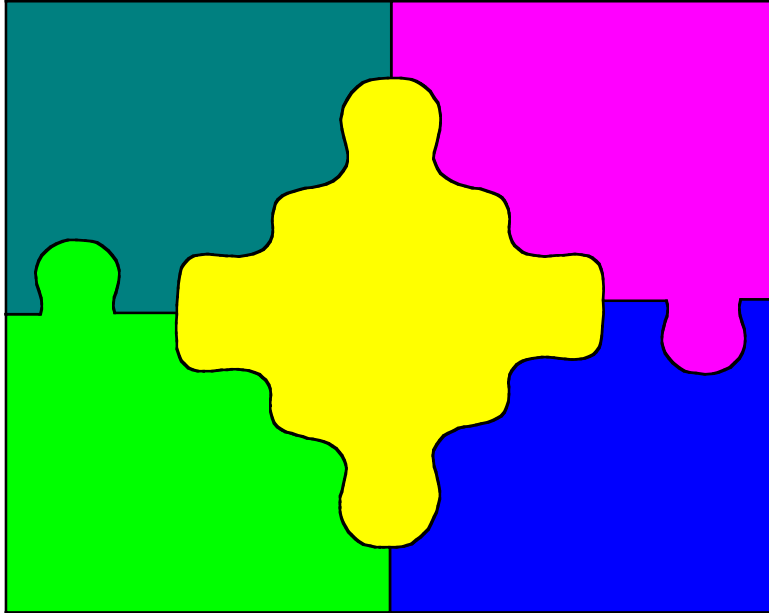


# ***THE DISCIPLINE PROCESS***



REVISED BY  
**MARYLAND DISABILITY LAW CENTER**  
April, 2001

ORIGINAL BY  
**ADVOCATES  
FOR CHILDREN AND YOUTH**  
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## School House Legal Services

School House Legal Services (SHLS) is now a joint project of the Maryland Disability Law Center and the Legal Aid Bureau. SHLS provides information to students and their families when a student is experiencing discipline problems in school. SHLS also recruits and trains attorneys to provide free legal representation to students who are from low income families. In certain cases, SHLS may provide direct representation to students or refer families to a pro bono or volunteer attorney. SHLS used to be part of Advocates for Children and Youth.

Services for SHLS are currently divided according to student placement in either regular or special education, as noted below.

### Special Education:

Maryland Disability Law Center  
1800 N. Charles Street  
Suite 400  
Baltimore, MD 21201  
(410) 727-6352  
(800) 233-7201

### Regular Education:

Legal Aid Bureau  
500 East Lexington Street  
Baltimore, MD 21202  
(410) 539-5340  
(800) 999-8904

*Funding for this handbook was originally provided by  
Advocates for Children and Youth, Inc.  
and  
the Maryland Legal Services Corporation (MLSC)*

Please feel free to share this handbook with other parents and  
educators.

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# **THE DISCIPLINARY PROCESS**

## **ALL STUDENTS**

### **INTRODUCTION**

The purpose of this handbook is to explain the procedures the school system must follow if they exclude, suspend or expel your child/client from school because of misbehavior. All schools are required to follow these general requirements. It is also hoped that this handbook will assist you in preparing for meetings and conferences with the school, and teach you how to most effectively advocate for your child/client.

The law defines a disciplinary action by the amount of time the student is removed from school. There are three basic types of school exclusions: 1) short-term suspensions, 2) extended suspensions (long-term suspensions), and 3) expulsions. Short-term suspensions are under 10 school days, extended suspensions are over 10 school days, and expulsion can be from 10 school days to one year to permanent removal from the school system. **The first day of removal from school is counted as the first day of the suspension. If the student is excluded from education programming for any part of the day, that is the first day.**

Note: Each county (and Baltimore City) individually decides what behavior will result in short-term, extended suspension or expulsion. Also, each determines the length of a suspension or expulsion based on its own guidelines/policies. Example: for drinking on school property, a student in one county may be referred to intensive counseling and be suspended for 3 days. In a neighboring county, s/he would be suspended for 2 semesters.

