

Know Your Rights, Remedies, & Resources

A Handbook for
Parents/Guardians and Students
in North Carolina Public Schools

a publication of
Advocates for Children's Services
a statewide project of Legal Aid of North Carolina

ADVOCATES FOR CHILDREN'S SERVICES

Advocates for Children's Services (ACS) is a statewide project of Legal Aid of North Carolina. The focus of ACS' work is dismantling the school-to-prison pipeline through:

- High-quality legal advice and representation for children from low-income families who are being pushed out of public school systems through suspensions, expulsions, school-based court referrals, mistreatment by school resource officers, discrimination, unmet educational needs, including special education, and other factors;
- Community education in the form of trainings, presentations, publications, and media outreach; and
- Collaboration with and technical assistance for individuals and organizations working for education justice.

For more information about ACS, visit www.legalaidnc.org/acs, call 919-226-0052, or email acsinfo@legalaidnc.org.



Produced By:

Jason Langberg
Equal Justice Works Fellow/Attorney
Advocates for Children's Services

Date of Publication:

April 2012

Thank you to the following individuals for their contributions to this booklet:

Katherine Asaro, Intern, Advocates for Children's Services
Brenda Berlin, Supervising Attorney, Duke Children's Law Clinic
Christine Bischoff, Staff Attorney, Education and Law Project, NC Justice Center
Erwin Byrd, Staff Attorney, Advocates for Children's Services
Mary Chesson, Pro Bono Volunteer, Advocates for Children's Services
Brandi Clemmons, Assistant Juvenile Defender, North Carolina Juvenile Defender
Matt Ellinwood, Policy Advocate, Education and Law Project, NC Justice Center
Angela Grant, Paralegal, Advocates for Children's Services
Chris Hill, Director, Education and Law Project Director, NC Justice Center
Gregory Malhoit, Assistant Clinical Professor of Law, NCCU School of Law
Peggy Nicholson, Powell Fellow/Attorney, Advocates for Children's Services
Katy Parker, Legal Director, ACLU of North Carolina
Lewis Pitts, Managing Attorney, Advocates for Children's Services
Jennifer Richelson, Push Out Prevention Project Fellow, Advocates for Children's Services
Andrew Stevenson, Intern, Advocates for Children's Services
Laura Swartz, Intern, Advocates for Children's Services
Christine Trottier, Attorney, Disability Rights NC
Mark Trustin, Private Attorney, Trustin Law
Jane Wettach, Clinical Professor of Law, Duke Children's Law Clinic
Eric Zogry, Juvenile Defender, North Carolina Juvenile Defender

Thank you to Equal Justice Works for its financial support.

Dedication:

To the generations of advocates who have fought for education justice and the rights of students and parents/guardians. We honor, pay tribute to, and carry on their struggles.

TABLE OF CONTENTS

Introduction.....	4
Disclaimers.....	4
Students' & Parents'/Guardians' Rights	
Sound Basic Education.....	5
Enrollment.....	5
School Transfer.....	6
Free & Reduced-Price Lunch.....	7
Education Records.....	7
Discipline (Suspension, Expulsion, Alternative School, Corporal Punishment).....	8
Students Who Are At Risk of Academic Failure.....	10
Students Who Have a Disability.....	11
Students Who Have Limited English Proficiency.....	16
Students Who Are Immigrants to the United States.....	17
Students Who Identify as LGBTQ.....	17
Students Who Are Pregnant or Parenting.....	17
Students Who Are Homeless.....	18
Freedom of Speech.....	18
Freedom of Religion.....	19
Freedom of Assembly.....	20
Freedom from Racial Discrimination.....	20
Freedom from Gender Discrimination.....	20
Freedom from Bullying.....	20
Freedom from Unreasonable Search and Seizure.....	20
Freedom from Self-Incrimination.....	21
Freedom from Excessive Force.....	22
Remedies.....	23
Tips.....	25
Resources.....	26
Appendix: Additional Information and Sample Forms.....	28

INTRODUCTION

This handbook provides an overview of students' and parents'/guardians' rights, what remedies are available when those rights are violated, tips and tools for self-advocacy, and support resources.

This handbook was written for three main reasons:

- 1) Students and parents/guardians are expected to follow laws and policies.
- 2) Students and parents/guardians often either do not know their rights or do not know what to do when their rights are violated. Additionally, there are not enough student and parent/guardian advocates to fulfill the need for assistance in enforcing rights and remedies. Therefore, students and parents/guardians must be equipped with the information and tools necessary to advocate for themselves.
- 3) Students have a greater chance of doing well in school, graduating, and becoming responsible, active citizens if their rights are respected.



DISCLAIMERS



This handbook is for informational purposes only. It is not legal advice.

This handbook provides only an overview of students' and parents'/guardians' rights. It does not cover all rights, remedies, and resources, and does not address every possible situation.

Laws and policies change over time. The information in this booklet is current as of April 2012.

This booklet is only about K-12 public schools in North Carolina. It is not intended to be used by students and parents/guardians in charter schools (although many of the same rights apply in charter schools), private schools, post-secondary schools, or schools outside of North Carolina.

This booklet does not include local policies and rules. It is very important for students and parents/guardians to read their local school board policies and school rules. A copy of local policies can usually be found on the school district's website, at the school district's central office, and/or at individual schools.

Laws and policies, and the remedies for violations of them, can be very complicated. It is strongly recommended that students and parents/guardians contact one of the organizations listed in the resources section of this handbook if they have questions or if their rights are violated.

Please direct corrections and suggestions for improving this handbook to Jason Langberg, 919-226-0051 ext. 438, jasonl@legalaidnc.org.

STUDENTS' AND PARENTS'/GUARDIANS' RIGHTS

Sound Basic Education

Every child has the right to an opportunity to receive a sound basic education. A sound basic education is one that provides a student with:

- the ability to read, write, and speak English;
- sufficient knowledge of math and science in order to function in a complex and changing society;
- sufficient knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices that affect the student personally or affect the student's community, state, and nation;
- sufficient academic and work skills to enable the student to successfully go on to college or vocational school after graduation;
- sufficient academic and work skills to allow the student to compete for further education or employment;
- a competent, certified, well-trained teacher;
- a well-trained, competent principal; and
- a school that has enough resources to support an effective instructional program.

Enrollment

A student has the right to enroll in a public school if s/he:

- is between the ages of five and 21;
- tries to enroll during the first 120 days of a school year;
- lives with a parent or legal guardian in that school's school district;
- is not currently suspended or expelled from that school or another public school; and
- has not been convicted of a felony in adult criminal court.

Though local school districts may ask for additional information, they **MUST** enroll the student while waiting to receive the information.

Students Who Have Been Suspended, Expelled, or Convicted of a Felony

School districts can choose to enroll students who are suspended or expelled from another school district and students who have been convicted of a felony in adult criminal court. A student who has an Individualized Education Program (IEP) **MUST** receive a free and appropriate public education (FAPE), even if the student is suspended or expelled from another school district or has been convicted of a felony. See below for more information about IEPs and FAPE.

Living with a Non-Guardian

A student who is living with an adult, other than his/her parent/guardian, may attend school where the non-guardian adult lives if the student:

- is not under suspension or expulsion from another school district;
- has not been convicted of a felony;
- is living with an adult who lives in the school district; and
- lives with the adult for at least one of the following reasons:
 - the death, serious illness, or incarceration of a parent/guardian;
 - the parent/guardian has completely abandoned control of the student;
 - abuse or neglect by the parent/guardian;
 - the parent/guardian has a physical or mental condition that prevents him/her from providing adequate care and supervision of the student;
 - the student's home may not be inhabited because of a natural disaster; or
 - the parent/guardian is on active military duty and deployed.

Group Homes and Foster Homes

A student living in a group home or foster home has the right to enroll in the school district where the group home or foster home is located.

Students Who Are Homeless

See below for more information about the enrollment rights of students who are homeless.

School Transfer

A parent/guardian may request that his/her student be transferred to another school as long as the request is made:

- in writing to the local board of education;
- within 10 days after the parent/guardian is notified of his/her student's school assignment;
- on the forms required by the local board of education; and
- following the rules and regulations of the local board of education.

If the local board of education denies the transfer request, the board **MUST** send a letter by registered or certified mail to inform the parent/guardian of the decision. The parent/guardian who applied for the transfer has a right to appeal the board's decision. If an appeal is requested, the parent/guardian **MUST** be given a timely and fair hearing in front of the board. In deciding the appeal, the board **MUST** consider:

- what is best for the student;
- the orderly and efficient administration of the public schools;
- what is best for the school to which the student is seeking to be reassigned; and
- the instruction, health, and safety of the students at the school to which the student is seeking to be reassigned.

The board **MUST** make a timely decision after the hearing and give the parent/guardian notice of the decision. If the parent/guardian wants to further appeal the decision of the board, s/he can file a petition in the superior court that is in the county where the school board is located.

Schools Not Making Adequate Yearly Progress

A Title I school is a school that receives Title I money from the federal government. The money is given to schools with higher percentages of low-income families. Adequate Yearly Progress (AYP) is the measure by which schools, districts, and states are held accountable for student performance under the No Child Left Behind Act (NCLB). To find a list of Title I schools, visit www.dpi.state.nc.us/nclb/title/schools/. To find out which schools made AYP, visit www.ncpublicschools.org/nclb/abcayp/ayp/.

If a Title I school does not make AYP in the same subject for two consecutive years, parents/guardians **MUST** be given transfer options. Parents/guardians **MUST** be notified by the school district that their child is eligible for public school choice no later than 14 calendar days before the start of the school year for which the choice is being offered. The notification **MUST** be understandable and, to the extent practical, in a language that parents/guardians can understand. The notification **MUST** at least:

- inform parents that their child is eligible to attend another public school and may receive transportation to the school;
- identify each public school, which may include charter schools, that parents may select; and
- include information on the academic achievement of the schools that parents may select.

Additionally, the school district should describe the procedures and timelines that parents must follow in selecting a school for their child. Students who transfer **MUST** receive free transportation to and from their new schools.

Free and Reduced-Priced Lunch

A student is entitled to free lunch at school if that student's family's income is at or below 130% of the federal poverty level for that year. Students whose families have incomes between 130% and 185% of the poverty level are entitled to reduced-price lunches. A student who pays for reduced-price meals may not be charged more than 40 cents for a meal. Current federal poverty guidelines can usually be found on this website: <http://aspe.hhs.gov/poverty>.

