

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 one 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

20 U.S.C. § 1400; 42 U.S.C. § 12131 et seq; TCA § 37-2-404; TCA § 37-2-409; TCA 49-10-601; TCA § 49-6-3401 - Suspension of Students, Expulsion of students; TCA § 49-10-1304 - Isolation or Restraint of Student; TCA § 49-6-4216 - Zero Tolerance Offense; TRPP Rules 402, 403, 404; 34 CFR §§ 300.530 - 300.536 - Discipline under IDEA; DCS Admin Policy and Procedure 21.14; CPS 14.7; TN State Board of Education, 0520-01-09

According to Tennessee statute, a school principal or assistant principal of any Tennessee public school is authorized to suspend a student “for good and sufficient reasons.”

In the case of expulsion or suspension of more than 10 days- the school administrator will provide written or actual notice to the parent or guardian and the student of the right to appeal the decision. All appeals must be filed within 5 days of receipt of the notice and may be filed by the parent or guardian, the student, or any person holding a teaching license who is employed by the school system if requested by the student.

Students with disabilities identified under Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act (IDEA) are afforded a disability related analysis before a long-term suspension or expulsion and may receive behavior support for problem behavior caused by disability.

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 if they received notice less than 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)? If yes:

- Does the youth have an Individualized Education Program (IEP) or a Section 504 Plan? Or has anyone recently requested evaluation for an IEP or a 504 plan?
- 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 youth’s guardian ad litem or juvenile defense attorney is exceptionally helpful in disciplinary appeals and manifestation meetings.

If the youth **does not have an IEP/504 Plan** and is struggling with problem behavior at school and an adult who knows the youth (court, attorney, etc.) suspect the child’s behavior is caused by a disability, consider recommending or requesting that DCS refer the youth for special education evaluation. **See Special Education Reference Guide.*