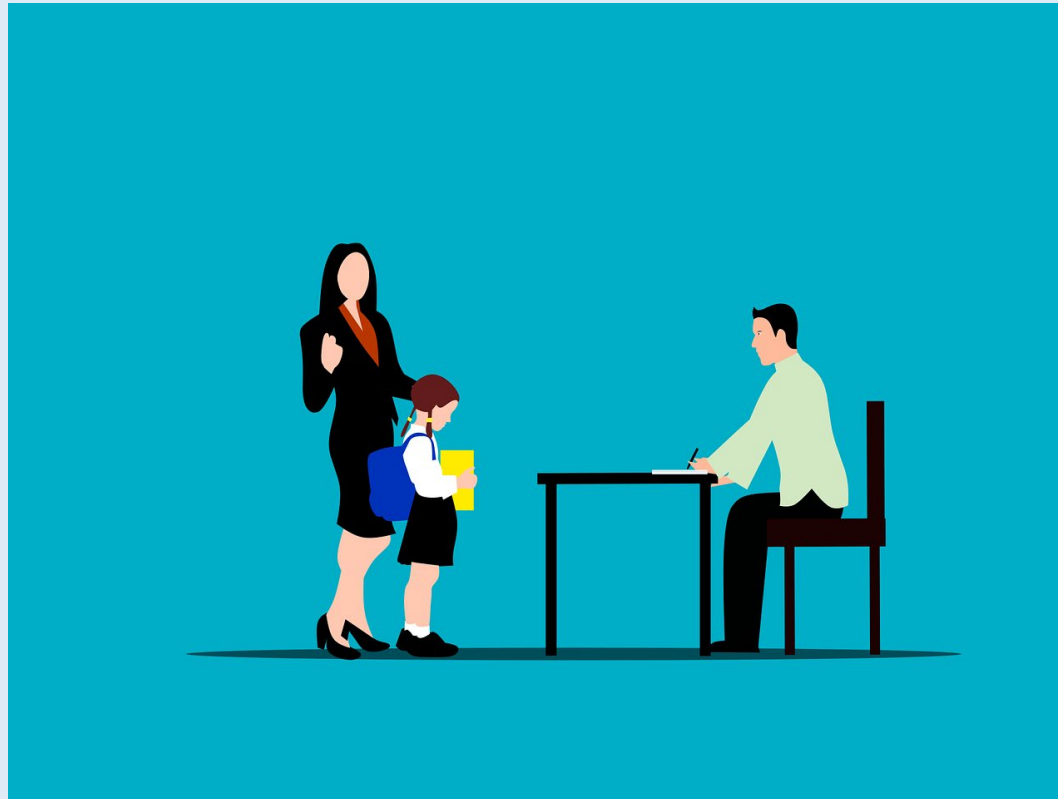


School Discipline in New Jersey

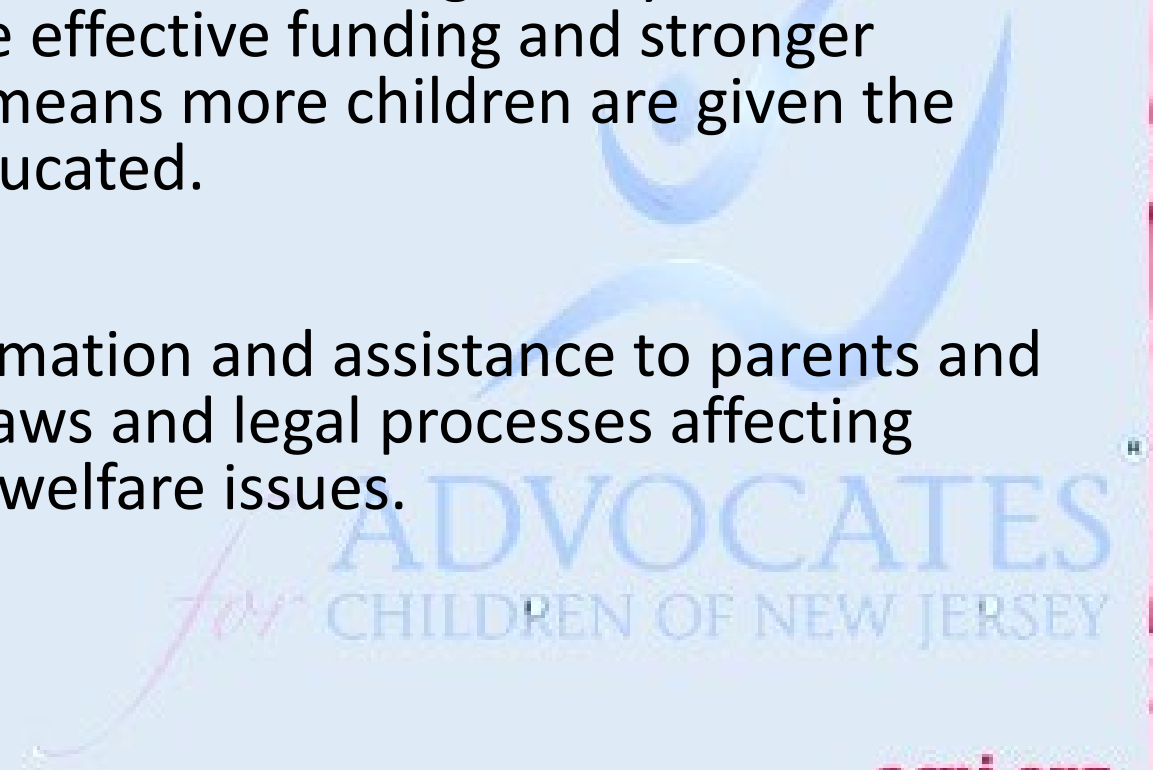


Advocates for Children of New Jersey (ACNJ)

