



Education Law, Part II

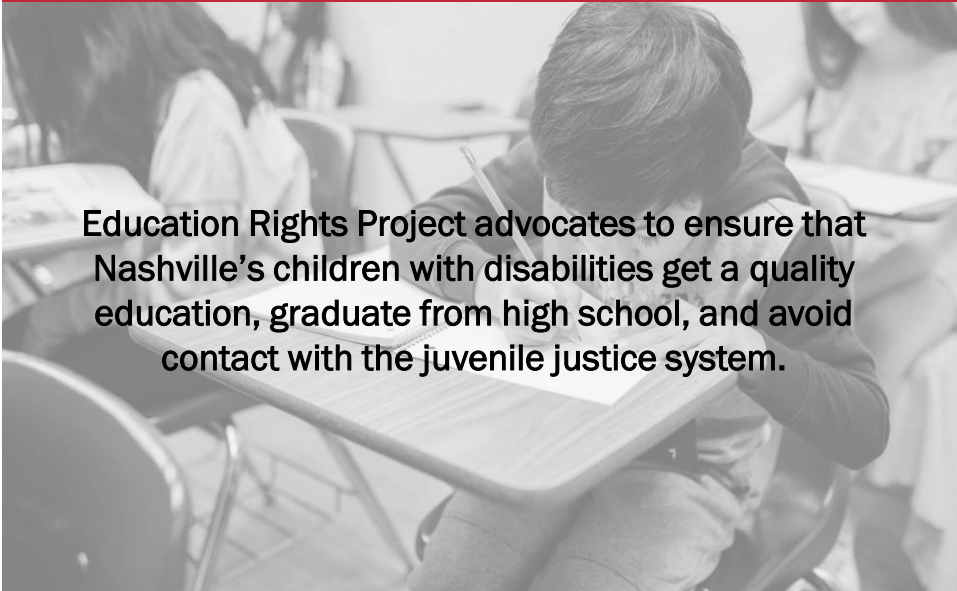
Discipline Law;
Leveraging Education Law In Juvenile
Court Proceedings

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Please note: Language in the presentation is paraphrased for brevity and in some cases does not directly quote the language in the relevant statutes, regulations, or case law. This does not constitute legal advice.

EDUCATION RIGHTS PROJECT



Education Rights Project advocates to ensure that Nashville's children with disabilities get a quality education, graduate from high school, and avoid contact with the juvenile justice system.

EDUCATION RIGHTS MODEL

Education Advocacy

- Advocacy & Legal Representation
- Holistic care

Foster Care Practice

- Guardian ad Litem
- Surrogacy

Training for Key Community Stakeholders

Policy Work



THE SCHOOL TO PRISON PIPELINE

School arrest, suspension and expulsion push students towards criminal justice involvement.

- **Lost instructional time** leads to lower academic performance. (Attendance Works, 2014)
- School exclusion increases risk of **dropping out** of school. (Balfanz et al, 2012)
- **Within a year** of suspension or expulsion, **three times** higher likelihood of juvenile justice contact. (Fabelo, T. et al, 2011)
- Students attending high-suspending middle schools have a 15-20% increase in likelihood of arrest and incarceration *as an adult*. (Bacher-Hicks, A., et al 2019)
- **Youth in Foster Care** with 3 school changes in high school have a 28% likelihood of graduating on-time; Those with 5 school changes have a 16% likelihood.

SCHOOL SUCCESS IS PROTECTIVE

Risk of Incarceration for Men by 35	With High School Diploma	Without Diploma
White	6.2%	28%
Black	20%	68%
Latino	9.2%	19.6%

Western & Petit, 2010



INTRODUCTION

- **Discipline**
 - Due Process Rights
 - Protections for Students with Disabilities
- **Leveraging Education Advocacy in Juvenile Court Proceedings**
- **Questions**



DISCIPLINE

- Discipline Protections for All Students
 - Due Process
 - Suspensions and Expulsions
- Discipline for Students with Disabilities
 - IDEA
 - Manifestation Meetings
 - Section 504
 - Restraint & Isolation



DUE PROCESS PROTECTION IN DISCIPLINE CASES

1. What does procedural due process require?
2. What does substantive due process require?

Goss v. Lopez, 419 U.S. 565 (1975).

Seal v. Morgan, 229 F. 3d 567 (6th Cir. 2000).



SUSPENSIONS

- Students - Except in emergency, schools must:
 - Advise student of nature of misconduct
 - Question
 - Give chance to explain
- Notice to Parents - Principal must notify parent within 24 hours of:
 - Reason for suspension
 - Length of Suspension
 - Exception: ISS for less than 1 day

T.C.A. § 49-6-3401(c)(1),(2).



