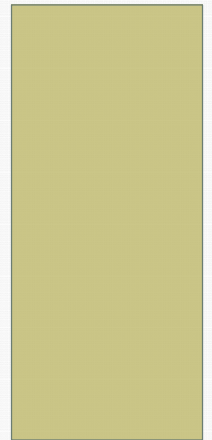


EDUCATION RIGHTS & ADVOCACY

(SHORT VERSION)

JUSTICE CENTER OF SOUTHEAST MA &
SOUTH COASTAL COUNTIES LEGAL SERVICES



WHAT WE DO

- Free legal representation and information for low income families in education cases (i.e. special education and school discipline)
- Systemic cases (Does one student's case reflect a problem for others?)
- Workshops & community education
- Partner with community-based organizations and providers

1) COVID 19 and Schools

COVID 19 AND SCHOOLS

School is back in-person. There is no remote option.

- Home services including possibly remote learning may be provided where student will require being in home or hospital for 14 days or more, with physician statement.
- Rarely a student with significant medical needs may require a “home placement” through IEP processes.

COVID 19 Compensatory Services are available for 2020-2021. According to the state, the following groups are most likely to require CCS:

- Students with disabilities in districts that were fully remote for three or more months during the 2020-21 school year;
- All students with disabilities who were chronically absent during the 2020-21 school year; and
- All students with disabilities who had significant difficulty accessing remote learning offered by the school district due to the nature or severity of the child’s disability, technology barriers, language access barriers, or barriers resulting from the pandemic.

COVID 19 AND SCHOOLS

- **Masks are required for all students and staff age 5 and older at least until November 1, 2021.**
- **COVID 19 Exposure and Testing Protocols**
 - Test Positive:** Quarantine 10 days and until symptom free
 - Close Contact Exposure:**
 - *You can stay in school if: If you're Asymptomatic and Vaccinated; close contact in school (if masked and 3 ft apart); close contact on bus (if masked and windows open); had COVID in the last 90 days.
 - *Schools offering "test and stay" where students who are asymptomatic but in close contact receive rapid test daily.
 - *Otherwise, can return to school on day 8 if Negative PCR or RAPID test at least 5 days after exposure and symptom free.
 - Symptomatic in school:**
 - *Schools will offer rapid tests for sick students.
 - *If negative rapid test in school *but* have symptoms especially fever, shortness of breath, loss of taste or smell, muscle aches, then student should go home and follow testing/quarantine procedures.

2) Special Education

SPECIAL EDUCATION LAW

All students with disabilities are covered by Section 504 of the Rehabilitation Act of 1973

- Ensures equal access for students with disabilities.
- 504 Plans

Students requiring special education eligible for an IEP under the Individuals with Disabilities Education Act.

SPECIAL EDUCATION LAW

A student is **eligible** for an Individualized Education Plan if:

- Aged 3-21 (has not received diploma)
- The student has one or more disabilities
- The student is NOT making effective progress in school as a result of the disability
- The student requires special education in order to make effective progress

SPECIAL EDUCATION LAW

- **Request for Evaluation**

- School has “child find” obligations
- Parents or others in care giving role can request evaluation in all areas of suspected disabilities

- **Consent for Evaluation**

- Parent should receive the consent form within **5** school days of the school's receipt of their request for an evaluation

SPECIAL EDUCATION LAW

Timeline

- Consent form to parent within **5 school days** after request for evaluation
- Evaluation must be completed **30 school days** after parent signs consent
- Team Meeting must be held within **15 school days**

SPECIAL EDUCATION LAW

IEP TEAM MEETING

- School personnel familiar with the child
 - Regular Education Teacher
 - Special Education Teacher
 - Special Education Administrator
- Professional to interpret evaluations
- Parent
- Individuals invited by parent
 - Attorney or non-attorney advocate
 - People who are familiar with the child (relatives, doctors etc.)
- Student (when appropriate)
- Interpreter (if parent's primary language is not English)

SPECIAL EDUCATION LAW

- Parent does not have to consent to the IEP at the Team meeting (30 days to consider)
- Options for responding to IEP:
 - **Accept**
 - Special education begins without delay
 - **Reject**
 - No special education will be provided to your child
 - **Accept in part**
 - Only those parts of the IEP that are accepted will be provided to your student
 - A parent can request another meeting to discuss rejected parts of the IEP

SPECIAL EDUCATION LAW

“Stay Put” Rights

- IEPs are for one year.
- Each year the Team reconvenes to discuss the student's progress, continued eligibility, and to draft a new IEP.
- IEP's do not expire. Services on IEP continue until IEP changes or eligibility changes.
- If parents disputes changes, students “stays-put” in current IEP until dispute resolved.

