

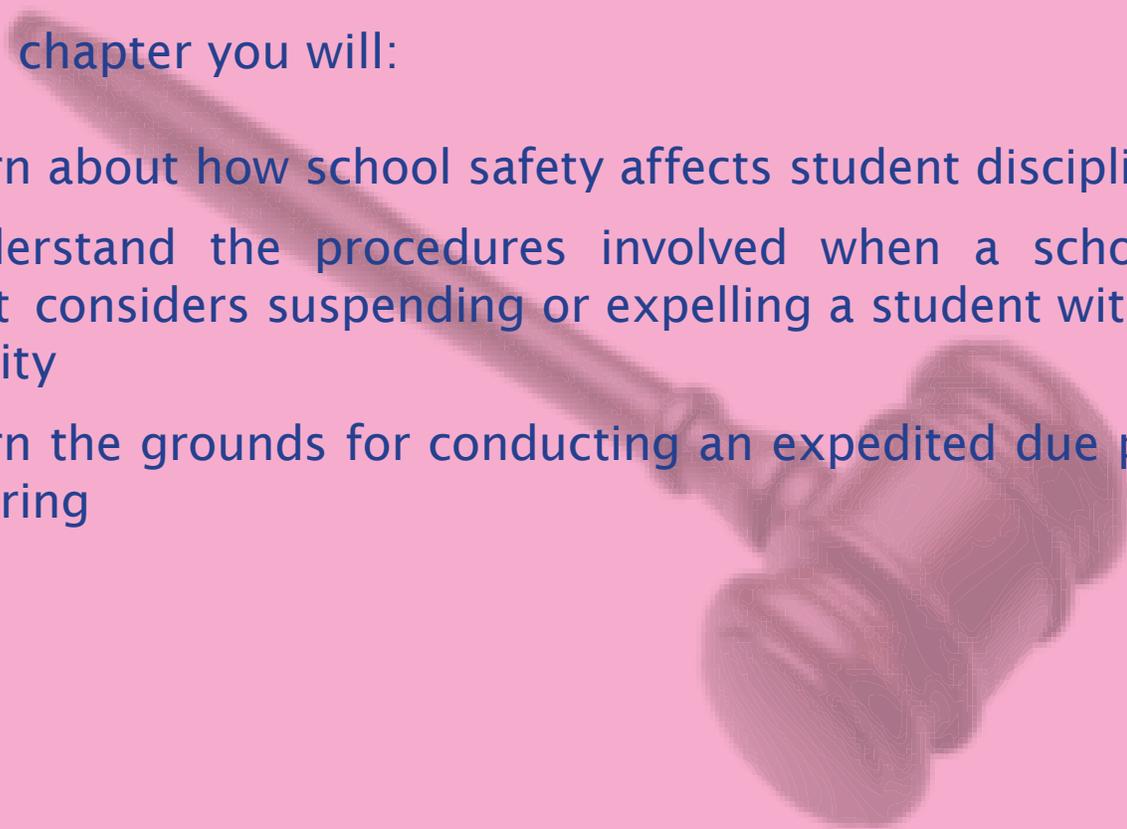
# Chapter 10:

# Student Discipline

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In this chapter you will:

- learn about how school safety affects student discipline
- understand the procedures involved when a school district considers suspending or expelling a student with a disability
- learn the grounds for conducting an expedited due process hearing



## School Safety

Schools are responsible for keeping students and staff safe. If any student behaves in a way that is dangerous for themselves or others, the school's first priority must be to deal with that danger and keep everyone safe.

Special education laws cannot hinder school safety. A student with a disability can receive the same punishments as other students, with one exception – a suspension beyond 10 days. A student with a disability cannot be disciplined more severely than other students for breaking the same rule. If a student without a disability can be suspended for up to three days for breaking a specific rule, a student with a disability cannot be suspended for more than three days for breaking the same rule.

Finally, schools have a right and a responsibility to report crimes to the police. The schools do not need to get a parent's permission before reporting a crime.

### Manifestation Determination Review (MDR)

Every student, whether or not the student has an IEP, may be suspended up to 10 school days per year for violations of student conduct. When a student faces a suspension that could result in removal from education for more than 10 consecutive school days, or when the suspension would cause the student to exceed 10 school days of suspension for the school year, the district is required to conduct a Manifestation Determination Review ("MDR") with members of the IEP team and the parent.

An MDR is conducted to decide if the student's disability was the primary cause of the incident in question. The two possible outcomes of an MDR are:

- The student's disability IS the primary cause for the incident. In this case, the district may NOT discipline the student (i.e., impose a suspension or expulsion on the student in accordance with procedures required for all students in the district), or

- The student’s disability IS NOT the primary cause for the incident. In this case, the student may be recommended for suspension or, in the case of expellable conduct, recommended for an expulsion hearing before the appropriate school district authorities.

When an MDR team looks at the issue of whether the student’s disability was the principal cause of the conduct, the team must look a range of information including:

- The student’s IEP and placement;
- Information about the incident;
- Further observations of the student; and
- Any further relevant information supplied by the parent or the school district.

The information will be used by the team members to answer two required questions:

1. Was the conduct caused by or had a direct and substantial relationship to the student’s disability?
2. Was the conduct the direct result of the school district’s failure to implement the IEP?

If the answer to **either** question is “yes”, then the team must find that the student’s disability caused the conduct and may not recommend the student for further discipline, such as a suspension or expulsion.