In some places in this handbook, you will see references to various law or regulations. These are listed to assist you and advocates working with you.

### **DEFINITIONS**

**COMAR:** Code of Maryland Regulations. Regulations developed by the State to regulate administrative procedures. It is found in some public libraries. **See** COMAR 13A.08.01.1

**Designee:** Refers to a person the school system employs to determine whether a child should be suspended over 10 days or be recommended for expulsion. Note: the law requires that the Superintendent of Schools review every expulsion recommendation and make an independent decision. In the vast majority of cases, the Superintendent follows the recommendation of the designee.

**IEP:** A special education term meaning Individualized Education Program.

**Md. Annotated Code, Education Article:** Maryland law on suspensions and expulsions. **See** the Education Article, Section 7-305, found in many public libraries.

**Parent:** Used generically to refer to any adult who has legal authority over a child and includes guardians, legal custodians and parents.

**Principal:** Refers to the principal or any other person s/he designates to investigate and resolve a discipline issue.

**School Board:** Each of Maryland's 24 (and Baltimore City) counties has its own school board. The method of appointment/election to the School Board varies from county to county.

## **A. SHORT-TERM SUSPENSION**

The shortest and most common type of disciplinary action is "Short-term Suspension." Short-term suspension means "the removal for disciplinary reasons of a student from school for a period of not more than ten (10) days by a school principal." See COMAR 13A.08.01.11.

The principal has the authority to remove a student for misbehavior for a specified time (not to exceed 10 school days) at his/her discretion. There is no formal right to appeal the principal's decision. However, you may write a letter to his/her supervisor or the members of the School Board asking for a review of the principal's decision. There are no formal procedures for this review and the law requires no response.

The principal/vice principal must abide by the following procedures if they wish to place a student on short-term suspension:

### **1) Student-Principal Conference**

The first thing that happens is the principal or vice principal meets with the student and tells him/her the reason(s) s/he is being suspended. This usually occurs on the day of the incident. Exception: when the investigation of the incident takes longer than a day and the student stayed in school during the investigation. In this instance, the conference should occur when the investigation is completed.

- If the student denies the charges/allegations, the principal/vice principal must provide an explanation of the supporting evidence and allow the student an opportunity to present his/her side of the story. Often the principal/vice principal asks the student to write a statement. This statement will be used as evidence against the student at the parent conference and other suspension hearings.
- Statements made by the student to school personnel may not be used in criminal or delinquency proceedings unless the child has been informed of his/her right to remain silent, and the right to request the presence of his/her parent/guardian. However, statements can and will be used against him/her in suspension/expulsion administrative procedures, even if the parent/guardian was never called or informed that the child was being questioned.

- A letter is then given to the student to take to the parent stating that the child has been suspended, the reason, and asking the parent to either call for a meeting time with the principal, or assigning a meeting time. A copy of this letter is also mailed to the parent(s).
- The student loses the right to be on school property and to attend school-related or school-sponsored activities for the duration of the suspension.

Exception: A student may be removed from school immediately (without a conference) if s/he poses a continuing danger to persons or property or an ongoing threat of disruption.

## **2) Searching and Questioning of Students**

Searches: School personnel may search a student's locker, backpack and personal belongings, if they have a reasonable belief that it contains weapons, drugs or other contraband. Police officers may search students and lockers only upon the authority of a search warrant, unless the search is essential to prevent imminent danger to the safety of the student, school personnel or school property. (See COMAR 13A.08.01.14)

Questioning by Police: The police may not question students on school premises, unless it is in connection with a crime committed on school grounds or one that would endanger the lives or safety of students or school personnel. A school official must be present during the questioning.

Questioning by Social Services: The local department of social services or a police officer may question a student on school property in an investigation of suspected child neglect or child abuse.

## **3. Parent-Student-Principal Conference**

The school principal must make every effort to schedule a conference with the student's parent at the earliest possible time following a short-term suspension. Usually the conference occurs within 3-5 days.

