



Does your child get in trouble at school?

If your child is in special education there are some things the school must do

All schools have rules. Usually if a student breaks the rules, schools make them stay home. If it is for a few days it is called **suspension**. If it is for the rest of the year, it is called **expulsion**. There are special rules about this for children with disabilities.

In Tennessee gifted students are also in special education. **BUT** these special rules are not for them unless they also have a disability. They are treated the same as students not in special education.

This brochure tells what happens to students with disabilities who break school rules. There are 2 parts:

1. If your child breaks code of conduct rules
2. If your child has weapons, illegal drugs **OR** badly hurts someone

Has your child broken school rules? What happens to them depends on what they did. Your child will be treated one way if they broke code of conduct rules. **Code of conduct rules** are about things like behavior, fighting and cheating on tests. The first part tells you what the school will do if this happens.

Did your child have illegal drugs or weapons at school? Or did your child hurt someone badly? These problems are more serious. They will be treated a different way. The second part tells you what the school will do in those cases.

Part 1 If your child breaks code of conduct rules

For small problems, the teacher or principal may just talk to you or your child. But what if the same problem happens again or it is a big problem? Then the school can do what it does to students without disabilities.



The school has 3 choices:

1. Kick your child out of school for up to 10 total days in a school year **OR**
2. Move your child to a different class or school **OR**
3. Move your child to a school just for students who break the rules. In Metro Nashville Schools, this is called an **alternative learning center or ALC. Important!** Your child **must** still get **ALL** the services and supports in the IEP.

What if your child breaks school rules more than once?

The school has these 3 choices each time. **BUT** has your child been **kicked out** for more than 10 days in a school year? Or has your child been **sent to another class or school** for more than 10 days? Then **starting with the 11th day** your child is kicked out that year, the school must:



- Give your child services that let them learn what other kids are learning (general education curriculum) **AND**
- Give your child services that let them keep making progress on IEP goals **AND**
- If needed, give your child help with behavior so it doesn't happen again.

These things must be done **no matter where your child learns**. It could be at home, in the same class or in a different class or school.

What counts as being kicked out of school?

Your child is kicked out of school for bad behavior or breaking school rules **IF**:

- You are called to come pick up your child **OR**
- Your child is sent home before school is out for the day **OR**
- You are told to keep your child home from school **OR**
- Your child is sent to a school just for students who break the rules - but doesn't get the services in their IEP **OR**
- Your child is kicked off the bus — **IF** riding the bus is written in the IEP. Was your child kicked off the bus for behavior? Then maybe a behavior plan for the bus needs to be added to the IEP.



Other things that might count as "kicked out" even if your child stays at school:

- Going to In-School Suspension (ISS). This is a class just for kids who break school rules.
- Having to sit in the hall, principal's office, or some other office or room. This could be for all or part of the day.
- Not getting the services in their IEP – even if they are in a different class or school

BUT these **DON'T** count as part of the 10 days when:

- Your child is still learning what kids without disabilities learn (general education curriculum)
- Your child is still making progress on IEP goals and getting all IEP services and
- Your child has the same amount of time with students without disabilities as the IEP says.

Your rights if your child breaks school rules

- To have your child receive services starting with the 11th day they are kicked out. This means the 11th day in a school year. It doesn't have to be 11 days in a row.
- To have the IEP Team change or write a behavior plan for your child.
- To be told about your rights if the school wants to change where your child learns.
- To help decide if your child's disability caused the behavior.
- To have a hearing if you disagree with changing where your child learns.
- To decide if the police can see your child's school records. This only happens if your child breaks the law.

Is the school thinking of changing where your child learns (placement)?

For some students a change in class or school can be very bad. For other students, a different class or school can be good. The school can look at each student's case by itself. They don't have to treat each student the same.

It is a change of placement **IF**:

1. Your child is kicked out of school for more than 10 school days in a row **OR**
2. Your child has been kicked out of school several times **AND**
 - It was for more than 10 school days in a school year
 - The behavior was the same each time they got kicked out and
 - The school does the same thing each time there is a problem. This is called a **pattern**. The pattern can be:
 - o How long your child was kept out each time,
 - o The total time your child was kept out of school and
 - o How close together the times your child was kept out were to each other



Each case is looked at to see if there is a pattern. If there is a pattern, then this is a change of placement. Do you disagree about if there is a pattern or not? Then you can ask for a hearing.

