

# School Discipline of Students with Disabilities

A Self-Advocacy Fact Sheet from the Minnesota Disability Law Center

The Individuals with Disabilities Education Act (IDEA) is a federal law. The IDEA tells what the schools must do for students with disabilities. The information in this fact sheet is based on the most recent amendments to the IDEA, and to laws in the State of Minnesota. The information in this fact sheet is not legal advice. Every student is different, and the laws change all the time. Some of the laws may be different in other states.

\*Look at the end of this fact sheet for the meaning of words and abbreviations printed in bold & italics, such as ***IEP***.

---

Federal and state laws have many detailed rules to protect the rights of students with disabilities. The schools have to follow these rules when deciding how to handle behavior problems. This fact sheet should help you understand how to protect your child's rights. If your child is having behavior problems at school, you should get help as soon as possible.

## 1. How do we avoid trouble at school?

Before a student gets *special education services*, they have at least one *educational evaluation* (see Question #2). The evaluation was used to write the student's ***IEP (individual education program, often called an individual education plan)***. The evaluation and the IEP are tools to help the school understand a student's disability. A good IEP should help a student fit in at school and get along no matter what kind of disability s/he has.

## 2. What is an educational evaluation?

An educational evaluation is a group of tests and observations. A student must have one before s/he can get special education services. The results give information about the student and his/her disability. Some disabilities make it hard for a student to get along in school and follow the rules. The evaluation should help the ***IEP team*** understand connections between the student's disability and the student's behavior. This will help the team figure out positive ways to prevent or stop behavior problems.

If you think your child's evaluation is outdated, ask the school for a new one.

## 3. What is a *functional behavior assessment*?

Students with emotional behavior disorders often need extra help to get along at school. Their behavior problems make it harder for them to learn with the other students. A functional behavior assessment is a careful look at the student's behavior. The person doing the assessment looks to see what happens to set off behavior problems, and what the student gets out of misbehaving.

For example, a student might disrupt class every day around 10:30 a.m. Maybe the student cannot pay attention when s/he is hungry. When the student disrupts class, the whole class stops paying attention. Hunger is a “trigger” for a behavior problem. The functional behavior assessment identifies the student’s triggers.

The IEP team looks at the results of the functional behavior assessment. They come up with *positive interventions*. Positive interventions are not punishments. They are ways of helping the student learn to behave in a different way and avoid problems. In this case, the student might have a protein bar to eat around 10:15 a.m.

If your child is getting in trouble, ask the school to do a functional behavior assessment right away. Do not wait for the problem to get worse. If the school says no, ask again. Don’t take no for an answer.

#### **4. How should the school use the IEP to deal with behavior problems?**

If a student’s behavior makes it hard for her/him to learn with other students, the IEP team must deal with this. The IEP has to consider how the student learns best. It has to take the student’s disability into account, along with strengths and weaknesses. The IEP should have a plan to help the student learn new behaviors. If you want more information about IEPs, ask for our fact sheet entitled *IEPs for Students with Disabilities*.

The IEP has several parts for dealing with behavior problems.

##### **Present Level of Performance**

This part describes how the student deals with feelings and how s/he gets along with others. It tells how the student does in the classroom.

If the student is having trouble following rules, this part of the IEP describes the trouble. It should say what the student does right and what the student does wrong. It should describe all problem behavior carefully. This part should say how behavior keeps the student from learning, taking part in school activities, or getting along with other students.

The IEP should say if the student’s disability makes it hard to understand consequences. It should also say if his/her disability makes it hard to control behavior. If your child’s IEP is not clear about this, ask for it to be rewritten.

##### **Annual Goals and Short-Term Instructional Objectives**

The IEP team must use the evaluation and everything they know about the student to decide on behavior goals and objectives. They should choose goals and objectives that will help the student do better in the regular classroom. The focus should be on learning new skills, not on punishment.

### **Changes to the School Setting or to the Program**

The IEP form has a section for *adaptations*. Sometimes, changes in the classroom help a student to learn better behavior. Or, if problems happen at a certain time of day, the school can change the student's schedule. Those changes should be written in the IEP.

Whenever possible, it is best for the student to learn with other students. The school should make adaptations to help the student get along in the regular classroom.

### **Changes to the School Discipline Policy**

Sometimes a student cannot follow some school rules because of a disability. The school should work with you on this. The school discipline policy should be discussed at the first IEP meeting.