Education Records

Privacy

Schools may not release private information from a student's education records to anyone outside the school system unless the school has written permission from an "eligible student" (i.e., a student who is age 18 or older) or from the student's parent/guardian, if the student is under age 18. However, there are certain exceptions that allow a school to release a student's records without first getting permission from an eligible student or parent/guardian. Examples of exceptions include:

- directory information, such as name, address, phone number, and email address;
- a public health emergency (e.g., a meningitis scare); and
- when a judge issues a lawful order for the information.

Access

Eligible students or parents/guardians have the right to review the student's education records maintained by the school. Education records are those records that are:

- directly related to a student; and
- maintained by an educational agency or institution (i.e., a school) or by a party acting for the agency or institution.

A student's official record **MUST** contain, at a minimum:

- adequate identification data, including date of birth, attendance data, and grading and promotion data; and
- notice of any suspension for a period of more than 10 school days or of any expulsion, and a description of the conduct for which the student was suspended or expelled.

Local boards of education may also require schools to maintain other information. Student records often include additional information, such as a student's Social Security number, grades, standardized test scores, attendance records, medical information, teacher reports, disciplinary records, and special education records.

Education records do not include records of law enforcement agencies (e.g., police departments and sheriff's departments). So, law enforcement agencies may refuse to provide eligible students or parents/guardians with the agencies' records. Records of law enforcement agencies do not include: 1) records created by a law enforcement agency but maintained by a school or school district; or 2) records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a school disciplinary action or a proceeding conducted by the school or school district (e.g., a suspension hearing). Therefore, eligible students or parents/guardians have a right to view these records.

A school **MUST** comply with a request for records within a reasonable period of time, but not more than 45 days after it received the request. Schools are not required to provide eligible students or parents/guardians with copies of records unless, for reasons such as the family living a great distance from the school, it is impossible for parents/guardians or eligible students to review the records. Any charge for copies **MUST** be reasonable and may not prevent the eligible students or parents/guardians from getting the records.

Revisions

Eligible students or parents/guardians have the right to request that inaccurate or misleading information in education records be changed. Schools **MUST** consider such requests. If the school does not change a record, the school **MUST** inform the eligible student or parent/guardian of his/her right to a hearing on the matter. If, after the hearing, the school still does not agree to change the record, the eligible student or parent/guardian has the right to insert a statement in the record setting forth his/her own views. That statement **MUST** remain in the student's record for as long as the record is maintained.

This right may not be used to challenge a grade or an individual's opinion, or a substantive decision made by a school about a student (e.g., a suspension ruling or test score).

Discipline

Short-Term Suspension

A student facing a short-term suspension (i.e., a suspension for 10 school days or fewer) has the right to:

- receive notice (i.e., an explanation from the school as to why s/he is being suspended) that includes:
 - what rule the student broke; and
 - the evidence against him/her (i.e., a description of the incident)
- tell his/her side of the story to a school administrator (this can be an informal conversation); and
- take textbooks home, get missed assignments, and make up exams.

The notice **MUST** be given by the end of the workday during which the suspension is imposed when reasonably possible, but never more than two days after the suspension is imposed. The notice **MUST** be given by certified mail, telephone, fax, e-mail, or any other method reasonably designed to achieve actual notice to the parent/guardian. If English is the second language of the parent/guardian, the notice **MUST** be provided in both English and the parent's/guardian's primary language, when the appropriate foreign language resources are readily available. Both versions **MUST** be in plain language and easily understandable.

Long-Term Suspension and Expulsion

A student facing a long-term suspension (i.e., a suspension lasting more than 10 school days), 365-day suspension (i.e., a suspension lasting one calendar year), or expulsion (i.e., indefinite removal from the school system) has the right to:

- receive written notice that **MUST** include:
 - a description of the incident that led to the proposed suspension or expulsion;
 - the specific policies from the student code of conduct that s/he is charged with violating;
 - the specific process to request a hearing to challenge the suspension or expulsion, including how many days a parent has to request it;
 - a description of the format of the hearing;
 - notice that the parent/guardian is permitted to have an attorney (or an advocate, if local board policy allows it) to represent the student in the hearing process; and
 - notice that the parent/guardian has the right to review and obtain copies of the student's educational records before the hearing.
- take textbooks home, get homework, and make up tests during the first 10 days of the suspension and during the appeals process;
- review, before the hearing, any audio or video recordings of the incident and the information supporting the suspension that may be presented as evidence at the hearing, including statements made by witnesses;
- have an informal hearing before an unbiased decision-maker where the student **MUST** be able to:
 - bring an attorney;
 - present evidence in his/her defense;
 - bring witnesses to testify on his/her behalf;

- question ("cross-examine") the witnesses, evidence, or statements used against him/her by the school; and
- make a recording of the hearing.
- a hearing decision that is written, based on "substantial evidence," and includes:
 - the basis for the decision, including a reference to any policy or rule that the student is determined to have violated;
 - notice of what information will be included in the student's official record; and
 - the student's right to appeal the decision and notice of the procedures for the appeal.
- appeal the hearing decision to the local board of education; and
- appeal the local board of education's decision to the local superior court.
 - See the appendix for more information about appeals to superior court and a sample petition for judicial review.

Written notice may be provided by certified mail, fax, e-mail, or any other written method reasonably designed to achieve actual notice of the recommendation for long-term suspension or expulsion. When school personnel are aware that English is not the primary language of the parent/guardian, the notice **MUST** be written in both English and in the primary language of the parent/guardian when the appropriate foreign language resources are readily available.

If a hearing is requested in a timely manner, it **MUST** be held before the long-term suspension starts (i.e., before the end of the tenth school day of the suspension). If the student does not request a hearing, the superintendent reviews the circumstances and then:

- imposes the suspension
- imposes another appropriate penalty; or
- declines to impose any penalty.

Alternative School

Students who are long-term suspended or expelled **MUST** be offered alternative education services, unless the superintendent provides a significant or important reason for declining to offer such services. The following may be significant or important reasons:

- the student exhibits violent behavior;
- the student poses a threat to staff or other students;
- the student substantially disrupts the learning process (e.g., setting a fire at school); and
- the student failed to comply with reasonable conditions for admittance into an alternative education program.

The superintendent also **MUST** make sure that the student's education is not taken away more than necessary to protect safety and order in the school. For example, it may not be necessary to suspend a student for the remainder of the school year if s/he was in a minor fight at the beginning of the year, or it may not be necessary to deprive a student of all education, if the student could take classes on a computer.

Readmission

All students suspended for 365 days or expelled may, after 180 calendar days from the date of the beginning of the suspension or expulsion, request in writing to be readmitted to the school district.

A student who is suspended for 365 days and then requests readmission has the right to:

- an in-person meeting with the local superintendent or board of education;
- be readmitted if the student demonstrates that the student's presence in school no longer constitutes a threat to the safety of other students or staff;
- a decision within 30 days of the request; and
- appeal to the board of education, if the superintendent is designated to make the initial decision.

A student who is expelled and then requests readmission has the right to:

- a ruling from the local board of education;
- be readmitted if the student demonstrates that the student's presence in school no longer constitutes a threat to the safety of other students or staff;
- a decision within 30 days of the request; and
- request readmission again every six months, if s/he is denied.

If a student is readmitted, the local superintendent and board of education have the right to assign the student to any program within the school system and to place reasonable conditions on the readmission.

Corporal Punishment

Corporal punishment is the intentional infliction of physical pain upon the body of a student as a disciplinary measure. Each local board of education determines whether corporal punishment is allowed in the district.

If corporal punishment is allowed:

- it may not be administered in a classroom with other students present;
- only a teacher, principal, or assistant principal may administer corporal punishment;
- there **MUST** be a second teacher, principal, or assistant principal present;
- a school staff member **MUST** provide the student's parent/guardian with notification that corporal punishment was used;
- the person who used the corporal punishment **MUST** provide the student's parent with a written explanation of the reasons for the punishment and the name of the second person who was present;
- the school **MUST** maintain records of each use of corporal punishment and the reasons for its use;
- excessive force may not be used, such as force that results in injury to the child that requires medical attention beyond simple first aid; and
- it may not be used on a student whose parent/guardian has stated in writing that corporal punishment shall not be used on that student (parents/guardians **MUST** be given a form to make such a decision at the beginning of the school year or when the student first enters the school during the year).

Students Who Are at Risk of Academic Failure

A student who is failing or at risk of academic failure has the right to a free Personal Education Plan (PEP). A PEP should help guide the student, parent/guardian, and teachers in bringing the student up to grade level in all subjects. Schools **MUST** provide effective PEPs for all eligible students. A lack of funding is not a valid excuse!

A student is at risk of academic failure if the student:

- scored a I and/or II on an end-of-grade (EOG) or end-of-course (EOC) exam; and/or
- has other factors that could cause academic failure, such as failing grades, excessive absences, and/or suspensions.

The school **MUST** create the PEP by the end of the first grading period or after a teacher has had a student in class for nine weeks. Schools do not need to wait for the results of EOG or EOC exams before creating a PEP. If the school fails to provide a PEP to an eligible student, the student's parent/guardian may request one.

PEPs **MUST** include:

- an evaluation to determine the student's specific academic needs and which interventions are best for the student;

- intervention strategies (e.g., coaching, mentoring, tutoring, summer school, Saturday school, extended school days, special homework, and smaller classes) that will help the student improve to grade-level proficiency; and
- monitoring strategies (e.g., assessments and evaluations) to make sure that the PEP is being implemented and is working.

The school should involve students' parents/guardians in the implementation and ongoing review of the PEP, and **MUST** provide students' parents/guardians with a copy of the PEP.

A PEP is different than an Individualized Education Program (IEP). Students at risk of academic failure are entitled to a PEP. A student with a diagnosed disability that requires specialized instruction is generally entitled to an IEP. See below for more information about IEPs. See the appendix for more information about PEPs, a sample PEP request form, and a sample request to revise a PEP.

Students Who Have a Disability

Evaluation

If a parent/guardian thinks his/her student has a disability and needs special education services, the parent/guardian has the right to have the student evaluated by the school system for free. The parent/guardian should request an evaluation in writing. See the appendix of this guide for a form to use to request an evaluation. If the school staff believes the student may have a disability, the school **MUST** inform the parents/guardian of the suspicion and ask for permission to conduct an evaluation.