When does the school have to tell you about a change in placement? They must do it on the day they decide. They must give you a copy of parent rights when they tell you about the change in placement. The parent rights booklet will tell you what to do if you disagree. It is in the part about due process.

Does the school want to change your child's class or school because of behavior? Or has your child already been kicked out of school for 10 days and the school wants to suspend your child again?

Then it is important to know if your child's disability caused the behavior. If the disability caused the behavior just changing classes or schools won't help.

Your child may need a behavior plan. If there is a behavior plan already, it may need to be changed.

How does the school decide if the disability caused the behavior?

They have what is called a **manifestation determination** meeting. The school **must** have this meeting **before** kicking your child out of school for the 11th day. Do they want to change where your child learns (placement)? Then they must meet within 10 days of deciding to change where your child learns. The school must tell you about the meeting at least 24 hours before it is held.

Who is at the meeting?

You and someone from the school who can make decisions must come. The two of you then pick which members of the IEP Team to invite. You may also invite people who know about your child or the disability. At the meeting the group must read your child's school file including:



- Your child's IEP
- Reports from your child's teachers on what they have seen in class and
- Anything you want to tell the school about your child.

These are the 2 questions this group must answer:

1. Did your child's disability cause the behavior? **OR** was it a big part of the reason it happened?
2. Did the behavior happen because the school didn't follow the IEP?

Did the group say "yes" to one of these questions? Then the group **MUST** say the disability caused the behavior.

Did the behavior happen because the school didn't follow the IEP? Then the school must fix this right away.

How does the group decide if the disability caused the behavior? This **DOESN'T** mean they just say what



the disability is. It **DOESN'T** mean deciding if that behavior is usual for that disability. It means deciding if the disability was all or part of the reason the behavior happened.

Example: Mark was in high school. He was in the hall talking to Sarah, a girl from one of his classes. Mark asked Sarah if he could have a hug. Sarah said yes and hugged him. While they were still hugging, he asked for a kiss. Sarah said no, but Mark tried to kiss her anyway. When Sarah tried to get away, he kept hugging her and trying to kiss her. Other students had to pull Mark away. He was sent to the principal's office.

Trying to force Sarah to kiss him meant Mark broke school rules. Because Mark was in special education, they had a manifestation determination meeting to decide what to do. At the meeting, they talked about Mark's disability. He has an intellectual disability (mental retardation). All people with an intellectual disability **DON'T** try to make other people kiss them. So the group asked Mark questions about what happened. Mark said Sarah was his girlfriend. Mark said a boy could kiss his girlfriend any time he wanted. The group asked when Sarah became his girlfriend. Mark said it was when Sarah said he could hug her. He said Sarah would only have hugged him if he was her boyfriend.

Mark's disability didn't make him kiss Sarah. **BUT** it kept him from understanding that hugging Sarah didn't make her his girlfriend. Because it kept him from understanding, Mark's disability caused the behavior.

What if the disability DIDN'T cause the behavior?

Then the school may do the same thing they do to students without disabilities. **BUT** is your child kicked out of school for more than 10 total days in a school year? Then the school still must follow the 11th day rule. They must give your child services while they are kicked out.

The group must discuss how to keep the behavior from happening again. This could mean your child will need more services or supports.

Who decides what the services will be?

It depends. Are they **changing** where your child learns (placement)? If they are, then the IEP Team decides what services your child gets. What if they are **not changing** where your child learns? Then the school and at least 1 of your child's teachers decide the services.

What services must the school give your child?

1. Services that let your child learn what students without disabilities are learning (general education curriculum)
2. Services that help your child meet IEP goals.

3. If needed, a **functional behavior assessment or FBA**. This tells you how often the behavior happens and why. It helps



the school write a behavior plan. The school needs your OK to do an FBA. Did the school do an FBA before this behavior happened? Then they don't need to do another one unless things have changed. **AND**

- 4.
5. Behavior services that work to stop the behavior from happening again (behavior plan).

Does the school have to give services if the suspension is less than 10 days? No. Not unless they do it for students without disabilities.