SUSPENSIONS

- Review the District's Discipline Code – Is the offense suspendable?
 - Example: MNPS [Discipline Table](#)
 - Charter schools have their own discipline handbook.
- All disciplinary infractions should be documented by school. Parent can request records.
- Punishment must rationally relate to the offense. Intent must be considered. *Seal v. Morgan*, 229 F. 3d 567 (6th Cir. 2000).
- Informal “Soft” Suspensions: Not Legal
 - “Come and pick up your child.”
- Pursue Informal Appeals
 - Contact Principal or Board of Education

EXPULSIONS

- Parent and student must be given:
 - Actual or written notice of offense committed
 - Opportunity to explain
 - Notice of expulsion
 - Notice of right to appeal
- Appeal: 5 Days to request a hearing after receipt of notice of *right to appeal*
 T.C.A. § 49-6-3401(c)(4)(B)
- “Punishment must rationally relate to offense.”
 Intent must be considered.
 - Punishment must fit the offense
 - Student should not be disciplined for accidental behavior.*Seal v. Morgan*, 229 F. 3d 567 (6th Cir. 2000).

ZERO TOLERANCE OFFENSES

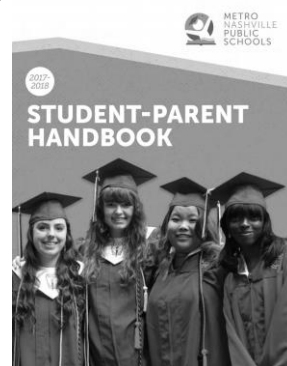
- Tennessee Zero Tolerances requiring one year expulsion:
 - Aggravated assault of school staff or SRO
 - Illegal Drugs
 - Firearms
 - Director of schools can modify 1 year expulsion on case by case basis
 T.C.A. § 49-6-3401(g).
- Tennessee Zero Tolerance Offense – requires expulsion, one year not mandatory
 - Threat by Electronic Transmission
- Each school district can define additional zero tolerance offenses

APPEALING AN EXPULSION: 1ST STEPS

- Request an appeal.
 - For MNPS students, call the Discipline Office at (615)259-8757.
- Interview the client
- Request discipline records.
 - Ask for client's "discipline packet" from the Discipline Office.
 - Review with client

APPEALING AN EXPULSION: PREPARING YOUR CASE

- Does the behavior meet the definition in the handbook?
- If required, were interventions implemented?
- Did the school complete an investigation?
- Prepare your client for hard questions.
- Consider:
 - Witnesses
 - Letters of Support
 - Therapists
 - Community Members