A student on short-term suspension must be returned to the educational program by the eleventh school day following the first day of the removal, unless the principal refers the child for extended suspension or expulsion. Exception: the parent requests a delay or unreasonably delays the parent-student-principal conference.

In addition to parent-student-principal conference procedures, state policy mandates that a written record be kept of the reason for the short-term suspension and the substance of the conference.

The principal may reinstate any student who is placed on short-term suspension at any time prior to the maximum period of a short-term suspension (10 school days) at the principal's discretion.

At the parent-student-principal conference, the incident will again be discussed and reviewed with the student and parent. The student is permitted to present his/her side of the story and any supporting evidence. Again, all statements made by the parent and student may, and probably will, be used at later administrative suspension meetings.

#### **4) Preparation for the Conference**

It is very important to prepare for the parent-student-principal conference. Because of the peculiar way in which the law is written, unless your child is being proposed for suspension for a very minor offense, s/he **may be proposed for extended suspension or expulsion, even if your letter only says “short-term suspension.”**

To prepare for the conference, you should take with you any and all supporting evidence of why your child should not be suspended and/or evidence that s/he did not do the behavior s/he is accused of doing. This can and should include statements from witnesses, therapists, clergy, teachers and other supportive individuals.

### **B. LONG-TERM SUSPENSIONS**

#### **1) Preparation – School System**

Another type of disciplinary action is the long-term suspension, now called the extended suspension. Extended suspension is “the removal for disciplinary reasons of a student from school for a period of more than ten (10) school days.” (See COMAR 13A.08.01.11)

- First, the principal places the student on short-term suspension for 10 school days and follows the procedure in Section A above.
- If, after the parent-student-principal conference, the principal decides a longer suspension is warranted or required by school policy, s/he contacts the Superintendent’s Designee with the suspension allegations and a recommendation for further action. In some counties, the principal does not have discretion to return a child to school for certain offenses. Example: gun, weapon, teacher assault, drugs, alcohol, etc. Note: Each county defines these offenses in its own way. You should ask for the county policy on the particular offense to decide whether the student’s alleged behavior meets the definition.

The Designee is employed by the school system to review extended suspension and expulsion recommendations and to decide: 1) if the student violated school policy and 2) if so, whether the student will be suspended and for how long.

Once the Designee receives the principal’s recommendation, s/he should:

- Arrange for a conference with student and parent(s) within ten (10) school days of the first day of removal.

- Notify the parent(s) and student in writing of the time and place of the conference, the nature of the charge, and the policy, rule or regulation violated.
- Inform the parent(s) and the student, that they may present witnesses on the student's behalf and have a representative or attorney present.
- Note: If the Designee believes the student should be expelled, s/he sends his/her findings to the Superintendent. By law, only the Superintendent can expel a student. In 99% of cases, the Superintendent follows the recommendation of the Designee.

## 2) Preparation – Parent

**Parents please note: If your child is referred to the Designee for a conference, chances are very good that s/he is being recommended for extended suspension/expulsion. This means your child will be out of school for a month, semester or longer. You must prepare for the meeting with the Designee.**

Prior to the meeting, you can request from the Designee: 1) copies of all documentation that will be presented at the meeting, 2) copies of all school policies that apply to suspension procedures, and 3) copies of all school policies about the particular offense. Example: assault, alcohol, cigarette or drug violations.

- **Preparation for the conference**: Obtain statements from witnesses, teachers, mental health workers, employers (of the student) attesting to either the facts of the incident or the student's good character. Take copies of these statements to the conference. Keep a copy for your records.

## 3) Designee's conference

At the conference, the Designee will:

- Review all the evidence, including any paperwork and any witnesses from the school. Often the school only sends paperwork to the conference. The parent/student may present any relevant evidence to the Designee, including letters from other students or teachers who observed the incident and letters of recommendation from community, religious or mental health workers. The parent may also bring witnesses to the conference to testify on the student's behalf.
- Decide, after presentation of all the evidence, whether an extended suspension or expulsion is warranted and the length of time the student will be out of school. Sometimes the Designee will decide that the student must participate in counseling, anger management courses, or the like, prior to returning to school. The Designee should tell the parent and student of his/her decision, either in writing or orally, within 10 school days of the removal.