The school **MUST** get the parent's/guardian's permission before conducting the evaluation. The evaluation **MUST** assess the student in all areas related to the child's suspected disability.

If a school thinks a student has a disability, it will sometimes try intervention strategies in the classroom before or during the evaluation process. Sometimes the interventions are implemented by what is called a "student support team" (SST), by using what is called a "student assistance plan" (SAP), or through a four-tiered program called "responsiveness to instruction" (RTI). While SSTs, SAPs, and RTIs can be useful to avoid unnecessarily or wrongly identifying students as disabled and in need of special education services, schools **MUST** still provide an evaluation if the parent/guardian requests one or if interventions have failed and school staff still suspect the student has a disability.

Examples of disabilities that may make a student eligible for special education services include:

- | | |
|--|---------------------------------|
| ▪ Autism | ▪ Serious emotional disturbance |
| ▪ Hearing impairment | ▪ Specific learning disability |
| ▪ Intellectual disability | ▪ Speech or language impairment |
| ▪ Orthopedic impairment | ▪ Traumatic brain injury |
| ▪ Other health impairment (such as attention deficit hyperactivity disorder or ADHD) | ▪ Visual impairment |

After the evaluation is completed, a group of qualified professionals and the parent/guardian will meet to decide whether the child is eligible for special education services. In order to be eligible, the student must be "a child with a disability," which means:

- the child must have one of the recognized disabilities
- the child's disability must have a negative impact on his/her educational performance; and
- the child must need specially designed instruction.

A student can have multiple areas of eligibility, if the student has more than one disability.

If a parent/guardian disagrees with the results of the evaluation conducted by the school system, the parent/guardian has a right to an independent educational evaluation (i.e. an evaluation conducted by a qualified examiner who is not employed by the school system), that is paid for by the school system.

Individualized Education Program (IEP) Team

If the child is eligible for special education services, a group called the Individualized Education Program (IEP) Team must meet to create an IEP. The Team **MUST** consist of:

- the student (when appropriate);
- the student's parent/guardian;
- at least one regular education teacher;
- at least one special education teacher;
- a representative of the school district who is qualified to provide or supervise special education instruction and who is knowledgeable about the general education curriculum; and
- an individual who can interpret the evaluation results.

Other individuals who have knowledge or special expertise regarding the student can also be included (e.g., the student's therapist, social worker, or doctor). Parents may bring an advocate or someone to take notes with them.

The first two meetings—the meeting to decide whether the student is eligible and the IEP Team meeting to develop the IEP—often happen at one time.

The evaluation, the eligibility determination, and the creation of the IEP (if the student is eligible), must take place within 90 days of the school receiving the referral (e.g., the request from the parent or school staff member). SSTs, SAPs, and RTIs do not change or extend this requirement.

Before each Team meeting, the school **MUST**:

- contact the parent/guardian early enough to make sure s/he has an opportunity to attend;
- schedule the meeting at a time and place agreeable to the parent/guardian; and
- tell the parent/guardian:
 - the purpose, time, and location of the meeting;
 - who will be attending the meeting; and
 - that s/he may invite people to the meeting who have knowledge or special expertise about the student.

Individualized Education Program (IEP)

An IEP is a plan to meet the student's unique educational needs. The IEP **MUST** be a truly individualized document. Schools may not deny a service to a student with a disability if that student truly needs the service to fulfill his/her educational needs. A lack of funding is not a valid excuse! The IEP **MUST** include:

- The student's current performance in school. This information usually comes from tests, assignments, evaluations, and observations. The statement about "current performance" must include how the child's disability affects his/her involvement and progress in the general curriculum.
- Goals that the student can reasonably accomplish in a year. Goals may be academic, address social or behavioral needs, relate to physical needs, or address other educational needs. The goals **MUST** be measurable—it **MUST** be possible to measure whether the student has achieved the goals.
- The special education and related services to be provided to the child or on behalf of the child. This includes supplementary aids and services that the child needs to learn in the regular classroom to the maximum extent appropriate. Related services can include, but are not limited to: audiology services, counseling services, medical services, occupational therapy, mobility services, parent counseling and training, physical therapy, psychological services, recreation, rehabilitation counseling services, social work services, speech-language pathology services, and transportation. It can also include supports for school personnel, such as training or professional development.
- The extent to which the student will not participate with nondisabled children in the regular class and other school activities (i.e., what percentage of time the student will be out of the regular class in order to receive special education services).

- What modifications in the administration of tests the child will need.
- When services will begin, how often they will be provided, where they will be provided, and how long they will last.
- How the student's progress will be measured (e.g., observations, data collection, tests and assessments, interviews, work samples and portfolios, and reviewing class work and homework assignments) and how the parent/guardian will be informed of that progress.

Beginning when the student is 14 years old, the IEP MUST include the courses s/he needs to take to reach his/her post-school goals.

Beginning when the student is 16 years old, the IEP MUST include what transition services are needed to help the child prepare for leaving school. The transition services MUST address post-secondary goals related to training, education, employment, and where appropriate, independent living skills. The services MUST also take into account the student's individual needs, strengths, skills, preferences, and interests. Examples of transition services include guidance counseling, independent living skills instruction, and help obtaining a driver's license, opening a bank account, becoming employed, completing college applications, and acquiring assistive technology devices and services.

Beginning at least one year before the child turns 18 years old, the IEP MUST include a statement that the student has been told of any rights that will transfer to him/her at the age of majority (i.e., age 18). IEPs can remain in effect until age 21.

An IEP travels with the student. In other words, if a student changes schools or school districts, the student still has a right to have the IEP remain in effect.

Free, Appropriate Public Education (FAPE)

A student with a disability has the right to a "free, appropriate public education" (FAPE). A FAPE means that a student MUST, for free, have his/her unique academic and functional needs met and have access to the general curriculum. Students with a disability who are long-term suspended or expelled have a right to continue receiving a FAPE that will enable them to continue to participate in the general education curriculum and progress toward meeting the goals set out in their IEP.

Least Restrictive Environment (LRE)

Students with disabilities have the right to receive their education in the "least restrictive environment" (LRE). This means that schools MUST educate students with disabilities in regular classrooms with their nondisabled peers, in the school they would attend if not disabled, to the maximum extent appropriate.

Annual Review

The student's IEP MUST be reviewed by the Team at least once each calendar year (i.e., at least once every 365 days). The parent/guardian can request interim (i.e., more frequent) reviews if s/he believes the IEP needs to be changed. The IEP MUST be revised as necessary during each annual review meeting.

Reevaluation

The student has the right to be reevaluated at least every three years. The purpose of the reevaluation is to assess if the student continues to have a disability and the student's educational needs. A parent/guardian can request interim evaluations (i.e., a parent/guardian can ask for a new evaluation before three years has passed, if s/he believes the area of eligibility (i.e., the disability) is incorrect or that there should be an additional area of eligibility). The parent/guardian can also waive the reevaluation requirement.

Manifestation Determination Review (MDR)

A student with an IEP has the right to a manifestation determination review (MDR) within 10 school days of any decision to change the student's placement, such as a transfer to an alternative school, long-term suspension, or expulsion. Any time a child is denied access to any part of the educational services, regardless of the time of day, it is counted as one day of a change in placement (e.g., being suspended for part of the day or going to day treatment for part of the day).

Even if the student does not have an IEP, a MDR may still be required if the school knew that the student is a child with a disability. A school is deemed to have knowledge that a student is a child with a disability if, before the behavior that led to the suspension:

- the child's parent/guardian expressed concern in writing to a teacher or administrator that the child is in need of special education and related services;
- the child's parent/guardian requested an evaluation of the child;
- the child's teacher, or another staff member in the district, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the district or to other supervisory personnel in the district; or
- the child's behavior and educational performance clearly showed the need for special education.

The purpose of the MDR is for the Team to answer two questions:

- Was the student's conduct caused by, or did it have a direct and substantial relationship to, the student's disability?; and
- Was the student's conduct the direct result of the school's failure to implement the IEP?

If the answer to either of the questions above is yes, then the student's placement generally may not be changed and the student **MUST** return to the placement from which s/he was removed. However, if the conduct involved a weapon, drugs, or serious bodily injury, then the student can be suspended for up to 45 school days regardless of whether the answer to one or both questions is yes. Also, if the conduct was a manifestation of the student's disability, then the Team **MUST** conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP), or review and modify (if appropriate) the BIP, if one already exists. See below for more information about FBAs and BIPs.

If the answer to both of the questions above is no, then the student's placement can, generally, be changed (i.e., the student can be suspended or transferred to an alternative school or program). The student can still appeal the suspension and **MUST** still receive a FAPE. See above for more information about suspension appeals and FAPE.

Functional Behavioral Assessment (FBA)

A functional behavioral assessment (FBA) is used to help the Team figure out why the student's behaviors are happening and what interventions will address the behaviors. A FBA should inform the creation of a behavioral intervention plan (BIP). See below for more information about BIPs.

The FBA should include observations, interviews, and information review, such as previous discipline referrals and teacher behavior logs. The Team should consider questions such as:

- 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 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 and difficult assignments, avoid a low-interest subject, or achieve some other goal?

A FBA **MUST** be created if the student's behavior is a manifestation of his/her disability. See above for more information about manifestation determination reviews (MDRs). However, parents/guardians can also request a FBA at any time.

Behavioral Intervention Plan (BIP)

A behavioral intervention plan (BIP) is a roadmap the student and school should use to target and change certain negative behaviors. The BIP is created using the information obtained in the functional behavioral assessment (FBA). See above for more information about FBAs.

Effective BIPs are not punishment; instead, they should:

- have multiple interventions or support strategies;
- focus on the whole child;
- teach the child coping strategies;
- be proactive and strength-based;
- teach the child self-management skills;
- identify supports or strategies that will improve behavior (e.g., teachers stating clear expectations, modifying seating arrangements, adapting the pace of instruction, avoiding exposing the student to long delays, providing a choice of activities, and allowing the student to take breaks);
- establish steps to be taken when misconduct happens; and
- identify a caring adult to give the student positive time at school.

