotionally/Behaviorally Disordered for a behavior to be related to his or her disability. Students with mental and learning disabilities, for example, can exhibit inappropriate behavior due to a high level of frustration. Parents should be skeptical of a school's claim that a certain behavior is not related to the disability if the sole reason given is the absence of a specific behavior disorder. Also, it is not enough for school officials to state that a student knows right from wrong, and decide from that finding that the behavior is not related to or influenced by the exceptionality.

DISCIPLINARY ACTION - BEHAVIOR IS RELATED TO DISABILITY

In general, if it is determined that the behavior **is related** to a student's disability, then the **student cannot be excluded** in the form of a suspension or expulsion. An IEP meeting must be held to conduct a functional behavioral assessment, develop or change the behavioral plan and consider modifications to the student's educational program to address his/her behavior needs. The modifications can include the following: (a) additional related services, such as counseling; (b) a change of class schedule; (c) a change of teacher.

As discussed previously, if the disciplinary action involves weapons and/or controlled substances, or if the child inflicted serious bodily injury upon another person while at school, on school premises, or at a school function, IDEA permits school systems to change the placement of a student with a disability to an appropriate interim alternative educational setting, but this exclusion may not exceed forty-five days.

If the local education agency (LEA) believes that maintaining the current placement is substantially likely to result in injury to the child or to others, but the parents do not agree to an interim change of placement, the LEA must request an expedited due process hearing at which a hearing officer will make the final determination.

DISCIPLINARY ACTION - BEHAVIOR IS NOT RELATED TO DISABILITY

If school officials determine that a student's behavior **is not related** to his/her disability, then the school can use discipline policies applied to non-disabled students. Such discipline procedures may include exclusion in the form of a suspension or an expulsion. A suspension can take one of two forms: (a) an in-school cessation of educational services for one school day or longer; and/or (b) a temporary removal of the student from school for not more than nine school days from the date of an incident involving disorderly conduct. Expulsion involves the removal of the student from school for ten or more consecutive school days.

Nevertheless, even when the behavior was not related to the child's disability and he or she is subject to the same disciplinary procedures as a child without a disability, the student will continue to receive his/her special education services, just in a different environment. **In other words, a free and appropriate public education, or FAPE, must be provided.**

The IEP committee must meet to determine programming, placement, and to develop an appropriate behavior management plan to address the behavior that caused the exclusion to occur.

CHALLENGING AN ALTERNATIVE PLACEMENT OR MANIFESTATION DETERMINATION

Because expulsions or repeated suspensions can have a serious impact upon a student's educational progress, it is important to challenge inappropriate imposition of these forms of disciplinary action on special education students. If a student is suspended as the result of an inappropriate manifestation determination, or if a parent disagrees with an interim placement, parents should be prepared to dispute the determination that the student's behavior is not related to his or her disability. This is very important because the full range of rights under special education law are available only to those students whose behavior is related to their disability. *If an expulsion is being recommended, consider obtaining legal assistance.*

The parent of a child with a disability who disagrees with any decision regarding placement, or with the manifestation determination decision, may request an expedited due process hearing.

If school officials decide that the student's behavior was not related to his/her disability, and this decision appears to be wrong, request an expedited hearing, especially if school officials try to schedule a disciplinary hearing with regular education disciplinary personnel. The student loses many rights and protections if the parent agrees to proceed through the regular education disciplinary procedures.

All of the procedural safeguards that apply to due process hearings apply to expedited due process hearings. The hearing shall occur within 20 school days of the date the hearing is requested, and shall result in a determination within 10 school days after the hearing.

While the due process proceedings are pending, the child shall remain in the interim alternative setting until the decision of the hearing officer has been made, or until the term of the alternative placement has expired, whichever occurs first.

CHALLENGING EXPULSION HEARING DECISIONS

If a parent of a child who is either receiving special education services or 504 services proceeds to an expulsion hearing and the hearing officer upholds a school's expulsion recommendation, that decision can be appealed. For children who are receiving special education services, the hearing officer's decision should be appealed to the State Department of Education. For children who are receiving services under Section 504, the appeal should be made to the local school board.

BEHAVIOR PROBLEMS AND THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Avoiding discipline issues, through communication and use of the IEP process, is much preferable to dealing with them after there have been serious incidents.

IDEA requires that a child's IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address behavior for any student whose behavior impedes his or her learning or that of others.

TIPS FOR PARENTS

It is most important for parents to keep aware of behavior problems occurring in school. Parents should take measures to prevent their child's behavior from interfering with his/her educational program. If a parent receives numerous calls from teachers, the principal, etc. or if the student is repeatedly called to the office or put into in-school suspension, the student may be in danger of being formally suspended or recommended for expulsion.

If the child is frequently disciplined, it is advisable for the parent to send a written request for an IEP meeting to the student's teacher or special education supervisor for the purpose of discussing his/her behavior problems. In particular, request that an IEP meeting be held as soon as possible if:

- (a) The student has been assigned to an in-school discipline program on several occasions;
- (b) The student has spent time in an in-school suspension program;
- (c) The student's educational program was interrupted due to one or more suspensions; or
- (d) The student's inappropriate behavior is such that it requires an immediate review.