- Advise the parent of his/her right to appeal. If the parent wants to appeal the Designee's decision, s/he must do so within 10 days of receiving the decision.
- Please note: For children previously found eligible for special education services or 504 services, the Designee will not hear evidence about whether or not the behavior is related to the student's disability. This is a matter for the IEP team. See page \_\_ for further discussion. If you have not had a causal IEP team meeting, you should inform the Designee.

### C. EXPULSIONS

Although a long-term suspension is used in the hope that further disciplinary action can be averted, students who present on-going problems, continued disruption, or have seriously affected school safety are often expelled.

Expulsion is defined as "at a minimum, the removal of the student from the student's regular school program and may be further defined by a local board of education." (See COMAR 13A.08.01.11.B(3))

In addition to the procedures described above for suspensions, special procedures are required for expelled students. Specifically, the Superintendent has to review each expulsion recommendation by a Designee to determine if expulsion is appropriate. **A decision to expel a student may only be made by the Superintendent.** Upon determining that a student should be expelled, the Superintendent sends the student and his/her parent(s) a written statement of the reason(s) for the expulsion, their right to an appeal, and their rights at the appeal hearing.

The difference between suspensions and expulsions is unclear. However, in most counties, expulsion results in the student being barred from school for a longer time period. It can also mean that the student will be removed from school rolls and be ineligible for alternative education. Talk with the Designee about the difference between suspension and expulsion in your particular county.

A Superintendent may deny attendance to any student who is currently expelled from another school system for a length of time equal to the expulsion. This rule does not apply to a student who is suspended. (See Md. Annotated Code, Education article 7-305.)

### D. APPEALS TO THE SCHOOL BOARD

To appeal, write a letter to your local school board or to the person who held the "designee's conference" within 10 days of the suspension/expulsion determination. Keep a copy of all letters to the school.

- The Board usually hears your appeal within 30 days, but there is no legal requirement to do so.

- Unless a public hearing is requested, the school board holds a private hearing. A cassette tape is made and copies are available upon request.
- The Board hears all the evidence again. This process is very formal and legalistic. There are opening statements, direct and cross-examination and closing arguments. All evidence, written materials and testimony is heard. The principal and Designee often testify about their findings, and what was told to him/her by the student and parent(s) at the conference. An attorney will represent the school system and the Board will have an attorney present to advise it.
- You may ask the Board to summons school personnel to the hearing. The Board does not have the authority to summons students or other non-school personnel. You should do this as soon as possible, at least a week prior to the hearing.
- The attorney for the school system should send you, upon request, a copy of all documents s/he intends to use at the hearing and a list of all those people s/he will call as a witness.
- Your child should attend, but does not need to testify. If s/he does testify, s/he will be cross-examined by the attorney for the school system.
- A decision is given at the hearing or by the following day. Findings and conclusions are based solely on evidence produced at the hearing. A written decision is sent to each party.
- Note: Baltimore City uses a different appeal system. Suspension appeals are heard by a principal or vice principal from another school. Expulsion appeals are heard by a Board-designated hearing officer, a specially trained lawyer, who then makes a recommendation to the full Board.
- If you lost your appeal, you have the right to appeal to the State Board of Education (appeal must be taken within 30 days). You can also, at the same time, appeal to the Circuit Court for your county.

#### **E. ALTERNATIVE EDUCATION & RETURNING TO SCHOOL**

For students suspended for less than 10 school days, the school must provide home work and a reasonable amount of time to make up missed work and tests.

School systems are required to provide alternative education for students suspended for more than ten (10) school days or have been expelled, if they are under 16 years of age.