SPECIAL EDUCATION LAW

Independent Evaluations

- Make sure they are useful! Can the evaluator make specific recommendations about what student *requires*.
- Observations!!
- District will fund if parent makes request for evaluation that District did in the last 16 months and parent is low-income.

SPECIAL EDUCATION LAW

When there is a dispute

- Facilitated Team Meeting (781-397-4750)
- Problem Resolution System
(<http://www.doe.mass.edu/prs/>)
- Mediation (781-397-4791)
- Hearing (<https://www.mass.gov/orgs/bureau-of-special-education-appeals>)

3) SCHOOL DISCIPLINE

SCHOOL DISCIPLINE RIGHTS

Key Principles

- Notice
- Opportunity to be heard
- The greater the punishment the more “process” you get.

SCHOOL DISCIPLINE RIGHTS

- **Short Term Suspensions**

- 10 consecutive or cumulative school days or fewer

- **Long Term Suspension**

- More than 10 consecutive or more than 10 cumulative school days
- Up to 90 school days consecutively or cumulatively
- Right to appeal

- **Expulsion**

- More than 90 school days
- Only for: bringing drugs to school, bringing weapon to school, assault on school staff, or conviction of a felony
- Right to appeal

*No suspension days can go beyond one school year

*During exclusion for disciplinary actions, student has a right to make academic progress

NOTICE

▲ Notice should be **oral and written notice** to student and the parent, in English and in the primary language of the home.

The **short term suspension** notice should include:

- (a) the disciplinary offense;
- (b) the basis for the charge;
- (c) the potential consequences, including the potential length of the student's suspension;
- (d) the opportunity for the student to have a hearing with the principal concerning the proposed suspension, including the opportunity to dispute the charges and to present the student's explanation of the alleged incident, and for the parent to attend the hearing;
- (e) the date, time, and location of the hearing;
- (f) the right of the student and the student's parent to interpreter services at the hearing if needed to participate;

▲ Notice of **long terms suspension** should include all of the above plus notice of additional rights afforded at long-term suspension hearing.

SHORT TERM SUSPENSION HEARING

- With the principal.
- **At a minimum**, the principal shall discuss the disciplinary offense, the basis for the charge, and any other pertinent information. **The student also shall have an opportunity to present information, including mitigating facts**, that the principal should consider in determining whether other remedies and consequences may be appropriate.
- Principal must notify parent and student of decision in writing.
- No right to appeal.

LONG TERM SUSPENSION HEARING

At a minimum, in addition to the rights afforded a student in a short-term suspension hearing, the student has the following rights:

- Opportunity to review the student's record and the documents upon which the principal may rely
- the right to be represented by counsel
- the right to produce witnesses
- the right to cross-examine witnesses
- the right to request that the hearing be recorded

WHEN CAN A STUDENT BE EXPELLED?

Students in Massachusetts may only be expelled for 4 reasons:

- 1) Bringing drugs to school or school sponsored events (37H)
- 2) Bringing a dangerous weapon to school or school sponsored events (37H)
- 3) Assaulting school staff (37H)
- 4) Being *convicted* of a felony (37H1/2)

Note: can be long term suspended when long felony complaint issues

EDUCATION DURING OUT OF SCHOOL EXCLUSION

- Right to Academic Progress
- Suspension for 10 or fewer days
 - Opportunity to make academic progress during period of suspension
 - Make up assignments, earn credits, including but not limited to homework, quizzes, exams, papers, and projects missed
- Expulsion or suspension for more than 10 days
 - Opportunity to make academic progress during period of suspension or expulsion
 - Make up assignments, earn credits, including but not limited to homework, quizzes, exams, papers, and projects missed
 - May include, but not limited to tutoring, alternative placement, and online or distance learning.

DISCIPLINE OF STUDENTS WITH DISABILITIES

- SwDs have all the rights just described.
- Plus must not be punished for behavior caused by their disability. That is disability discrimination.
- Have the right to have their behavior addressed as an educational need.
- When are excluded from school have the right to FAPE. Students should be receiving IEP and 504 services.

MANIFESTATION DETERMINATION REVIEW

- Students with disabilities cannot be suspended for more than 10 school days consecutively, or more than 10 school days cumulatively in the same school year when the removals are a pattern, and the behavior is caused by or substantially related to the student's disability.
- Team needs to have a **Manifestation Determination Review**.

HOT TOPICS

- Any serious school discipline matters—long term suspensions and expulsions.
- Student pushed out of school. Students not receiving educational services or without a placement.
- Charter School student subjected to excessive or repeated discipline not receiving appropriate services.
- English Learners who are not receiving appropriate special education services.

JUSTICE CENTER OF SOUTHEAST MA & SOUTH COASTAL COUNTIES LEGAL SERVICES

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