

U.S. Attorney's Office, District of New Jersey, U.S. Department of Education, Office of Civil Rights & New Jersey Division on Civil Rights Presents: Addressing Discrimination in New Jersey Education

RESOURCES

January 26, 2023

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U.S. Attorney's Office, District of New Jersey

The Civil Rights Division of the U.S. Attorney's Office enforces a broad array of federal civil rights statutes addressing, among other things, education-related discrimination, disability rights, national origin discrimination and language access issues, housing discrimination, servicemembers' rights, police misconduct, voting rights, and hate crimes. With respect to civil rights issues in education, our office enforces Titles IV and VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Equal Educational Opportunities Act of 1974, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. Collectively these prohibit discrimination and/or denials of equal protection on the basis of race, sex (including sexual orientation and gender identity), national origin (including limited English proficient status), religion, and disability in school settings.

Contact Information:

The U.S. Attorney's Office for the District of New Jersey welcomes information from the public regarding possible violations of our nation's civil rights laws. Civil rights complaints can be submitted by email, mail, or phone. You do not need a special form to submit a complaint, but you can use this [Civil Rights Complaint Form](#). You can send your complaint by U.S. Postal Service mail or email to: USANJ.Civilrightscomplaint@usdoj.gov

or

U.S. Attorney's Office, District of New Jersey
Civil Rights Complaints, Civil Rights Division
970 Broad Street, Suite 700
Newark, New Jersey 07102

- To submit a complaint by telephone, dial (855) 281-3339, or by fax, dial (973) 297-2010.
- To learn more about the right to a public education regardless of immigration status, click [here](#).
- To learn more about DOJ's work to coordinate and expand enforcement, outreach, and training efforts on behalf of servicemembers, veterans, and their families, click [here](#).

Resources:

- Civil Rights Division Brochure (attached)

THE CIVIL RIGHTS DIVISION ENFORCES:

- Americans with Disabilities Act (ADA)
- Fair Housing Act (FHA)
- Voting Rights Act
- Equal Credit Opportunity Act (ECOA)
- Title IV, Title VI, and Title VII of the Civil Rights Act of 1964
- Uniformed Services Employment and Re-employment Rights Act
- Servicemembers' Civil Relief Act (SCRA)
- Title IX of the Education Amendments of 1972
- Civil Rights of Institutionalized Persons Act of 1980 (CRIPA)
- Equal Educational Opportunities Act (EEOA)
- Freedom of Access to Clinic Entrances Act of 1994 (FACE)
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Deprivation of Rights under Color of Law
- Shepard Byrd Hate Crimes Prevention Act

FILING A COMPLAINT

If you believe that you have been discriminated against or that your civil rights have been violated, you may file a written complaint with the U.S. Attorney's Office:

United States Attorney's Office
ATTN: Civil Rights Division
970 Broad Street, Suite 700
Newark, NJ 07102

Complaint hotline: 855-281-3339
www.justice.gov/usao-nj/civil-rights-enforcement

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The Civil Rights Division of the United States Attorney's Office works to uphold the constitutional and civil rights of all persons, particularly some of the most vulnerable members of our society. The Division enforces federal laws prohibiting discrimination or criminal conduct on the basis of race, color, sex (including pregnancy sexual orientation, and gender identity), disability, religion, familial status, and national origin.

PRIMARY AREAS OF ENFORCEMENT

DISABILITY RIGHTS

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in many contexts, including employment, transportation, state and local government activities, places of public accommodation, and telecommunications. The U.S. Attorney's Office is authorized to investigate complaints, conduct compliance reviews to ensure accessibility, and initiate and intervene in litigation.

POLICE MISCONDUCT

The U.S. Attorney's Office is authorized to investigate patterns or practices of conduct by law enforcement agencies that result in the violation of individuals' federal and constitutional rights.

VOTING

The U.S. Attorney's Office enforces the federal laws that protect the right to vote, including the Voting Rights Act and the National Voter Registration Act.

FAIR HOUSING AND FAIR LENDING

The Fair Housing Act and Equal Credit Opportunity Act prohibit discriminatory housing and residential lending practices based upon race, color, religion, sex, national origin, and familial status. The U.S. Attorney's Office is authorized to bring a lawsuit if it finds a pattern or practice of unlawful conduct or if the matter raises an issue of public importance. The U.S. Attorney's Office may also litigate cases on behalf of private citizens who elect such action upon a finding of reasonable cause by the Department of Housing and Urban Development (HUD). HUD complaints may be filed by going to www.hud.gov.

CRIMINAL

The U.S. Attorney's Office investigates and prosecutes criminal civil rights violations involving hate crimes and the interference with liberties and deprivation of civil rights.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) gives the U.S. Attorney's Office the authority to investigate conditions at certain institutions operated by state and local governments, including facilities for individuals with psychiatric or developmental disabilities, nursing homes, juvenile correctional facilities, and adult jails and prisons.

SERVICEMEMBERS' RIGHTS

The Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) prohibits discrimination and retaliation based on military service and requires, among other things, that employers put individuals back to work in their civilian jobs with applicable promotions following military service, under specified conditions.

EDUCATIONAL OPPORTUNITIES

To ensure equal educational opportunities for all students, the U.S. Attorney's Office investigates claims that school districts are not providing students who are English Language Learners with appropriate services to overcome their language barriers. The U.S. Attorney's Office can also investigate allegations of discrimination, including harassment and the administration of discriminatory discipline based on race, national origin, sex, religion, and disability, in elementary and secondary schools, as well as in public colleges and universities.



FOR MORE INFORMATION <http://www.justice.gov/usao-nj/civil-rights-enforcement>

U.S. Department of Education, Office for Civil Rights

The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by [Title VI](#) of the Civil Rights Act of 1964; sex discrimination is prohibited by [Title IX](#) of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by [Section 504](#) of the Rehabilitation Act of 1973; and age discrimination is prohibited by the [Age Discrimination Act](#) of 1975. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. Areas covered may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment. OCR also has responsibilities under Title II of the [Americans with Disabilities Act](#) of 1990 (prohibiting disability discrimination by public entities, whether or not they receive federal financial assistance). To view OCR's guidance please visit the [Policy Guidance Portal](#). In addition, as of January 8, 2002, OCR enforces the [Boy Scouts of America Equal Access Act](#) (Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001). Under the Boy Scouts of America Equal Access Act, no public elementary school or State or local education agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society.

Contact Information:

Call the **Office for Civil Rights (OCR)** at **1-800-421-3481** to report any educational discrimination on the basis of race, sex, disability, etc., request information on civil rights compliance programs, procedures for filing discrimination complaints, or access to civil rights regulatory and policy documents.

- The local number in Washington, D.C. is **202-453-6100**. [Federal Relay Service](#). Email: ocr@ed.gov.
- See the [OCR Contact Us](#) page to find the enforcement office serving your area or use the [OCR Electronic Complaint Form](#).

Resources:

- [Section 504 Discipline Fact Sheet](#) (attached)
- [Settlement with Victor Valley Union High School District in California](#)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

FACT SHEET

Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973

On July 19, 2022, the Department of Education’s Office for Civil Rights (OCR) issued guidance called *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*.

The guidance reminds public elementary and secondary schools of their obligations under a Federal disability civil rights law, Section 504 of the Rehabilitation Act of 1973 (Section 504), to provide the services, supports, interventions, strategies, and modifications to policies students with disabilities need to address any disability-based behavior, including behavior that could lead to discipline. The guidance explains that when schools do discipline students with disabilities, they must do so in a nondiscriminatory manner.

This Fact Sheet summarizes public schools’ obligations under Section 504 to:

- *Provide a free appropriate public education to K-12 students with disability-based behavior;*
- *Make reasonable modifications to disciplinary policies for students with disabilities; and*
- *Administer student discipline requirements in a nondiscriminatory manner.*

Nothing in Section 504 prohibits a school from responding to emergency circumstances or from taking appropriate, nondiscriminatory steps to maintain safety—for both students and school staff—and to support students in learning how to be accountable for the impact of their actions on others.

This *Fact Sheet* summarizes the guidance; for more information, including relevant legal authorities, please see the guidance, available [here](#).