Sometimes this is an alternative school and sometimes it is home tutoring. High school students, over 16 years old, are usually referred to alternative adult education programs or GED programs. Although you do not “choose” what school your child will attend, you should discuss with the pupil personnel worker different alternatives and the benefits of the alternatives for your child.

The principal has the responsibility, in consultation with the school staff, for arranging an appropriate educational program for a student after the period of suspension or expulsion has expired. The educational plan may include various follow-up activities for the student to be more successful, counseling and/or tutoring, etc.

#### **F. REFERRAL TO JUVENILE JUSTICE**

For many offenses that occur on school property, the school is required to notify the police. Your child may then receive a notice to come to an intake interview with a Juvenile Justice worker. Although it is very important for you and your child to appear for the interview, it is not Court.

At the interview, the worker will review the incident, discuss what you, as the parent, have done to assist the child to change his/her behavior, what the child has done to change his/her behavior, and the child's record. Based on this information, the worker may recommend community service or that the child be prosecuted. If your child denies the charges, s/he should not agreed to community service, because the incident becomes part of the Juvenile Justice record, and could have a negative impact, if the child is ever arrested again.

#### **G. TIMELINES**

##### **Day 1-3: Meeting Between Principal and Student**

A meeting with the student is held to review the "incident." The student is given a suspension notice and a copy is mailed to the parent. The student loses the right to be on school property.

##### **Day 3-5: Meeting Between Principal, Parent and Student**

Principal, vice principal or Designee meets with the parent within 3 to 5 school days after the removal. The principal reviews the "incident" and decides whether to propose an extended suspension.

The written report is sent/faxed to the Superintendent's Designee.

The Designee notifies the parent, the student and the school of the time, date and place of the conference.

##### **Day 10: Conference with Designee**

The conference must be conducted within ten (10) days of the first day of removal. The conference addresses the nature of the charge, the evidence, the witnesses and the basis for the suspension. The evidence may be either written or oral.

The Designee issues a decision within ten (10) days of removal. The decision should include the length of the suspension and the recommended steps to be taken prior to the student returning to school.

The parents and the student are informed in writing of the right to appeal a recommendation to suspend.

If no decision is reached, or if a conference is not conducted within 10 school days of removal, the suspension is rescinded and the student returns to school. Exception: delay caused by the student or his/her parent(s).

### **Day 20: Appeal by Parent**

The appeal must be received by the tenth day after the date on which the parent is notified of the suspension.

## **SPECIAL EDUCATION & 504 STUDENTS**

### **OVERVIEW**

State law requires that schools provide an education to all students and may not discriminate against students with disabilities. This means the school may not change the placement of a student with a disability for behavior that is related to his/her disability. (Exception: short-term suspension, placement in an interim alternative setting for weapon/drug violations or by an administrative law judge who decides the child is “substantially likely to injure themselves or others.”)

If a child is already identified as eligible for special education services **or** 504 accommodations and the school proposes to suspend him/her for longer than 10 days or has already suspended the child for more than 10 cumulative days during one school year, the school must hold a **CAUSAL IEP TEAM MEETING**. **The causal IEP team must meet within 10 business days of the first day of removal.**

The causal IEP team must determine if there is a relationship between the child’s disability and the behavior leading to the suspension. If the team decides the behavior is related to the student’s disability, the student must be immediately returned to school and the suspension removed from his/her record. (**See exceptions below**: guns, illegal drugs or decision by administrative law judge.)

If the team decides the student’s behavior is not related to the child’s disability, the process described on pages 1 to 8 for regular education students is followed. However, during any term of exclusion that exceeds 10 days, the student must be provided with the services required by the Individual Education Plan (IEP). (**See** the section on placement below.)

Parents have a right to request mediation or a due process hearing through the Office of Administrative Hearings if they disagree with any decision by the IEP team, including a causal IEP team decision.

Both special education and 504 eligible students have the rights outlined in this section. The only difference is that the school committee for special education students is called an IEP team, and for 504 team or SST committee for 504 students (may vary from county to county).