The BIP should include a description of:

- previously tried interventions and how well they did or did not work in changing the behavior;
- the behavior being targeted;
- the interventions that will be used, including who will be involved in implementing the interventions;
- specific procedures that will be followed when misbehavior occurs;
- how data about the student's behavior will be collected;
- the expected behavior changes;
- how the success of the interventions will be measured;
- a schedule for when/how often the plan will be reviewed to determine its effectiveness;
- when and how information will be shared between home and school; and
- how the student's behavior will be handled should it reach crisis proportions.

A BIP should also include:

- a list of the student's strengths and abilities;
- important information about the student that could impact the plan;
- a statement describing the function or purpose of the targeted behavior; and
- a description of the behavior that will replace the inappropriate behavior.

Parents/guardians can request a BIP at any time, even if the student's behavior was not a manifestation of his/her disability. See above for more information about manifestation determination reviews (MDRs). See the appendix for a sample form to request a FBA and BIP.

504 Plans (Section 504 of the Rehabilitation Act of 1973)

An Individualized Education Program (IEP) is for a student with a disability who needs specialized instruction. A 504 Plan is for a student with a disability who does not require specialized instruction but needs the assurance that they will receive equal access to public education and services. See above for more information about IEPs. There are more procedural protections for students with IEPs than there are for students with 504 Plans.

504 Plans are designed to ensure that students with a disability are not discriminated against and have their needs adequately met. 504 Plans are generally for students who have a disability that "substantially limits one or more major life activities." Examples of such disabilities include, but are not limited to: diabetes, epilepsy, allergies, poor vision, poor hearing, heart disease, depression, digestive disorders, or chronic illness. Major life activities include, but are not limited to: self-care, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others, and working. 504 Plans can

also be used when a student has a temporary disability, like a broken arm, that may affect their ability to function at school.

504 Plans are generally created by a committee at the student's school. The committee should consider grades over the past several years, teachers' reports, information from parents and other agencies, test scores, observations, discipline reports, attendance records, and health records.

A parent/guardian **MUST** be given notice before his/her child is evaluated and/or placed on a 504 Plan. Parents/guardians **MUST** also be given a copy of the 504 Plan. Parents/guardians also have a right to:

- request an impartial hearing about the school district's actions regarding the identification, evaluation, or placement of the student; and
- file a complaint with the school district Section 504 Coordinator.

Examples of accommodations that may be part of a 504 Plan include, but are not limited to:

- | | |
|---|--|
| ▪ Highlighted textbooks | ▪ Behavioral intervention plans |
| ▪ Extended time on tests or assignments | ▪ Rearranging class schedules |
| ▪ Peer assistance with note taking | ▪ Visual aids |
| ▪ Frequent feedback | ▪ Preferred seating assignments |
| ▪ Extra set of textbooks for home use | ▪ Taping lectures |
| ▪ Computer-aided instruction | ▪ Oral tests |
| ▪ Enlarged print | ▪ Individual contracts |
| ▪ Positive reinforcements | ▪ Allowing the student to eat in class |

The 504 Plan should be updated annually.

Translation

At a minimum, the following **MUST** be in the parent's/guardian's native language, unless it is clearly not feasible to do so:

- a copy of procedural safeguards;
- the consent for an evaluation; and
- notices (e.g., plans to evaluate or re-evaluate, Team meetings, and changes in services).

See below for more information about services for students who have limited English proficiency.

Disability Discrimination

Schools and school districts may not discriminate against students with disabilities. Examples of discrimination include:

- denial of access to educational programs and facilities (e.g., a student in a wheelchair cannot get into a classroom because there is not a ramp); and
- denial of a free, appropriate public education (FAPE) (see above for more information about FAPE).

If a school official is aware that a student with a disability is being bullied because of that disability, but the school official does not act to stop the bullying, the school could be considered to have discriminated against the student.

Students Who Have Limited English Proficiency or Who Are English Language Learners

Schools **MUST**:

- identify students who are not fluent in English and evaluate their academic achievement and language skills; and
- take affirmative steps to provide English language instruction to non-English speaking students so that students can participate meaningfully in school.

Failure of a school district to teach English to non-English speaking students is illegal discrimination.

English Language Learner (ELL) programs MUST be:

- based on a sound educational theory;
- supported with adequate and effective staff and resources; and
- periodically evaluated and, if necessary, revised.

Schools MUST provide language support for students with limited English proficiency (LEP) and students who are English language learners until those students develop the English language skills necessary to participate meaningfully in the regular course of study.

Speaking a different language is not a disability. Schools may not label students with limited English proficiency as needing special education services just because they are learning English.

Students Who Are Immigrants to the United States

All children living in the United States, whether or not they are United States citizens, have the right to attend school. Schools may not exclude children because they are undocumented or have undocumented parents/guardians.

Students Who Identify as Lesbian, Gay, Bisexual, Transgender, or Queer (LGBTQ)

Public schools MUST remedy the abuse of LGBTQ students, such as harassment, bullying, threats, name-calling, and physical harm.

If a school allows non-curricular clubs to form at the school, then the school MUST allow students to form a LGBTQ or Gay/Straight Alliance (GSA) club. A non-curricular club is one that is not directly related to a school class or activity. For example, if a school allows a Bible study group or community service organization to form, the school MUST also allow students to organize an LGBTQ or GSA club. However, if a school only allows clubs related to class subjects (i.e., curricular clubs), such as math club, the school can prevent students from forming a LGBTQ club or GSA.

School employees may not tell anyone that a student identifies as LGBTQ without the student's permission.

Schools may not prevent students from:

- bringing same-sex dates to prom;
- openly discussing their sexual orientation;
- being "out of the closet" and open about sexual orientation; or
- wearing clothing with a rainbow or references to gay pride.

However, schools can prohibit lewd, vulgar, indecent, and clearly offensive speech (including clothing), as well as speech contrary to the school's educational mission. See below for more information about freedom of speech in schools.

Students Who Are Pregnant or Parenting

Generally, schools MUST treat pregnant or parenting students the same way they treat other students. Schools may not discriminate against students because of pregnancy or any conditions relating to pregnancy, including childbirth, terminating a pregnancy, or false pregnancy. In fact, schools MUST create policies to provide assistance and support to encourage pregnant and parenting students to remain enrolled in school and graduate.

Pregnant and parenting students have the right to participate in school events and extracurricular activities like any other student. The school may not ask for a doctor's note to participate in a school

activity, unless the school requires a doctor's note from every student with a condition requiring medical treatment from a doctor.

Schools are required to give pregnant students the same special services given to temporarily disabled students. For example, if temporarily disabled students receive at-home tutoring or online classes, those services **MUST** be made available to pregnant students who must miss school because of the pregnancy.

Schools may not force pregnant or parenting students to attend any programs designed specifically for pregnant or parenting students (e.g., parenting classes or alternative schools). The coursework and classroom activities in programs designed specifically for pregnant or parenting students **MUST** be just as good as (i.e., of the same quality as) the course work and classroom activities in the regular program at the school.

If a pregnant or parenting student has to miss school due to pregnancy or related conditions or due to the illness or medical appointments of her child, the school **MUST** excuse the absence for as long as a doctor says it was necessary. Schools **MUST** also allow the student to make up work, tests, and projects, and, if necessary, assign a homebound teacher to the student.

Students Who Are Homeless

A student is considered homeless if s/he does not have a fixed, regular, and adequate nighttime residence. For example, a student may be considered homeless if s/he is:

- living in another person's house after losing housing;
- living in a hotel, motel, trailer park, or campground because s/he has nowhere else to live;
- living in a shelter;
- abandoned in a hospital;
- awaiting foster care placement without a permanent place to stay; or
- living in a car, park, public space, abandoned building, substandard housing, bus or train station, or something similar.

Students who are homeless have the right to go to school with other students, and may not be discriminated against or separated from other students based on their living situations.

Schools **MUST** immediately enroll students who are homeless, even if the students do not have all of their enrollment paperwork (including medical records, former school records, proof of residency, and/or immunization records), and even if there is a disagreement about where the child should be enrolled.

Students who are homeless are allowed to stay in the school they attended before they became homeless (called the "school of origin") for the entire time the student is homeless. Schools **MUST** provide students who are homeless with transportation to and from the student's school of origin.

Every school district **MUST** have a staff member designated as a contact or liaison to children and families that are homeless. This person is responsible for making sure that children who are homeless living in the area are enrolled and attending school. Every state **MUST** have a coordinator of education services for students who are homeless. To find the liaison, visit <http://center.serve.org/hepnc/>.

Freedom of Speech

Students have a right to freedom of speech in school, which includes:

- speech on controversial topics (i.e., schools may not punish students for saying something just because it is controversial, such as discussing topics like school segregation, teen pregnancy, gay rights, war, and politics);
- symbolic speech, such as t-shirts, arm bands, buttons, flags, decals, and other badges; and
- peaceful demonstrations, such as picketing or marching, as long as the activities are not disrupting school.

Schools can limit free speech and punish students for speech that:

- is vulgar, lewd, or disruptive;
- is a true threat (i.e., that gives a person a reasonable fear for his/her safety);
- is defamatory (i.e., that is not true and harms someone's reputation);
- is obscene (i.e., that is blatantly offensive or appeals to the shameful interest of minors);
- encourages others to commit acts of violence;
- promotes illegal activities; or
- seriously interferes with appropriate discipline in the school.

Flyers and Written Materials

Students have a right to bring flyers and other written materials to school and distribute the materials at school. They do not need permission. However, schools can limit when, where, and how students distribute materials. If flyers and written material contain speech that would get a student in trouble if the speech was spoken out loud (see the examples above), then students can get in trouble for distributing those materials.

Newspapers and Publications

If a school sponsors a student newspaper, the school can control certain aspects of what is published in the newspaper. If a student newspaper is underground or independent (i.e., not sponsored by the school), then students have a right to complete control over the material in the newspaper. For newspapers that are underground or independent, students do not need to ask for permission to bring the paper to school and they do not have to get prior approval of the material. However, schools can punish students if the underground or independent newspaper that is distributed at school has language that is on the prohibited list above.

Access to Information

School boards may not remove school library books just because the board disagrees with the political philosophies, religious ideas, or opinions expressed in the books. Schools are allowed to have certain filters on the internet while students are using computers at school.

Internet Speech

Students have the right to free speech when emailing, blogging, creating a website, or posting information on a website. However, students **MUST** follow school rules when using school computers on campus and students can sometimes be punished for speech that is on the list above of language that cannot be used. Students can also be punished (e.g., suspended) for off-campus internet "speech" (e.g., a Facebook post) that has a direct and immediate impact on the safety or orderly operation of the school.