Get a copy of the school discipline policy before the first meeting. Ask if the school has a written policy about discipline of students with disabilities. If so, ask for a copy of that too. Get the copies a few days before the meeting so you have time to read everything.

The school should have a copy of all discipline policies at the IEP meeting. The IEP team should talk carefully about any trouble the student might have following rules. Some of the punishments in the school's policy might be bad for the student. The IEP team should use the results from all evaluations and tests. Everyone should work together to figure out how to help the student get along at school.

The IEP team can make changes to the policy based on the student's disability. For example, a student who uses a walker might move slowly from one class to another. The student's disability would make him/her late to class. The IEP could allow the student five extra minutes between classes.

The IEP can also make changes based on a cognitive (thinking or learning) disability. For example, the student might get in trouble in noisy, crowded hallways. The IEP team could say that the student will leave each class five minutes early. That way, the student can always have a quiet hall to move from one class to the next.

Any changes to the rules should be written in the student's IEP. The IEP should answer these questions:

- Which parts of the school discipline policy can the student follow?
- What will teachers or staff do if the student does not follow those parts of the policy?
- Which rules might the student have trouble with? If they don't have to follow a rule as it is written, what should they do instead? For example: "Student cannot get from one class to another in the two minutes between bells. Therefore, each teacher will release the student from class five minutes before the bell."

- If the student does not follow the changed rule, what will happen? For example, if the student is still late for class even though they had an extra five minutes, what will the teacher do?

### **Behavior intervention plan**

The IEP should have a very clear behavior intervention plan. This plan tells staff exactly what to do if they have a problem. For example, if the student waits in the hallway until all the other students come out and causes trouble in the hallway, what should teachers do? How do they stop the behavior? All teachers and staff will use the same plan. That way, the student knows what to expect.

The plan should:

- Use evaluation information to help the student learn new skills to get along at school.
- Say exactly what will happen when a student misbehaves. How will the problem behavior be stopped?
- Be very specific about how the school will measure the student's progress. Behavior goals, like all other learning goals, should be measured over time.
- Say what the IEP team will do with the data from the measurements. How will the team know if the student is learning?

## **5. What kinds of rules does the school have to follow if they want to punish my child?**

Minnesota law has different rules for different kinds of punishments.

### **Prohibited Procedures**

Some types of punishment can never be used to stop bad behavior. These are:

Corporal punishment – Hitting, spanking, or any kind of force that hurts the student physically or emotionally;

Making the student stand or sit in some position that is painful;

Using unpleasant sounds, lights, or smells to make a student stop doing something;

Taking away a student's *assistive technology (AT)* or any equipment the student needs, unless the student is breaking the equipment;

Electrical shock to the student's skin;

Blocking off a student's sight or hearing;

Taking away a regular meal, or water, or access to the bathroom.

### **Conditional procedures**

Conditional procedures can only be used with your permission, or in an emergency. If you give permission, then a conditional procedure can be written in the student's IEP. If the procedure is not in the IEP, then it can only be used in an emergency. Conditional procedures are:

Holding the student down, or stopping the student from moving;

Using anything that locks to hold the student in any way;

Time out for seclusion;

Short delay (less than 30 minutes) of a meal or water; and

Other types of punishment that are unpleasant or that take something away from the student.

A conditional procedure should not be the school's first choice of a way to deal with behavior problems. If the IEP includes a conditional procedure, it must also:

- Name the target behavior and say how serious it is and how often it happens;
- Identify at least two positive interventions and say how effective they are.

### **Time Out**

State law recognizes two kinds of time out. The rules are different for the two kinds.

#### Time out for exclusion

A student is taken out of the regular classroom or activity for less than 30 minutes. This is not a conditional procedure. The school can put this type of punishment in the student's IEP and use it anytime.

#### Time out for seclusion

A student is put in a special room where s/he is alone and separated from everyone else. This is a conditional procedure. It can only be used in an emergency or if the IEP has a very detailed plan about when and how to use it. The state has safety laws about seclusion rooms. The school has to follow those laws.

### **Parental Consent**

The school cannot put conditional procedures in your student's IEP unless you say it is okay. If you give permission and then change your mind, tell the school. They have to stop using that punishment right away. The school has to tell you in writing that they understand they can no longer use that punishment. They will send a paper for you to sign. Once you take away consent, the school has to change the IEP. They should contact you within three school days to set up an IEP

meeting. The team will talk about a different way to deal with your child's behavior.