FAPE and Student Discipline under Section 504¹

Section 504’s free appropriate public education (FAPE) provisions require schools to provide students with disabilities regular or special education, and related aids and services, that: (1) are designed to meet the student’s individual educational needs as adequately as the needs of students without disabilities are met; and (2) satisfy Section 504’s requirements for evaluation and placement, educational setting, and procedural safeguards.

Parents or guardians who disagree with a decision related to their child’s FAPE have the right to challenge the decision using Section 504’s procedural safeguards.²

OCR enforces the Section 504 rights of all students with disabilities, including those who may also receive services under the Individuals with Disabilities Education Act (IDEA). The IDEA requires schools to provide FAPE to students with disabilities who are eligible under the IDEA. The Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. This fact sheet addresses only Section 504 FAPE, so for information about the IDEA, please see OSERS’s guidance, available [here](#).

¹ 34 C.F.R. § 104.33. For more information, please refer to the guidance at 4-24.

² 34 C.F.R. § 104.36. For more information, please refer to the guidance at 13.

■ Evaluation³ and Placement⁴

A school must conduct an initial evaluation, at no cost to parents or guardians and regardless of whether a parent or guardian has requested an evaluation, when the school has reason to believe a student needs special education or related aids and services due to a disability, including when a student's behavior indicates that they may have a disability. Evaluations need to be conducted in a timely manner for a school to meet its FAPE duties.

If a student is doing well academically, that fact does not justify denying or delaying an evaluation when the school has reason to believe the student has a disability. Schools must respond to parent or guardian requests for an evaluation, and a denial of the request can be challenged under the procedural safeguards.

Evaluations must be conducted by trained personnel and interpreted by a group of persons (which can include the student's parents or guardians) who are knowledgeable about the student, the meaning of the evaluation data, and the placement options, as described below. Evaluations must be based on relevant information about the student from a variety of sources. When a student's evaluation shows that challenging behavior is based on disability, a team of knowledgeable individuals, usually called the student's Section 504 team, is responsible for determining the services and supports the school must provide to address the behavior.

"Placement" refers to the individualized educational instruction, services, supports, interventions, and modifications to policies a student receives from the school. The Section 504 team is responsible for identifying, and the school must provide, the placement needed for that student to receive FAPE.

Although a written plan is not explicitly required by Section 504's regulations, schools often record these services and supports in a document called a Section 504 plan. A student's Section 504 plan could include: the behavioral supports that the student needs to address behavior interfering with their own or other students' ability to learn, and a description of specific disability-based behavior for which the student will not be disciplined under the school's code of conduct. For example, a Section 504 team may decide that a particular student with a disability needs a behavioral intervention plan based on the results of a functional behavioral assessment. By providing individualized services and behavioral supports to a student with a disability to meet their needs, schools can help reduce or eliminate behavior that otherwise might lead to violations of school rules and disciplinary consequences.

If a student continues to have behavioral challenges based on their disability despite the school fully implementing their Section 504 plan, the student's placement may not be adequately addressing the behavior. The Section 504 team may reconvene to determine if additional or different services are necessary. If an adjustment in services does not adequately address the behavior, an additional evaluation may be necessary to identify the student's current needs and develop additional or different supports.

■ Educational Setting⁵

To the maximum extent appropriate for their needs, students with disabilities have a right to receive FAPE alongside students without disabilities. For many students, the appropriate educational setting is the regular educational environment where students without disabilities participate in school. All students with disabilities are entitled to FAPE, and the behavioral supports they need, no matter the setting.

KEY POINTS:

Schools must, in a timely manner, evaluate a student at no cost to the student's parents or guardians when the school has reason to believe the student may have a disability.

The student's Section 504 team determines the student's placement, including any behavioral supports a student may need.

³ 34 C.F.R. § 104.35(a)-(b). For more information, please refer to the guidance at 6-10.

⁴ 34 C.F.R. § 104.35(c). For more information, please refer to the guidance at 8-11.

⁵ 34 C.F.R. § 104.34. For more information, please refer to the guidance at 11-12.

■ Disciplinary Removals that Significantly Change a Student's Placement⁶

Exclusionary discipline refers to the removal of a student, whether on a short-term or long-term basis, from a class, school, or other educational program or activity for violating a school rule or code of conduct. Examples of exclusionary discipline can include detentions, in-school suspensions, out-of-school suspensions, suspensions from riding the bus, expulsions, disciplinary transfers to alternative schools, and referrals to law enforcement, including referrals that result in arrest for school-related actions.

KEY POINTS:

A school must first evaluate a student with a disability to determine if their behavior is based on disability before imposing any of the following disciplinary actions for the student's behavior:

- *An expulsion;*
- *A suspension over 10 school days in a row; or*
- *A suspension for less than 10 school days if there is a pattern of disciplinary removals for the student totaling more than 10 school days in the school year.*

Sometimes schools informally exclude students without invoking the school's disciplinary procedures, such as by requiring a parent or guardian to pick up their child early from school or assigning a student with a disability to a shortened school day schedule without first convening the student's Section 504 team. Informal exclusions are subject to the same Section 504 requirements as formal disciplinary exclusions.

Schools must conduct an additional evaluation of a student with a disability under Section 504, referred to in the guidance as a manifestation determination,⁷ *before* implementing a disciplinary removal that will result in a significant change in placement. A significant change in placement due to discipline means: (1) a removal from class or school for longer than 10 consecutive school days, or (2) a series of removals from class or school that together total more than 10 school days in a school year and constitute a pattern of removal. Examples include expulsions and certain suspensions. Accurate records of the basis for excluding the student and the time during which the student was excluded are needed for a school to determine whether and when a proposed disciplinary removal would be a significant change in placement.

The purpose of this evaluation beforehand is to determine whether the behavior for which discipline is proposed is based on the student's disability, and, if so, whether changes in the student's placement are required to ensure the student receives FAPE. A school must provide notice to the student's parent or guardian before the school proposes discipline that would constitute a significant change in a student's placement.

If, after a full review of the information obtained from the evaluation, the Section 504 team determines that the student's behavior is a manifestation of a disability, the school may not carry out any discipline that would exclude the student on the basis of disability. A finding that the student engaged in disability-based behavior in violation of a school rule could be one reason to believe that the student's placement may be inappropriate and that the student may need additional or different services, such as behavioral supports, or a change in educational setting, to ensure FAPE. Therefore, the Section 504 team must continue the evaluation process to determine if the student's current placement is appropriate, including whether the student's behavior interferes with their own or other students' ability to learn.

⁶ 34 C.F.R. §§ 104.33(a), (b), 104.35(a), (c), 104.36. For more information, please refer to the guidance at 14-21.

⁷ The IDEA's regulations use the term "manifestation determination" in connection with determining whether the conduct for which certain discipline is proposed is a manifestation of a student's disability. See 34 C.F.R. § 300.530(e). Section 504's regulations do not use the term "manifestation determination" but require an "evaluation" prior to a significant change in placement. See 34 C.F.R. §104.35(a). For purposes of this document, this type of evaluation is referred to as a "manifestation determination." Although a manifestation determination under IDEA and Section 504 have the same purpose, different regulatory requirements apply. For more information about the IDEA, please refer to OSERS's guidance, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, available [here](#).

If the Section 504 team determines that the student's behavior was **not** based on the student's disability, school officials may discipline the student, as long as they do so in the same manner in which they discipline similarly situated students without disabilities. Parents or guardians can challenge these and other determinations, if they disagree with them, by using Section 504's procedural safeguards.

Section 504's General Nondiscrimination Requirements and Student Discipline⁸

Under Section 504, disability discrimination means excluding, denying benefits to, or otherwise discriminating against someone based on disability. It includes relying on stereotypes, generalizations, or assumptions about a student based on their disability, or about individuals with disabilities generally, when making decisions about the student's education.

KEY POINTS:

Disability discrimination includes:

- *not making needed reasonable modifications;*
- *unnecessarily treating a student differently based on disability; and*
- *implementing a policy with unjustified discriminatory effects based on disability.*

■ Reasonable Modifications⁹

Under Section 504, schools must make reasonable modifications to their criteria, policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. In the discipline context, reasonable modifications could include not applying a particular policy to a student with a disability for disability-based behavior or adapting a school policy to support a student's behavioral needs.