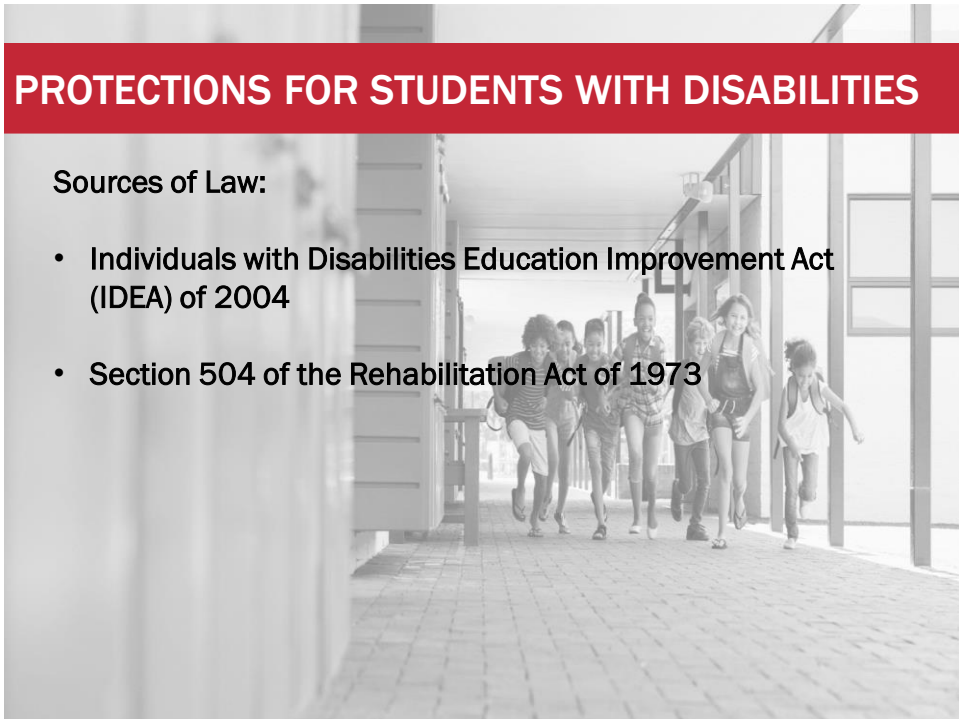
THE APPEAL

- What can the Board do?
T.C.A. § 49-6-3401(b)(5)
- Level 1: Disciplinary Hearing Authority or Board:
 - Overturn expulsion
 - Shorten length of expulsion
 - May not shorten the length of expulsion for a Zero Tolerance offense if the Board determines the student has committed offense
- Level 2: Director of Schools or Designee (some districts):
 - Overturn expulsion
 - Shorten length of expulsion
 - May shorten the length of a Zero Tolerance expulsion
- Level 3: Appeal to Board of Education
 - May grant or deny request for appeal
 - May affirm or overturn decision with or without hearing

PROTECTIONS FOR STUDENTS WITH DISABILITIES

Sources of Law:

- Individuals with Disabilities Education Improvement Act (IDEA) of 2004
- Section 504 of the Rehabilitation Act of 1973



IDEA AND BEHAVIOR

- Individualized Education Program (IEP)
 - Present Levels: Current, Specific, Data-Driven
 - Goals: Measurable and Achievable
 - Individualized Accommodations
 - Functional Behavior Assessment (FBA) & Behavior Intervention Plan (BIP)
 - Check-In/Check-Out with Preferred Adult
 - Safety Plan
 - Services
- IEP Team must consider use of positive behavior interventions and supports.
- Services based on peer-reviewed research.

MANIFESTATION DETERMINATION MEETINGS

Purpose: Protection from Disability Discrimination

Who is entitled to a manifestation meeting?

- A student with an IEP or 504 Plan
- A student without an IEP when the school has knowledge of a disability:
 - Parent expressed concern in writing that child needed services to administrators or child's teacher
 - Parent requested an evaluation
 - Teacher or other school personnel expressed specific concerns about a pattern of behavior to supervisors.

IDEA: MANIFESTATION MEETINGS

- Required when:
 - **Expulsion** – Removal for more than 10 consecutive days, or
 - **10-Day Rule** – Pattern of removals for similar behavior for more than 10 days in a school year
 - **Juvenile Petition** – Before school files a (truancy) petition against a child receiving special education services (has an IEP)



TIMING OF MANIFESTATION MEETING

- Manifestation Meetings may be held upon 24 hours notice.
- Parents have a right to participate in decisions regarding placement.
- School has 10 school days to complete meeting after decision to change placement.



MEMBERS OF MANIFESTATION TEAM

- LEA Representative
- Parent
- Relevant Members of the IEP Team (as determined by the parent and the LEA)
- *Best Practice:* Include school psychologist and other members of the IEP Team



WHAT MUST BE CONSIDERED

- Team must review *all relevant information* in student's file, including:
 - Child's IEP
 - Teacher Observations
 - Any relevant information provided by the parents
 - *Psychological Evaluation
- Provide team with relevant information regarding diagnoses and effect of trauma on the child.



MANIFESTATION QUESTIONS

1. Was conduct caused by, or did it have a direct and substantial relationship, to child's disability?
2. Was conduct direct result of school's failure to implement the IEP?

If **YES** to either question:

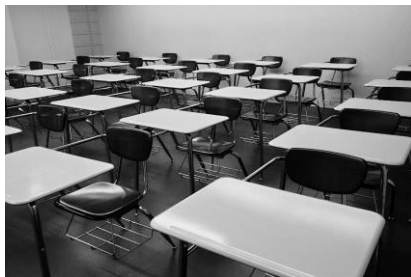
- End suspension or expulsion (or other change of placement)
 - *Unless* parent and school agree to change of placement.
- Create or revise FBA and BIP.

If **NO** to *both* questions:

- Student may be disciplined.
- Student must receive educational services.
- FBA and behavior intervention services, as appropriate.

SPECIAL CIRCUMSTANCES

- Under "Special Circumstances" involving weapons, drugs, or serious bodily injury:
 - The IDEA allows school personnel to remove a child with a disability to an Interim Alternative Educational Setting (IAES) for not more than 45 school days *regardless* of whether the behavior is determined to be a manifestation of the child's disability.