## **DEFINITIONS**

**Causal IEP team meeting:** An IEP team meeting where the team, with input from the parent, decides if the behavior leading to the suspension was related to the child's educational disability.

**IEP:** Individualized Education Program.

**Implementation of IEP:** This is a very important special education term. It is used over and over by the law and school personnel. It means the services, modifications and accommodations on the child's IEP are, in fact, given to the child. The IEP is a contract between the school, the student and parent. The student has the right to receive all the services written on the IEP.

**Interim alternative placement:** Temporary alternative school or placement for a child.

**Manifestation Determination:** The decision by the causal IEP team that the behavior leading to suspension is related to the child's educational disability.

**Section 504:** Refers to Section 504 of the Rehabilitation Act of 1973. In this context, it refers to a child who is handicapped because s/he has a physical or mental impairment which substantially limits a major life activity (such as, learning). A child with ADD/ADHD sometimes receives services, accommodations and related services under a "504 plan.

### **A. NOTICE AND PREPARATION FOR THE CAUSAL IEP TEAM MEETING**

Parents have a right to 10 days' notice of all IEP team meetings. However, in cases of suspension, the parent is frequently asked to waive this right to notice in order to speed up the process. You may also want to speed up the process, because your child will be out of school until the IEP team meets. However, if you need time to prepare for the meeting or to obtain an advocate, you should contact the IEP team chair as soon as possible to reschedule.

The notice you receive must include the purpose, time, location of the meeting and who will be in attendance. Parents are also encouraged to let the team chair know who they will bring to the meeting. (43 C.F.R. 300-61A)

#### **1) Preparation**

The team will accept (although not always agree with) statements from outside professionals. If your child is seeing someone like a therapist, counselor, psychiatrist, doctor or tutor, it is very important that you get their opinion about whether they think there is a relationship between the child's disability and the behavior leading to the suspension. To do this:

1. Make an emergency appointment for the professional to interview the child about the incident.

2. Give the professional a copy of the section on “Making a Causal Determination” below.
3. Ask them to write a letter to the IEP team addressing the questions.
4. Take the letter with you to the causal IEP team meeting.

If your child is not seeing a professional, you may want to make an emergency one-time-only appointment and ask for a written opinion using the “Making a Causal Determination” criteria below.

## **2) Attendance**

Parents: Parents are equal partners with school personnel in making IEP decisions. The IEP team must consider the parents’ concerns and the information they provide about the child. The team should work toward consensus decision making, however, the school has the ultimate responsibility for developing the IEP and decisions in causal relationship.

Student Participation: A child with a disability may attend the causal IEP team meeting, if the parent thinks it is appropriate. Note: the IEP team often discusses a child’s weaknesses far more than strengths, especially in discipline cases. This may be a very negative and demoralizing experience for your child. You may want to have your child present only during those parts of the meeting that discuss the actual incident. An older child may be present during discussions of the behavior intervention plan. S/he can sit outside for everything else. You should bring something for him/her to do.

Advocates/Attorneys: You have the absolute right to be represented by an attorney at the IEP team meeting or to have other advocates or support people go with you.

## **B. MAKING A CAUSAL DETERMINATION**

Before making a causal determination, the IEP team must go through several steps.

### **1) Review History: The first thing the causal IEP team should do is to review:**

- all evaluations
- observations of the child
- the child’s IEP
- the child’s placement
- other relevant information

### **2) IEP Appropriateness and Implementation: The second thing the causal IEP team should do is review the IEP and answer the following questions:**

1. In relation to the behavior in question, was the child’s IEP and placement appropriate?

2. Were special education services, supplementary aids and services, and behavior intervention strategies provided consistent with the child’s IEP and placement?

If the answer to either question is "no," the law says there is a relationship between the behavior and the child's disability.

Note: If the school finds that the child's IEP was not appropriate or the IEP was not implemented (services weren't provided), the school must immediately change the IEP or remedy the failure to provide services.

