

Legal Aid of North Carolina, Inc.

ADVOCATES FOR CHILDREN'S SERVICES

2101 Angier Avenue, Suite 300 • Durham, NC 27703
919-226-0052 • www.legalaidnc.org/acs

Dear Youth Justice Advocate:

We are sharing the enclosed resources to support you in your ongoing efforts to ensure that your student's educational needs are met. These materials include information about students' and guardians' rights related to school discipline, as well as additional tips and tools for use in trying to prevent or overturn suspensions. You can use these tools on behalf of your student and/or you can share them directly with other families who may need them to advocate for their children.

Specifically, you will find the following information enclosed:

- ✓ An overview of the protections that all students must receive when facing school discipline, such as suspensions or expulsions (*"School Discipline"*)
 - ✓ Template forms that can be used to challenge unlawful short-term suspensions through the school grievance process. (*Note that the grievance process is *only* available to challenge short-term suspensions that violate students' legal rights.)
- ✓ An overview of the protections that students with disabilities should receive when they are having behavior challenges and/or facing school discipline (*"Special Education and School Discipline"*)
 - ✓ A template form to use in requesting that your student's **IEP Team** have a meeting to discuss your concerns. In the meeting, you can request that therapeutic behavior supports be put in place in order to prevent future suspensions before they happen.
 - ✓ A template form to use in requesting that your student's **504 Team** have a meeting to discuss your concerns. In the meeting, you can request that therapeutic behavior supports be put in place in order to prevent future suspensions before they happen.
- ✓ An overview of therapeutic behavior supports that schools can and should utilize for students instead of suspensions (*"Behavior Interventions"*)
 - ✓ A template form to use in requesting that your student's **school-based MTSS/RTI/SST team** have a meeting to discuss your concerns. In the meeting, you can request that therapeutic behavior supports be put in place in order to prevent future suspensions before they happen.

We hope that these resources will be helpful to you in your advocacy efforts. Please note that every student's situation is very different, and so the **tips and recommendations included in the enclosed materials should not be interpreted as legal advice in your specific situation.**

Visit our website (www.legalaidnc.org/acs) for additional resources related to students' rights in school. If you have general questions about students' rights or would like to request training for a group of students/parents/advocates, contact Advocates for Children's Services at 919-226-0052 or acsinfo@legalaidnc.org. If you need direct legal assistance, contact our helpline at 1-866-219-5262.

Sincerely,

The Advocates for Children's Services Team
Legal Aid of North Carolina

School Discipline

(What are my student's rights when facing a suspension or expulsion?)

Is suspension the only option for school discipline?

NO! Schools *should* be focused on constructively addressing student misbehavior and preventing future incidents. This can be done through the use of parent/student conferences, peer mediation, behavior contracts, conflict resolution, community service, loss of privileges, and other interventions that do not take away a child's education.

What rights does my student have when facing a suspension?

It depends on the kind of suspension. Short-term removals like bus suspensions, in-school suspensions, and short-term suspensions have fewer rights than long-term suspensions or expulsions.

❖ Bus Suspension

- Definition: A student can go to school, but cannot ride the bus to get there.
- Rights: There is no formal right to appeal (challenge) a bus suspension.



GOLD STAR TIP: If a student has an Individualized Education Program (IEP), a parent/guardian can request that special transportation be added to the child's IEP if the misbehavior leading to the bus suspension is related to the student's disability.

❖ In-School Suspension (ISS)

- Definition: A student can go to school, but is sent to a separate classroom in the school.
- Rights: There is no formal right to appeal an ISS.



GOLD STAR TIP: If a student has an IEP, they must continue to receive all services in their IEP while placed in ISS. If these services aren't provided, there can be extra protections under the law.

❖ Short-Term Suspension (STS)

- Definition: A student cannot go to school for 10 days or fewer.
- Rights: There is no formal right to appeal an STS. All students facing STS have the right to:
 1. An explanation of why they're being suspended (i.e. what school rule they broke and what evidence the school has);
 2. Tell their side of the story, which can be a very informal conversation between a student and administrator; and
 3. Take books home, get homework, and make up tests missed during the suspension.
 - *Note:* Someone else must pick up work for the student. Without given permission by an administrator, a student is not allowed on school grounds while suspended.