## **6. What are the rules for In-School Suspensions (ISS)?**

The school can pull a student out of the classroom and send him/her to a detention room during school hours. This is called in-school suspension. The law allows in-school suspensions for students with disabilities.

During an in-school suspension, the school must continue to follow the student's IEP. The student must continue to get the same services. If these things change, then it is a *change in placement*. The school cannot change a student's placement without agreement from the IEP team.

## **7. What can the school do in an emergency?**

An emergency is any situation where a student might hurt him/herself or someone else, or do serious damage to property. The school staff must do something right away so nobody gets hurt. A teacher can use reasonable force to protect him/herself and other students. They should do the "least intrusive intervention." This means they should use as little force as possible to stop the student's behavior.

For example, if the student kicks the teacher, the teacher may need to take the student out of the classroom. If the student stops kicking, the emergency is over. If the student stops kicking but the teacher still puts the student in a seclusion room for the rest of the day, seclusion was not the least intrusive intervention.

## **8. What happens if my child's behavior caused an emergency?**

If the school uses a conditional procedure because of an emergency, they must let you know right away. You can ask for an IEP meeting to talk about it. If the school uses any emergency intervention twice in a month, they must call an IEP meeting whether you ask for it or not. The team must meet as soon as possible, no later than five days after the emergency. At the meeting, the IEP team needs to ask these questions:

- Is the IEP working? Sometimes the IEP is fine, but school staff isn't following it.
- Does the IEP team understand the student's behavior problems? Maybe more testing is needed.
- Does the IEP need to be changed?

The school can use conditional procedures until the IEP team meets, but only if needed to keep people from getting hurt.

## 9. What if there are a lot of emergencies?

The IEP should prevent emergencies. If emergencies happen often, the school may not be following the IEP. Or maybe the IEP is not a good one. If a student starts some new problem behavior that gets in the way of meeting IEP goals, that is another sign that something is wrong.

## 10. Can the school kick my child out?

Before the IDEA, many children with disabilities were kicked out of school. The IDEA protects these students. Now, federal and state laws have strict rules about removing a student with a disability from school. The rest of this fact sheet is about rules for removing students with disabilities from school.

### **Manifestation Determination Review**

The school cannot exclude or expel a student for any behavior that is manifestation of a disability. “Manifestation” means that the behavior was directly related to the disability. If the school wants to kick a student out of school, they must first have a *manifestation determination review*. A manifestation determination review is a special part of an IEP team meeting. The IEP team must consider each of these questions:

- Is the student’s IEP right?
- Is the student’s school placement a good one?
- Was the school following the IEP in every way?
- Did the student’s disability get in the way of understanding why the behavior is bad, or what would happen if s/he did it?
- Did the student have trouble controlling his/her behavior because of the disability?

In answering these questions, the team should look at everything they know about the student. They must listen to what the parents say about the student’s behavior. They must listen to the student’s side of the story. They need to look very carefully at all test results, the IEP, and the placement. This way, the IEP team can decide if the student’s disability played a part in the behavior.

### **Pupil Fair Dismissal Act**

The Pupil Fair Dismissal Act is a state law that protects all students, with or without disabilities. The Act defines the different ways a school can remove a student. You should understand what each term means.

**Dismiss** – Denying the current education program to a student. Excluding, expelling and suspending are ways of dismissing a student. Removing a student from class is not. In-school suspension is not a dismissal, as long as the student still gets the same services.

**Suspend** – Removing the student from school for up to ten school days. If a student is suspended for more than five days, the school must tell the school superintendent why they are giving the student such a long suspension.

**Exclude** – Not letting a student enroll in the school. The school can exclude a student for up to one full school year.

**Expel** – Not letting an enrolled student come to school. If the student is expelled, s/he can be kept out of school for up to 12 months.

The IEP team decides at the manifestation determination review if the problem behavior was related to the student’s disability. The school **cannot exclude or expel** a student for any behavior related to the student’s disability. They may suspend the student for a short time.

If the behavior was **not** related to the disability, then the school can treat your child like any other student. In either case, the school still must follow the rules in the Pupil Fair Dismissal Act.

## **11. If the school wants to suspend my child, what rules do they have to follow?**

The school cannot suspend a student without having an informal administrative conference first. The only exception is in an emergency.