ACNJ is the trusted, independent voice putting children's needs first for more than 40 years. We educate the public and policymakers and equip caregivers with the information they need to be their child's strongest ally. Our work results in better laws and policies, more effective funding and stronger services for children and families. This means more children are given the chance to grow up safe, healthy and educated.

KidLaw Resource Center provides information and assistance to parents and those working with families regarding laws and legal processes affecting children, including education and child welfare issues.

You can learn more at acnj.org



acnj.org

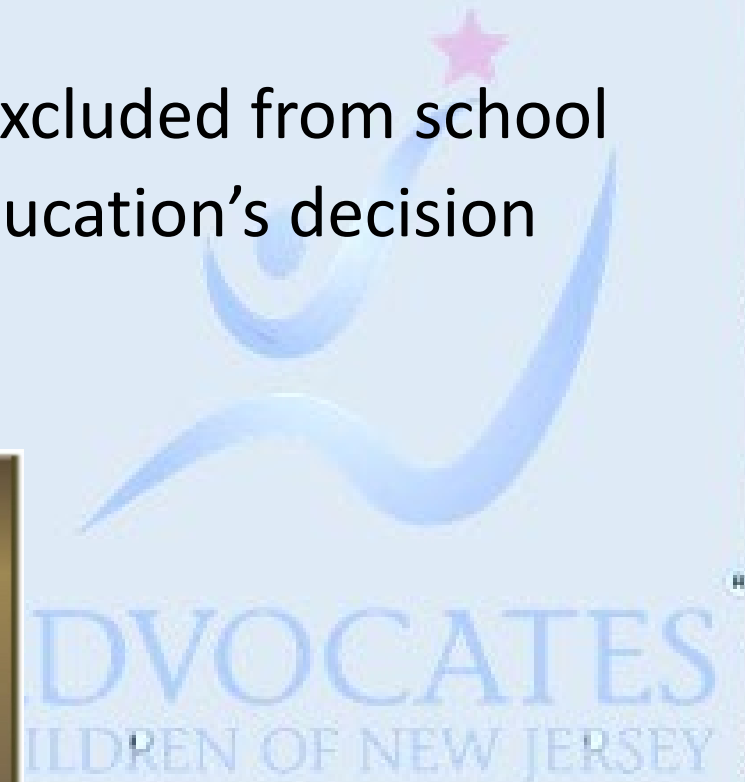
This presentation is intended to provide information and does not constitute legal advice. Discipline laws are complicated and consultation with a lawyer/education advocate is highly recommended regarding individual cases.

For assistance, you may contact Nina Peckman at ACNJ.



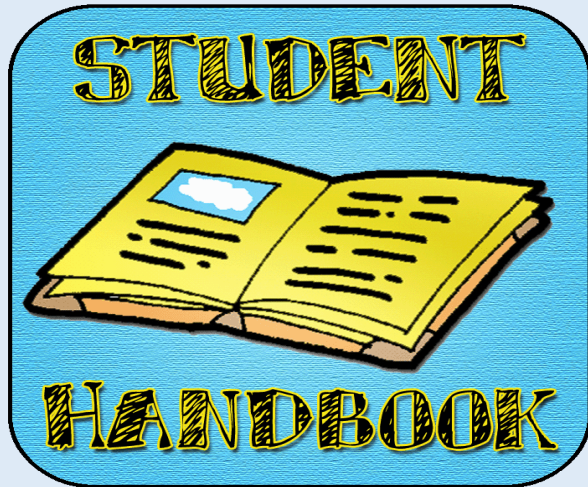
What You Will Learn

- The rules and procedures that schools must follow regarding suspensions and expulsions
- Student and parent's rights when students are excluded from school
- How to appeal an administrator's or board of education's decision
- Resources for further information



District Disciplinary Rules

School districts must have a written code of conduct - usually found in the student handbook:



- Should be distributed yearly to school staff, parents and students
- Available on school websites or upon request from board of education

The board of education must develop written policies regarding discipline rules and procedures, and make them available on the school website or upon request.