**3) Impact of Disability: The third thing the cause IEP team must do is to answer the following questions:**

1. Did the child's disability impair his/her ability to understand the impact and consequences of the behavior subject to disciplinary action?
2. Did the child's disability impair his/her ability to control the behavior subject to disciplinary action?

If the causal IEP team answers "yes" to **one** or both of these statements, the law says there is a causal relationship between the child's disability and the behavior leading to the suspension. (34 C.F.R. Sec. 300.523)

**C. THE CAUSAL IEP TEAM SAYS "NO CAUSAL." (THERE IS NO RELATIONSHIP BETWEEN THE CHILD'S DISABILITY AND THE BEHAVIOR LEADING TO SUSPENSION)**

If the IEP team determines that there is not a causal relationship between the child's disability and the behavior, the child can be disciplined in the same way as children without disabilities. This means the school system continues through the process described at the beginning of this handbook for all students.

However, even if your child is suspended, the school must:

1. Develop and implement a behavior intervention plan (see below).
2. Provide "services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP."
3. Send the special education and disciplinary records of the child to the person making the final decision regarding the disciplinary action.

(34 C.F.R. 300.121(d)(2))

Note: If your child is 504 eligible, the school district is not required to provide educational services to your child if it does not provide them to non-disabled students.

**D. CAUSAL IEP TEAM SAYS “YES CAUSAL.” (THERE IS A RELATIONSHIP BETWEEN THE BEHAVIOR AND THE CHILD’S DISABILITY (NON-GUN OR DRUG CASE))**

1. The child should be immediately reinstated in school and the suspension removed from his/her record.
2. The IEP should be modified as appropriate.
3. A behavior intervention plan should be implemented. (See below)

Exception: The school may seek an order from an administrative law judge for placement in an alternative setting if it believes that continuing the child in his/her current school is substantially likely to result in injury to the child or to others. (IDEA, 20 U.S.C. Section 1415(d)(2))

At the hearing the school must prove by “substantial evidence” that maintaining the child in his/her present placement is substantially likely to result in injury to the child or others. “Substantial evidence” means beyond a preponderance of the evidence. (34 C.F.R. Section 300.521(e))

The administrative law judge is required to consider 1) the appropriateness of the child’s placement and 2) whether the school system has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services.

S/he then must determine that the interim alternative setting proposed by the school will allow the child to receive the following:

1. “The placement must enable the child to continue to participate in the general curriculum (although in another setting) and to continue to receive those services and modifications that will enable the child to meet the goals set out in the child’s IEP.”
2. The interim alternative placement must also include services and modifications designed to address the child’s behavior and to prevent it from recurring.

**E. CAUSAL IEP TEAMS SAYS “YES CAUSAL.” (GUN OR ILLEGAL DRUG VIOLATION)**

Even if the causal IEP teams determines that the child’s disability is related to his behavior, the school may place the child in an interim alternative setting for 45 calendar days if the child carried a weapon or knowingly possessed, sold or attempted to sell illegal drugs or controlled dangerous substances while at school or a school function. (34 C.F.R. 300.520(a)(2))

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 pocketknife with a blade of less than 2 inches in length.” (18 U.S.C. Section 930(g)(20))

Controlled substance does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional.

If the child is placed in an interim alternative setting, the school must also:

1. Develop and implement a behavior intervention plan (see below).
2. Select a placement that enables the child to “continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP, that will enable the child to meet the goals set out in that IEP, and
3. Include services and modifications to address the behavior and prevent the behavior from recurring.” (34 C.F.R. 300.522)

After 45 calendar days, the student must be returned to his/her original placement, unless the school has obtained an order from an administrative law judge extending the time. See Section VII above.

#### **F. BEHAVIOR INTERVENTION PLANS**

Within 10 business days of first removing a child for more than 10 school days, the IEP team should meet “to develop a functional behavioral assessment” plan. As soon as possible after completing the assessment, the IEP team should meet to develop a “behavioral intervention plan.”