At the administrative conference, a school administrator must do all of these things:

- Tell the student why s/he is being suspended;
- Explain what proof the school has of the student’s problem behavior;
- Give the student a chance to tell his/her side of the story.
- Before the suspension starts, the administrator must give the student:
  - Written reason for the suspension;
  - A statement of the facts;
  - A plan that tells what the student needs to do before the student can come back to school; and
  - A copy of the Pupil Fair Dismissal Act.

The school must mail a copy of all documents connected with the suspension to the parents within 48 hours. They have to tell a parent about the suspension (in person or by phone) as soon as possible.

If the suspension lasts for more than five days in a row, the school must provide *alternative educational services*. The alternative services may include tutoring or instruction at home.

If a suspension lasts for five or more days in a row, or if the student has been suspended for more than 10 days in a school year, then the school must have an IEP meeting. The meeting must be within 10 school days of the suspension. At the meeting, the IEP team must have a manifestation determination review.

## **12. Can the school suspend my child as often as they want?**

Sometimes, the school will suspend a student for a few days. They can suspend your child for three days one month, and again the next month for three days. Because each suspension is less than five days, they don't have to call an IEP meeting or have a manifestation determination review unless the parents ask for one.

If these suspensions add up to more than 10 days in one school year, it is a change of placement. On the eleventh day that the student is out of school for punishment, the school must:

- Call an IEP meeting, which includes a manifestation determination review (see Question #10);
- Come up with a plan to do a functional behavior assessment (see Question #3) within 10 days; and
- Make a new behavior intervention plan (see Question #4), using what they learn in the functional behavior assessment.

You should watch for a *pattern of exclusion*. Sometimes a school will use a number of short suspensions to keep a student out of school. This is not legal. Pay attention to how many times the school suspends your child, how long each suspension lasts, and how close together the suspensions are over time.

If a student has so much trouble getting along that s/he keeps getting suspended, then something is wrong with the IEP. The school is not doing its job of helping the student to learn. This is a sure sign that the student needs a new behavior intervention plan.

If the IEP team decides that the student is getting into trouble because of a disability, then they cannot suspend him/her again. If the school district wants the student out of the school, they have to request a hearing. They have to ask the hearing officer to order an *alternative education placement* (see Question #13). They can also go to court and ask for a *Honig injunction* (see Question #14).

### **13. What is an alternative education placement?**

The school might ask the Minnesota Department of Education for permission to take a student out of the school. The Department would assign a hearing officer to the case. The hearing officer can decide to move the student to another setting. That setting is called an alternative education placement. The student will not be moved unless:

- The school can show that the student will harm him/herself or others if s/he stays in school;
- The hearing officer looks at the student's current placement and decides it is no longer appropriate;
- The hearing officer decides that the school has made reasonable efforts to avoid risk in the student's current placement; and
- The alternative placement is one where the student can get the services s/he needs to learn. The alternative placement must be able to follow the IEP. The new placement must be able to deal with the student's behavior so the same thing doesn't happen again.

The hearing officer should look at the student's functional behavior assessment. S/he should check to see if the student's behavior intervention plan works. Everyone needs to take a good look at the IEP. Probably, the parts that deal with behavior are not right for this student.

### **14. *Honig* Injunction**

The *Honig* Injunction is based a U.S. Supreme Court case, *Honig v. Doe*. In that case, the school wanted to expel a student. They did not want the student in school while the decision was being made.

If a student is out of school for more than 10 days, it is a change in placement. The school cannot change the student's placement unless the IEP team agrees. So the school had to get a court order to remove the student from school.

Because of that case, a school may get a court order to kick a student out of school. The order is called a *Honig* injunction. To get one, the school has to prove that if the student stays where s/he is, someone is likely to get hurt. They have to show that keeping the student out is the only way to protect everyone.

### **15. What about drugs and weapons?**

Rules about drugs and weapons are strict. If a student breaks them, the school can temporarily move the student to an alternative education placement without needing to get an order from a hearing

officer (see Question #13). They can keep the student there for the same amount of time that a non-disabled student would be punished, but not more than 45 days.

The school can move the student if the student does one of these things:

- Brings a weapon to school or a school activity;
- Has or uses illegal drugs at school or a school activity; or
- Sells or is involved in the sale of a controlled substance at school or at a school activity.