GOLD STAR TIP: If a student has an IEP and has been STSed for 11+ days *total* in a school year, they have extra rights, such as continued access to educational services and not to be suspended for disability-related conduct.

What Can I Do for Bus Suspensions, ISS, and STS?

Even though there is no formal right to appeal these suspensions, parents/guardians can take steps to reduce the harms of suspensions and prevent future issues:

- Request a meeting to ask for a different consequence and/or create a plan to prevent future issues.
- If your child has an IEP, request a functional behavioral assessment (FBA) and behavior intervention plan (BIP) as needed to prevent future issues.
- If your child does not have an IEP and the behaviors appear to be disability-related, request an evaluation to determine eligibility
- If school policies weren't followed or rights were violated, file a formal grievance.

❖ Long-Term Suspension (LTS)

- Definition: Student is not allowed to attend school for a time of **more than 10 school days**
 1. If an incident happens in 1st, 2nd, or 3rd quarters, LTS can last until the end of the school year
 2. If incident occurs in the 4th quarter, LTS can last through 1st semester of the *next* school year
- Rights: *All students* facing LTS have the right to:
 1. Take books home, get homework, and make up tests during first 10 days;
 2. Receive written notice of the charges against them;
 3. Review and get copies of any evidence the school has about the incident;
 4. Have a hearing before an impartial decision-maker where they can bring an advocate or attorney, present evidence (including character witnesses), question witnesses, evidence, or statements used against them, and receive a decision based on substantial evidence;
 5. Appeal the hearing decision, as needed, to the Board of Education and Superior Court; and
 6. Receive alternative education services while suspended, unless the school provides an important reason for refusing to provide those services.
 - *Note:* a refusal to provide alternative education is an appealable decision

❖ Expulsion

- Definition: Student is never allowed to return to school
- Rights: All students facing expulsion have the right to:
 1. The same protections given to students facing LTS, with the exception that:
 - the school must **also** show that allowing the student to attend *any* school or program in the district would threaten the safety of others
 - The Board of Education must hold a hearing to approve the expulsion
 - Expelled students do not have a right to alternative education (though the school may choose to offer those services to expelled students)
 2. Request readmission after 180 days have passed by providing information sufficient to demonstrate that their return to school would not pose a threat to school safety.

What Can I Do for LTS and Expulsions?

A student should always appeal, either to argue:

1. **Innocence** if they are accused of an offense they didn't commit; OR
 - The *school* has the burden of providing reasonable evidence that proves the student committed the offense they are accused of.
2. That the length of the **suspension is longer than needed and is unnecessarily harmful.**

In a hearing, a student can:

1. Bring up defenses (e.g. self-defense, bullying)
2. Offer positive information that contradicts the school's negative description of them (e.g., good grades, 1st offense, cooperation with investigation)
3. Provide letters of support from family, teachers, and community members.
4. Tell how LTS will harm them (academically, etc)
5. Offer suggestions of more appropriate alternatives (e.g. mediation, community service, etc)

GOLD STAR TIPS

In writing, request an appeal as soon as possible. You can still request and should be able to appeal even if the school's deadline has passed.

Students facing LTS or expulsion who have IEPs or 504 Plans cannot be suspended for behaviors that are related to their disability or to the school's failure to implement the services in their plans. A meeting called a Manifestation Determination Review (MDR) must be held within 10 days to review the suspension. While LTSed, students with IEPs must receive the services needed to progress on IEP goals and in the general curriculum.

If charges have also been filed against the student for the same offense, coordinate with the student's criminal or juvenile attorney about what to present at a suspension hearing.

Advocates for Children's Services of Legal Aid of North Carolina

For additional resources: www.legalaidnc.org/acs To apply for legal services: **1-866-219-5262**



You may want to contact a lawyer if your child has missed a lot of days of school due to disciplinary incidents, or if your child is facing long-term suspension or expulsion.

The information included here is not legal advice and does not cover all rights and remedies, or apply in every situation

Background: Grievances

What is a grievance?

A grievance is a written complaint about the actions of a school district employee. Grievances may be filed by students and parents/guardians. Every school district in North Carolina MUST have a grievance policy. Students and parents/guardians should make sure to carefully read their local grievance policies.