Offenses That Can Lead to Suspensions/Expulsions

- Disobedience
- Defiance
- Physical assault
- Theft
- Property damage
- Possession, using or being under influence of drugs or alcohol on school grounds
- Harassment, intimidation or bullying



Discipline for General Education Students

If a student violates a district's Code of Conduct, the school administrator may impose consequences, including:

- Deny participation in extracurricular activities, privileges, school functions, sports and graduation ceremonies;
- Remove student from classroom/detention;
- In-school or out-of-school suspension; and/or
- Expulsion



Alternatives to Suspension/Exclusion

Prior to suspending/excluding students, school administrators should consider alternatives, such as:

1. Positive supports and interventions
2. Written reflection and apology
3. Loss of a privilege at school or at home
4. Community service
5. Parent and student conference with school staff
6. Behavior contract
7. Counseling and/or mentoring
8. Referrals to community-based organizations



ADVOCATES
for CHILDREN OF NEW JERSEY

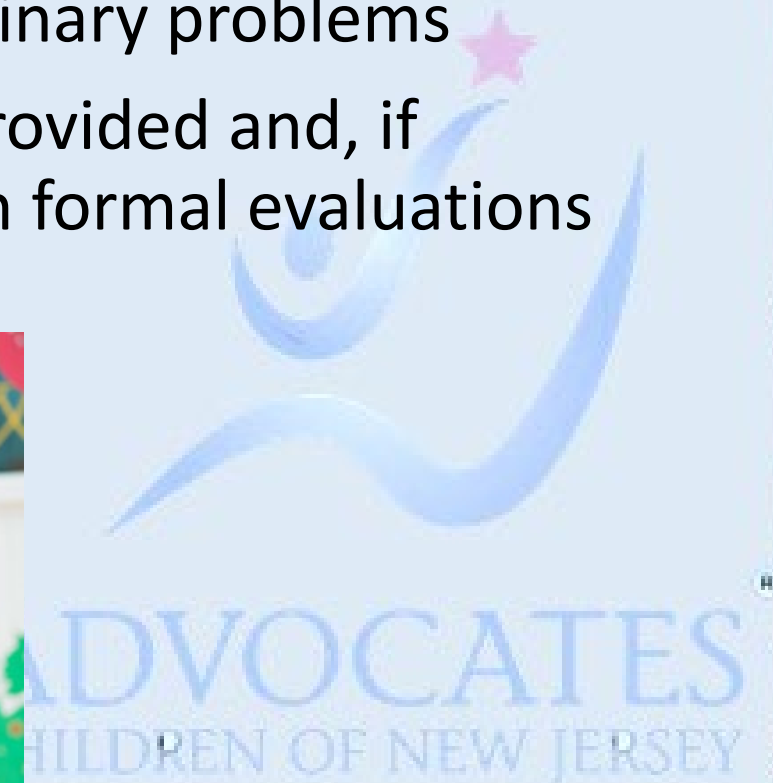
Limitations on Suspensions

- Preschoolers and students up to 2nd grade cannot be suspended unless conduct is of a violent or sexual nature that endangers others
- Alternative to suspensions should be imposed for minor behavior infractions
- Students should not be suspended for absences or tardiness
- There are special considerations for students with disabilities



Early Detection and Prevention Program

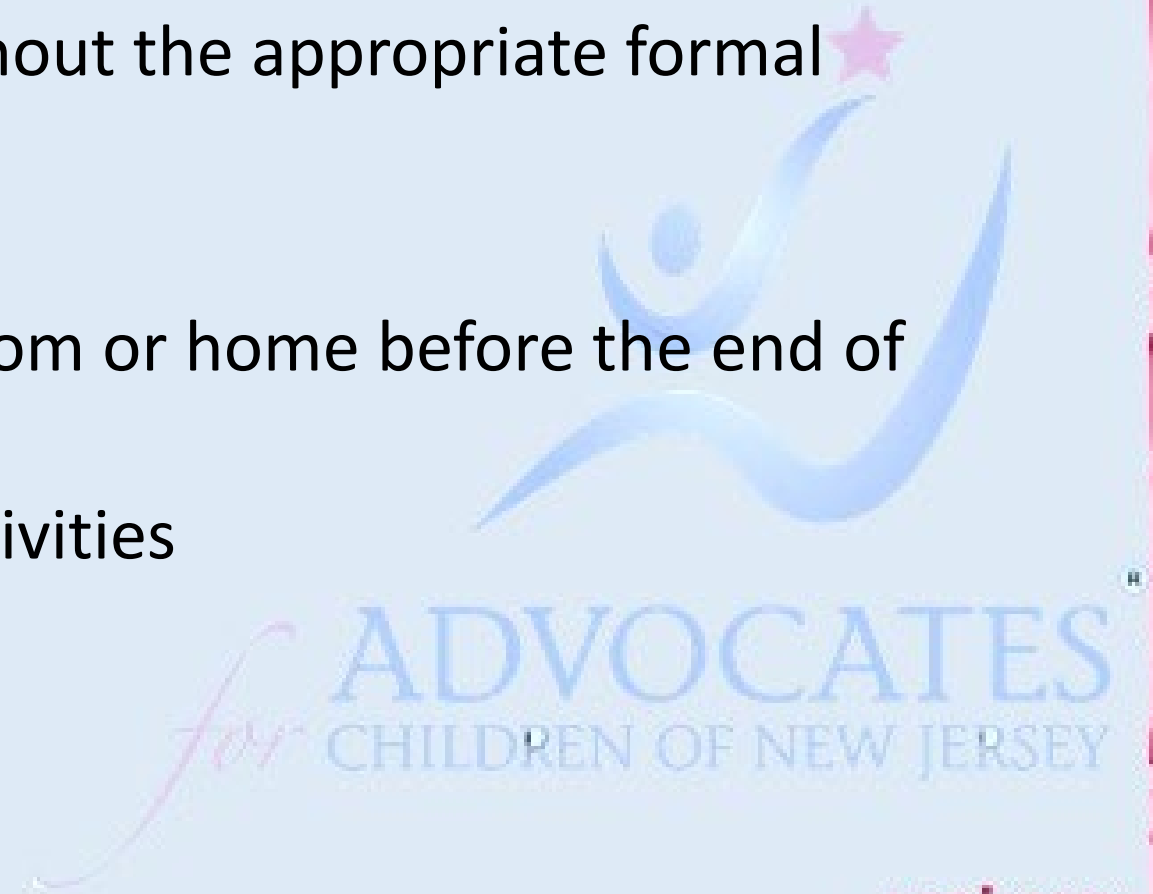
- These programs must identify students in preschool through 2nd grade who are experiencing behavioral or disciplinary problems
- When a need is identified, supports should be provided and, if appropriate, interventions should be based upon formal evaluations