The IEP team must choose the alternative education placement. It must be a setting where the student can continue to work toward IEP goals, and to get all of the services in the IEP. The setting must include services to help the student deal with the behavior that got him/her in trouble in the first place. You can appeal the new placement. If you do, the school must give you an *expedited hearing*. This means that the hearing will happen quickly.

## **16. What if I don't agree with what the school does?**

If you don't agree with the school, get help as soon as possible. The first time the school says they have a problem with your child's behavior, call the Minnesota Disability Law Center. We may have an *advocate* who can help you. Even if we can't give you an advocate, we can give you advice about your case.

Meanwhile, it is very important to keep good records. Save all notices from the school. Make copies of anything you send to the school and keep your copies. Go to all meetings and answer all notices. Keep all of your paperwork together.

If you talk to someone from the school on the phone, keep a phone log. Write down the day and time of the call, and the name and title of the person you talked to. Write down what was said. Keep this with your other papers. Whether or not you have an advocate, these records will help your case.

You are your child's best advocate. By learning about the laws, you can protect your child's right to an education.

### **\*\*\* Definitions \*\*\***

*Adaptations* – Changes to school rules or expectations that a student with a disability might need in order to learn in the regular classroom.

*Advocate* – Someone who is on your side and will help you understand the law and fight for your rights. An advocate can be a lawyer or anyone else who understands your problem and can help you.

**Alternative education services** – Special options for teaching that the school can use when the student cannot be in school.

**Alternative education placement** – A different school setting for a child who cannot get along in the school s/he is in.

**Assistive technology (AT)** – AT can be used to mean both AT devices and AT services.

**Assistive technology devices** – Equipment or tools that can help a person with a disability to work, learn, or move through their life more easily.

**Assistive technology services** – Help or instruction to find, make, repair, or learn to use an AT device.

**Behavior intervention plan** – A plan to deal with problem behavior. The plan should be specific, and should include a way to measure the student’s progress.

**Change of placement** – Moving a student to a different school setting than the one written in the IEP.

**Conditional procedure** – A type of punishment that can be used only in an emergency, or with direct permission from a parent or guardian.

**Corporal punishment** – Hitting, spanking, or any physical force that causes bodily or emotional harm.

**Educational evaluation** – A series of tests to find out how a student’s disability affects their ability to learn, and to figure out what the student needs to get a good education.

**Expedited hearing** – A hearing that happens more quickly than usual, to deal with an immediate problem.

**Functional behavior assessment** – A test that looks at a student’s behavior to figure out what types of things are causing problems.

**Honig injunction** – A court order to remove a student from school because the student is likely to cause harm.

**IEP team** – A group of people (including the parents and special education teacher) who are involved in a student’s education. This team decides on an education plan for the student, and writes the IEP document.

**Individual education program (IEP - often called an individual education plan)** – IEP can mean either the IEP document or the IEP meeting. The document, which describes the educational plan for a student with a disability, is written at the meeting.

**Manifestation determination review** – When a student misbehaves, the IEP team looks at everything they know about the student to decide if the student’s disability affected the behavior.

**Pattern of exclusion** – Suspending a student from school over and over, so that it results in a pattern of the student being out of school.

**Positive intervention** – A positive way of helping a student learn to change problem behaviors.

**Present level of educational performance (PLEP)** – A description of a student with a disability, which tells how the student is doing in school at the present time. The PLEP should give detailed information about the student’s disability and the student’s strengths.

**Special education services** – Special planning for the extra help or equipment a student with a disability needs to get an education.

This fact sheet may be reproduced in its entirety, with credit to the Minnesota Disability Law Center. The legal content of this fact sheet was updated in March 2000, and it was re-written by MDLC for the Minnesota Governor’s Council on Developmental Disabilities in June 2004.

**Contact Information:**

**Minnesota Disability Law Center (MDLC)**

430 First Ave. North, Suite 300

Minneapolis, MN 55401-1780

Web Address: [www.mndlc.org](http://www.mndlc.org)

New client intake: 612-334-5970

Toll Free: 1-800-292-4150

TTY: 612-332-4668

Preparation of this Fact Sheet was financed in part by grant number 90DNO133 from the US Department of Health and Human Services, Administration on Developmental Disabilities, Projects of National Significance, under provisions of Public Law 106-402. The content of this Fact Sheet does not necessarily reflect the position of policy of the Administration on Developmental Disabilities or the Minnesota Department of Administration.