Flag Salute and Pledge of Allegiance

Students do not have to stand for or say the Pledge of Allegiance. The school may not force students to say the Pledge of Allegiance and may not punish students for refusing to do so. Schools also may not require students to explain why they do not want to salute the flag or say the Pledge of Allegiance.

Freedom of Religion

Every student has the right to practice any religion s/he chooses or no religion. Students have the right to pray and express their individual religious beliefs at school.

Schools **MUST** maintain religious neutrality, so that all students enjoy the freedom to practice any religion. Schools may not endorse, sponsor, or require participation in any particular religion or religious activities.

Schools **MUST** not favor any religion (e.g., teach that one religion is better than another religion) or insult any religion. Schools **MUST** not organize or lead prayers (even "non-denominational prayers"), Bible discussions, or Bible readings. Schools are allowed to have classes that teach the history, literature, and culture of various religions.

Schools are allowed to put up displays and have holiday celebrations about various religious holidays. However, schools may not promote any one religion over others or promote being religious in general.

Freedom of Assembly

Students have the right to peacefully assemble and freely associate with others, including:

- starting a student organization;
- conducting meetings and activities at school, if other non-curriculum-related groups (e.g., church bible study or community service organizations) can use the same school facilities; and
- conducting peaceful rallies and demonstrations at school, as long as the gathering does not disrupt classes or school activities.

Freedom from Racial and National Origin Discrimination

Schools may not discriminate against students or parents/guardians based on race, color, or national origin. Examples of discrimination include:

- racial harassment;
- school segregation; and
- denial of language services to national-origin-minority students who are limited in their English.

See the appendix for more information about filing federal civil rights complaints about racial and national origin discrimination.

Freedom from Gender Discrimination and Sexual Harassment

Schools may not discriminate against students or parents/guardians based on gender.

Schools **MUST** protect students from sexual harassment. Sexual harassment is any unwelcome verbal or physical conduct based on sex that makes a student feel uncomfortable and/or prevents a student from learning. Examples include:

- insults, name-calling, and offensive jokes based on sex;
- intimidation by words or actions;
- unwelcome or inappropriate sexual touching;
- pressure for sexual activity or dating; and
- sexual assault and rape.

See the section above about pregnant and parenting students. See the appendix for more information about filing federal civil rights complaints about gender discrimination.

Freedom from Bullying

Every school district **MUST** have policies and procedures to prevent, intervene, investigate, document, and report all forms of harassment, bullying, and discrimination. See above for more information about bullying of students with disabilities and students who identify as LGBTQ.

Freedom from Unreasonable Search and Seizure

Students have a right to be free from unreasonable searches of their persons and seizures of their belongings.

School Officials

School officials (e.g., teachers and principals) and school resource officers (i.e., law enforcement officers assigned full-time to schools) may only search a student or a student's belongings if they have "reasonable suspicion" to believe that the student has something illegal or something that is not allowed at school. Reasonable suspicion **MUST** be based on specific, individualized facts that there is a "moderate chance" the student has something illegal or unauthorized. It may not be based on a guess, hunch, or generalized suspicion.

School officials can search lockers, school computers, and other school property for any reason (i.e., they do not need reasonable suspicion).

Outside Law Enforcement

When an outside law enforcement officer (i.e., one who does not work full-time in schools) conducts a search or when an outside officer requests a school official to conduct a search, the search is only legal if there is "probable cause." Probable cause means that the law enforcement officer has specific evidence that there is a "substantial chance" that the student has something unauthorized or illegal. If there is no probable cause and the student does not give consent for the search (see below for more information about consent), the search is illegal.

Consent

Students have a right to say no to school officials and law enforcement officers who ask for permission to conduct a search of the student or the student's belongings. If a student says "no," the search **MUST** not happen unless there is reasonable suspicion or probable cause for the search.

Scope

Searches of students **MUST** be reasonable in scope. In other words, school officials **MUST** conduct searches in a reasonable manner. This means that the way the search is conducted **MUST** be related to the objectives of the search. The following factors are relevant when determining whether searches are conducted reasonably:

- age of the student;
- steps taken by school officials or law enforcement officers before the search;
- how intrusive the search was (e.g., a pat down or a strip search); and
- the school's interest in finding something illegal or unauthorized (i.e., how serious was the suspected illegal activity or rule violation).

Seizure

If, during a search, a school official or law enforcement officer finds something that is illegal or against school rules, s/he can take (or "seize") it from the student. Any evidence that is seized can be used against students in a delinquency or criminal proceeding and in a school disciplinary hearing (e.g., a suspension appeal).

Freedom from Self-Incrimination (Interrogations)

Students have a right to be free from self-incrimination. In other words, they do not have to tell on themselves when they are suspected of committing a crime or when they are charged with a crime.

Miranda Warnings

Any student under the age of 18 who is "in custody" with a law enforcement officer (including a school resource officer or "SRO") **MUST** be given, before questioning, his/her *Miranda* warnings—i.e., that:

- s/he has the right to remain silent;

- any statement made by him/her can be and may be used against him/her;
- s/he has the right to have a parent, guardian, or custodian, as well as an attorney, present during questioning;
- s/he may consult with an attorney; and
- an attorney will be appointed for the student, if the student is not represented and wants one.

Any student age 18 or older who is "in custody" MUST be given, before questioning, his/her *Miranda* warnings—i.e., that:

- s/he has the right to remain silent;
- any statement made by him/her can be and may be used against him/her;
- s/he may consult with an attorney; and
- an attorney will be appointed for the student, if the student is not represented and wants representation.

If a student is age 13 or younger, no "in custody" admission or confession can be used against the student in court unless the confession or admission was made in the presence of the student's parent, guardian, custodian, or attorney. In other words, a student who is age 13 or younger may not waive (i.e., give up) the requirement of having a parent, guardian, or custodian present.

For a student age 14 or older, there is no legal requirement for a parent, guardian, or custodian to be present if the juvenile chooses to make an "in custody" statement, as long as the student was informed that s/he had a right to have a parent, guardian, or custodian, as well as an attorney, present.

Regardless of age, "in custody" interrogations by law enforcement officers MUST stop if the student indicates that s/he does not want to be questioned any more.

"In Custody"

For a student to be considered "in custody," the questioning MUST be:

- by a law enforcement officer;
- in the presence of a law enforcement officer; and/or
- at the direction of a law enforcement officer (e.g., a police officer tells a principal to interrogate a student and share the answers).

There is no set definition of "in custody." Whether a student is considered "in custody" depends on all of the circumstances surrounding the questioning. A student is "in custody" if s/he has been arrested or if his/her freedom has been restricted in a significant way. Whether a student is "in custody" depends on factors that may include:

- the student's age;
- who is asking the questions (e.g., a school administrator or law enforcement officer);
- the amount of time the student was questioned;
- the location of the questioning (e.g., in a room with a closed and locked door);
- whether the student was handcuffed or restrained in any way; and
- whether the student was told that s/he could leave.

Freedom from Excessive Force

Students have a right to be free from excessive force. There is no exact definition of excessive force. It is generally considered force that is more than the minimum amount needed to achieve a legitimate purpose.

School personnel (e.g., teachers and administrators) may use reasonable force on students when it is necessary under the circumstances, such as:

- to stop a disturbance that threatens to injure others;
- to obtain possession of a weapon; and
- for self-defense.

REMEDIES

School districts and schools will not always follow laws and policies. It is important for students and parents to assert their rights, if the school is not following the law. The following are some of the ways that students and parents/guardians can remedy violations of their rights. Students and parents should contact a lawyer when they need assistance. See below for a list of free legal resources.

Meeting with Principal and Teachers

If a student's or parent's/guardian's right has been violated, a good first step is to meet in-person with the student's principal in order to resolve the issue quickly and cordially. See the appendix for a sample meeting request letter.

Meeting with School Board Member

All citizens in North Carolina are represented by at least one elected local school board member. Students and parents/guardians can request to meet with their school board member(s) in order to discuss their concerns and ask for assistance. Usually school board members and their contact information can be found on the school district website.

Grievance

Every school district in North Carolina MUST have a grievance policy. Grievances can be filed by students and parents/guardians for any violation of a law or policy by a school district employee. See the appendix for more information about grievances and sample forms.

Internal Affairs Complaint

A student who is mistreated by a law enforcement officer can file a complaint with the law enforcement officer's employer (i.e., the sheriff's department or police department). Law enforcement agencies generally have internal affairs departments that investigate incidents of lawbreaking and professional misconduct by officers. See the appendix for an internal affairs complaint form.

Office of Administrative Hearings Petition

Decisions and actions related to special education laws and policies can be appealed by filing a petition (sometimes called a "due process petition") in the Office of Administrative Hearings (OAH). OAH is an independent, quasi-judicial agency that was established to provide a source of independent Administrative Law Judges (ALJs) to preside in administrative law contested cases. See the appendix for more information about OAH petitions and a petition form.

Office for Civil Rights Complaint

Students discriminated against on the basis of sex, race, national origin, age, or disability can file complaints with the Office for Civil Rights (OCR) of the U.S. Department of Education. OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. All school districts in North Carolina receive such assistance. See the appendix for more information about complaints to OCR and a sample complaint form.

Complaint to the Department of Public Instruction

A student with a disability whose rights have been violated can file a complaint with the North Carolina Department of Public Instruction (DPI), Exceptional Children Division. See the appendix for more information about complaints to DPI and a sample complaint form.

Petition for Judicial Review

The judicial branch of government has the authority and the duty to protect students' legal rights. Students and parents/guardians can file petitions for judicial review in their local superior court or in the federal court for their region of the state, depending on the case. For example, students who are long-term suspended from school can appeal the school board's decision to uphold the suspension by filing a petition for judicial review in the local superior court. See the appendix for more information about petitions for judicial review and a sample petition form for use in suspension and expulsion appeals.

Contact the Media

Students and parents/guardians can try to express their concerns publicly by contacting the media (e.g., television stations, radio stations, and newspapers) through letters to the editor, op-eds, and contacting a reporter and requesting that a story be written. They can also share their stories using social media, such as blogs, Twitter, Facebook, and YouTube.

TIPS

Read this entire handbook. Know your rights, remedies, and resources!

Carefully read local policies, including the school board's policies and your school's policies. Keep a copy for future reference.