When may a grievance be filed?

If a student or parent/guardian believes that a school district employee has violated, misapplied, or misinterpreted a law or policy, s/he may file a grievance. Many complaints may be resolved informally by talking directly with the teacher or principal, but when those efforts do not work, the formal grievance process described below is available.

Grievances are not the appropriate way to “grieve” a long-term suspension or expulsion, which should be appealed using the rights described above and the process in the local school board policy.

What information MUST be in the grievance?

- the name of the school system employee(s) whose decision or action caused the complaint;
- the specific decision(s) or action(s) by that individual that led to the complaint;
- any school board policy, state or federal law, state or federal regulation, or State Board of Education policy or procedure that the student and/or parent/guardian believes has been misapplied, misinterpreted or violated; and
- the specific resolution or corrective action desired (i.e., what the student and/or parent/guardian wants to happen as a result of the employee's actions).

What is generally the grievance process? (Note: The process may differ from district-to-district.)

- **Filing:** A grievance should be filed as soon as possible after the incident, and MUST be filed within 30 days after the incident that is the subject of the complaint. If the grievance is filed after 30 days have passed, the school can, but is not required to, take any further action.
- **Conference:** After receiving the grievance, the principal MUST schedule, within five school days, a meeting with the person who filed the grievance.
- **Principal's Decision:** After the conference, the principal MUST give his/her decision on the matter in writing to the student or parent/guardian within five school days.
- **Appeal to the Superintendent:** If the student or parent/guardian is not satisfied with the decision, s/he may appeal to the superintendent. The appeal MUST be made within five school days after receiving the principal's written response.
- **Superintendent's Decision:** Once the superintendent receives the appeal, s/he MUST review it within five school days. However, if the superintendent determines that more investigation is needed, s/he may have 15 additional days to investigate. After the review is completed, the superintendent MUST give the student or parent/guardian a decision in writing within 10 school days.
- **Appeal to the Board of Education:** If the grievance is not resolved by the superintendent, it may be appealed in writing to the board of education. This written appeal MUST be made within 10 school days following the written response from the superintendent.
- **Board's Decision:** A Board's consideration of a grievance appeal takes place in a closed session and is limited to the written record (i.e., the appeal to the principal and the superintendent, their responses, and other documents related to the suspension), unless the board determines that additional information is necessary. There is generally no hearing or in-person meeting. The board may affirm, reverse, or modify the decision of the superintendent. The board MUST give the student or parent/guardian a final, written decision within 30 days of the session.

If the school system fails to comply with the time periods or other procedures, the parent/guardian may advance the grievance to the next level. For example, if a parent/guardian files a grievance with a principal and the principal does not respond within five school days, the parent/guardian can immediately file an appeal with the superintendent.

SUSPENSION GRIEVANCE

Parent/Guardian

Name	
Phone	
Email	
Address	

Student

Name	
Grade	
School	

My child's school violated the state school discipline statute (G.S. § 115C-Article 27) and local school board policies for the following reason(s). (Check all that apply.)

<input type="checkbox"/>	My child's conduct did not violate a school board policy that authorizes a short-term suspension.
<input type="checkbox"/>	My child's conduct was not willful.
<input type="checkbox"/>	My child was not provided an opportunity to make statements in defense or mitigation of the school's accusations.
<input type="checkbox"/>	I was not provided proper notice of my child's suspension.
<input type="checkbox"/>	My child was denied the opportunity to take her textbooks home, receive missed assignments and instructions, and/or make up tests and quizzes.
<input type="checkbox"/>	Other:

Additional Details (Describe why you checked the box(es) above.)

Signature

Date

** Parents/Guardians: After you complete this form, make and save a copy for your records. Read your school district's grievance policy to determine whether to submit the grievance to the principal or superintendent.*

SUSPENSION GRIEVANCE APPEAL

Parent/Guardian

Name	
Phone	
Email	
Address	

Student

Name	
Grade	
School	

My child's school violated the state school discipline statute (G.S. § 115C-Article 27) and local school board policies as outlined in my initial grievance. (Initial grievance enclosed)

The response to my grievance was not adequate for the following reason(s).