The behavior intervention plan should address the behavior that led to the suspension and provide services, modifications and accommodations so the behavior will not recur.

If the child already has a “behavior intervention plan,” the IEP team must meet to review it and its implementation and modify it to address the behavior.

#### **G. CHILDREN NOT PREVIOUSLY IDENTIFIED AS SPECIAL EDUCATION ELIGIBLE**

If the student was not previously identified as requiring special education services of 504 accommodations and the school had knowledge that the child is disabled, the parent may request a causal IEP team meeting.

The school “has knowledge” if:

- The parent has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the child is in need of special education; or
- The behavior or performance of the child demonstrates the need for special education services; or
- The parent has requested an evaluation of the child; or
- The teacher of the child or other personnel of the school has expressed concern about the behavior or performance of the child to the director of special education or other appropriate school personnel.

The school does not “have knowledge” if:

- It conducted evaluations and determined that the child was not special education eligible and notified the parent; or
- Determined that an evaluation was not necessary and notified the parent.

(34 C.F.R. 300.527)

If the IEP team did not have knowledge that the child might be disabled and the parent requests an evaluation, the evaluation must be completed in an “expedited manner.” The team must then reconvene to determine if there is a disability. If there is a disability, the team must then determine if there is a relationship between the disability and the reason for suspension.

The student shall remain in the educational placement determined appropriate by the school system, including suspension or expulsion without educational services, until the evaluation is complete.

## **H. APPEALS**

If you do not agree with the decision of an IEP team on any issue, you may appeal to the Office of Administrative Hearings. You may also request mediation, a much less formal method of resolving differences with an IEP team. There are many specific rules about appeals. **Please see** the Maryland Disability Law Center Handbook on “*Special Education Rights and Wrongs*” for more specific information.

## **I. “STAY PUT” OR PLACEMENT DURING APPEALS**

If a parent appeals or requests mediation of an IEP team decision, the parent may also request “stay put.” This means the child stays (“stays put”) in a particular placement until the appeal is finished or resolved. You must make this request in the appeal or mediation request letter.

Although the federal regulations on this issue are somewhat vague, it appears the “stay put” placement in non-gun, non-drug discipline cases is the current placement of the child, meaning the child’s school placement prior to suspension.

The “stay put” placement is the interim alternative placement in gun and drug cases or when an administrative law judge has been asked to decide if there is a “substantial likelihood of injury to the child or others.”

## *CONFERENCE TIPS*

Tips for a successful conference:

1. Sometimes students are included in conferences but may be hesitant to speak. Whether or not your child attends the conference, ask him ahead of time if there is anything he would like you to discuss with his teachers, including social as well as academic issues.
2. Think about your concerns and jot down a few questions ahead of time.
3. Encourage your spouse or a family member/friend to attend the conference with you. If you have trouble understanding English, bring or request an interpreter.
4. Arrive on time, even if you have to wait a few minutes. There is nothing like starting off on the right foot.
5. Begin by requesting a brief overview of your child's progress. If there are problems, ask "What can we do about that?" Remember, you and the teacher are partners, not adversaries.
6. Take notes. None of us has a perfect memory and it is important to get key points down on paper.
7. Avoid criticism of the school or particular teachers, but don't be afraid to ask questions or express your concerns.
8. Close the conference by reviewing what has been discussed. Talk about next steps. If necessary, set a date for a follow-up telephone conference.
9. Share the details of the conference with your child. Talk up his/her strong points before going into what needs improvement. Then let your child know that you're behind him/her 100 percent.

## ***COMMUNICATION WITH SCHOOL STAFF***

- Clarify the expectations that you have for your child (hopes and dreams).
- Clarify your expectations of the teacher.
- Try to put yourself in the shoes of the teacher.
- Don't let your concerns continue to mount. (Work with the school staff and identify a school representative with whom you can communicate.)
- Talk with school staff about how you can best share information and ideas and actively participate in the IEP process.
- Don't be afraid to say "I don't understand" or "I'm confused" - especially when jargon is used.