



Advocates for Children of New York

Protecting every child's right to learn

Discipline of Students with Disabilities: *E.B. v. New York City Department of Education*

E.B. v. New York City Department of Education is a federal court case brought against the New York City Department of Education (DOE). This case was settled in 2015 and requires the DOE to take certain steps when students with disabilities in DOE schools are suspended, removed, transferred, or discharged from class or school.

This fact sheet tells you about some of the rights and procedures the *E.B.* Settlement gives to students with disabilities. To get the settlement agreement or more information about the settlement, please go to AFC's website at http://www.advocatesforchildren.org/litigation/class_actions/eb_vs_doe.

Who is protected by E.B.?

The *E.B.* Settlement gives rights to children with disabilities from kindergarten through age 21 who are removed, suspended, expelled, transferred or excluded from a DOE class or school.

SUSPENSIONS AND REMOVALS FROM CLASS

In New York City, there are only **3** types of removals from class for discipline:

- 1. Teacher removals:** Teacher removals are typically for less than an entire school day, although can last up to 4 school days. The principal must notify the parent of the removal and give the parent an opportunity to meet to discuss the removal.
- 2. Principal suspensions:** Principal suspensions remove the student from his or her regular class for 5 days or less and provide education in an alternative site in the school. The principal must provide the parent a written notice of the suspension and, in almost all instances except when the student poses a current threat of harm, the principal must hold a conference with the parent and student to discuss whether the suspension should occur before the student is removed from class.
- 3. Superintendent's suspensions:** Superintendent suspensions remove the student for 6 days or more and provide education in an alternative site outside of the school. The parent must be given a written notice of the suspension and a hearing will be held outside of school to determine whether the student should be suspended within 10 days of the suspension.

All other removals from school or class are **not allowed** punishments. For more information on suspensions, please see AFC's *Guide to School Suspensions*, available at http://www.advocatesforchildren.org/get_help/guides_and_resources.

When can a student be removed from school before a suspension hearing?

In most cases, a student cannot be removed from his or her class for a Superintendent's Suspension (a suspension of 6 or more days) before a suspension hearing. However, if a student is accused of violating certain discipline codes (mainly involving threats of harm), the principal can remove him or her if the principal follows procedures added through the *E.B. Settlement* including notifying and sometimes getting approval from the DOE's Office of Safety and Youth Development.

What if the removal was for behavior caused by the student's disability?

A student cannot be removed from class or school for behavior that was caused by his or her disability or if the school is not following his or her IEP.

- To make sure that a student is not removed because of the student's disability, the school must hold a meeting called a Manifestation Determination Review (MDR).
- An MDR is a meeting that happens at the student's school with the parent and other members of the student's IEP team to see if there was any connection between the student's disability and the behavior that led to the suspension.

When should the DOE hold an MDR?

Under the *E.B. Settlement*, the DOE must conduct an MDR for a student with an IEP in three instances:

- If the student is facing a Superintendent's Suspension for more than 10 school days;
- If, within a 40 school day period, a student is removed from class (through teacher removals or suspensions) 3 or more times for a total of 11 or more school days of removal;
- If a student is removed from class (through teacher removals or suspensions) 2 or more times for a total of 11 or more school days of removal during the school year and the principal of the school decides:
 - a. The student's behavior is "substantially similar" to the student's behavior(s) that led to past removals, and
 - b. There is a "pattern of removals" based on: the length of past removals, the total time the student has been removed or suspended from class or school throughout the school year; and how close in time the removals were.

EXAMPLE 1:

Student A gets a teacher removal on January 1 for 1 day, a principal suspension on January 30 for 5 days, and a principal suspension for up to 5 days on February 5. The school must conduct an MDR before the third principal suspension because the student could be removed for more than 11 school days in a 40 school day period.

EXAMPLE 2:

Student B gets a teacher removal on September 1 for 1 day for pushing a teacher and a Superintendent's Suspension on October 31 for 10 days for pushing a teacher. Because the student faces removal for 11 days during the school year, prior to imposing the Superintendent's Suspension, the principal must examine whether the student was removed for similar behavior. After deciding that the behavior is similar (in both cases pushing the teacher), the principal must look whether Student B is being removed for a pattern of behavior.