Exclusions That Can Violate a Student's Rights

Education rights may be violated when a student is excluded from class or school in response to behavior without the appropriate formal process. For example:

- Sending a student out of the classroom or home before the end of the school day
- Denials of participation in school activities



Short-Term Suspension – Up to Ten Days

Required notice:

- Oral or written notice before the end of the school day to parents in a language they can understand, which includes:
 - specific charges and which student code of conduct was violated,
 - underlying facts,
 - length and conditions of suspension, and
 - due process appeal rights.

Before suspension:

- The student must be allowed to present their version of facts at an informal meeting with the school administrator
- The parent can suggest alternatives to suspension

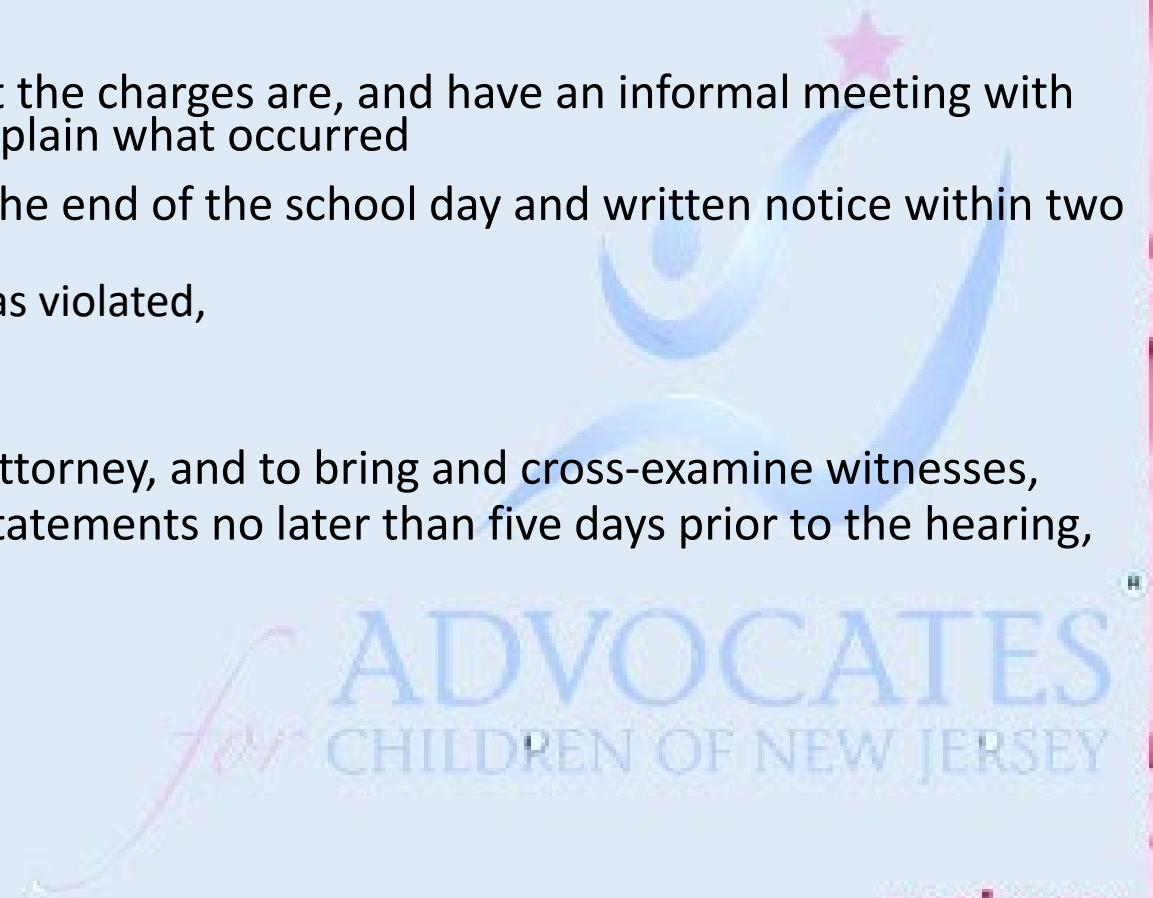


Long-Term Suspension – Ten+ Days

Required notice:

- Before the suspension, the student must be told what the charges are, and have an informal meeting with the school administrator to have an opportunity to explain what occurred
- In a language parents can understand, notice before the end of the school day and written notice within two days regarding:
 - specific charges - which student code of conduct was violated,
 - underlying facts,
 - length and conditions of suspension,
 - the right to a board hearing, represented by an attorney, and to bring and cross-examine witnesses,
 - the right to receive a list of witnesses and their statements no later than five days prior to the hearing, and
 - the right to request a recording of the hearing.