Document everything in writing. For example, if you make a request (e.g., for a meeting, services, or records), do it in writing, date it, and keep a copy of the letter for your records.

Ask a lot of questions and take good notes during meetings and conversations with teachers and administrators. Write down the date and time of each conversation, and the name of the person with whom you spoke. If possible, send a letter to the school confirming what was discussed.

Keep good records. Get a binder, file folder, or box, and keep in one place all records (e.g., report cards, letters from school, student handbooks, and evaluations), copies of documents you have given the school, and all of your notes from meetings and phone calls.

Be a good listener.

Be part of the solution. Help teachers, counselors, and administrators come up with ways to solve problems and ensure student success.

Give respect to get respect. Make the school takes you seriously by being on time, polite, and firm.

Try to control your emotions. If you are upset or angry during a meeting at school, ask to take a break to walk around or call a friend. If you are crying or yelling at school employees, they are less likely to really hear and understand what you are trying to say.

Request and review all of the student's education records each year.

Do not be afraid to ask for help. Take someone with you to meetings at the school. Very often there are people in the community who help parents/guardians in dealing with schools. Tell the school in advance that you will be bringing the person. At most meetings, there will be several school employees present, so it may help you feel more comfortable to not be alone. Also, there will be someone to witness what happened in case later there is a dispute about what took place at the meeting. If the person is a trained education advocate who knows the school rules, s/he can offer suggestions at the meeting or point out if the school is not doing what it should. Finally, having a third party often helps keep the meeting focused and productive. See below for support resources. See below for organizations that provide advocates.

Visit classes and meet your student's teachers, administrators, and support staff early in the school year. Let the school know you care and will be involved. Get the teachers' phone numbers and email addresses, and give them your contact information. Attend parent-teacher conferences, open houses, and other school events.

Keep up to date on assignments and progress.

RESOURCES TO LEARN MORE ABOUT STUDENTS' RIGHTS

State	National
Advocates for Children's Services www.legalaidnc.org/acs	American Civil Liberties Union www.aclu.org
American Civil Liberties Union of NC www.acluofnorthcarolina.org	Dignity in Schools www.dignityinschools.org
Council for Children's Rights www.cfcrights.org	Lambda Legal www.lambdalegal.org
Disability Rights NC www.disabilityrightsnc.org	National Dissemination Center for Children with Disabilities http://nichcy.org
Duke Children's Law Clinic www.law.duke.edu/childedlaw	National Juvenile Defender Center www.njdc.info
Exceptional Children's Assistance Center www.ecac-parentcenter.org	National Women's Law Center www.nwlc.org
NC Department of Public Instruction www.ncpublicschools.org	U.S. Department of Education www.ed.gov
NC Juvenile Defender www.ncids.org/JuvenileDefender	Wrightslaw www.wrightslaw.com

RESOURCES FOR ASSISTANCE

Legal

Advocates for Children's Services
919-226-0052
acsinfo@legalaidnc.org
www.legalaidnc.org/acs
Statewide

ACLU of NC
919-834-3390
aclu@nc.rr.com
www.acluofnorthcarolina.org
Statewide

Council for Children's Rights
704-372-7961
info@cfcrights.org
www.cfcrights.org
Charlotte-Mecklenburg

Disability Rights NC
919-856-2195
info@disabilityrightsncc.org
www.disabilityrightsncc.org
Statewide

Duke Children's Law Clinic
919-613-7169
www.law.duke.edu/childedlaw
Triangle

Legal Aid of North Carolina
1-866-219-5262
www.legalaidnc.org
Statewide

NC Central University, Juvenile Law Clinic
919-530-5245
nmpare@nccu.edu
<http://law.nccu.edu/clinics/juvenile-law/>
Triangle

NC Justice Center
919-856-2570
contact@ncjustice.org
www.ncjustice.org
Statewide

Pisgah Legal Services
828-253-0406
info@pisgahlegal.org
www.pisgahlegal.org
Western North Carolina

UNC Center for Civil Rights
919-843-3921
civilrights@unc.edu
www.law.unc.edu/centers/civilrights
Statewide

Other

Action for Children NC
919-834-6623
admin@ncchild.org
www.ncchild.org
Statewide

Coalition of Concerned Citizens for African
American Children
ccaac_aacca@yahoo.com
www.cccaac.com
Wake County

Exceptional Children's Assistance Center
1-800-962-6817
ecac@ecacmail.org
www.ecac-parentcenter.org
Statewide

NC NAACP
919-682-4700
execdirnaacpnc@gmail.com
www.naacpnc.org
Statewide

Parents Supporting Parents
336-210-5608
psp.org@triad.rr.com
www.parents-supporting-parents.org
Guilford County

APPENDIX

Form: Letter to Meet with Principal

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

Dear Principal:

I would like to meet with you to discuss:

Please contact me at your earliest convenience to arrange a date, time, and location to meet with me.

Thank you,

Signature of Parent/Guardian

Date Submitted to the Principal

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.

Form: Grievance to Principal

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

Date of Incident	
Location of Incident	
Name of Employee(s) Who Committed Violation(s)	
Laws and/or Policies Violated	

Detailed Description of Incident:

Requested Corrective Action:

I request a conference with you to discuss this grievance and seek a resolution to the problem. Please contact me with a date, time, and location for a conference to be held within the next five school days. Thank you.

Signature of Student or Parent/Guardian

Date Submitted to the Principal

Form: Grievance Appeal to Superintendent

* ATTACH A COPY OF THE ORIGINAL GRIEVANCE TO THE PRINCIPAL AND THE PRINCIPAL'S WRITTEN RESPONSE.

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

Date of Incident	
Date Grievance Filed	
Date of Conference	
Date of Principal's Response	

I am not satisfied with the principal's response to my grievance because:

Please review this grievance appeal within five school days and send me a written response within 10 school days after completing the review. Thank you.

Signature of Student or Parent/Guardian

Date Submitted to the Superintendent

Form: Grievance Appeal to Board of Education

* ATTACH A COPY OF THE ORIGINAL GRIEVANCE TO THE PRINCIPAL, THE PRINCIPAL'S WRITTEN RESPONSE, THE APPEAL TO THE SUPERINTENDENT, AND THE SUPERINTENDENT'S WRITTEN RESPONSE.

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

Date of Incident	
Date Grievance Filed	
Date of Conference	
Date of Principal's Response	
Date of Appeal to Superintendent	
Date of Superintendent's Response	

I am not satisfied with the superintendent's response to my grievance because:

Please review this grievance appeal within five school days and send me a written response within 30 days. Thank you.

Signature of Student or Parent/Guardian

Date Submitted to the Board of Education

Form: Internal Affairs Complaint to Local Police Department of Sheriff's Department

* SUBMIT A COPY OF THIS FORM TO YOUR LOCAL INTERNAL AFFAIRS DEPARTMENT.

Student:

Full Name	
School	
Age	
Grade	

Parent/Guardian:

Full Name	
Address	
Phone	
Email	

Law Enforcement Officer:

Name	
Agency	
Badge #	

Incident Prompting Law Enforcement Involvement:

Date	
Time	
Location	

Attach additional pages if necessary.

Witness 1:

Full Name	
Address	
Phone	
Email	

Witness 2:

Full Name	
Address	
Phone	
Email	

Attach additional pages with names and contact information for witnesses if necessary.

The law enforcement officer violated my right or my student's right to be free from: (Check all that apply.)

- Unreasonable search and seizure
- Self-incrimination
- Bullying
- Sexual harassment
- Excessive force (e.g., use of TASERS, physical injury)
- Discrimination

Describe any other violations or misconduct:

Provide a detailed description of the incident(s):

Attach or enclose any evidence of misconduct, such as video footage, photographs, and witness statements.

Signature of Student

Date Submitted to Internal Affairs

Signature of Parent/Guardian

Background: Personal Education Plans (PEPs)

What is a Personal Education Plan (PEP)?

An individualized plan designed to improve a student's performance to grade-level proficiency.

How do I know if my student should have a PEP?

PEPs are for students who are at risk for academic failure. Schools MUST create a PEP when a student:

- scores a level I and/or II on an end-of-grade (EOG) or end-of-course (EOC) exam; and/or
- is at risk of academic failure based on other factors like failing grades, excessive absences, and suspensions.

What is the timeline for creating a PEP?

PEPs MUST be created or updated each year by the end of the first grading period, or after a teacher has had a student in class for nine weeks. Schools do not need to wait for the results of EOG or EOC exams before creating a PEP.

What goes into a PEP?

- a diagnostic evaluation to see what difficulties the student has and what interventions will best help the student;
- intervention strategies such as coaching, mentoring, tutoring, summer school, Saturday school, extended school days, special homework, smaller classes, and modified instructional programs; and
- monitoring strategies to make sure that the student's PEP is being implemented and is working.

What if the school does not respond to my letter, refuses to give my student a PEP, or doesn't implement the PEP?

File a grievance. See above for more information about grievances.

What else should I know about PEPs?

- PEPs are free (i.e., provided at no cost to students and parents/guardians).
- Parents/guardians should be included in the implementation and ongoing review of PEPs.
- Schools MUST provide free transportation to all students who need it to access interventions in PEPs.
- Schools MUST provide parents/guardians with copies of PEPs.
- A student with a disability should have Individualized Education Program (IEP).

Form: Personal Education Plan (PEP) Creation Request

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

I am concerned that my student is at risk of academic failure because s/he: (check all that apply)

- Failed his/her most recent end-of-grade or end-of-course exam
- Has received failing grades on assignments, quizzes, tests, and/or assessments
- Has excessive absences
- Has been repeatedly short-term suspended, or long-term suspended or expelled

Additional Information:

Please conduct a diagnostic evaluation of my student and then create a personal education plan (PEP) that includes focused educational interventions and monitoring strategies. Please contact me within 10 school days to schedule a time to meet with the team that will be conducting the diagnostic evaluation and for me to sign any necessary paperwork so that my child's needs can be addressed as soon as possible. I wish to exercise my right to be included in the implementation and ongoing review of my student's PEP.

Thank you.

Signature of Parent/Guardian

Date Submitted to the Principal

Form: Personal Education Plan (PEP) Revision Request

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

My student has had a PEP for at least two full grading periods; however, s/he is not making adequate academic progress and is still at risk for academic failure.