If a student with a disability has been or will be removed or suspended for 11 or more days in a school year, you should ask the school to hold an MDR. If you think that the behavior was related to the student's disability, and the school does not hold an MDR, you can appeal by filing a request for an impartial hearing. For information on impartial hearings, please see AFC's *Guide to Impartial Hearings*, available at http://www.advocatesforchildren.org/get_help/guides_and_resources.

What happens at an MDR?

- Everyone at the MDR must review and consider all relevant information in the student's file, including his or her IEP, evaluations, teacher observations, and any other information that a parent provides about the student's disability and any connection to the behavior for which the school has sought the suspension.
- If the student works with someone (like a counselor or a psychologist) from outside the school who can explain how the actions were related to the student's disability, you can ask that person to come to the MDR, participate by telephone, or write a letter explaining the connection between the behavior and the student's disability.
- A student's behavior is a "manifestation" of his or her disability (and can return to class immediately) if:
 - a. The school finds that the behavior had a "direct and substantial relationship" to the student's disability, **OR**
 - b. The behavior was the direct result of the school's failure to follow the student's IEP.
- Parents have the right to bring an advocate or attorney with them to MDRs.
- If you do not agree with the result of the MDR, you have the right to an expedited (faster than usual) impartial hearing to appeal the decision. See AFC's *Guide to Impartial Hearings* for more information.

What happens after an MDR?

If the school decides that the behavior was a manifestation of his or her disability:

The student has the right to return to school immediately. In addition, the school must conduct a Functional Behavioral Assessment (FBA) to identify the appropriate supports for the student's behavior and create a Behavior Intervention Plan (BIP) to provide those supports in school.

If the school determines that the behavior was not a manifestation:

The suspension will continue until the end of the suspension period. During the suspension, the student must be provided with appropriate special education services that allow him or her to progress toward his or her IEP goals. The suspension site will prepare a suspension plan identifying the special education supports the student needs.

INVOLUNTARY TRANSFERS FROM SCHOOL

The DOE may not force a student to transfer to another school as discipline or punishment even if the new school will provide the same type of special education program or services that he or she is currently receiving.

DISCHARGES OUT OF SCHOOL & TRANSFERS TO A GED OR HIGH SCHOOL EQUIVALENCY PROGRAM

Every student has the right to attend school through the end of the school year in which he or she turns 21. A public school cannot discharge students with disabilities out of school or transfer them to GED or high school equivalency programs as punishment or discipline.

A school must take the following steps before a student with a disability is discharged or transferred:

- If a student has an IEP, the school must hold a meeting with the parent and student before discharging or transferring him or her out of school. This meeting is called a planning interview.
- The purpose of the planning interview is for the parent and the school to discuss ways to address the student's learning and behavior challenges so that he or she can continue in school instead of being transferred or discharged.
- The school must send a notice to the parent before the planning interview that says the school is considering transferring or discharging the student. The notice will also tell the parent and student of his or her right to attend school to the end of the school year in which he or she turns 21.
- The school also must provide the parent with a packet of information called a Planning Interview Packet that will give information about the rights a parent and student have before and after discharge.
- During the planning interview, school staff must consider the student's prior school history, including past discipline.
- A special education staff member at the school must review the student's IEP and planning interview form.
- For a student with an IEP, the school must get the parent's consent to discharge, unless the student has been absent for 20 school days in a row.
- A person within the DOE who does not work for or at the student's school will review certain transfers and discharges of students with IEPs and will work with the school and student if the reviewer believes the school tried to transfer or discharge the student as punishment or discipline.

**If you need help with a suspension or school discipline,
Please call the Jill Chaifetz Education Helpline:**

(866) 427-6033 (toll-free) • Monday—Thursday • 10am—4pm

For questions about rights under the E.B. Settlement, please contact AFC at:

(973) 878-4559 or ebsettlement@gmail.com

This fact sheet does not constitute legal advice. This fact sheet attempts to summarize existing policies or laws without stating the opinion of AFC. If you have a legal problem, please contact an attorney or advocate.

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