--

Signature

Date

** Parents/Guardians: After you complete this form, make and save a copy for your records. Then, attach a copy of the "Suspension Grievance" form above, and submit both forms to either the superintendent or the Board of Education. Read your school district's grievance policy to determine which is the next step in the process.*

Special Education and School Discipline

(What rights does my student with a disability have when facing a suspension?)

How should schools respond when students with IEPs have behavior struggles?

Many children with disabilities experience behavior challenges in school. If your student's education – or that of others – is affected by your student's behavior, the following interventions *should* be implemented.

- A **Functional Behavioral Assessment (FBA)** is used to help the IEP team figure out *why* the student's behaviors are happening and what supports will best address the behaviors. The FBA should identify a target behavior, and then include a review of observations, interviews, and other information, such as previous discipline referrals and teacher behavior logs related to that behavior.
 - A parent/guardian may request a FBA at any time.
 - If a behavior is found to be related to a child's disability following a manifestation determination review (MDR) (*see below*), the school **must** conduct or review a FBA.

More info: Functional Behavioral Assessments

- Target behaviors can include externalizing behaviors (e.g. disruptiveness, aggression, talking back, leaving the classroom), internalizing behaviors (e.g. sleeping, daydreaming), or other behaviors (e.g. tardiness).
- Aim of FBA: The FBA should answer the following questions:
 - In what settings does the behavior occur?
 - Are there any settings where the behavior does not occur?
 - Who is present when the behavior occurs?
 - What activities or interactions (triggers) take place just prior to the behavior?
 - What usually happens immediately after the behavior?
 - Is the student trying to gain attention or approval of a classmate, avoid instruction/difficult assignments, or achieve some other goal?



- A **Behavior Intervention Plan (BIP)** is a tool to assist parents, teachers, and the student in dealing with a child's behavior in a therapeutic and beneficial way. The BIP is created using the information obtained in the FBA.
 - Creation of a BIP, or revision of the BIP, can be requested by the parent/guardian at any time. If the school has not already done so, they should complete an FBA prior to a BIP.
 - If a behavior is found to be related to a child's disability following an MDR (*see below*), the school **must** conduct or review a BIP.
 - Once created, the BIP becomes an enforceable part of the student's IEP.

More info: Behavior Intervention Plans

Effective BIPs are not punishment; instead, they should:

- be preventative and strengths-based;
- include multiple interventions or support strategies;
- make changes to the child's school environment to prevent the behavior;
- teach the child coping strategies and self-management skills;
- identify supports or strategies that will improve behavior;
- be developed with input from the student;
- establish constructive steps to be taken when misconduct happens;
- establish when and how the plan will be reviewed to determine its effectiveness;
- establish when and how information will be shared between home and school; and
- determine how the student's behavior will be handled should it reach a crisis, particularly without the use of seclusion, restraints, or law enforcement involvement.



When are special protections triggered during the discipline of students with IEPs?

- Once a student with an IEP has been suspended for more than 10 days in a school year, special protections (*see below*) must be provided to that student. The following “suspensions” can trigger protections:
 - A long-term suspension (LTS) (e.g. a suspension lasting more than 10 days)
 - A series of short-term suspensions (STS) that involve similar types of behaviors
 - A series of in-school suspensions (ISS) that involve similar types of behaviors if the student doesn’t receive all services in their IEP or spends less time with non-special education peers while removed
 - A series of removals in which a parent/guardian is told to come pick their child up before the end of the school day and, as a result, the child misses required services under their IEP
 - A disciplinary transfer to an alternative program
 - An expulsion

What special protections must students with IEPs receive when facing a suspension?

- Once a suspension that falls into one of the categories above occurs, the following protections are triggered:
 - a. Beginning no later than the 11th total day of suspension and continuing throughout any resulting suspension, the student must be provided **uninterrupted access to an appropriate education**.
 - This includes any educational and related services needed to help the student make progress on their IEP goals and in the general curriculum
 - These services may be provided in a different environment.
 - b. The student’s IEP team must meet as soon as possible (but no later than 10 days after the suspension) to hold a **Manifestation Determination Review (MDR)**.
 - The purpose of the MDR is to answer two questions:
 - 1) Was the student's conduct caused by, or did it have a direct and substantial relationship to, the student's disability?; or
 - 2) Was the student's conduct the direct result of the school's failure to follow the IEP?
 - If the answer to either of the questions above is yes, then the student may not be suspended.
 - **EXCEPTION:** If conduct involved a weapon, drugs, or serious bodily injury, the student can still be removed to a different environment for up to 45 school days.
 - c. Creation or review of a **FBA and BIP** (*see above*) to prevent future incidents
 - If the behavior is found to be a manifestation, an FBA/BIP is *required*
 - If the behavior is not found to be a manifestation, and FBA/BIP is *strongly recommended*