### Removal from the Current Placement for Certain Conduct

In certain situations, the school district may be entitled to remove the student from the current setting, regardless of whether the student’s conduct was caused by the disability. In such situations, the student may be removed for up to 45 *school days* to an “Interim Alternative Educational Setting” (or “IAES”). The IAES may be any educational setting other than the current one that is capable of implementing the student’s IEP.

#### Important Reminder

If the team determines that the conduct was caused by the student’s disability, the team must also review the student Behavioral Intervention Plan (BIP) to determine if it addresses the conduct appropriately. If the student does not have a BIP, the team will need to develop one. See Chapter 9 for more information on BIPs

There are three primary situations in which a school district may remove the student are:

1. Where the student's conduct involves a weapon (such as a gun or a knife);
2. Where the conduct involves the sale, use or possession of an illegal drug or a controlled substance at school, on school premises or at school function sponsored by the school district or a state education entity (such as the ISBE or IHSA); or
3. Where the student inflicts serious bodily injury on another person at school, on school premises, or at a school function sponsored by the school district or a state education agency.

In such cases, the school district may remove the student immediately to an IAES, regardless of whether an MDR has occurred.

In addition, the school district may also remove a student to an IAES for up to 45 school days for conduct that puts the student or others at serious risk of harm (even if no physical injury occurs). However, before the removal can occur, the school district must obtain the order of a special education due process hearing officer. (See the next section for more information.)

### **Protections for Certain Students Who Are Not Special Education Eligible**

#### Worth a Look

The provisions concerning the rights of students who are not yet eligible for special education services can be found at 20 USC Sec. 1415(k), as well as 34 CFR 300.534.

In some very limited cases, the procedures described in the previous sections may apply to students who are not receiving special education services at the time of the disciplinary incident. It's important to note, though, that this situation typically involves a very specific set of facts.

A school district will be required to do a manifestation determination review for a student who is not eligible for special education if the district is "on notice" that the student may be eligible for special education services. This means that the district would have some reason to believe

that the student might be eligible for special education *prior* to the incident.

For example, let's say a student had been already referred for an evaluation prior to the incident, and the parent and district evaluation team had not yet decided whether the student was eligible for special education. In this case, the district would probably be required to do an MDR before suspending the student beyond 10 school days or moving forward with an expulsion hearing.

In addition to the example in the previous paragraph, a school district might be required to do the MDR when a parent had provided the district with a written concern to the district that the student might require special education. Also, if a district supervisor over special education services had received a written concern from a teacher or other district people about specific patterns of behavior, an MDR might be required even though the student was not yet eligible for special education.

### Expedited Due Process Hearings

If a dispute arises between a parent and the school district over a disciplinary matter affecting a student with a disability, it may be possible for an Impartial Due Process Hearing Officer to decide the matter. Though a full discussion of due process hearings is covered in the next chapter, it is worthwhile to discuss expedited hearings right now.

Expedited hearings can be requested on three grounds:

1. A parent can request an expedited hearing if he/she disagrees with the district's conclusions in the MDR (i.e., whether the conduct in question is the result of the child's disabling condition).
2. The parent can request an expedited hearing if he/she disagrees with the district's decision to move the child to an interim alternative educational setting as a result of conduct involving a drug or weapon, or where the conduct resulted in serious bodily injury to another student or a member of the school staff.

#### Important Reminder

In order for a district to be on notice that a student who is not receiving special education may require an MDR, the district must have received this "notice" *before* the incident occurred.

#### Tips for Parents

Expedited hearings are requested only to challenge the decisions of the school district concerning (a) the district's conclusion that the student can be suspended or expelled after an MDR, or (b) to challenge the district's choice of an IAES.

If you, as a parent, want to challenge *the facts* surrounding your child's suspension or expulsion, please consult with legal counsel to determine what, if any, action can be undertaken by you.

### Worth a Look

For a more complete discussion of hearing procedures in general, please read Chapter 11: Conflict Resolution.

A sample letter for requesting an expedited hearing can be found in Appendix A at the end of the book. You can also find a sample ISBE form for requesting a due process hearing in Appendix D.

3. The district can request an expedited hearing if it believes that the child's conduct was dangerous and that his/her continued presence in the current setting is substantially likely to result in injury to other students, school staff, or the child.

When filing for an expedited hearing, one should follow the guidelines described in Section 11 for filing a standard hearing request. However, you should also state in your request that you are requesting an expedited hearing.

Rather than describe all the details of an expedited hearing here, you should simply be aware of the significant differences between an expedited hearing and a standard due process hearing. Unless a specific difference is noted here, you can simply review the information on standard hearings for more details on how the expedited hearing will occur.

The big differences between expedited hearing and standard due process hearings are as follows:

- Unlike the standard hearing which allows the parties up to 30 days to work out their differences in a "Resolution Process" (see page 103), the parties are given only fifteen days to complete the resolution session in an expedited hearing. The parties must have their first resolution meeting within 7 calendar days of the initiation of the hearing.
- Parties may use Mediation (see page 90) instead of the Resolution Process to discuss potential settlement of the dispute, but the Mediation cannot delay the hearing timelines.
- In an expedited hearing, the hearing must begin within 20 *school* days and the hearing may not exceed two days in length.
- The hearing officer is given 10 school days from the end of the hearing to render the decision.
- During the period of time while the hearing is going on, the student may still be required to attend the

placement designated by the district as a result of the disciplinary incident. In other words, the usual rules for “stay-put” (see page 101) do not apply and the *new* placement is considered the “stay-put” as opposed to the last agreed-upon placement.

Please keep these important differences in mind if you decide to file for an expedited hearing. As you can see, the timelines are generally shorter than is usually the case in a standard hearing.