If the disability DID cause the behavior

- The IEP Team **must** find out **why** the behavior is happening. They do this with a **functional behavior assessment or FBA**. The FBA is a paper that says how often the behavior happens and why. It helps the school write a behavior plan. The school needs your



written OK to do an FBA. Did the school do an FBA before this behavior happened? Then they may not need to do another one. But it may be needed if the behavior has changed or gotten worse.

- The IEP Team must use a **behavior intervention plan or BIP** to help stop the behavior. Does your child already have a behavior plan? Then the IEP Team must check it. If the plan needs changes, the IEP Team must make them.
- The IEP Team must send your child back to the class where the problems happened. What if you and the school agree a different class or school is needed? Then you can make this new place part of the behavior plan.

What if you disagree with what the FBA shows?

Then you can ask to have testing done by someone who doesn't work for the school. This is called an **independent educational evaluation**. You have the right to ask the **school to pay** for the independent test.

Part 2 If your child has weapons, illegal drugs or badly hurts someone



Most schools have zero tolerance for some things. **Zero tolerance** means they don't put up with it at all. Many things are zero tolerance. **BUT** weapons, drugs and badly hurting someone are much more serious. Schools can send your child to a separate school for kids who break rules if your child:

- Has a weapon at school or school activities or on school grounds **OR**
- Has, uses, sells or buys illegal drugs at school or school activities or on school grounds **OR**
- Badly hurts someone at school or school activities or on school grounds

In Metro Nashville, schools for kids who break these rules are called **alternative learning centers or ALCs**. The school can send your child there for up to 45 school days. **It does not matter if the disability caused the behavior or not**. The school decides where your child will go to school. What if you disagree? You can ask for a due process hearing.

What if the school wants your child to get home-bound services?

Home-bound services are usually for students who are too sick to come to school. They also can be used for discipline removals if certain rules are followed.



- **There must be another adult there** while the teacher is with the child. The services don't have to be done in your home. It could be at a public library or police station where there are other adults. Or it could be at the school before or after regular school hours.
- Your child must still take part in general education curriculum. **General education curriculum** is what students without disabilities are learning. A general education teacher must say exactly what your child should be taught.
- Your child must still get all the services listed in the IEP.
- Only a **certified teacher** should teach your child.
- Your child should get the number of teaching hours that are already in the IEP. On the IEP form look under "service hours" to see how many it says.
- The school must supply books, supplies and other materials.
- There should be a plan for checking to make sure your child is learning.
- There should be a plan to help your child return to school.
- Home-bound should last no more than 30 school days. This can only go longer if the school asks for a due process hearing and wins.

What if you disagree with where your child will go for the 45 days? Then you can file a due process complaint. This lets someone who doesn't work for the school decide what to do.

Does the school think your child might badly hurt himself or someone else?

Then they can make him or her stay another 45 school days. They can keep doing this as long as

they think your child might hurt someone. Do you disagree? Then you can ask for a **quick (expedited) hearing**.

If you disagree, a hearing officer who doesn't work for the school decides who is right. You and the school get to tell your side. Then the hearing officer will decide. You or the school can ask for a hearing.



You can ask for a quick (expedited) hearing if you and the school disagree about:

- Tests to see if your child had a disability (evaluation) **OR**
- If your child should be in special education **OR**
- The kind of class where your child should learn (placement). This includes moving your child to a school just for kids who break rules (interim alternative educational setting). **OR**
- If the disability caused the behavior that made your child break school rules.

Why are you asking for a quick (expedited) hearing? Is it because you disagree with changing the kind of class where your child learns?

Then the school must set up the hearing **within 20 school days**. The 20 days start the day the paper asking for the hearing is filed.

How do you ask for a quick (expedited) hearing?

You must do it in writing. The easiest way is to ask the school principal for a Due Process Hearing paper. Fill it out and sign it. Then make 2 copies. Keep one copy. Give one copy to the principal of your child's school. Mail the paper to:

ATTN: Legal Services
Tennessee Department of Education
Division of Special Education
5th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0380



OR fax it to them at **615-253-5567**. You must give a copy to the principal and the Tennessee Department of Education. If you don't, you won't get

a hearing. You will get a letter telling you when the hearing will be.

If you ask for a quick hearing, first there will be a resolution meeting. You don't need a lawyer. This is a chance to see if you and the school can agree without going to a hearing. The meeting must happen within 7 days of when you ask for the hearing. Don't want a resolution meeting? Then you and the school must agree in writing to skip it. **OR** you must both agree to have mediation instead.