■ Discriminatory Different Treatment¹⁰

To provide equal opportunity, schools sometimes must treat students with disabilities differently than students without disabilities, such as by providing FAPE and making reasonable modifications. However, a school may not unnecessarily treat a student with a disability differently based on disability. For example, a school may not discipline a student with a disability more severely than students without disabilities unless it has a legitimate, nondiscriminatory reason for doing so.

■ Discriminatory Effects¹¹

A school policy or practice that is neutral on its face may still have the unjustified discriminatory effect of denying a student with a disability meaningful access to the school's aid, benefits, or services, or of excluding them based on disability, even if the discrimination is unintentional. For example, OCR may find that a policy that automatically imposes detention for any use of profanity has an unjustified discriminatory effect on a student whose Tourette's Syndrome sometimes causes the student to curse involuntarily.

Where Can I Find Additional Information?

For more information, please contact OCR at 1-800-421-3481 (TDD 1-800-877- 8339) or ocr@ed.gov, or visit www.ed.gov/ocr. Please visit www.ed.gov/ocr/complaintintro.html to learn about filing an OCR complaint.

If you have difficulty understanding English, you may ask OCR to provide language access services or resources, which may include oral technical assistance or written translation of a publicly available OCR document, free of charge, by contacting OCR at ocr@ed.gov.

Please note that other than the underlying statutory and regulatory requirements referenced in this document, the contents of this document do not have the force and effect of law and do not bind schools or others. This document is intended only to provide clarity to the public on existing requirements under the law.

⁸ 34 C.F.R. § 104.4. For more information, please refer to the guidance at 27-32.

⁹ *Id.* For more information, please refer to the guidance at 24-27.

¹⁰ 34 C.F.R. § 104.4(a), (b)(1)(i)-(v), (vii). For more information, please refer to the guidance at 27-30.

¹¹ 34 C.F.R. § 104.4(b)(4). For more information, please refer to the guidance at 30-32.

NJ Office of the Attorney General, Division on Civil Rights

The [New Jersey Division on Civil Rights \(DCR\)](#) is the state agency charged with enforcing New Jersey's civil rights laws, including the [New Jersey Law Against Discrimination \(LAD\)](#), the [New Jersey Family Leave Act \(NJFLA\)](#), and the [Fair Chance in Housing Act \(FCHA\)](#) effective January 1, 2022. The mission of DCR is to protect the people of New Jersey from discrimination and bias-based harassment in employment, housing, and public accommodations. The LAD, one of the most comprehensive anti-discrimination laws in the country, prohibits discrimination and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability and other protected characteristics. The law applies in [employment](#), [housing](#), and [places of public accommodation](#) (places open to the public, including businesses, restaurants, schools, summer camps, medical providers, government offices and agencies, etc.).

Contact Information:

In order to file a complaint with DCR, you must first submit an intake form. You can submit the intake form:

- Online by creating an account and using the [NJ Bias Investigation Access System](#) (NJBIAS) By calling 1. 833.NJDCR4U and asking a DCR receptionist to assist you in filling out the form on the [NJ Bias Investigation Access System](#) (NJBIAS)
- NJBIAS is available in English and Spanish. DCR also offers translation services for people with limited English proficiency who speak other languages. Call 1. 833.NJDCR4U (833-653-2748) or email at NJDCR4U@njcivilrights.gov to request assistance with NJBIAS in a language other than English or Spanish.
- To request a disability-related accommodation, please call 1. 833.NJDCR4U (833-653-2748) (voice), call the Relay Service at 711, or email NJDCR4U@njcivilrights.gov.

Resources:

- [October 8, 2020 Press Release on Youth Bias Task Force Report](#)
- [Youth Bias Task Force Full Report | Recommendations Summary](#)
- [DCR's Education and Training Unit's Training Schedule](#)

The Division on Civil Rights Fact Sheets offer brief overviews of different areas covered by the LAD.

- [The New Jersey Law Against Discrimination](#)
- [Protections Against Discrimination and Harassment in School Under the Law Against Discrimination](#)
- [Race Discrimination in Places of Public Accommodation](#)
- [LGBTQ+ Student Rights in School](#)
- [How to File a Complaint with New Jersey Division on Civil Rights](#)

Youth Bias Task Force's Recommendations for Change



New Jersey's Interagency Task Force to Combat Youth Bias has conducted extensive research into the root causes of increased bias activity among New Jersey youth and, in a report being issued today, makes the following 27 recommendations to counter the trend:

Education

- 1.** Require comprehensive anti-bias education in public schools and develop curricular support materials
- 2.** Require anti-bias training for educators and school employees
- 3.** Address discrimination in the imposition of school discipline
- 4.** Study potential changes to reduce disparities in criminal justice referrals
- 5.** Reduce racial disparities in identification of academically advanced students and identification and placement of students with disabilities
- 6.** Take meaningful measures to diversify educator hiring at both the K-12 and postsecondary levels
- 7.** Require anti-bias training for student athletes
- 8.** Fund programs for student-led anti-bias programming and coordinate best practices
- 9.** Encourage K-12 districts to designate a chief equity officer
- 10.** Require anti-bias policies in colleges & universities
- 11.** Encourage public and private postsecondary institutions to hire or designate a chief equity officer
- 12.** Ensure that juveniles in state custody receive the same anti-bias programming as students in other schools
- 13.** Publish resources for schools, colleges, and universities responding to a bias incident

Enforcement

- 14.** Improve eUCR bias incident data collection and public access to data
- 15.** Make it easier for NJ residents to report bias incidents to the Attorney General's Office
- 16.** Continue aggressive criminal and civil enforcement of NJ's bias laws
- 17.** Strengthen the State's hate crime law
- 18.** Strengthen the civil and criminal remedies available to victims of bias-motivated conduct
- 19.** Hold accountable those who weaponize the internet to harm others
- 20.** Mandate completion of anti-bias education program for juvenile bias crime offenders
- 21.** Expand law enforcement training on cyberhate investigations and domestic extremism
- 22.** Consider investigations related to social media platforms
- 23.** Study potential amendments to Section 230 of the Communications Decency Act

Engagement

- 24.** Call out public figures who use hateful rhetoric
- 25.** Launch a statewide campaign to stand up to hate in New Jersey
- 26.** Implement the plan to establish an incident response team within the Division on Civil Rights
- 27.** Create resource guides to educate parents, guardians, and educators about how to talk to children about avoiding hate on the internet and how to recognize signs of radicalization



5 Things You Should Know About The New Jersey Law Against Discrimination

- 1 **The New Jersey Law Against Discrimination (LAD) prohibits discrimination** and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability, and other protected characteristics. The law applies in employment, housing, and places of public accommodation (generally, places open to the public, including businesses, restaurants, schools, summer camps, medical providers, etc.).
- 2 **The anti-discrimination provisions mean that** an employer cannot fire someone, pay someone less money, or refuse to hire or promote someone because of their race. Similarly, a housing provider cannot refuse to rent an apartment to a couple because of their sexual orientation. And a place of public accommodation cannot refuse service to someone because of their religion.
- 3 **The LAD also prohibits bias-based harassment.** That means if someone is being subjected to bias-based harassment that creates a hostile environment, an employer, housing provider, or place of public accommodation must take reasonable steps to stop the harassment if they knew or should have known about it. That includes harassment between coworkers, tenants, or patrons, not just harassment by a landlord or by a supervisor at work. The LAD also prohibits “quid pro quo” sexual harassment—where a person in a position of power demands sex or sexual favors in exchange for favorable treatment, such as continued employment or a promotion.
- 4 **The LAD prohibits retaliation** against a person for complaining about discrimination or bias-based harassment, or otherwise exercising or attempting to exercise their rights under the law. For example, an employer cannot fire someone for reporting sexual harassment to human resources. And a housing provider cannot evict someone for reporting housing discrimination to DCR.
- 5 **The New Jersey Division on Civil Rights (DCR) enforces the LAD** and is tasked with preventing and eliminating discrimination and bias-based harassment in New Jersey. Anyone who believes their rights under the LAD have been violated may file a complaint with DCR within 180 days of the incident.