-



Expulsion

- A board of education may expel a general education student as long as:
 - All procedural due process rights were provided to the student just as for a long-term suspension - the student is entitled to the same notice rights, an informal hearing and a board of education hearing.
 - The student is provided with appropriate education programs or services in an alternative education program, in or out of the public school.
 - For a 2nd expellable offense, education services may be discontinued but only if the district proves that this is the only way to achieve school safety and order.
- The decision may be appealed to the Commissioner of Education within 90 days.
- A student with a disability can only be expelled from his/her current program – but always retains the right to a public school education until age 21.



ADVOCATES
CHILDREN OF NEW JERSEY

Discipline for Behavior Off School Grounds

Students can be disciplined for their conduct away from school, but only if:

- 1) reasonably necessary for the physical or emotional safety, security and well-being of the student, other students or staff on school grounds **AND**
- 2) the conduct “materially and substantially” interferes with the “orderly operation” of the school



Discipline for Students in Special Education

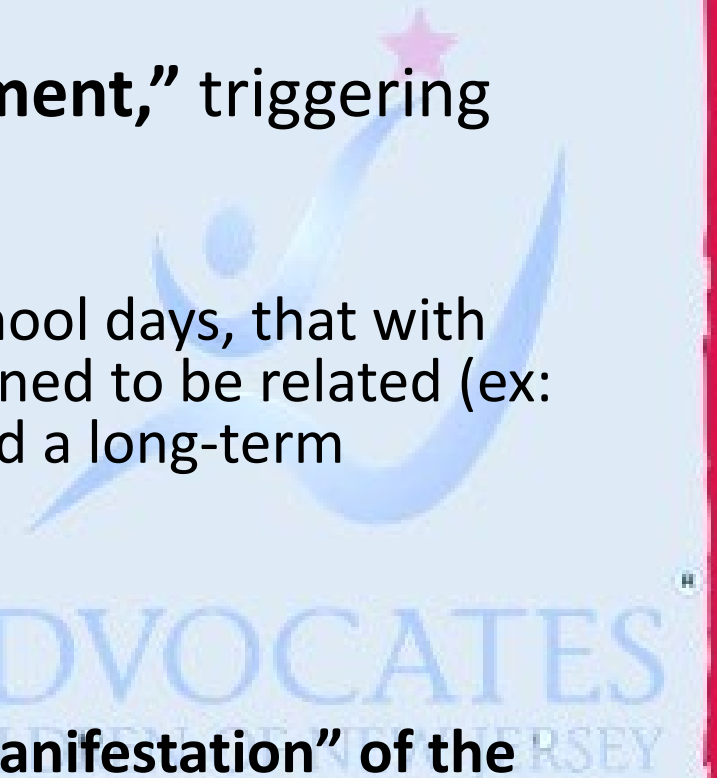
- In general, all students must comply with their school's code of conduct
- Students have the same procedural rights as general ed students plus other rights:
 - The administrator may consider the student's unique circumstances to decide whether to require suspension or change of placement.
 - The Individual Education Program (IEP) may excuse a student from certain school rules and/or explain how negative consequences will be imposed.