Additional Information:

Please contact me within 10 school days to schedule a time to meet with the team that will revise my student's PEP.

Thank you.

Signature of Student or Parent/Guardian

Date Submitted to the School

Form: Request for an Evaluation to Determine Eligibility for Special Education Services

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

Dear Principal:

I request that my student be evaluated to determine if s/he is a child with a disability who is eligible for special education services. I believe my student may eligible because s/he:

Please contact me within 10 school days to schedule a time to meet with you to discuss the process and for me to sign any necessary paperwork so that my child's needs can be addressed as soon as possible. Also, please accept this request as written consent to evaluate my child.

Thank you.

Signature of Parent/Guardian

Date Submitted to the Principal

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 my student's: (Check all that apply.)

- Behavioral issues
- Academic issues
- Area of eligibility/disability
- Teacher(s)
- Special education services
- Related services
- Accommodations
- 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 Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP)

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

Dear Principal:

I would like for my student's IEP Team to conduct a functional behavioral assessment (FBA) and then create a behavioral intervention plan (BIP). I believe my student needs a FBA and BIP because s/he has received: (Check all that apply)

- Multiple write-ups and/or office referrals
- Multiple detentions
- Multiple placements in in-school suspension (ISS)
- Multiple bus suspensions
- Multiple short-term suspensions
- A long-term suspension or 365-day suspension
- 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

Background: Office of Administrative Hearings Petitions

What is the Office of Administrative Hearings (OAH)?

OAH is an independent, quasi-judicial agency that provides Administrative Law Judges (ALJs) to preside in State administrative law proceedings. In other words, ALJs provide an impartial review of state agency decisions, including the decisions of IEP Teams. For more information, visit www.ncoah.com.

Why would I file a petition in OAH?

Decisions of a student's Individualized Educational Program (IEP) Team can be appealed by filing a petition in OAH (often called a "due process petition"). Examples of matters that could result in a petition include when a parent disagrees with:

- the results of an evaluation to determine eligibility for special education services;
- the educational placement of a student in special education or related services;
- whether the student is receiving a free, appropriate public education; and/or
- a manifestation determination review outcome.

When MUST I file a petition in OAH?

The petition MUST be filed within one year after the parent/guardian learns of the violation or actions giving rise to the complaint. However, the one-year restriction does not apply if the parent/guardian was unable to meet that deadline because the school or IEP Team has not met its obligations, or when the school or IEP Team failed to provide the parent/guardian with information that it was legally required to disclose.

How do I file a petition?

- Complete the petition below.
- Make four copies of the petition, in addition to the original.
- Mail the original petition and one copy to:
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
- Keep one copy for your personal records.
- Mail or hand-deliver one copy to the local superintendent.
- Fax (919-807-3243) or mail one copy to:
N.C. Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

What happens after I file a petition?

The school district has 15 days after receiving the petition to meet (often called a "resolution meeting") with you to discuss the issues raised in the petition and to try to resolve the dispute. At the meeting, relevant members of the IEP Team should be present, along with someone from the local board of education who has decision-making authority on behalf of the board. The board may not be represented by an attorney unless you are also represented by an attorney. You and the school system can agree in writing not to have a "resolution meeting." If a resolution is not reached within 30 days of the local superintendent receiving the petition, a hearing will be held (often called a "contested case hearing").

What if my child has been suspended or expelled?

If you are appealing a manifestation determination review (MDR) decision, then the process moves much more quickly. The OAH hearing must be held within 20 days from the day the school receives the petition from the parent/guardian, and the hearing officer must reach a decision within 10 days after the hearing. The resolution meeting discussed above must be held within seven days of the school receiving the petition.

What if my child's placement has been changed?

If you are appealing a change in placement (e.g., your child was moved from a resource classroom to a regular education classroom), you have the right for your child to "stay put" in his/her current educational placement while you appeal to OAH.

Where will my hearing be held?

The hearing **MUST** be held in the county where the child is enrolled, unless both parties agree to a different venue.

What happens at the hearing?

The hearing is very similar to a trial in court, but with no jury. At the hearing, the student and parent/guardian have the right to:

- present evidence on any relevant issues;
- be represented by a lawyer;
- subpoena witnesses and documentary evidence (i.e., ask the judge to order that certain witnesses and documents be presented in court); and
- cross-examine witnesses.

What will happen after the hearing?

The judge has 45 days to issue a written decision that addresses all of the issues raised in the petition (except in MDR appeals, when the judge has 10 days to decide). All of the parties will receive a copy of the decision, along with a notice of the availability of an appeal.

What can I do if I do not agree with the judge's decision?

A judge's decision can be appealed within 30 days by filing a written appeal to the State Board of Education. The State Board will appoint a Review Officer to review the case, and a copy of his/her decision will be served on all parties.

Form: Office of Administrative Hearings (OAH) Petition

STATE OF NORTH CAROLINA

COUNTY OF (1) _____

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
EDC

(2) _____ by parent)
(Student Name))
 or guardian _____)
(Parent/Guardian Name))

PETITIONERS,

v.

(3) _____)
(Name of County, City, or Charter))
 Board of Education)

RESPONDENT.)

PETITION FOR A
CONTESTED CASE HEARING
(Special Education)

(4) Student's School: _____

(5) Student's Name: _____

(6) Student's Birthdate: _____

(7) Student's Address: _____
(Street Address) (City) (State) (Zip) (County)

I hereby petition for a due process contested case hearing as provided for by the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.), North Carolina General Statute §115C-109.6, and Article 3 of Chapter 150B of the General Statutes.

(8) My Petition is based upon a dispute regarding the following: (Check all that apply.)

- _____ The identification of my child as a student with a disability needing special education;
- _____ The evaluation to determine whether my child has a disability under IDEA and/or the nature and extent of the special education and related services my child needs;
- _____ The educational placement of my child in special education or related services under IDEA;
- _____ My child has been denied a free, appropriate public education;
- _____ The decision regarding a manifestation determination for my child; and/or
- _____ Other (please elaborate on a separate sheet.)

(9) Describe the problem and the facts that support your Petition: (Attach additional pages if necessary.)

(10) Describe the resolution or remedy you are seeking: (Attach additional pages if necessary.)

(11) Date: _____

(12) Your Phone Number: _____

(13) Your Address: _____
(Street Address/P.O. Box) (City) (State) (Zip) (County)

(14) Your Name: _____

(15) Your Signature: _____

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the Local or County Superintendent of Schools named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed or by hand-delivering it to the named superintendent.

(16) _____
(Name of Superintendent Served)

(17) _____
(School Board Listed for Number 3 Above)

(18) _____
(Street Address/P.O. Box) (City) (State) (Zip)

(19) _____
(Your Signature)

(20) _____
(Date)

(10) Describe the resolution or remedy you are seeking: (Attach additional pages if necessary.)

(11) Date: _____

(12) Your Phone Number: _____

(13) Your Address: _____
(Street Address/P.O. Box) (City) (State) (Zip) (County)

(14) Your Name: _____

(15) Your Signature: _____

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the Local or County Superintendent of Schools named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed or by hand-delivering it to the named superintendent.

(16) _____
(Name of Superintendent Served)

(17) _____
(School Board Listed for Number 3 Above)

(18) _____
(Street Address/P.O. Box) (City) (State) (Zip)

(19) _____
(Your Signature)

(20) _____
(Date)

Background: Complaints to the Office for Civil Rights (OCR)

What is the Office for Civil Rights (OCR) of the U.S. Department of Education?

OCR enforces federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education. All school districts in North Carolina receive federal money.

Who can file a complaint?

Anyone who believes that a school or school district has discriminated against someone on the basis of race, color, national origin, sex, disability, or age can file a complaint. The person or organization filing the complaint (called a "complainant") does not have to be a victim of the alleged discrimination but may complain on behalf of another person or group.

When MUST the complaint be filed?

A complaint MUST be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause shown under certain circumstances.

MUST a grievance be filed before filing a complaint with the OCR?

No. A complaint may be filed with OCR before filing a grievance with the local board of education. Or, a complainant may file a grievance and file a complaint with the OCR, as long as the complaint is filed with OCR within 60 days after the grievance process is completed.

How can I file a complaint?

Fill out the form below and submit it any of the following ways:

- Mail: Office for Civil Rights
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202-1475
- Email: ocr@ed.gov
- Online: www.ed.gov/about/offices/list/ocr/complaintintro.html

What happens after the complaint is filed?

- OCR evaluates the complaint;
- OCR decides whether to open an investigation or to dismiss the complaint; and
- OCR sends a letter to the person who filed the complaint and the institution accused of discrimination.

What happens during an OCR investigation?

OCR may review documents submitted by both parties, conduct interviews, and/or visit the school district. At the end of the investigation, OCR decides whether there is enough evidence to conclude that the institution committed discrimination and violated the law. OCR will send both parties a letter stating their conclusions.

What happens if OCR finds that discrimination occurred?

OCR will contact the recipient of federal funds to attempt to voluntarily resolve the violation. If the recipient agrees, it will sign a written resolution agreement that explains the steps it will take to address the problems. OCR will monitor the recipient to make sure it follows through with the agreement. If, however, the recipient refuses to negotiate a voluntary resolution agreement, OCR will continue to take all the necessary legal steps to compel the recipient to remedy the violation. Failure to remedy the violation may result in the recipient losing their federal financial assistance.

What happens if OCR does not open an investigation or finds that discrimination did not occur?

The person who filed the complaint may send a written request for reconsideration to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's dismissal, findings, or administrative closure letter. Requests for reconsideration and appeals should be sent to:

Deputy Assistant Secretary for Enforcement
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100.

The letter MUST explain why the complainant believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how the mistake(s) would change OCR's decision in the case.

For more information, visit www2.ed.gov/ocr.

Form: Complaint to the Office for Civil Rights (OCR)

1) Person Filing Complaint:

Full Name	
Mailing Address	
Email Address	
Home Phone	
Cell Phone	
Work Phone	

2) Person Discriminated Against:

Full Name	
Mailing Address	
Email Address	
Home Phone	
Cell Phone	

Attached additional pages for additional person(s) discriminated against.

3) School or School District that Engaged in Discrimination:

Full Name	
Mailing Address	

4) Discrimination was based on: (Check all that apply.)