To find out more or to file a complaint, go to [NJCivilRights.gov](https://njcivilrights.gov) or call **1.833.NJDCR4U**



NJ Office of the Attorney General
[NJCivilRights.gov](https://njcivilrights.gov)



NJ DIVISION ON CIVIL RIGHTS
@CivilRightsNJ #CivilRightsNJ #StandUpAgainstHate





5 Things You Should Know About Protections Against Discrimination and Harassment in School Under the Law Against Discrimination

- 1 **The New Jersey Law Against Discrimination (LAD) prohibits discrimination and bias-based harassment in employment, housing, and places of public accommodation, including schools, based on actual or perceived race, religion, national origin, gender, sexual orientation, disability, gender identity or expression and other protected characteristics.** That means that you cannot be subjected to bias-based harassment from students or school staff in a way that creates a hostile school environment.
- 2 **If a school knows or should have known about such harassment, it must take action to stop it.** For instance, a school must take action if a teacher or other school official knows that one student is repeatedly harassing a classmate because of her disability.
- 3 **The LAD also applies to school-sponsored functions and activities that take place outside of school hours.** For example, students have the right to participate in high school and college athletics without being subjected to racial or religious harassment from teammates, opponents or fans.
- 4 **The LAD also prohibits discrimination on the basis of race, religion, gender, sexual orientation, and other protected characteristics in the implementation of school discipline policies, including suspension and expulsion.**
- 5 **A school cannot retaliate against a person for reporting bias-based harassment or discrimination, for exercising or attempting to exercise these or any other rights under the LAD, or for assisting someone else in exercising their rights.**

To find out more or to file a complaint, go to [NJCivilRights.gov](https://njcivilrights.gov) or call **1.833.NJDCR4U**



NJ Office of the Attorney General
[NJCivilRights.gov](https://njcivilrights.gov)



5 Things You Should Know About Race Discrimination in Places of Public Accommodation

Did you know that NJ has among the highest Black maternal mortality rates in the nation & that Black infants in NJ are four times more likely than white infants to die before their first birthday?



In NJ, the LAD prohibits race discrimination & race-based harassment in most places open to the public.

The New Jersey Law Against Discrimination (LAD) applies in all “places of public accommodation,” which includes places like restaurants, retail stores, schools, police departments and other government agencies, doctors’ offices, hospitals, and other medical facilities, to name a few.



Race discrimination is illegal in health treatment & services.

Doctors’ offices, hospitals, and other medical facilities cannot take your symptoms less seriously, provide you with less care, drug test you, or refuse to care for you because of your race (or because of the race they think you are based on your name, address, education, or other factors).



Racism cannot stop you from receiving fair service.

For example, restaurants, retail stores, hotels, pharmacies, & other establishments cannot provide you with lesser service or allow their employees or customers to harass you. Also, you cannot be followed or approached in a store because of your race. Race-based harassment can include hostile, demeaning, or intimidating comments, offensive gestures, or use of racial slurs.



Racism cannot stop you from being treated equally by police officers or departments.

Police officers cannot stop you or pull you over or ask you to leave a neighborhood because of your race. They cannot harass you because of your race or use racial slurs. And they cannot refuse to take a complaint because of your race, even if that complaint is against a fellow officer.



The LAD protects you against retaliation.

No one can retaliate against you for reporting possible LAD violations, filing a discrimination complaint with them, with DCR, or in court, or exercising any other rights under the LAD.

To find out more or to file a complaint, go to [NJCivilRights.gov](https://www.njcivilrights.gov) or call **1.833.NJDCR4U**



NJ Office of the Attorney General
[NJCivilRights.gov](https://www.njcivilrights.gov)



5 Things You Should Know About LGBTQ+ Staff Rights in Schools

*Did you know that more than one in every four transgender people in the U.S. have lost a job due to bias?
– The National Center for Transgender Equality*



In New Jersey, discrimination cannot stop you from thriving in the workplace.

The New Jersey Law Against Discrimination (LAD) prohibits discrimination and harassment against any school employee based on actual or perceived sexual orientation, gender identity, and gender expression in New Jersey schools.



You have the right to express your gender fully.

You have the right to bring your whole self with you to work every day, which includes the right to self-identify; dress in accordance with your gender identity; and be addressed by your name, title, and pronouns. For example, a school administrator must act if they know a teacher intentionally or repeatedly refuses to address a school custodian by their pronouns.



You have the right to be treated equally in the workplace.

You have the right to have your gender and sexual orientation respected in school, and you have the right to receive the same treatment as your non-LGBTQ+ coworkers. For example, a school must allow LGBTQ+ coaches to bring their significant others to a team banquet if non-LGBTQ+ coaches are allowed to bring theirs.



Members of the school community cannot harass you because of your LGBTQ+ identity.

LGBTQ+-based harassment can include hostile, demeaning, or intimidating comments; offensive gestures; or the use of slurs. For example, a school must address students making lewd homophobic comments about a lesbian teacher if the school knows (or should have known) about the statements.



The LAD protects you against retaliation.

It is illegal for anyone, including teachers and administrators, to retaliate against you for complaining about discrimination or harassment; filing a discrimination complaint with the school, the Division on Civil Rights, or in court; or exercising any other rights under the LAD.

To find out more or to file a complaint, go to [NJCivilRights.gov](https://www.njcivilrights.gov) or call **973-648-2700**



NJ Office of the Attorney General
[NJCivilRights.gov](https://www.njcivilrights.gov)



HOW TO File a Complaint with the New Jersey Division on Civil Rights



ABOUT DCR

The New Jersey Division on Civil Rights (DCR) is the state agency charged with enforcing New Jersey's civil rights laws, including the New Jersey Law Against Discrimination (LAD) and the New Jersey Family Leave Act (NJFLA). The mission of DCR is to protect the people of New Jersey from discrimination and bias-based harassment in employment, housing, and public accommodations.

The LAD prohibits discrimination based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability and other protected characteristics.

This law applies to employment, housing, and places of public accommodation (places open to the public, such as businesses, restaurants, schools, summer camps, medical providers, government offices and agencies, etc.).

HOW TO FILE A COMPLAINT

- 1** In order to file a complaint with DCR, you must first submit an intake form. You can submit the intake form:
 - ▶ Online by creating an account and using the NJ Bias Investigation Access System (NJBIAS) at NJCivilRights.gov
 - ▶ By calling 1.833.NJDCR4U and asking a DCR receptionist to assist you in filling out the form on the NJ Bias Investigation Access System (NJBIAS)
- 2** A DCR investigator will contact you to conduct an intake interview to determine whether DCR has jurisdiction over your complaint (i.e., whether you are alleging a violation of the LAD that occurred within the past 180 days and if they can help).
 - ▶ If so, DCR will prepare a verified complaint form for your signature. Once you sign the verified complaint, you are known as the Complainant.
- 3** DCR will serve your complaint on the Respondent—the party that may have violated your civil rights. The Respondent has a chance to respond with their version of events.
- 4** DCR then conducts an investigation, which may include:
 - ▶ Interviews with you, the Respondent, and witnesses
 - ▶ Review of relevant documents, photos, video recordings
 - ▶ It is important that you preserve all relevant evidence, including electronically stored evidence such as text and email messages, until your case has concluded.

At the end of the investigation, DCR will determine whether there is probable cause to believe a violation of the law occurred.

DISPUTE RESOLUTION

DCR also offers free dispute resolution services to parties who wish to resolve the complaint on mutually agreeable terms. A voluntary resolution can be negotiated at any time during the complaint or investigation process.



VOICE
HOTLINE **1.833.NJDCR4U**
(653-2748)

RELAY
SERVICE **711**

DCR
EMAIL **NJDCR4U@NJCivilRights.gov**



www.NJCivilRights.gov

#NJCivilRights

SPAN Parent Advocacy Network

Since 1987, families around New Jersey and beyond have made [SPAN](#) their first stop for support and resources. SPAN was founded in 1987, in Westfield, NJ, by parents of children with special needs. We received non-profit status and our first Parent Training and Information Center (PTI) grant in 1989 as well as pilot funding from NJ Department of Health for Project CARE. That same year, we began training volunteer SPAN Resource Parents (SRPs) to support families.