for **ADVOCATES**
CHILDREN OF NEW JERSEY

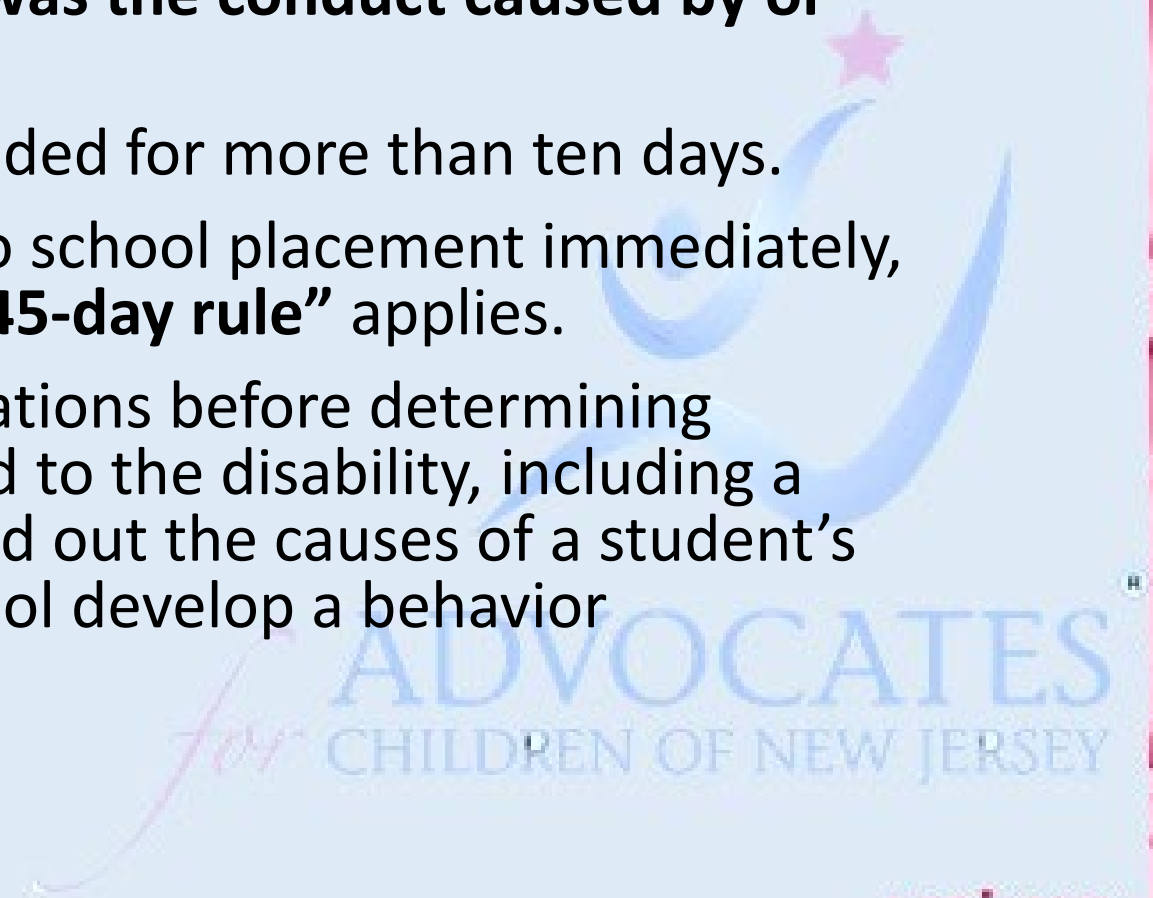
Discipline for Students in Special Education

- Short-term suspensions are permissible.
- Suspensions can be considered a **“change in placement,”** triggering special education rights, **when:**
 - The student is given a long-term suspension; or
 - For a series of short-term suspensions equaling ten+ school days, that with the child study team (CST) and parent input are determined to be related (ex: based on similar behaviors) – in this case, it is considered a long-term suspension resulting in a change in placement.
- A long-term suspension may be imposed **only if:**
 - 1) the student’s IEP does not provide otherwise AND
 - 2) the student’s conduct is determined **not to be a “manifestation” of the child’s disability**



Manifestation Determination

- The CST must have a meeting with the parent within ten school days of a long-term suspension to determine: **was the conduct caused by or related to the student's disability?**
 - **if no**, the student may be suspended for more than ten days.
 - **if yes**, the student must return to school placement immediately, unless an **exception** known as a **"45-day rule"** applies.
- The CST must conduct necessary evaluations before determining whether or not the conduct was related to the disability, including a functional behavioral assessment to find out the causes of a student's problem behavior(s), and help the school develop a behavior modification plan.



45-Day Exception

Students with an IEP may be placed in an alternative educational setting for up to 45 days, even if the behavior is a manifestation of the student's disability, when the discipline is as a result of:

1. possession of a weapon
2. knowing possession or use of illegal drugs
4. infliction of serious bodily injury upon another person

