



Protections for Students Not Yet Identified as Eligible for Special Education Services

Is your child facing school disciplinary action? Do you think your child has a disability? If so, there are certain things you need to know to protect your child's rights. The Individuals with Disabilities Education Act 2004 (IDEA) is the federal law requiring schools to give special education services to eligible children with disabilities.

In certain circumstances, this law restricts how a child with a disability can be disciplined. These restrictions on discipline may apply even if your child was not in special education at the time of the behavior incident. This is because the school has a duty to provide special education to all children with disabilities who need it. If your child needs special education and the school "knew" it, the school must follow special education rules about discipline.

I think my son has a disability and he is facing punishment at school. What disciplinary protections does he have?

Disciplinary protections available under IDEA include:

- Before expelling or suspending a child with a disability for more than 10 days, the school must hold a special meeting to determine if the child's actions were related to his disability. This is known as a manifestation determination meeting.
- If the disciplinary violation is determined to be related to the child's disability, the school cannot expel the child or suspend the child beyond 10 days.
- If the disciplinary violation was not related to the child's disability, the school may expel or suspend the child for more than 10 school days in a school year; however, the child is entitled to receive educational services during the expulsion or all future suspensions.

(Please see Disability Rights South Carolina's fact sheets, "Discipline of Students with Disabilities" and "Expulsion and Manifestation Meeting" for more detail.)

So, if my child does not currently have an Individualized Education Program ("IEP"), how do I know if my child gets these special disciplinary protections?

Your child will get these protections if the school "knew" there was a disability that makes him/her eligible for special education. The school must know about the disability prior to the disciplinary violation. A school is considered to "know" about a disability if:

1. The parent(s) wrote to the child's teacher or to supervisory or administrative personnel of the school saying the parent thinks the child needs special education services;
2. The parent(s) requested an evaluation to find out if the child has a disability; or
3. The child's teacher(s), or other school personnel, have expressed specific concerns about the child's pattern of behavior to the director of special education or to other supervisory personnel.

Generally, a child will get special education discipline protections if the facts show the school knew about the disability in one of the three ways noted above. However, there are two exceptions:

- First, a child will not get special protection if the parent has not allowed the child to be evaluated or if the parent has refused special education services for the child.
- Second, a child will not get special protection if the school already evaluated him/her and determined special education was not needed.

A child in each of these situations can receive the same punishment as a student without disabilities.

I think my child has a disability, but after reading this fact sheet I don't think the school "knew" about it. Is there anything I can do?

Yes. You can immediately ask the school to evaluate your child. Since your child is involved in a disciplinary matter, the school must conduct the evaluation quickly, also known as an "expedited evaluation." During the evaluation process, your child must remain in the placement chosen by the school (i.e. suspension, expulsion) without educational services.

Attached to this fact sheet is a sample letter. You may want to send a letter like this to the school if your child is facing punishment. You can change this letter to fit your situation. The letter says the school knew your child had a disability. It asks that your child be allowed to return to school. The letter also asks the school to evaluate your child if the school won't let him/her come back. If you don't think the school "knew" about the disability, then leave out that part of the sample letter

when writing your letter and simply ask that the school conduct a special education evaluation. If the evaluation shows your child *is* eligible for special education, he/she will be entitled to start special education services.

Sources for the information in this fact sheet:

Individuals with Disabilities Education Act 2004, 20 USC § 1415(k)
Individuals with Disabilities Education Act of 2004, Regulation §300.534,
SC State Board of Education Regulation 43-243(V.)(B)

Sample Letter

[Date]

Special Education Director
School District
Address

RE: [Student's name]

Dear Special Education Director:

I am writing on behalf of my child, [student's name], to request that he/she receive the procedural safeguards for students eligible for special education services. He/she is a student at [school's Name] School. I believe the school district knew my child has a disability prior to the alleged disciplinary infraction because [explain why school district should have known that the student has a disability, for example: I wrote my child's teacher letting her know he/she needs special education, or, my child's teacher told me she told the principal my child needed to be evaluated for special education.]

For this reason, I believe that [student's name] qualifies for special education services; that the district had knowledge of his disability; and that pursuant to the Individuals with Disabilities Education Act, Section 20 U.S.C. 1415(k)(5), [he or she] is entitled to the procedural protections of a special education student. Accordingly, I request that [student's name] return to [school's name].

In addition, I am asserting [student's name]'s right to an expedited special education evaluation under Section 20 U.S.C. 1415(k)(5)(D) of the IDEA, which provides for such an evaluation when the request is made during disciplinary procedures.

Sincerely,
[Parent's signature]
[Parent's typed or printed name]
[Parent's address and phone number(s)]

This publication provides legal information, but is not intended to be legal advice. As the law may change, please contact Disability Rights South Carolina for updates. Please let us know if you would like this information in an alternative format.

The Protection and Advocacy System for South Carolina. This publication was made possible by funding, in part, by SAMHSA. These contents are solely the responsibility of the grantee and do not necessarily represent the official views of SAMHSA.

Last updated: 2020

Disability Rights South Carolina

 1-866-275-7273

 1-866-232-4525

 www.disabilityrightssc.org

 info@disabilityrightssc.org