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# School Discipline and How It Affects Your Child with Special Needs

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Most parents don't know that there are lots of systemic issues that affect their child. They truly believe they are the only ones dealing with this, thinking they are the only ones with a "bad" child, and ashamed of what is going on with their child. This is actually all part of a larger system affecting all children in the public school system—but ESPECIALLY yours if they have special needs.

Kids are being disciplined in public schools at rates like never before. This is part of the School to Prison Pipeline. This is a nationwide system of local, state, and federal education and public safety policies that push students out of school and into the criminal justice system. It disproportionately targets youth of color and youth with disabilities.

## What more do you need to know about the School to Prison Pipeline?

That it's real, that there are years and years of data on it, that a number of agencies and experts have been monitoring it (look it up!) and it affects your child with special needs in the public school system. Other important things to know are:

- Inequities in areas such as school discipline, policing practices, high-stakes testing, wealth and healthcare distribution, school "grading" systems, and the prison-industrial complex all contribute to the Pipeline.
- It operates both indirectly and directly:

**Directly**, schools send their students into the Pipeline through zero tolerance policies, and involving the police in minor discipline incidents. All too often school rules are enforced through metal detectors, pat-downs and frisks, arrests, and referrals to the juvenile justice system. Schools pressured to raise graduation and testing numbers can sometimes artificially achieve this by pushing out low-performing students into GED programs and the juvenile justice system.

**Indirectly**, schools push students towards the criminal justice system by excluding them from the learning environment and isolating them from their peer groups through suspension, expulsion, ineffective retention policies, transfers, and high-stakes testing requirements.

## The Rise of Zero Tolerance

Schools today rely on different rules than when you most of us were young. Most of these stricter rules are related to the Columbine tragedy, but in reality were happening years before Columbine. In the 90's we were inundated with ideas of children who were predators (remember the stories about the boys

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who got a 3 year old to follow them to the railroad tracks and then beat and killed them?). Public fear was ignited about juveniles who offend, resulting in much stricter laws on our youth. This affects your child who goes to school today. Zero tolerance:

- Relies on suspension, expulsion, citations, arrest, juvenile and criminal charges to deal with often minor disciplinary problems
- Was originally meant to address only the most serious violent behavior
- Schools rely on suspension, expulsion, citations, summonses, and arrests to handle disciplinary problems like bringing cell phones and iPods to school, smoking cigarettes, and skipping class. Students who might easily be disciplined through a visit to the principal's office end up in jail cells—this is the essence of the Pipeline!
- Criminal charges are brought against youth in schools for violations that never would be considered criminal if committed by an adult
- Targets normal and non-violent adolescents
- Move youth directly into the juvenile and criminal justice system by involving police in minor disciplinary matters

If your child has ever received a ticket at school, has ever been suspended and sent to an “alternative” campus, then you know exactly what this means. **You are in the middle of this Pipeline and may not even know it!**

### **What else you need to know about the School to Prison Pipeline:**

- It is a precursor to involvement in the juvenile justice system is disciplinary referrals while in school
- Involves referrals to: ISS, OSS, DAEPs
- More serious offenders are sent to more restrictive placements: JJAEPs, state youth facilities
- Last segment of this pipeline is adult prison

### **IDEA and FAPE:**

- If your child receives special education services, your child is protected by IDEA (the Individuals with Education Act). Your student must be provided with a Free Appropriate Public Education (FAPE), which means:
- Students must be educated in regular education settings, to the maximum extent appropriate
- FAPE provides protections when a school is considering disciplining a student with a disability
- Students with behavioral issues must receive behavioral supports while on campus
- FAPE includes providing services to help students whose behavior makes it difficult for them or other students to learn

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- Behavioral supports might be necessary to provide a child w/ FAPE
- Behavioral supports vary and are individualized
- They should include incentives and not just negative consequences

### **IDEA and Disciplinary Change in Placements**

- Schools do not have to use a “zero tolerance” policy towards a student with a disability
- IDEA allows schools to consider unique circumstances on a case-by-case basis
- School personnel can decide whether or not to order a change in placement for a student code of conduct violation

### **Change in Placement**

- Removal from class for more than 10 consecutive school days; OR
- Removals form a pattern
- ISS, OSS, DAEP, Expulsion

### **Suspension: Disciplinary Placement Less Than 10 Days**

- School must hold a conference with parent(s), principal, teacher (if teacher was involved in removal), and student.
- Student must receive: Oral or written notice of reason for removal
- An opportunity to explain his or her version of what happened

Additionally, school can suspend the student out of school for more than 3 consecutive days. There’s no limit to the number of times of suspensions during a school year. However, a series of 3 day removals during the course of the school year may be considered a change in placement giving rise to IDEA protections.