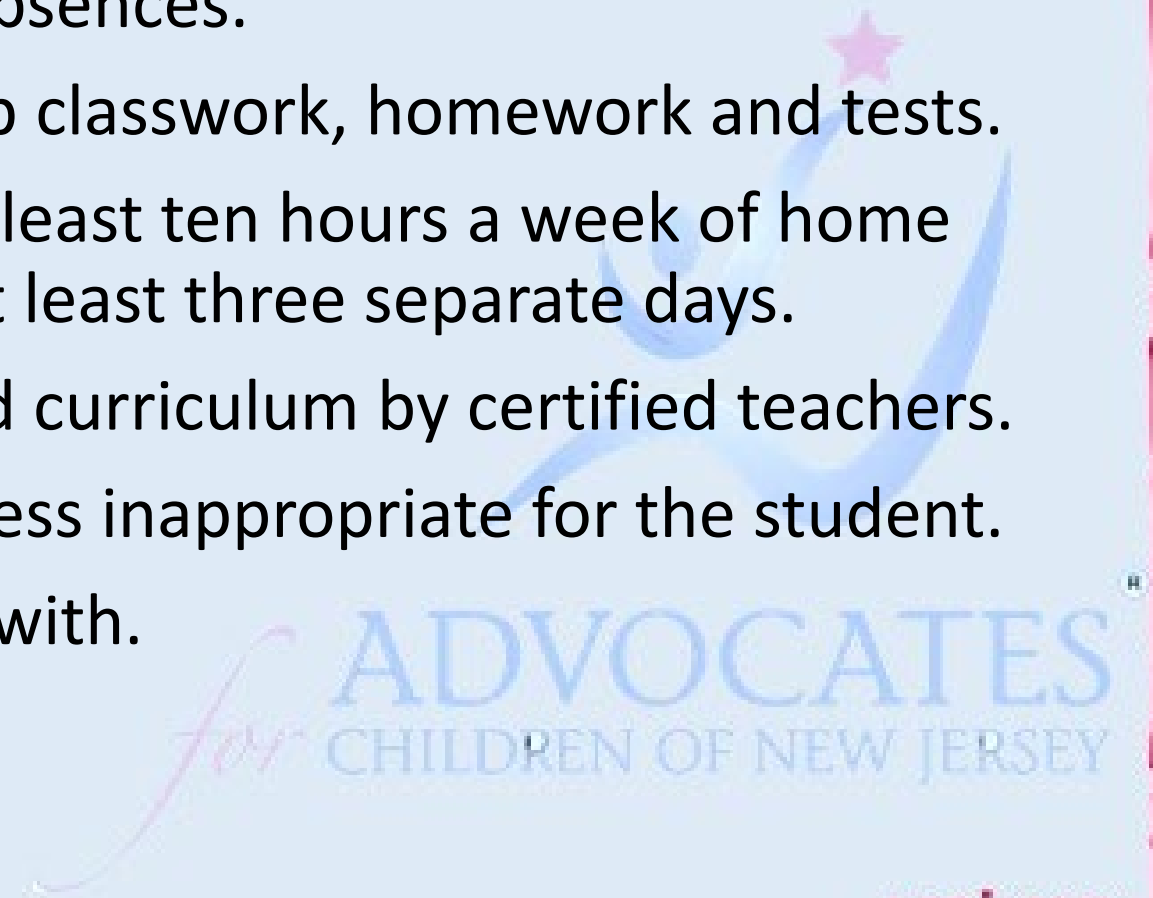


for ADVOCATES
CHILDREN OF NEW JERSEY

acnj.org

Home Instruction/Other Protections

- Exclusion/suspension days are not absences.
- The student has the right to make up classwork, homework and tests.
- Within the fifth day of exclusion - at least ten hours a week of home instruction, in or out of school, on at least three separate days.
- In-person instruction of the standard curriculum by certified teachers.
- Virtual instruction is permissible unless inappropriate for the student.
- IEPs or 504 plans must be complied with.

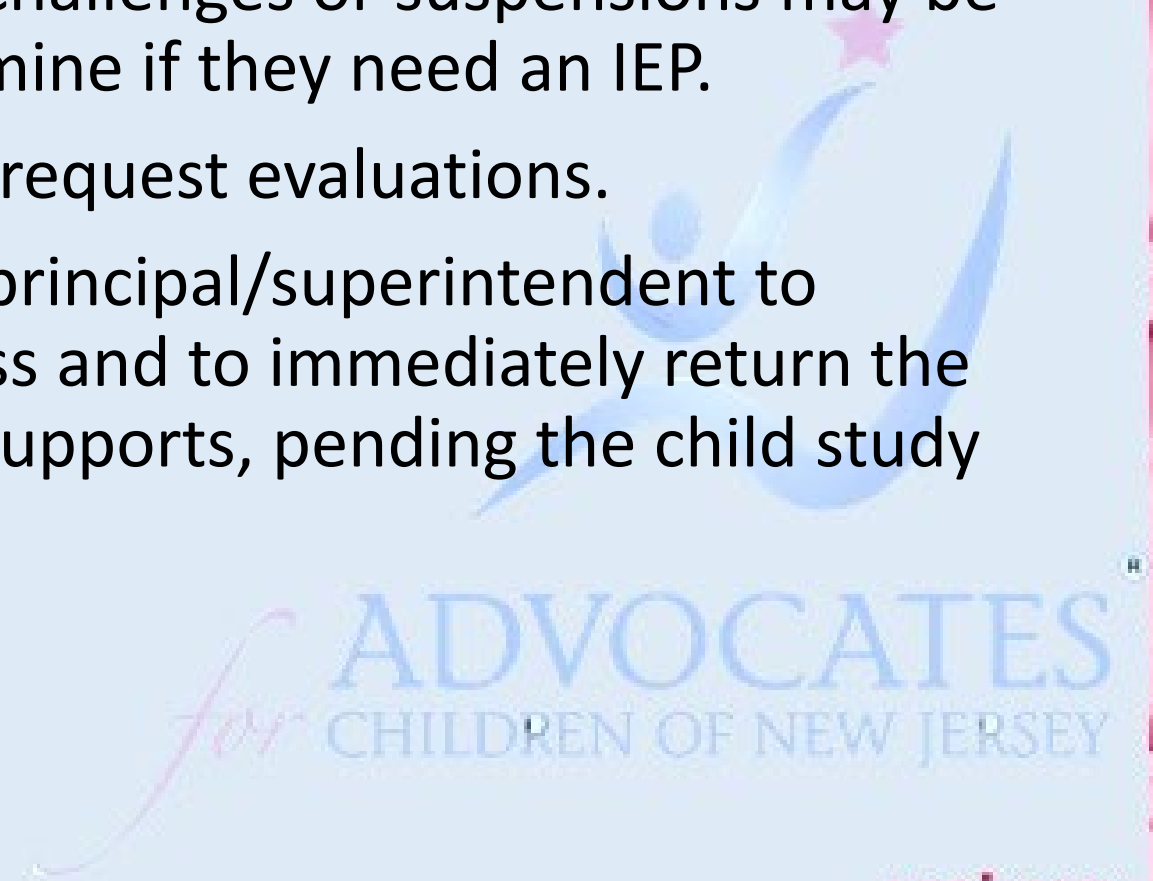


Alternative placements

- Placement decisions should be based upon an assessment of the student's risk for failure in a public school setting.
- Consideration should be given to the student's academic, health and behavior records and needs, information from the school multi-disciplinary team and CST, if applicable.
- Notice to and consultation with the parent are required.
- In-district, other public school or private school setting.
- Return to a public school setting should be reviewed annually by the board of education and transition services provided.