If you do have the resolution meeting, DON'T skip it. If you don't go, the school wins. You won't get a hearing. If you go, you and the school have **15 days** to try to agree. The 15 days start on the day you ask for a hearing. If you can't agree by the 15th day, then you have the hearing.

The quick hearing may be on the phone or in person. The school will have a lawyer for the hearing. You should have a lawyer too. At the hearing, a hearing officer who doesn't work for the school is in charge. You and the school tell your side. Then the hearing officer makes the decision.



The hearing officer must decide **within 10 school days** after the quick hearing. What if you don't like what the judge decides? You can ask for another hearing.

What happens to your child while you are waiting for the hearing decision? Your child stays in the new school (interim setting or IAES). He or she stays there until the hearing is decided or the 45 days are up, whichever is first. But if you and the school agree, your child can learn in a different place.

Another way to try and solve problems without a hearing is **mediation**. You and the school must both agree to do it. If you or the school refuses, then you can't have mediation. Here's how it works. You and someone from the school will meet with a mediator. The mediator lets both of you tell your side. The mediator's job is to try and get you and the school to agree. If you agree, the things you agree to will be put in writing. This is a legal paper that the school must follow. If you sign the paper, you won't have a hearing. **What if you can't agree?** Then you will have a hearing.

If your child is not in special education yet

Your child might have the same protections as children already in special education. Did the school know your child had a disability before the behavior happened? The school "knew" **IF**:

- You told the school (teacher, principal, supervisor) in writing that you thought your child needed special education.
- You asked for testing to see if your child needed special education.
- Your child's teacher, or other school staff, told the Special Education Director or another supervisor, that they were concerned about your child's behavior.

A school **doesn't** "know" a child had a disability **IF**:

- You didn't let the school test your child for special education **OR**
- You refused to let your child have special education services **OR**
- Your child was tested for special education but doesn't meet the rules to get it.

What if the school doesn't know your child has a disability and your child breaks school rules? Then the school can do the same thing it does to any student without a disability that breaks school rules.

Do you want your child tested for special education while s/he is kicked out? Or when s/he is moved to a school for kids who break rules?

If you ask for the testing, it must be done quickly. Until the testing is done, the school decides where your child learns. **OR** the school may keep your child out of school until the testing is done. The school doesn't have to give your child any services during this time.



What if the testing shows your child has a disability? Then the school must give your child special education services. But you must OK it.

What if your child commits a crime? Having weapons, drugs or badly hurting someone are crimes. The school can tell the police. The police can arrest your child. You should make sure the police know your child is in special education. Give the

school the OK to send the police your child's school records. The school can only do this if you OK it or a judge orders it.

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice.

Your rights if your child is not yet in special education

- To have the same rights as children in special education. This is true IF the school knew the child might have a disability.
- To have your child tested for special education while she/he is kicked out.
- To decide if the police can see your child's special education records.



This project is funded under an agreement with the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs and is supported by Award #2099-SU-B9-0002 awarded by the Bureau of Justice Assistance, Office of Justice Programs, USDOJ. This brochure was a joint project of The Arc of Davidson County, The Kids' Rights Program, Legal Aid Society of Middle Tennessee and the Cumberland and the Nashville Prevention Partnership. The Cal Turner Family Foundation has provided the Legal Aid Society with support to increase parent understanding of special education.

© 1998 - 2011 Possibilities, Inc. All rights reserved. Used with permission.

What if the school won't help your child?

One of the places below may help you. Or connect you with someone who can help you.

- In Metro Nashville Public Schools? Call **The Arc of Davidson County - 615-321-5699, ext. 35**. They may be able to help in other counties.
- **Legal Aid Society - 1-800-238-1443**. They help in some counties.
- **Nashville Prevention Partnership - 615-297-7635**
- Metropolitan Nashville Public Defender's Office, Juvenile Division, **The Kids' Rights Program - 615-880-3710**

Ask for our other brochures:

- Is your child having trouble in school?
- Who can get special education?
- What is an IEP?
- Writing an IEP
- If you and the school disagree
- Can't get special education? A 504 Plan may help
- Your rights as the parent of a child in special education