### **Disciplinary Placement Over 10 Days**

School must:

1. Notify parent of disciplinary decision and give them a copy of their procedural safeguards on the same day the school decides to take the disciplinary action
2. Assemble parents and relevant ARD members for a manifestation determination review

### **Manifestation Determination Review (MDR)**

The IEP committee must decide if the student’s conduct:

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- Was caused by, or had a direct and substantial relationship to the student's disability; OR
- Was the direct result of the school's failure to implement the student's IEP.

If yes: The student's conduct is a manifestation of the student's disability and the school must:

- Conduct a functional behavioral assessment (FBA)
- Implement a behavior intervention plan (BIP); and
- Return the student to their prior placement

If no: Disciplinary procedures applied to non-disabled students may be applied.

**NOTE:** Even if it was a manifestation, if the behavior involved drugs, weapons, or substantial bodily injury, the student can be placed in a DAEP for up to 45 days.

### **"Serious Bodily Injury"**

"Serious bodily injury" means substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. If the school says that there is risk of this, make them prove it.

### **Discipline of Students not yet Eligible for Special Education**

Now what about if your child is not yet receiving special ed services? But you know that they might be eligible for services or if there is something not right about their education? The IDEA may still apply if the school knew your child was disabled before the behavior that caused the disciplinary action occurred. Schools have knowledge where:

- The parent has written the district requesting special education services.
- The parent has requested a special education evaluation.
- A child's teacher or other district personnel expressed concerns to other district personnel.

If the school had "knowledge" then the parent may request an expedited evaluation for IDEA eligibility. Schools do not have "knowledge" where the child has been evaluated and determined ineligible or where parent has refused special ed services.

### **Discipline of Students Protected under Section 504 of the Rehabilitation Act**

All students with disabilities are protected from discrimination under Section 504, even students who don't meet eligibility requirements for IDEA and don't have an IEP.

- The same IDEA right to a manifestation determination prior to more than 10 day removal applies to 504 only students.

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- Exception: Students who are disciplined for use or possession of illegal drugs or alcohol are not entitled to a manifestation determination and can be disciplined to same extent as students without disabilities, even if the behavior is related to a disability.

#### **Here are some resources for you to get more info on disciplinary matters and special education:**

- Stop Schools to Jails: [www.stopschoolstojails.org](http://www.stopschoolstojails.org)
- Wright's Law: [www.wrightslaw.com](http://www.wrightslaw.com)
- Texas Education Agency (TEA) Parent Resource Guide:  
[www.tea.state.tx.us/special.ed/resources/](http://www.tea.state.tx.us/special.ed/resources/)
- Individuals with Disabilities Education Act: [www.idea.ed.gov](http://www.idea.ed.gov)
- Southern Disability Law Center: [www.sdlcenter.org](http://www.sdlcenter.org)
- School To Prison Reform Project, Southern Poverty Law Center:  
[www.splcenter.org/legal/schoolhouse.jsp](http://www.splcenter.org/legal/schoolhouse.jsp)

There are many other issues that I did not go into: FBAs, BIPs, the components of good/bad ones, etc. This was a general overview of disciplinary issues as they affect your child with special needs. I hope it provided insights into the system and how you can begin to foresee any potential pitfalls before they arrive.

\*\*\*Can be reprinted with the following:

**Gloria Perez-Stewart is the founder of Latina Mami, a community-based organization for Latina mothers and is owner of GPS Advocacy, an advocacy service helping families navigate disability issues nationwide. GPS Advocacy provides IEP and IPP assistance and strategizing, and in the case of agency violations, helps families prepare their cases for further legal involvement. Ms. Perez-Stewart hosts a weekly advocacy show and is writing "Divorcing Autism" about co-parenting her special needs son. Visit [www.GPSAdvocacy.com](http://www.GPSAdvocacy.com) or follow her on Twitter (@lagloria) for more information.**

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