In 1996, SPAN moved from Westfield to Newark, New Jersey's largest school district, and started the NJ Statewide Parent to Parent to match parents experiencing significant stress or crises with other parents who have been trained to be "support parents."

Since then, SPAN has started, piloted, and run multiple projects and programs for parents of children from birth to age 21, all the while teaching families and caregivers to be advocates for their children and leaders in their communities in collaboration with their school districts.

SPAN is proud to have been the first stop for families around New Jersey for 35 years. As we've grown, we've expanded our services and support across the US and US Territories. We've even had several international collaborations that have allowed us to bring the model resources and information we provide our parents and children here to other countries looking to improve their systems and become parent and community leaders in support of their children.

Contact Information:

Address: 35 Halsey Street, 4th Floor, Newark, NJ 07102

Phone: (973) 642-8100

Fax: (973) 642-8080

Toll-free in NJ: (800) 654-SPAN (7726)

Email: info@spanadvocacy.org

Resources:

- [SPAN Resources Library](#)
- [Workshops & Trainings](#)
- Comparison Of Discipline Provisions Under Section 504 & Idea for Public School Students (Attached)
- Summary of Discipline Rules & Rights For Students with and without Special Needs Under Federal and State Law, Regulation, and Constitutional Law (Attached)

COMPARISON OF DISCIPLINE PROVISIONS UNDER SECTION 504 & IDEA FOR PUBLIC SCHOOL STUDENTS

Section 504 of the Vocational Rehabilitation Act	Individuals with Disabilities Education Act
<i>Who must comply with Office for Civil Rights Discipline Guidance?</i>	<i>Who must comply with Office of Special Education Programs Guidance?</i>
<ul style="list-style-type: none"> ✓ State and local education agencies and schools, including public charter schools, because they are recipients of federal financial assistance 	<ul style="list-style-type: none"> ✓ State and local education agencies, and other state agencies and private schools or service providers contracted by the state or local education agencies to provide IDEA services, including public charter schools
<i>Who is protected?</i>	<i>Who is protected?</i>
<ul style="list-style-type: none"> ✓ Individual who has, has had, or is perceived as having, a physical or mental impairment which substantially limits one or more major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working; limits ability to attend, participate in, receive benefit from, schooling ✓ <i>Examples:</i> Cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, diabetes, heart disease, HIV/AIDS, dyslexia, dysgraphia, rheumatoid arthritis, ADD/ADHD, cystic fibrosis, severe allergies, asthma 	<ul style="list-style-type: none"> ✓ Child, 0-21, with a disability that affects their ability to learn and requires special education and/or related services in order to benefit from their education ✓ <i>Covered disabilities:</i> Cognitive disability, hearing impaired, speech/language impaired, visually impaired, serious emotional disturbance, autism, traumatic brain injury, learning disabled, multiply disabled, deaf, blind, deaf-blind, other health impaired
<i>What is required?</i>	<i>What is required?</i>
<p>For students with disabilities in public school, a free appropriate public education in the least restrictive environment (FAPE in LRE)</p> <ul style="list-style-type: none"> ✓ <i>Child find/identify eligible students:</i> Challenging behavior may be an indicator of a disability that would require evaluation ✓ <i>Non-discriminatory assessment & eligibility determination (initial and annual)</i> by a team knowledgeable about the child and the disability; parent consent required; right to independent evaluation, at own expense, and to provide relevant information that must be considered by the team ✓ <i>Development of a plan for services (a 504 plan, which does not have to be written), and non-discrimination, reasonable accommodations, meaningful program access, and as adequate an education as children without disabilities</i> <ul style="list-style-type: none"> ○ Special education and related services ○ Accommodation examples: <ul style="list-style-type: none"> ✓ Physical barrier removal ✓ Seating placement ✓ Extended time for testing ✓ Testing modifications ✓ Adjust class schedule ✓ Rest periods ✓ Use of aids (tape recorders, calculators, audio-visual 	<p>For students age 3-21 in public school, a free, appropriate public education in the least restrictive environment (FAPE in LRE)</p> <ul style="list-style-type: none"> ✓ <i>Child find/identify eligible students:</i> Challenging behavior may be an indicator of a disability requiring evaluation ✓ <i>Non-discriminatory assessment & eligibility determination (initial, annual, triennial)</i> by a multi-disciplinary team, including the parent, that identifies all areas of suspected disability and impact on all education areas; parent consent required; right to independent evaluation at district expense, and to provide relevant information that must be considered by the team ✓ <i>Development of a plan for services, an Individualized Education Program (IEP) with annual goals, short-term objectives/benchmarks (if the student will be taking alternate assessments or state rules require them), and methods to determine if achieved</i> <ul style="list-style-type: none"> ○ Special education & related services: <ul style="list-style-type: none"> ✓ Administration of medication ✓ Aides/paraprofessionals ✓ Assistive technology ✓ Audiology ✓ Counseling ✓ In-class supports ✓ Medical services (for diagnosis) ✓ Modified instruction

<ul style="list-style-type: none"> ✓ equipment, computers, modified textbooks) ✓ Push-in or pull-out services: ✓ Note taking ✓ Oral catheterization ✓ Administration of medication ✓ Monitoring of blood levels ✓ Monitoring of physical status ✓ Positive behavioral supports (PBS) ✓ Consultation ✓ Service coordination ✓ Tutors ✓ Counseling, OT/PT, other related services <p>✓ <i>Services in the least restrictive appropriate environment:</i> the class/school the child would be in if not disabled; the nearest school; not be removed from regular class unless the child's needs cannot be met in that class even with the use of supplementary aids and services; opportunities to interact with non-disabled peers; comparable facilities if segregated; meaningful program accessibility</p> <p>✓ <i>Confidentiality of records, and parent access to records (FERPA) including access to records regarding behavior and any disciplinary action taken</i></p>	<ul style="list-style-type: none"> ✓ Accessible instructional materials ✓ Parent counseling/training ✓ Peer supports ✓ Physical therapy ✓ Positive Behavior Supports ✓ Psychological services ✓ Occupational therapy ✓ Recreation ✓ School Health services ✓ Social work services ✓ Speech pathology ✓ Transition services ✓ Other services needed to enable student to benefit from their education <p>✓ <i>Services in the least restrictive appropriate environment:</i> the class/school the child would be in if not disabled; nearest school; not be removed from regular class unless the child's needs cannot be met in that class even with the use of supplementary aids and services; opportunities to interact with non-disabled peers; equal access to extra-curricular & non-academic activities; continuum of placements/services</p> <p>✓ <i>Confidentiality of records, and parent access to records (FERPA) including access to records regarding behavior and any disciplinary action taken</i></p>
<i>What are the discipline requirements under Section 504?</i>	<i>What are the discipline requirements under IDEA?</i>
<p><i>Removal for Up to Ten School Days under Goss v. Lopez</i></p> <p>The minimal protections for a removal for up to ten school days include:</p> <ul style="list-style-type: none"> • The right to an informal meeting with the principal <i>before</i> suspension, except in an emergency • The right to notice of the charges and the evidence against the student • The right to explain his/her side of the story. 	<p><i>Removal for Up to Ten School Days under Goss v. Lopez</i></p> <p>The minimal protections for a removal for up to ten school days include:</p> <ul style="list-style-type: none"> • The right to an informal meeting with the principal <i>before</i> suspension, except in an emergency • The right to notice of the charges and the evidence against the student • The right to explain his/her side of the story.
<p>If the student with a disability is determined to be “guilty” of the disciplinary infraction through this informal procedure, 504 allows the student to be suspended in- or out-of-school for a comparable period of time as a student without a disability would be suspended. S/he has the right to be fair/equal treatment in determination of the consequences. In other words, the student with a disability should not be suspended longer than a student without a disability would be suspended for the same or similar behavior.</p>	<p>If the student with a disability is determined to be “guilty” of the disciplinary infraction through this informal procedure, IDEA allows the student to be suspended in- or out-of-school for a comparable period of time as a student without a disability would be suspended. S/he has the right to fair/equal treatment in determination of the consequences. In other words, the student with a disability should not be suspended longer than a student without a disability would be suspended for the same or similar behavior.</p>
<p>For removals of <i>up to</i> ten consecutive or cumulative school days, the student with a disability is <i>not</i> entitled to:</p> <ul style="list-style-type: none"> • A manifestation determination • A review of the current 504 plan/supports and services being provided • Educational services during the period of exclusion, UNLESS state law, district policy, or the student’s 504 plan explicitly requires services during even short-term exclusions. The 504 plan may prohibit suspension as a response to student behavior. School personnel may consider “any unique circumstances on a case-by-case basis” to reduce the allowable term of suspension. 	<p>For removals of <i>up to</i> ten consecutive or cumulative school days, the student with a disability is <i>not</i> entitled to:</p> <ul style="list-style-type: none"> • A manifestation determination • An IEP/positive behavior support plan review • Educational services during the period of exclusion, UNLESS state law, district policy, or the student’s IEP explicitly requires services during even short-term exclusions. The IEP may prohibit suspension as a response to student behavior. School personnel may consider “any unique circumstances on a case-by-case basis” to reduce the allowable term of suspension.

