

# Discipline Considerations

## A Court Reference Guide for Tennessee Child and Parent Attorneys, Multidisciplinary Professionals, Court Staff and Volunteers

Students in foster care are more likely to experience school discipline than their peers. There is mounting evidence that even a single out-of-school suspension raises the risk of future suspensions and justice involvement (Ayoub, et al, 2019). Aside from missing academic work, a suspended student in foster care may be cut off from positive school relationships while facing additional challenges in the foster home. Advocating for behavior support ahead of disciplinary issues or alternatives to out of school suspension support more positive outcomes for the student at school and home.

### THE LAW

#### Federal Law

20 U.S.C. § 1400 et seq. (IDEA)  
34 C.F.R. §§ 300.530–300.536 (IDEA Discipline Procedures)  
42 U.S.C. § 12131 et seq. (Section 504 of the Rehabilitation Act)

#### Tennessee Law and Policy

TCA § 37-2-404; § 37-2-409 (Judicial Oversight in Foster Care)  
TCA § 49-6-3401 (Suspension and Expulsion of Students)  
TCA § 49-10-1304 (Discipline Considerations of Students with Disabilities)  
TCA § 49-10-601 (Special Education)  
TRJPP 402, 403, 404  
DCS Admin. Policy 21.14  
TN State Board of Ed. Rule 0520-01-09

#### School Authority to Suspend

Under TCA § 49-6-3401, a principal or assistant principal of a Tennessee public school may suspend a student for “good and sufficient reasons.”

#### Notice and Appeal Rights

- When a student is suspended for more than one-day of in-school suspension, the principal must notify the parent within 24 hours. The notice must state the reason for the suspension and the requirements for the student’s return.
- A suspension of 5+ days requires the school to develop a student behavior plan.
- A suspension of more than 10 days requires the school to provide written or actual notice to the student and student’s parent of:
  - the disciplinary action taken and
  - the right to appeal.

#### Appeals must be filed within 5 days of receipt of notice.

An appeal may be filed by:

- the parent or guardian,
- the student, or
- a teacher employed by the school system, if requested by the student.

### WHAT TO CONSIDER

At Permanency Plan Ratification, Periodic Progress Review/ Foster Care Review Board and Permanency Hearings, the court/ FCRB should address disciplinary issues at school that impact child/youth well-being.

#### **Has the youth been the subject of disciplinary referrals at school? If yes:**

- Has the child been suspended in excess of 10 days or been expelled?
- Has the student received their notice of appeal rights?
- If the family is awaiting notice, or received it <5 days ago, does the family wish to appeal? If so, they must notify their school district of their decision to appeal the school discipline.
- During the appeal, the youth and the youth’s representative/ parent/etc. will have a chance to tell their side of the story and explain why they think the discipline is not warranted.

*Note that “Zero Tolerance” offenses, as defined by TN statute and local board policy, generally require a full school year expulsion.*

#### **Has the youth experienced more than 10 days out of school suspension this school year or was the youth expelled?**

- Does the youth have an Individualized Education Program (IEP) or a Section 504 Plan? Has anyone recently requested evaluation for an IEP or a 504 plan?
- If yes, has the school conducted a manifestation determination review meeting in order to determine whether the problem behavior was caused by the disability or by the school’s failure to implement the IEP? What was the result?
- If manifestation was found, then the student should be receiving behavior support. Has behavior support been implemented? Is it helping? Was an educational decision maker present? If not, why not? \* See *Special Education Reference Guide*.
- If there *has not been a manifestation meeting*, ask: When is that meeting scheduled? You can ask the court or recommend to the court that DCS follow up on this meeting and report back to the court or the FCRB.

#### **The participation of the GAL / defense attorney is helpful in disciplinary appeals and manifestation meetings.**

- If the youth *does not have an IEP/504 Plan*, is struggling with problem behavior at school, and an adult suspects the behavior is caused by a disability, consider recommending DCS refer the youth for special education evaluation. \* See *Special Education Reference Guide*.