

School Discipline: What To Do When the Call Comes in that Your Child (or Client) Has Just Been Suspended from School

By: Ellen A Callegary, Esq. and Sally Fite Stranfield, Esq.¹

I. Introduction

This Article provides a brief overview of the school discipline process in a Maryland public school setting.² Because there are greater legal protections for students with disabilities under the Individuals with Disabilities Education Act (IDEA)³, we walk you through two scenarios – the first scenario describes the discipline process for a student without a disability and the second scenario describes the process and protections available for a student with a disability.

A. Scenario 1 (Student in Regular Education with no Disability):

Seventeen year old Suzy Student proudly drives the family station wagon to Jolly Acres High School on the Friday before the big Memorial Day Weekend and parks in the school lot. When Assistant Principal Ida Rule walks to her car during her brief lunch break, she can't help but notice the case of National Bohemian Beer in the back of Suzy's car. The next thing Suzy knows is that she is in the Principal's office being suspended after hearing the announcement "will the owner of a blue Ford wagon with tag number Y., please come to the office." What should Suzy do? What are her rights? Should she give a statement? Call her parents? Call a lawyer?

Answer: She should ask to call her parents and have someone with her during questioning. She should not give or sign any statements until she has had a chance to consult with her parents or an attorney. Depending on the local public school system's policies, she could be suspended and then, recommended for expulsion⁴ for possessing alcohol on school grounds.

B. Possible Disciplinary Actions: Suzy could receive an in-school suspension for up to ten days, a short term suspension for up ten days, an "extended" suspension and/or be expelled. Suzy's possession of alcohol on school property may form the basis for the harshest penalty which is expulsion.

C. Due Process Rights? Yes, Suzy actually has some due process rights.⁵ Every local school system has a slightly different approach to discipline. It is essential that you obtain a copy of the local school system's regulations in the county or city where the alleged violation occurred.

II. Summary of Due Process Rights for Non-disabled Student

A. In summary, Suzy's rights are: 1) Notice - oral or written notification of the alleged disciplinary violation; 2) "Prompt-

ly" Given a Conference with the Principal -usually within 3-5 days and includes student and parents. At that time, Suzy has the right to an explanation of the evidence supporting the disciplinary action and must be given an opportunity to present her side of the story.

B. Additional Due Process Rights for Suspensions of More than 10 Days or Expulsion: If "extended" (greater than 10 days) suspension or expulsion is recommended by the Principal, Suzy has much greater due process rights than if a short-term or in-school suspension is recommended. In those cases, the principal must immediately send a written report to the local superintendent. Once the report is received, the local superintendent or designee must promptly make a "thorough investigation" of the matter. If the local superintendent or designee finds that a longer suspension or expulsion is warranted, a conference must be arranged with the student and the student's parent.

C. Practice Tip: As a practical matter, most of these conferences are held with the superintendent's designee rather than the superintendent. These conferences are usually held in an informal manner with the student, her parents and, in Suzy's case, Ida Rule who would present Jolly Acres perspective on the beer in the car, Suzy's school record and any prior disciplinary infractions. This would be the second time⁶ for Suzy's parents to explain that they, not Suzy, purchased the beer and accidentally left it in the car in preparation for the Memorial Day Weekend "down the Ocean".

D. Appeal Rights If Superintendent's Designee Finds that Extended Suspension or Expulsion is Warranted: If the designee finds that a suspension of more than 10 school days or expulsion is warranted, the student or the student's parent may:

- (1) Appeal to the local board of education within 10 days after the determination;
- (2) Have a Hearing before the local board or its designated committee; and
- (3) Bring counsel and witnesses to the hearing. The decision of the local board is final. However, the student can appeal to the State Board of Education or to Circuit Court. The possible grounds for Appeal are:

Whether the local school board violated state or local law, policies or procedures?

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Whether the local school board violated the due process rights of the student?

Whether the local school board acted in an otherwise unconstitutional manner?

III. Scenario 2 (Students with Disabilities in Public Schools)

Little Ricky is a 4th grader in the Farm Elementary School who has recently been diagnosed with ADHD. He's an engaging, adorable child. During Little Ricky's early years at Farm Elementary, he had minor conflicts with other students and his teachers were frequently reminding him to "pay attention". Three months into 4th grade, Little Ricky had already been suspended twice: once for defying teacher directions; and the second for kicking a student while waiting in line to enter the cafeteria for lunch. Three days before winter break, Little Ricky and a student at the adjacent desk, were "getting into it" when the teacher's back was turned. The boys' behavior escalated, culminating in Little Ricky's punching Freddie in the eye.

A. What should the parents do? What are Little Ricky's rights?

Answer: Little Ricky should immediately ask to call his parents and not write a statement. He should ask to have a parent with him before he talks to school staff or to a police officer. Depending on school policies, the police may be summoned to assume responsibility for the investigation. As soon as possible after Little Ricky's parents are notified, they should tell the school that Little Ricky is not to be questioned and is not to write any statement until a parent or an attorney is present.

B. Possible Disciplinary Actions: All of the same disciplinary options described in Scenario 1 are available in this Scenario even though Little Ricky may be a student with a disability. He simply has more protections during the disciplinary process than Suzy has. Little Ricky's prior suspensions and the seriousness of his punching Freddie in the eye may provide the school system with a sufficient basis to seek a long-term suspension or expulsion.