WHEN THERE IS DISAGREEMENT

- What if we disagree with the team's determination in a manifestation meeting?
 - Parent can request an expedited due process hearing.
 - The hearing must take place within 20 days of the request and a decision must be rendered within 10 school days of the hearing.
 - During the hearing process, the student remains in the interim alternative setting.

DISCIPLINE PROTECTIONS: SECTION 504

- A re-evaluation is required before a significant change of placement.
- A behavior plan may be required.
- A manifestation meeting is required for:
 1. Expulsion
 2. 10+ days of suspensions in a year



RESTRAINT & ISOLATION

- May only use in *emergency*
 - Child's behavior poses threat to physical safety of student or others nearby.
T.C.A. § 49-10-1304
 - OCR: Imminent danger of serious physical harm to self or others.
- Certified Staff
 - Completed a behavior intervention training (e.g. CPI, SAMA).
 - If not immediately available, other staff may utilize.
- Record must be created in Easy IEP and a copy must be provided to the parent. The parent must be notified the same day.

RESTRAINT & ISOLATION

- FBA/BIP is required if added to the IEP.
- Does the child need a restraint or isolation clause in the IEP?
 - Has the child previously endangered self or others?
 - What behaviors?
 - How frequent?
 - How severe?
 - How recent?
- If not in the IEP, IEP meeting must be held within 10 days.



ADVOCACY TIPS

- If it's not in writing, it's as if it did not happen.
 - Follow up conversations with an email.
 - Get information to the person with power.
 - Keep a copy.
- Documentation is powerful.
- Get the right people to the table.
- Take breaks as needed.
- Be cautious with confidential and sensitive information.

LEVERAGING EDUCATION LAW IN JUVENILE JUSTICE PROCEEDINGS

- Tenn. Code Ann. §37-1-129
 - "If the court finds that the child is not in need of treatment or rehabilitation, it may dismiss the proceeding"
- Delinquency Cases
 - Competency
 - Negotiations with the District Attorney
 - Disposition



LEVERAGING EDUCATION LAW

- Truancy Cases:
 - T.C.A § 37-1-102(b)(23)(A) – Unruly Offense – “...a child in need of treatment and rehabilitation who habitually and without justification” is truant from school while subject to compulsory school attendance under § 49-6-3007.
- Truancy Defenses:
 - Is child in need of treatment and rehabilitation?
 - Are absences “without justification”?
 - Has schools system met its obligation?
- Manifestation Determination Meetings
 - T.C.A. § 49-10-1304(a)(3)(B) – School personnel may file a juvenile petition against a student receiving special education only after conducting a manifestation determination...
 - MNPS Policy SPp3.113
 - Juvenile Court Petition requires MD paperwork for students with IEPs

LEVERAGING EDUCATION LAW

- Neglect/Dependency Cases
 - Relevant information available in educational records and with school staff
 - GALs – The role of the guardian ad litem is to represent the child’s best interests by gathering facts for the court’s consideration. Sup. Ct. Rule 40 Section 6.
 - Rule 40 Section 8(b)(1):
 - Conduct an investigation necessary to determine best interests, which can include, but is not limited to...
 - Child’s emotional needs, social needs, educational needs,
 - Vulnerability and dependence on others
 - Age and development level, including sense of time.
 - Importance of continuity
 - Home, school and community record of the child

EDUCATION RIGHTS PROJECT

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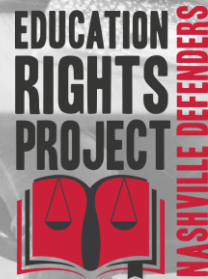
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EDUCATION RIGHTS PROJECT

- **To qualify for our services, the child must:**
 - Be a student in kindergarten through 12th grade
 - Reside and attend school in Davidson County
 - Have low income
 - Have a disability or mental health diagnosis
- **Our goal is to provide advocacy and legal representation to Nashville's students to help them succeed in school and stay out of the juvenile justice system.**



MNPS RESOURCES

- HERO Program for Homeless Families: (615)259-8733
- Discipline Office – To request an appeal: (615)259-8757
- Homebound Program: (615)298-2172
- Exceptional Education Department: (615)259-8698
- Customer Service: (615)259-4636

RESOURCES

- **U.S. Department of Ed, Office of Special Education and Rehabilitative Services**
<http://www2.ed.gov/about/offices/list/osers/osep/index.html>
- **TN Department of Education, Division of Special Education**
<http://www.state.tn.us/education/>
- **Positive Behavioral Interventions and Supports**
<http://www.pbis.org/>
- **TN STEP**
www.tn.step.org
- **Wrights Law:**
www.wrightslaw.com