<p>If the district plans to suspend a student who has already been suspended <i>more</i> than ten cumulative school days within the school year, it must first consider whether or not the cumulative days of suspension have amounted to a “change of placement.” In making this determination, the district must consider factors such as:</p> <ul style="list-style-type: none"> • The length of each removal • The total amount of time the student is removed, and • The proximity of the removals to one another. <p>If the district determines that an additional removal would result in a change of placement using the above criteria, it must follow the procedural requirements for an exclusion of greater than ten consecutive school days.</p>	<p>If the district plans to suspend a student who has already been suspended <i>more</i> than ten cumulative school days within the school year, it must first consider whether or not the cumulative days of suspension have amounted to a “change of placement.” In making this determination, the district must consider factors such as:</p> <ul style="list-style-type: none"> • The length of each removal • The total amount of time the student is removed, and • The proximity of the removals to one another. <p>If the district determines that an additional removal would result in a change of placement using the above criteria, it must follow the procedural requirements for an exclusion of greater than ten consecutive school days.</p>
<p><i>Removal for More than Ten School Days</i></p> <p>For exclusions longer than ten school days, students with and without disabilities have the right to a more formal due process hearing to determine their “guilt,” including the right to:</p> <ul style="list-style-type: none"> • Notice of the charges and evidence against them • Question and present witnesses • Review and present evidence • Bring an attorney or advocate (at their own expense). 	<p><i>Removal for More than Ten School Days</i></p> <p>For exclusions longer than ten school days, students with and without disabilities have the right to a more formal due process hearing to determine their “guilt,” including the right to:</p> <ul style="list-style-type: none"> • Notice of the charges and evidence against them • Question and present witnesses • Review and present evidence • Bring an attorney or advocate (at their own expense).
<p><i>Evaluation before a change in placement</i></p> <p>Schools must conduct an additional evaluation of a student with a disability under Section 504, referred to in the guidance as a manifestation determination, <i>before</i> implementing a disciplinary removal that will result in a significant change in placement. If the student with a disability has been determined to have committed an offense that violates a school rule or the school code of conduct that could result in an exclusion for longer than ten school days, the 504 team must conduct an evaluation within the first ten days of removal. The purpose of this evaluation beforehand is to determine whether the behavior for which discipline is proposed is based on the student’s disability, and, if so, whether changes in the student’s placement are required to ensure the student receives FAPE. A school must provide notice to the student’s parent or guardian before the school proposes discipline that would constitute a significant change in a student’s placement. If, after a full review of the information obtained from the evaluation, the Section 504 team determines that the student’s behavior is a manifestation of a disability, the school may not carry out any discipline that would exclude the student on the basis of disability. A finding that the student engaged in disability-based behavior in violation of a school rule could be one reason to believe that the student’s placement may be inappropriate and that the student may need additional or different services, such as behavioral supports, or a change in educational setting, to ensure FAPE. Therefore, the Section 504 team must continue the evaluation process to determine if the student’s current placement is appropriate, including whether the student’s behavior interferes with their own or other students’ ability to learn.</p>	<p><i>Manifestation Determination</i></p> <p>If the student with a disability has been determined to have committed an offense that violates a school rule or the school code of conduct that could result in an exclusion for longer than ten school days, the IEP team must conduct a manifestation determination within the first ten days of removal. No manifestation determination is required if the student carried or possessed a gun or dangerous weapon, knowingly possessed or used illegal drugs, sold or solicited a controlled substance, or inflicted serious bodily injury on another at school, on school grounds, or at a school function. The manifestation determination meeting is held with the parent and relevant members of the IEP team. The team reviews all relevant information in the student’s file, the IEP, teacher observations, and any relevant information from the parent(s) and student. The IEP team must determine that the behavior was a manifestation of the disability if:</p> <ul style="list-style-type: none"> • The conduct was caused by, or had a direct and substantial relationship to, the child’s disability, or • The behavior was a direct result of the district/school’s failure to implement the IEP.

<p><i>Functional Behavior Assessment & Positive Behavior Support Plan</i> In addition, the 504 team must:</p> <ul style="list-style-type: none"> • Conduct a functional behavior assessment and implement a positive behavior support plan, unless that has already been done; • If a positive behavior support plan has been developed, review and modify it as necessary. <p>If the behavior is a manifestation of the student's disability, the student must be returned to their current placement no later than the 11th day following their removal, unless the team determines otherwise. (The 504 team can always agree to a change of placement but must conduct an evaluation prior to changing a student's placement.) If the behavior is not a manifestation, the student may be disciplined, suspended, or expelled to the same extent as a student without a disability. Provision of services during the period of disciplinary removal for behavior that is not a manifestation of the student's disability is not required unless the school provides educational instruction and services to students without disabilities during disciplinary removal.</p>	<p><i>Functional Behavior Assessment & Positive Behavior Support Plan</i> In addition, the IEP team must:</p> <ul style="list-style-type: none"> • Conduct a functional behavior assessment and implement a positive behavior support plan, unless that has already been done; • If a positive behavior support plan has been developed, review and modify it as necessary. <p>If the behavior is a manifestation of the student's disability, the student must be returned to their current placement no later than the 11th day following their removal, unless the parent and IEP team agree otherwise. (A parent and the team can always agree to a change of placement.) If the behavior is not a manifestation, the student may be disciplined, suspended, or expelled to the same extent as a student without a disability. However, the student with a disability must continue to receive a free, appropriate public education during any period of removal of more than ten school days.</p>
<p><i>Pendency Placement</i> There is no requirement for pendency placement for students with disabilities under Section 504.</p>	<p><i>Pendency Placement</i> If the parent appeals the decision that the student's behavior was not a manifestation of their disability, or if the student committed an offense that can lead to placement in an Interim Alternative Educational Setting (IAES), the pendency placement during appeal is the IAES. The hearing must be held within 15 days of the request. A student may be removed unilaterally (without parental consent or permission of an impartial hearing officer) by the school to an IAES for up to 45 school days if it is determined that the student, at school, on school premises, or at a school function:</p> <ul style="list-style-type: none"> • Carried or possessed a gun or dangerous weapon • Knowingly possessed or sold illegal drugs, or sold or solicited a controlled substance • Inflicted serious bodily injury (bodily injury that involves substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) on another. <p>While the student is being educated in the IAES, the instruction and services that the student is receiving must enable them to progress in the general curriculum and make progress toward achieving their annual goals (and short-term objectives/benchmarks, if any). If the parent appeals, the pendency placement remains the IAES.</p>
<p><i>What are dispute resolution mechanisms?</i></p> <ul style="list-style-type: none"> ✓ Mediation not available unless state establishes a specific mediation process ✓ Complaints filed with LEA Section 504 Grievance Coordinator → ✓ US DOE OCR Complaint, or ✓ Immediate federal court hearing (Section 1983); exhaustion of administrative remedies not required 	<p><i>What are dispute resolution mechanisms?</i></p> <ul style="list-style-type: none"> ✓ Mediation available; voluntary on the part of the school and student ✓ Complaints filed with LEA followed by LEA Resolution session → ✓ Due process/impartial hearing → Federal or state court hearing ✓ No immediate federal court hearing; exhaustion of administrative remedies required unless it would be "futile"