Red Flag: Students who need but don’t yet have an IEP

If a student does not have an IEP, these protections must still be provided ***IF*** the school had reason to know the student needed an IEP **before** the incident occurred:

- a. Parent/guardian requested an evaluation, or put in writing concerns about child’s need for an IEP
- b. A teacher or other staff member expressed specific concerns about the child to an administrator; or
- c. The child's behavior and educational performance clearly showed the need for special education.

If an evaluation is requested during a suspension, it must be completed **faster than the 90-day timeline**



Be proactive – don’t wait for a suspension to request an FBA/BIP or other changes to your child’s IEP.

At the MDR, **be prepared** to discuss why the behavior is related to the student’s disability. If possible, **bring your child’s therapist, mentor, or physician** with you.

If the MDR does not end the suspension, **use the district’s general appeal process** to challenge the LTS.

Advocates for Children’s Services of Legal Aid of North Carolina

For additional resources: www.legalaidnc.org/acs

To apply for legal services: **1-866-219-5262**



You can request a FBA/BIP creation/revision at any time. If helpful, you can use the attached sample form. You may want to contact a lawyer if your child has missed a lot of school due to disciplinary incidents, or if your child is facing LTS or expulsion.

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Form: Request for an Individualized Education Program (IEP) Team Meeting

Student Name	
Student School	
Parent/Guardian Name	
Parent/Guardian Address	
Parent/Guardian Phone	
Parent/Guardian Email	

Dear Principal:

I would like to meet with my student's Individualized Education Program (IEP) Team to discuss the following concerns: (Check all that apply.)

- _____ My student is having **behavioral struggles** (*examples could include avoiding work, not staying organized, regularly getting into arguments or fights, etc.*) that aren't being met by their IEP
- _____ My student is having **academic struggles** (*examples could include having a hard time keeping up in math, reading, writing, etc.*) that aren't being met by their IEP
- _____ I think my student may qualify under an additional or different **area of eligibility**
- _____ I have concerns about how my student's IEP services are being provided by their **teacher(s)**
- _____ I think my student needs more or different **special education services** to meet their needs
- _____ I think my student needs new or different **related services** (*examples could include occupational therapy, speech therapy, counseling, social work services, parent counseling, etc.*) to meet their needs
- _____ I think my student needs new or different **accommodations** (*examples could include extended time on tests, opportunities for sensory breaks, chunked or modified assignments, etc.*) to meet their needs
- _____ I think my student needs a **functional behavioral assessment (FBA)** and **behavior intervention plan (BIP)** to help address ongoing behavior needs
- _____ Other: _____

Additional information:

Please have someone contact me within 10 school days with a possible date, time, and location for an IEP Team meeting.

Thank you,

Signature of Parent/Guardian

Date Submitted to the Principal

Form: Request for a 504 Plan Team Meeting

Student Name	
Student School	
Parent/Guardian Name	
Parent/Guardian Address	
Parent/Guardian Phone	
Parent/Guardian Email	

Dear Principal:

I would like to meet with my student's 504 Plan Team to discuss my student's: (Check all that apply.)

- _____ My student is having **behavioral struggles** (*examples could include avoiding work, not staying organized, regularly getting into arguments or fights, etc.*) that aren't being met by their 504 Plan
- _____ My student is having **academic struggles** (*examples could include having a hard time keeping up in math, reading, writing, etc.*) that aren't being met by their 504 Plan
- _____ My student needs new or different **accommodations** (*examples could include extended time on tests, opportunities for sensory breaks, chunked assignments, etc.*) to meet their needs
- _____ My student needs a **functional behavioral assessment (FBA)** and **behavior intervention plan (BIP)** to help address ongoing behavior needs
- _____ Other: _____

Additional information:

Please have someone contact me within 10 school days with a possible date, time, and location for a 504 Team meeting.