C. Who is entitled to the additional protections afforded to students with disabilities? If Ricky has been identified as a "student with a disability"⁷ through an IEP Team Process,⁸ he is entitled to these additional protections. Even though Ricky has been diagnosed with ADHD, he is not considered to be a "student with a disability" under IDEA unless the IEP Team determines that his ADHD is having an adverse impact on him in school. A student with a disability is treated the same way as students without disabilities for suspensions of not more than 10 consecutive school days.⁹

D. Students with Disabilities Who Are Not Yet Eligible for Special Education: If Little Ricky has not been determined to be a "student with a disability" by an IEP Team, he will be treated the same as a child without disabilities who has violated the school disciplinary code unless he meets the criteria outlined in this section. Even if Little Ricky has not yet been identified as a "student with a disability", he may be eligible for these additional protections during the disciplinary process if: (1) His parent wrote to supervisory or administrative personnel of the school system or his teacher that Ricky needs special education and related services because of his ADHD; (2) His parent requested an evaluation of Ricky; or (3) Ricky's teacher or other school personnel expressed specific concerns about Ricky's pattern of behavior to the director of special education or other supervisory personnel.¹⁰

E. Change of Placement – Suspensions of greater than 10 days: If Ricky is suspended for more than 10 days, this action is considered a change in school placement and additional protections are triggered. An IEP Team Meeting must be held within 10 days to determine whether his behavior was a manifestation of his disability.

F. "Manifestation Determination" Meeting: The underlying reason for the "manifestation determination" process is to prevent the punishment of students for behaviors that arise from their disabilities and to encourage the school team to focus on proactive measures to help the student. At a manifestation determination meeting, the IEP team must determine whether Ricky's behavior was: (1) caused by or had a direct and substantial relationship to his disability; or (2) the direct result of the public agency's failure to implement his IEP.¹¹ If Ricky's behavior is determined to be a manifestation of his disability, the IEP Team must conduct any assessments needed to develop and implement a behavioral intervention plan and return him to his school unless his parent and the school agree to a change of placement.¹² Even if Ricky's behavior was found not to be a manifestation of his disability, he still must be provided a free appropriate public education (FAPE).¹³

G. Drugs, Weapons or "Serious Bodily Injury" Exceptions: A student with a disability may be sent to an "interim alternative educational setting" for up to 45 days if, while at school, on school premises, or at a school function, the student:

- (1) Carries or possesses a weapon;
- (2) Knowingly possesses or uses an illegal drug;
- (3) Sells or solicits the sale of a controlled substance; or
- (4) Inflicts serious bodily injury on another person.

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None of these exceptions would apply to Ricky's case. His punching of the other student does not meet the definition of "serious bodily injury" which requires a severe degree of harm.¹⁴ If the student's behavior meets one of these exceptions, the IEP team determines the interim alternative educational setting where the student is placed for up to 45 days. The setting must enable the student to progress in the general curriculum; receive the services and modifications included in the student's IEP; meet the goals of the student's IEP; and receive services and modifications designed to address the behavior to prevent its recurrence.¹⁵

H. Dangerousness Exception and Expedited Due Process Hearing:

If the school system believes the behavior of a student with a disability is likely to result in injury to the student or others, it may request a due process hearing to seek the removal of the student to an interim alternative educational setting. The school system may request an expedited due process hearing, if it believes that it is dangerous for the student to be in the current placement during the pendency of the due process hearing. Under this dangerousness provision, an administrative law judge may order a change in placement to an interim alternative educational setting for not more than 45 school days.¹⁶

¹ As attorneys in the law firm of Callegary & Steedman, P.A., Ellen A. Callegary and Sally Fite Stanfield represent children and adults with disabilities throughout Maryland.

² In this Article, we are not discussing the protections that students with disabilities have in private schools under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and in public schools (and federally funded

private schools) under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

³ 20 U.S.C. §1400 et seq.

⁴ A "Expulsion" means "the removal of the student from the student's regular school program and may be further defined by a local board of education." COMAR 13A.08.01.11

⁵ "Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion." Id.

⁶ The first time for this explanation would have been in the meeting with the Principal at Jolly Acres High School. Obviously, the Principal did not believe their story or is choosing to ignore it and that is why Suzy's case is now before the superintendent's designee.

⁷ "Student with a disability" means a student who has been evaluated as having at least one of the following disabilities: Autism, Deaf-blindness, Emotional disturbance, Hearing impairment, Mental retardation, Multiple disability, Orthopedic impairment, Other health impairment, Specific learning disability, Speech or language impairment, Traumatic brain injury, or Visual impairment, and who, because of the impairment, needs special education and related services. COMAR13A.05.01.03B

⁸ "IEP team" means a group of individuals responsible for: (a) Identifying and evaluating students with disabilities . . .; An IEP is an "Individualized education program" for a student with a disability that is developed, reviewed, and revised by an IEP Team to meet the student's needs. Id.

⁹ COMAR 13A.08.03.03A

¹⁰ COMAR 13A.08.03.10

¹¹ COMAR 13A.08.03.08

¹² Id.

¹³ "Free appropriate public education (FAPE)" means special education and related services that are provided at public expense. COMAR13A.05.01.03B

¹⁴ "Serious bodily injury" means an injury inflicted on another individual that results in a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty

¹⁵ COMAR 13A.08.03.06; A student with a disability may be removed to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of the student's disability.

¹⁶ Id.