<i>Non-Discrimination Provisions of Section 504 Related to Discipline</i>	
<ul style="list-style-type: none"> ✓ Students with disabilities in public schools may not be disciplined for behavior due to their disability regardless of the nature or severity of the behavior ✓ Section 504 protections, including the potential need to make reasonable accommodations, extend to contractors including school resource officers ✓ Students with disabilities who are “informally removed” from school for their behavior, including for a shortened school day, are entitled to all the protections required for any formal removal ✓ The use of seclusion and restraint is not an evidence-based practice ✓ Districts must comply with federal laws that provide procedural safeguards to students with disabilities and parents if they use threat/risk assessments ✓ Using de-escalation strategies to calm a crisis situation may be a reasonable modification of school policies required by 504/ADA; schools should consider whether persons with specialized training or who have a trusting relationship with the student should be involved in de-escalating crises rather than the police ✓ Any removal from school, the classroom, or the bus for 10 consecutive school days is a change in placement, and a pattern of disciplinary removals totaling more than ten school days may be a change of placement; schools must conduct a manifestation determination to determine whether the student’s behavior is a manifestation of their disability before a disciplinary removal that will result in a change of placement can be implemented ✓ Schools must make reasonable modifications to their criteria, policies, practices or procedures regarding discipline when necessary to avoid discrimination on the basis of disability, which could include not applying a particular policy for a student with a disability for disability-based behavior, or adapting a school policy to support a student’s behavioral needs. ✓ To provide equal opportunity, schools sometimes must treat students with disabilities differently than students without disabilities, such as by providing FAPE and making reasonable modifications ✓ Schools may not unnecessarily treat a student with a disability differently based on disability, for example, by treating a student with a disability more severely than a student without a disability for the same behavior, unless there is a legitimate, nondiscriminatory reason to do so ✓ Schools must consider the discriminatory effects of policies or practices that are neutral on their face if they deny a student with a disability meaningful access to the school’s aid, benefits, or services, even if the discrimination is unintentional 	

For more information, contact the SPAN Parent Advocacy Network at 800-654-SPAN (8826) or 973-642-8100 or go to www.spanadvocacy.org.



SUMMARY OF DISCIPLINE RULES & RIGHTS FOR STUDENTS WITH AND WITHOUT SPECIAL NEEDS Under Federal and State Law, Regulation, and Constitutional Law



SPAN Parent Advocacy Network
35 Halsey Street
Newark, NJ 07102
800-654-SPAN
www.spanadvocacy.org

Summary of the Discipline & Manifestation Determination Provisions of IDEA 2004 & NJ State Special Education Code

Students with disabilities have three major sources of protection in disciplinary proceedings: the U.S. Supreme Court's decision in Goss v. Lopez, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), and the NJ Special Education Code. In Goss v. Lopez, the U.S. Supreme Court held that all public school students have a sufficient "interest" in their education to be entitled to at least minimal due process protections for a removal from school of up to ten school days, and more formal due process protections for longer removals.

Removal for Up to Ten Days

The minimal due process protections for a removal for up to ten school days include:

- The right to an informal meeting with the principal *before* suspension, except in an emergency
- The right to notice of the charges and the evidence against the student
- The right to explain his/her side of the story.

If the student with a disability is determined to be "guilty" of the disciplinary infraction through this informal procedure, IDEA allows the student to be suspended in-school or out-of-school for a comparable period of time as a student without a disability would be suspended. S/he has the right to be fair/equal treatment in determination of the consequences. In other words, the student with a disability should not be suspended longer than a student without a disability would be suspended for the same or similar behavior.

For removals of ***up to*** ten consecutive or cumulative days, the student with a disability is ***not*** entitled to:

- A manifestation determination
- An IEP/positive behavior support plan review
- Educational services during the period of exclusion, UNLESS state law, district policy, or the student's IEP explicitly requires services during even short-term exclusions. The IEP may prohibit suspension as a response to student behavior. School personnel may consider "any unique circumstances on a case-by-case basis" to reduce the allowable term of suspension.

If the district plans to suspend a student who has already been suspended *more* than ten cumulative days within the school year, it must first consider whether or not the cumulative days of suspension have amounted to a "change of placement." In making this determination, the district must consider factors such as:

- The length of each removal
- The total amount of time the student is removed, and
- The proximity of the removals to one another.

If the district determines that an additional removal would result in a change of placement using the above criteria, it must follow the procedural requirements for an exclusion of greater than ten consecutive days.

Removal for More than Ten Days

For exclusions longer than ten days¹, students with and without disabilities have the right to a more formal due process hearing to determine their “guilt,” including the right to:

- Notice of the charges and evidence against them
- Question and present witnesses
- Review and present evidence
- Bring an attorney or advocate (at their own expense).

Manifestation Determination

If the student with a disability has been determined to have committed an offense that violates a school rule or the school code of conduct that could result in an exclusion for longer than ten days, the IEP team must conduct a manifestation determination within the first ten days of removal.² The manifestation determination meeting is held with the parent and relevant members of the IEP team. The team reviews all relevant information in the student’s file, the IEP, teacher observations, and any relevant information from the parent(s) and student.

The IEP team must determine that the behavior was a manifestation of the disability if:

- The conduct was caused by, or had a direct and substantial relationship to, the child’s disability, or
- The behavior was a direct result of the district/school’s failure to implement the IEP.

Unless the IEP explicitly requires it, IDEA 2004 no longer requires consideration of whether:

- The IEP, services and placement were appropriate, and appropriately implemented; or
- The disability impaired the child’s ability to understand the impact and consequences of their behavior or to control their behavior.

To conduct a manifestation determination, the parent and the IEP team should:

- Collect and examine the records of behavior of the student over the period of the current IEP, explicitly looking to see if similar behaviors have been occurring;
- Examine the components of the existing positive behavior support plan for their impact in increasing or decreasing behaviors of concern;

¹ In addition, once a student has been removed from school for 10 days either consecutively or cumulatively, they have a right to receive a free, appropriate public education during the period of any additional removal.

² No manifestation determination is required if the student carried or possessed a gun or dangerous weapon, knowingly possessed or used illegal drugs, sold or solicited a controlled substance, or inflicted serious bodily injury on another at school, on school grounds, or at a school function.

- Collect information on the student's general school performance from school staff;
- Collect information on home behavior concerns from parents;
- Review historical academic and behavior data regarding the student, with a particular eye to whether this type of behavior was one of the original reasons for referral;
- Interview the student, with an emphasis on the student's current mental health and the student's understanding of the school policy violation;
- Interview teachers, seeking to identify the extent to which the problem behaviors are "normal" for the student;
- Interview administrators regarding this violation and what their investigation found;
- Review the student's current program and placement for appropriateness;
- Consider the usual characteristics of individuals with this student's disability;
- Consider the cognitive, emotional, and behavior status of the student in regard to school policy violations and self-control; and
- Review options for available and appropriate programming.

Functional Behavior Assessment & Positive Behavior Support Plan

In addition, the IEP team must:

- Conduct a functional behavior assessment and implement a positive behavior support plan, unless that has already been done;
- If a positive behavior support plan has been developed, review and modify it as necessary.

If the behavior is a manifestation of the student's disability, the student must be returned to their current placement no later than the 11th day following their removal, unless the parent and IEP team agree otherwise. (A parent and the team can always agree to a change of placement.) If the behavior is not a manifestation, the student may be disciplined, suspended, or expelled to the same extent as a student without a disability. However, s/he must continue to receive a free, appropriate public education during any period of removal of more than ten days.

Pendency Placement

If the parent appeals the decision that the student's behavior was not a manifestation of their disability, or if the student committed an offense that can lead to placement in an Interim Alternative Educational Setting, the pendency placement during appeal is the IAES. The hearing must be held within 20 school days of the request, with a decision within 10 school days of the hearing.