- Race
- National origin
- Sex
- Disability
- Age

5) Discriminatory Act:

Date of Discriminatory Act	
Name(s) of Each Person(s) Involved	
Name(s) of Witness(es)	

Detailed description of discriminatory act(s), including why it was discrimination (the focus must be on discrimination based on sex, race, national origin, disability, or age):

Attached additional pages if necessary.

6) What was the most recent date of discrimination? _____

7) Have you attempted to resolve these allegations with the institution through its internal grievance procedure, appeal, or due process hearing? (Circle One.) Yes No

If yes:

Type (Circle One)	Grievance Appeal Due Process Hearing
Allegation(s)	
Date You Filed	
Status (Circle One)	Pending Completed
Outcome	

If possible, attach a copy of your grievance, appeal, or due process request, and, if completed, the decision in the matter.

8) Have the allegations contained in this complaint been filed with any other federal, state, or local civil rights agency, or any federal or state court? (Circle One.) Yes No

If yes:

Agency or Court	
Date You Filed	
Case or Reference #	
Results of Findings by Agency or Court	

If possible, attach a copy of your complaint.

9) What remedies or solutions are you seeking (e.g., what do you want for the person(s) discriminated against and what you want to happen to prevent future discrimination)?

Signature of Person Filing Complaint

Date

Signature of Person Discriminated Against

Date

Signature of Parent/Guardian of Person Discriminated Against
(if Person Discriminated Against is under 18)

Date

Background: Complaints to the Department of Public Instruction, Exceptional Children Division

Who can file a complaint?

A complaint to the Department of Public Instruction (DPI) (often called a "formal state complaint") can be brought by an organization or person who believes that a school or school district violated a student's special education rights.

What are examples of a student's special education rights being violated?

Examples of violations of special education rights that could warrant a complaint filing include:

- improper identification or evaluation procedures (e.g., taking more than 90 days to evaluate the student, determine eligibility, and create an IEP, if the child is eligible);
- failure to provide related services;
- failure to give a parent/guardian access to his/her child's records;
- failure to provide the services in the child's IEP; and/or
- failure to follow proper disciplinary procedures.

The complaint process may not be used to challenge official Individualized Education Program (IEP) Team decisions, such as a decision about placement or a decision to exit a student from special education.

When MUST the complaint be filed?

Complaints MUST be filed within one year of the violation of the law.

What if I file a petition in the Office of Administrative Hearings (OAH) and a state complaint?

DPI will set aside any part of the complaint that is being addressed in OAH and the complaint timeline will stop. When the OAH case is closed, DPI will review the outcome of the OAH case and then either close the complaint or proceed with the investigation.

How can I file a complaint?

Fill out the form below and mail it to: Director, Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-3656

You MUST also send a copy of the complaint to the superintendent of the school district named in the complaint, or if a public charter school is named in the complaint, its administrator.

What happens after the complaint is filed?

- DPI will review the complaint and decide whether to open an investigation. If the complaint is incomplete or about something that may not be addressed by DPI, someone from DPI will contact the complainant and explain what needs to be done to make the complaint acceptable.
- If the complaint is opened for investigation, DPI will give a copy of the complaint to the school system involved.
- The school system has 30 days to investigate the complaint and report back to DPI.
- During the course of the investigation, the DPI investigator may request additional documentation, conduct interviews, and/or conduct an on-site visit.
- DPI should issue a written report to the complainant and the school system within 60 days after the complaint is submitted. The report will outline the facts that DPI has discovered and whether those facts show that the school violated the law. If a violation is found, the report will also contain a Corrective Action Plan (what the school MUST do to fix the violation).

What happens if I disagree with DPI's decision?

The decision of DPI is final. If you disagree with the decision, consider filing a petition in the Office of Administrative Hearings (OAH). See above for more information about OAH.

Form: Complaint to the Department of Public Instruction, Exceptional Children Division

Complainant:

Full Name	
Relationship to Student	
Address	
Email	
Phone	
Fax	

Student:

Full Name	
Age	
Grade	
Area of Disability	

Parent/Guardian:

Full Name	
Address	
Email	
Phone	

Current School:

Full Name	
District	

School Student Attended When Violation Occurred:

Full Name	
District	

Describe in detail how the school or school district violated special education law(s) and/or regulation(s). Include all relevant information, including important dates, names, and statute and regulation numbers.

Description Continued from Previous Page:

Proposed Solution(s):

Attach any other relevant information and supporting documents, such as a copy of the student's current Individualized Education Program (IEP) and most recent evaluation report, and relevant minutes from IEP Team meetings.

Signature of Person Filing Complaint

Date

Signature of Parent/Guardian*
(If not the person filing the complaint)

Date

** I give permission to DPI to send the investigation report to the complainant.*

Background: Petitions for Judicial Review of Suspensions and Expulsions

What is a petition for judicial review?

The final decision of a local board of education regarding long-term suspensions, 365-day suspensions, and expulsions (not short-term suspensions) can be reviewed by a local superior court. A petition for judicial review is when a citizen, such as a parent/guardian, asks the court to review the legality of the board's decision.

When do I have to file the petition for judicial review?

A petition for judicial review generally may not be filed until after all of the other levels of appeal (e.g., school-based due process hearing, appeal to the superintendent, and appeal to the local board of education) have taken place (called "exhaustion of administrative remedies"). A petition for judicial review MUST be filed on behalf of the student within 30 days of service of the written copy of the final decision of the school board. However, the court can accept the petition after 30 days if there was a good reason for the delay.

Why would I file a petition for judicial review?

There are six grounds for appealing the decision of the board of education. Parents/guardians who file a petition MUST claim that the board decision was at least one of the following:

- in violation of constitutional provisions;
- in excess of the statutory authority or jurisdiction of the agency;
- made upon unlawful procedure;
- affected by other error of law;
- unsupported by substantial evidence; and/or
- arbitrary, capricious, or an abuse of discretion.

How do I file a petition for judicial review?

The petition MUST be filed with the clerk of superior court in the county where the local board of education is located. The filing can be complicated and the advice of a lawyer may be needed.

What happens after I file a petition for judicial review?

Following receipt of a petition for judicial review, the local board MUST produce the record of its proceedings for the person who filed the complaint and for the court. This usually includes recordings of the appeal hearing and any documents that were considered by the board of education. Generally, new evidence is not admitted, but a court may allow new evidence if it is shown that the new evidence is material (i.e., relevant), not cumulative (i.e., provides new information), and could not reasonably have been presented at the earlier proceeding (i.e., there is no way that the evidence could have been part of the previous hearings).

What happens in court?

Petitions for judicial review are heard without a jury (i.e., the judge hears the evidence and makes a decision). Each side may present a brief (i.e., a written document that argues why that side should win), as well as an oral argument. (Note: the deadline for filing a brief depends on the local court—check the local rules.). The judge will read the briefs, listen to oral arguments, and review the evidence originally presented to the school board. The judge does not decide whether the student is guilty or not guilty. Instead, the judge basically decides whether the board followed the law and whether its decision was legal. The judge MUST assume that the board's decision was correct. Therefore, the student has the burden of proof (i.e., the student has to prove that the school board's decision falls into one of the six categories above; the school board does not have to prove or dispute anything until after the student does so).

Form: Petition for Judicial Review of Long-Term Suspension or Expulsions

STATE OF NORTH CAROLINA
COUNTY: _____

IN THE GENERAL
COURT OF JUSTICE
SUPERIOR COURT DIVISION

STUDENT: _____,)
a minor, by and through his parent,)
Parent: _____,)
Petitioner)
vs.)
COUNTY: _____,)
BOARD OF EDUCATION,)
Respondent)

PETITION FOR JUDICIAL REVIEW

NOW COMES Petitioner _____
(Student's Full Name) by and through his parent/guardian,

(Parent/Guardian Full Name), pursuant to N.C.G.S. § 115C-390.8(i) and N.C.G.S. § 150B-43.

(Student Full Name) petitions the Court for judicial review of the final decision rendered
by Respondent _____
(Name of County) County Board of Education to (check one):

- ____ Long-term suspend the Petitioner
- ____ Suspend the Petitioner for 365 days
- ____ Expel the Petitioner

JURISDICTION

- 1) The Petitioner is a citizen and resident of North Carolina, County of _____,
(Name of County) and has been so for more than six months prior to the commencement of this proceeding.
- 2) Respondent _____
(Name of County) County Board of Education is a local Board of Education established pursuant to Chapter 115C, Article Five, of the North Carolina General Statutes.
- 3) N.C.G.S. § 115C-390.8(i) provides: "A decision of the local board to uphold the long-term suspension of a student is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes."
- 4) The Petitioner has exhausted all administrative remedies made available to him by statute or agency rule.
- 5) The Petitioner filed this petition within 30 days of receiving a written copy of the Board's final decision.

6) Petitioner contends that Respondent's final decision was: (Check all that apply.)

- In violation of constitutional provisions
- In excess of the statutory authority or jurisdiction of the agency
- Made upon unlawful procedure
- Affected by other error of law
- Unsupported by substantial evidence
- Arbitrary, capricious, or an abuse of discretion

FACTUAL BACKGROUND

Provide a detailed description of the facts, including:

- *the student's age, grade, and school;*
- *positive information about the student (e.g., good grades, good attendance, no or little history of discipline issues, extracurricular and volunteer activities, the student's future aspirations); and*
- *dates and information about the suspension or expulsion (e.g., the incident that led to the disciplinary action, the appeal hearings, and the student's current educational placement.*

Attach additional pages if necessary.

CLAIMS FOR RELIEF

Describe why you think the board's decision should be reversed. Make sure that you address at least one of the possible reasons for reversal listed in #6 above. Attach additional pages if necessary.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully prays that the court:

- 1) Reverse the Board's decision and immediately order that the Petitioner be allowed to return to school. In the alternative, order that the Petitioner be placed at an alternative school or program that provides opportunities sufficient to enable the Petitioner to keep up with course work and remain on track for graduation.
- 2) Order that the Petitioner be provided with the necessary support and opportunities to complete assignments and credits necessary for graduation, which the Petitioner lost during the period of time the Petitioner has been unconstitutionally denied access to adequate educational services.
- 3) Order that the Petitioner's disciplinary record be expunged of all references to this matter.
- 4) Order such other relief as the Court deems just, fit, and proper.

This the _____ day of _____, _____.

(Date) (Month) (Year)

By:

Name of Person Who Filed: _____

Mailing Address: _____

Phone Number: _____

Email Address: _____