



Legislation 2009- Information You Can Use

Parent Student Involvement Act

History:

On June 2, 2009 the governor signed this bill into law. This bill is meant to provide clear due process for students who are expelled or suspended or recommended for expulsion or suspension for more than 10 days.

What this law provides for students who are expelled or suspended or recommended for expulsion or suspension for more than 10 days:

This law requires local board to give written notice to the student's parent or guardian by certified mail, telephone, telefax, e-mail, or any other method reasonably designed to achieve notice of the recommended expulsion or suspension.

This law defines "parent" as parent, guardian, caregiver, or other person legally responsible for the student.

Written notice will be provided to the student's parent by the end of the workday during which the suspension/expulsion is recommended.

Written notice must include the following information at minimum:

- (1) A description of the incident leading to the recommendation that the student be expelled or suspended for more than 10 days;
- (2) The specific provisions of the student conduct policy or rule alleged to have been violated;
- (3) The specific process by which the parent may request a hearing to contest the suspension for more than 10 days or expulsion, including the number of days within which the hearing must be requested;
- (4) The process by which a hearing will be held, including, to the extent provided by law, the student's opportunity to examine evidence and present evidence, to confront and cross-examine witnesses supporting the charge, and to call witnesses to verify the student's version of the incident;
- (5) The parent is permitted to retain an attorney to represent the student in the hearing process;

(6) The extent to which the local board policy permits the parent to have an advocate to accompany the student to assist in the presentation of his or her appeal instead of an attorney; and

(7) The parent has a right to review the student's educational records prior to the hearing.

What if my child receives specialized instruction under IDEA and is recommended for suspension/expulsion of more than ten (10) days?

When a child with a disability receives specialized instruction under IDEA and has an IEP, a suspension/expulsion of more than ten days is considered a change in placement. A student with an IEP has additional rights before the student may be suspended or expelled.

If there is a change in placement, the relevant members of the IEP team must conduct a manifestation determination review within 10 school days of the suspension. The team must decide if the behavior was caused by the student's disability or by the school's failure to follow the IEP. If one of these things caused the behavior, then the behavior is a manifestation of the student's disability. If the behavior that caused the suspension/expulsion was a manifestation of the student's disability then the suspension must end and the student must return to school. The IEP team must develop a Functional Behavior Assessment and Behavior Intervention Plan for the student.

If the behavior that caused the suspension/expulsion was not a manifestation of the student's disability then the suspension/expulsion may stand. If the suspension/expulsion stands then the student must be provided FAPE during the suspension. The IEP team is not required to develop a Behavior Intervention Plan, but you can ask that one be developed anyway.

If the determination is that the student's 10 day suspension/expulsion stands, you may still appeal the decision using the due process rules established by the Parent Student Involvement Act.

What You Can Do To Make This Law Effective:

1. Make sure that your child's IEP team is aware of the due process rights of your child under the IDEA and the Parent Student Involvement Act.
2. If your child has an IEP and is recommended for suspension/expulsion for more than ten days you need to know your rights. Make sure that your IEP team meets to address the recommendation for suspension/expulsion and conducts a manifestation determination review. Ask for a functional behavior assessment and behavior intervention plan.

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919-782-4632 www.arcnc.org October 1, 2009