If the student consistently exhibits behavior problems in school, the parent should discuss this at each IEP meeting. A discussion of the student's behavior problems at an IEP meeting should include the following:

- (a) A review of the behavior in question and how it relates to the student's disability;

- (b) The need for a behavior management program; and
- (c) A review of any behavior management program previously used with the student. If a structured behavior management program is written into the student's IEP, such program cannot be considered a disciplinary action.

To prepare for an IEP meeting where the student's disruptive behavior is to be discussed, a parent should first become very familiar with the student's evaluation and current IEP. Look for information in the evaluation that indicates areas of problem behavior. For example, the evaluation may indicate that the student is impulsive and does not think before s/he acts, that s/he talks back to persons in authority, or that s/he exhibits poor control in frustrating situations.

If there is a behavior management program in place, a school psychologist, or other trained person (such as a social worker or behavior disorder specialist), should be in attendance at the meeting to review the program and to suggest revisions, if necessary. If there is no such plan or program for the student, request that a qualified person be present so that the IEP committee can discuss the type of program that should be developed.

Parents should try objective and honest with the committee. If the student is receiving frequent referrals for discipline, and if the parent believes the behavior is related to his/her disability, the discussion should focus on developing a program to address the behavior. Parents should try to steer the committee into a discussion of why the behavior is related to the child's disability. Parents should openly discuss problem areas with behavior at home, and ask how his/her program at school can be incorporated into his/her home life. Above all, parents should try not to become defensive, and to offer any cooperation and assistance in carrying out a behavioral program.

SECTION 504 AND DISCIPLINE

The Office of Civil Rights (OCR) has determined that Section 504 also applies where the period of suspension is long enough to constitute a change in placement (i.e., more than ten days in length) or where an expulsion has occurred. The OCR has also found in some cases, that a series of short suspensions may be the same as a change in placement. There are no firm guidelines on this, but if a student is repeatedly suspended from school, a re-evaluation may be necessary prior to any further suspensions. The OCR will also investigate the method used to determine whether the behavior is or is not related to the student's disability, such as whether the appropriate people participated in making the determination. Therefore, in addition to the right to dispute disciplinary action taken against a student in a due process hearing, through

appeals, or through the formal complaint process, a parent may also file a complaint with the OCR.

For §504 complaints, contact

Office of Civil Rights, Southern Division
U.S. Department of Education
999 Bryan Street, Ste. 1620
Dallas, TX 75201.
Phone: (214) 661-9600

Parents can also file an OCR complaint online at:

<http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>.

For more information on how to challenge school related decisions, see Advocacy Center's "Solving Problems" publication.

STUDENTS WHO ARE NOT CURRENTLY IN SPECIAL EDUCATION

A student who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violated any school rule or code of conduct may assert any of the protections discussed in this chapter *if* the school system had knowledge, as defined below, that the student was a student with a disability prior to the behavior that resulted in the disciplinary action.

The school system has knowledge if:

1. The parent of the student expressed in writing to administrative or supervisory personnel of the child's school system, or to the child's teacher, that the student was in need of special education and/or related services;
2. The parent of the student has requested an evaluation of the student; or
3. The teacher of the student, or other personnel of the school system has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

Exceptions:

A local education agency shall not be deemed to have knowledge that the child is a child with a disability if:

1. The parent of the child has refused to allow an evaluation for special education services;
2. The parent of the child has refused special education services; or
3. The child has been evaluated and it was determined that the child was not a child with a disability.

If no such knowledge is shown, the school system may follow the disciplinary procedures applicable to students without disabilities who engaged in similar behavior.

If a request is made for an evaluation in the course of such disciplinary measures, the school system must conduct that evaluation in an expedited manner. Until the evaluation is completed the student remains in the educational placement determined by school authorities. This placement must be of the nature to allow pupil appraisal personnel to complete the evaluation.

Bulletin 1706 provides that students who are in the process of being initially evaluated for special education have all the rights of those students currently in special education.

If a student is undergoing evaluations to determine if he/she is eligible for special education, it becomes very important to prevent him/her from being suspended or expelled, because evaluations must include observations of the student in a classroom setting. Parents should use the same sorts of advocacy efforts outlined above. However, because there will not be written evaluation reports with which to document the student's disability, the parent may have to rely upon anecdotal evidence, reports from the student's teachers, and any other evidence contained in the student's educational records that show the school system suspects him/her of having a disability that would influence or relate to the behavior in question.

At the time this booklet was published, Bulletin 1706 was being revised. The sections mentioned were correct at the time of publication of this booklet. However, when the revision of 1706 is complete, some of the section numbers may be different from those listed, and some content may have changed.

For more information concerning discipline, see Louisiana Bulletin 1706, § 519; also see 29 U.S.C. 1414 and 34 C.F.R. §300.530 - 300.537.