Removal to an Interim Alternative Educational Setting

A student may be removed unilaterally (without parental consent or permission of an impartial hearing officer) by the school to an Interim Alternative Educational Setting for up to 45 days³ if it is determined that the student, at school, on school premises, or at a school function:

³ Federal law and regulations allow removal for up to 45 school days, but the NJ Special Education Code has limited the removal to 45 calendar days, a much shorter time-frame but still a significant amount of time.

- Carried or possessed a gun or dangerous weapon (as defined by U.S. Criminal Code)
- Knowingly possessed or sold illegal drugs, or sold or solicited a controlled substance
- Inflicted serious bodily injury (bodily injury that involves substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) on another.

Remember that the student is entitled to Goss v. Lopez protections. If the district plans to remove the student for more than 10 school days, it must provide the student with their constitutional due process protections and formally determine that the student has committed the offense with which they have been charged. Further, the offense must be one that would result in long-term removal of a general education student as well as a special education student. Once that determination has been made, the school may unilaterally remove the student.

In addition, an impartial hearing officer may remove a student to an Interim Alternative Educational Setting (IAES) if s/he determines that maintaining the student in the current placement is substantially likely to result in injury to the student or others. The hearing officer no longer must consider appropriateness of the current placement or whether the district made reasonable efforts to minimize the risk of harm in the current placement.

While the student is being educated in the IAES, the instruction and services that the student is receiving must enable them to progress in the general curriculum and make progress toward achieving their annual goals (and short-term objectives/benchmarks, if any). If the parent appeals, the pendency placement remains the IAES.

Functional Behavior Assessment and Positive Behavior Support Plan

The IEP team must conduct a functional behavior assessment and implement a positive behavior support plan, but only if the district had not already conducted an FBA prior to the behavior that resulted in the change of placement to the IAES. The steps of an FBA include:

- Define the behavior in specific, concrete terms, label it according to its seriousness (destructive, disruptive, distracting), and prioritize behaviors to address
- Collect informant and observer data to answer key questions regarding when the behavior is most and least likely to occur, including who is present, what is going on at the time, when, where, how often, and how long per episode, and observe and record antecedents, behaviors, and consequences.
- Develop a hypothesis about the purposes or functions served by the behavior (attention, escape/avoidance, getting something, self-regulation, play, etc.)
- Develop a plan that includes preventing, teaching, and reacting.
- Implement the plan, monitor its impact, and revisit and revise as necessary.

Discipline Procedures and Timelines

Behavior that cannot result in IAES placement, for < 10-day removal

Day 1

- School conducts a minimal Goss v. Lopez proceeding to determine if student engaged in misconduct
- School notifies parent of decision to take disciplinary action
- School notifies parent of procedural safeguards⁴

No later than Day 11

- Student is returned to original placement, unless parent and district have agreed otherwise

Behavior that cannot result in IAES placement, for > 10-day removal

Day 1

- School conducts a minimal Goss v. Lopez proceeding to determine if student engaged in misconduct
- School notifies parent of decision to take disciplinary action
- School notifies parent of procedural safeguards⁵

Within 1st 10 Days of Removal

- Manifestation determination meeting takes place with the parent
- School holds a more formal hearing to determine “guilt” and appropriate penalty
- IEP team and parent review existing FBA or PBS plan, if any; conducts an FBA and develops a PBS, if appropriate

No later than Day 11

- If the behavior is a manifestation, the student is returned to their placement by the 11th day following removal
- If the behavior is not a manifestation, the student may be excluded for a comparable amount of time as a general education student would be excluded, but must receive FAPE

⁴ No manifestation determination or provision of educational services required, unless state law, district policy, or the IEP require otherwise.

⁵ No provision of education or support services is required for the 1st ten days of removal, unless state law, district policy, or the IEP require otherwise. However, once the student has been removed for ten consecutive or cumulative days in a school year, a free, appropriate public education must be provided to the student during any period of removal.

Behavior that can result in Unilateral IAES Placement

Day 1

- School conducts a minimal Goss v. Lopez proceeding to determine if student engaged in misconduct
- School notifies parent of decision to take disciplinary action
- School notifies parent of date of meeting to determine the IAES
- School notifies parent of procedural safeguards⁶

Within 1st 10 Days of Removal

- School holds a more formal hearing to determine “guilt” and appropriate penalty
- IEP team meets with parent to determine appropriate IAES and length of removal up to 45 calendar days⁷
- IEP team and parent conduct an FBA and develop a PBS, if district had not already done so

Day 46

- Student returns to original placement unless parent and district agree otherwise.

Behavior that can result in IAES Placement by Hearing Officer

Day 1

- School conducts a minimal Goss v. Lopez proceeding to determine student “guilt”
- School notifies parent of decision to take disciplinary action and of request for hearing
- School notifies parent of procedural safeguards⁸

Within 1st 10 Days of Removal

- School holds a more formal hearing to determine “guilt” and appropriate penalty
- Due process hearing is held and Hearing Officer makes determination
- IEP team meets with parent to determine appropriate IAES⁹
- IEP team and parent conduct an FBA and develop a PBS, if district had not already done so

Day 46

- Student returns to original placement unless parent and district agree otherwise.

⁶ No provision of education or support services is required for the 1st ten days of removal, unless state law, district policy, or the IEP require otherwise.

⁷ The IAES must ensure continued provision of FAPE, involvement in the general education curriculum, and continued progress toward goals

⁸ No provision of education or support services is required for the 1st ten days of removal, unless state law, district policy, or the IEP require otherwise.

⁹ The IAES must ensure continued provision of FAPE, involvement in the general education curriculum, and continued progress toward goals

Manifestation Determination Worksheet

Student's Name _____ Date: _____

Eligible for IDEA services?

- If YES, list qualifying disability: _____
- If NO, list Section 504 impairment: _____
- If NO, did district know, or should district have known, that the student was a child with a disability?¹⁰

Name and Role of Team Members:

Sources of information:

- _____ Assessments/evaluations (attach assessments and summaries)
- _____ Diagnostic information (attach results)
- _____ Interviews conducted (attach summaries)
- _____ Direct observations (attach summaries)

Description of act(s) of misconduct (include all relevant details, including whether behavior was destructive, disruptive, or distracting):

Describe the proposed disciplinary action: _____

Does the proposed disciplinary action constitute a change of placement (e.g., more than 10 consecutive days, or more than 10 cumulative days when a pattern has been established)

If NO, proceed with disciplinary action.

If YES, determine whether the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or was a direct result of the district/school's failure to implement the IEP. Consider the following factors in making a manifestation determination:

¹⁰ A district knew, or should have known, if the parent had expressed concerns in writing to supervisory or administrative personnel of the appropriate educational agency or their child's teacher; the child's teacher or other district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education director or other district supervisory personnel. There is no longer an exception when the parent is illiterate or has a disability. The district will not be found to know or should have known if the parent has not allowed the child to be evaluated or has refused services for the child, or if the child had been evaluated and found ineligible.

Nature of the Disability

1. What is the student's disability, including its behavioral characteristics and severity?
2. What major life functions are impacted? Include a description of how the disability impedes academic and/or social performance.
3. To what extent are those major life activities impacted? Include a description of the child's strengths, deficits, and coping/compensating strategies.
4. To what extent if any does the child's disability cause the student to engage in inappropriate behavior (through lack of knowledge, understanding, motivation, or skill)?

Review of Disciplinary Records

1. What is the behavioral history of the student? (Include severity, setting, frequency)
2. What is the history of behavioral interventions? Include a description of how long the behavior has been occurring without intervention, settings where interventions have been implemented, and results of the behavioral interventions used to date.
3. Did the student exhibit similar behavior in the past that was attributable to the disability? Provide the approximate dates, specific behavior, and resulting intervention and discipline.

Review of IEP Implementation

1. Has the district fully implemented the IEP? If not, to what extent if any has the district's failure to implement the IEP resulted in the inappropriate behavior? Specify the services that have not been implemented and how they contributed to the student's inappropriate behavior.

Based on the above, is the student's behavior a manifestation of their disability?

If NO, discipline the student using procedures applicable to all students (except continue to provide FAPE)

If YES, return the student to their current placement. Revisit FBA, PBS plan, and IEP.