Thank you,

Signature of Parent/Guardian

Date Submitted to the Principal

Behavior Interventions

(How can I get more formal help for a student struggling with behavior?)

What is a Functional Behavioral Assessment and a Behavior Intervention Plan?

- ❖ A Functional Behavioral Assessment (FBA) is a process used to determine the cause (and function) of behaviors that interfere with learning.
 - The FBA incorporates data that should include: interviews (student, teacher, and parent), rating scales, direct observations, and a review of student records.
- ❖ A Behavior Intervention Plan (BIP) is then developed using the information collected during the FBA.

****Both general education students and special education students may need and be eligible for an FBA and BIP****

Creating a strong FBA

- ✓ As a team, identify and define the 1-2 behaviors that are having the greatest impact on the student's education
- ✓ Collect information about the behavior(s):
 - a. what happens before the child's problem behavior
 - b. what specific behaviors are displayed
 - c. what happens afterward
- ✓ As a team, analyze the information gathered, identify patterns, and come to an agreement about the purpose of the problem behavior
- ✓ Develop a statement that explains why and when the team thinks the child uses the problem behavior

What's in a BIP?

- A BIP includes strategies to:
 - a. Eliminate triggers that were identified in the FBA
 - b. Teach and reinforce positive replacement behaviors
 - c. Therapeutically deescalate the student when behaviors arise
- The BIP should be focused on what the *adults in the school environment* are going to do to more creatively support a students with challenging behaviors

When should an FBA be conducted and a BIP created?

- ❖ It is *best practice* to conduct an FBA and develop a BIP when *any student* demonstrates behaviors that impede his/her learning or that of others, exhibits a pattern of challenging behavior, is at risk for suspensions or has accumulated suspension days.
- ❖ For students who have IEPs, an FBA/BIP may be *required* and more behavior instruction/services available if the student is getting frequently suspended for disability-related behaviors.

Who should conduct an FBA and develop a BIP?

- ❖ Anyone who knows the student and is invested in their success can participate in the FBA/BIP process. This includes but is not limited to: teachers, administrators, counselors, parents, the student, school or district-level behavior specialists, psychologists, social workers, community members, etc..
 - If you disagree with the school's FBA for a student with an IEP and/or don't think the BIP is helping, you can request a free "Independent Education Evaluation" (IEE) FBA, which will trigger the school's duty to contract with a private specialist to complete an independent FBA.



GOLD STAR TIP

If a child has experienced trauma – such as abuse or neglect, you can advocate that the FBA and BIP consider and respond to the impact of trauma on the child's behavior through trauma-informed behavior interventions (e.g. relaxation strategies, utilizing pre-arranged signals, redirecting behaviors through offering reasonable choices, using calm tone of voice and/or nonverbal cues, etc.)

For more information about trauma-informed interventions, conduct an Internet search using terms such as "trauma-informed classrooms" or "trauma-informed schools."

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To apply for legal services: 1-866-219-5262



You may want to contact a lawyer if your child is denied needed behavior interventions.

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Form: Request for Meeting to Review MTSS, SST, or RTI plan

Student Name	
Student School	
Parent/Guardian Name	
Parent/Guardian Address	
Parent/Guardian Phone	
Parent/Guardian Email	

Dear Principal:

I request that my student's school-based support team (SST, MTSS, or RTI) meet to review my student's progress, the interventions that are currently in place, and any new interventions that may need to be implemented to address the following concerns: (Check all that apply.)

- _____ My student is having **behavioral struggles** (*examples could include avoiding work, not staying organized, regularly getting into arguments or fights, etc.*)
- _____ My student is having **academic struggles** (*examples could include having a hard time keeping up in math, reading, writing, etc.*)
- _____ My student needs a **functional behavioral assessment (FBA)** and **behavior intervention plan (BIP)** to help address ongoing behavior needs
- _____ Other: _____

Additional information:

Please have someone contact me within 10 school days with a possible date, time, and location for a Team meeting.

Thank you,

Signature of Parent/Guardian

Date Submitted to the Principal