Students Who May Have a Disability

- Students with a history of behavior challenges or suspensions may be eligible for CST evaluations to determine if they need an IEP.
- The parent must write to the CST to request evaluations.
- The parent should also write to the principal/superintendent to request a delay in suspension process and to immediately return the student to school with appropriate supports, pending the child study team process.



Appeal Rights

- Parents should write to the principal and/or superintendent and request a meeting to discuss the reasons the student should be returned to school immediately.
 - They may request an alternative to the suspension based upon student records and all the circumstances.
- Parents should consider contacting an education attorney or advocate to get information and advocacy assistance.



Appeals

for **ADVOCATES**
CHILDREN OF NEW JERSEY

acnj.org

Appeal Rights: Board of Education Hearings

For short-term suspensions:

The district must describe the due process appeal process in the Code of Conduct and allow the student to appeal the decision to the superintendent and then to the board of education.

For long-term suspensions:

A board of education hearing must take place within 30 days of the suspension.

The parent may appeal a suspension if school staff failed to comply with notice requirements and other procedures required by N.J. law and the school's policies.

Preparing for a Board of Education Hearing

Parents should:

- Write to the principal for copies of the incident reports and all formal notices if they have not been provided.
 - Request should include copies of all records regarding behavior, discipline, attendance, written plans for intervention services and academics for all years the student has attended the particular school.
- Review a copy of the student Code of Conduct and relevant school board policies regarding conduct and consequences to see if staff complied.

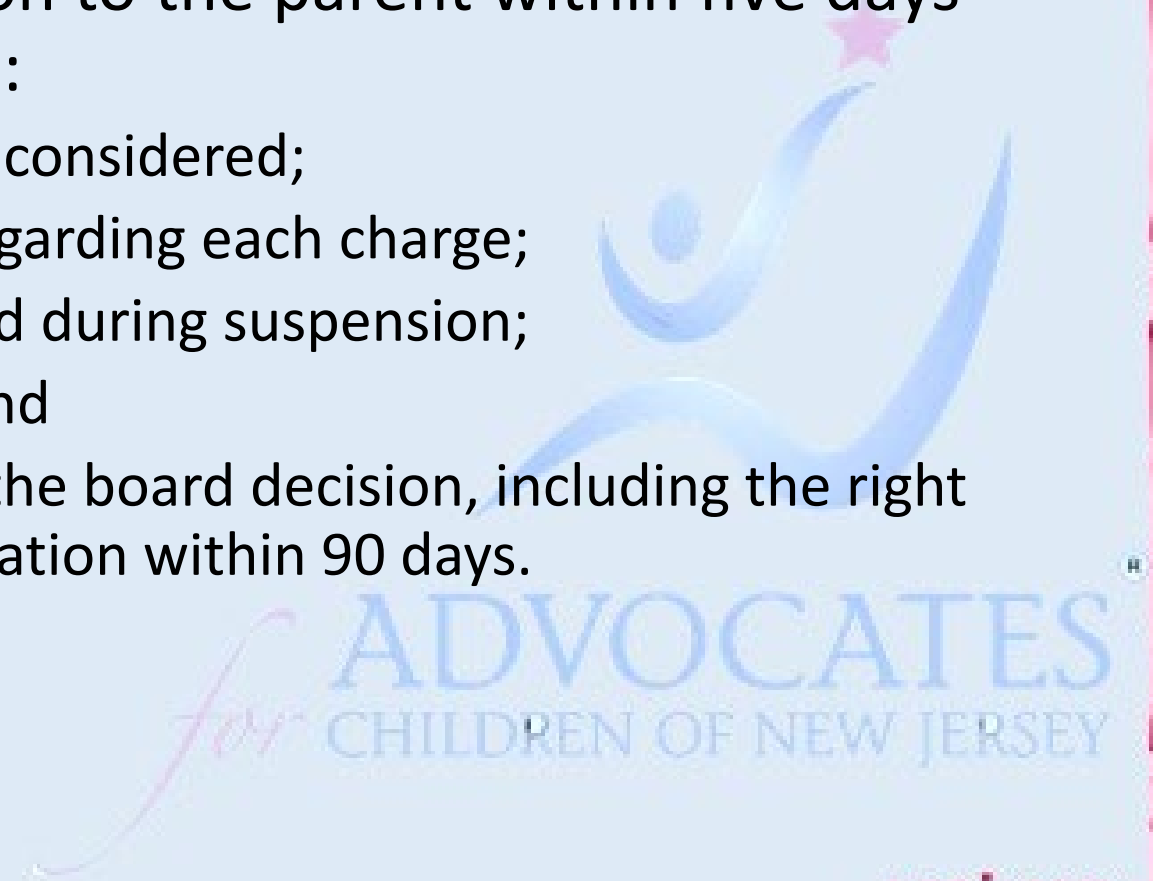


ADVOCATES
CHILDREN OF NEW JERSEY

acnj.org

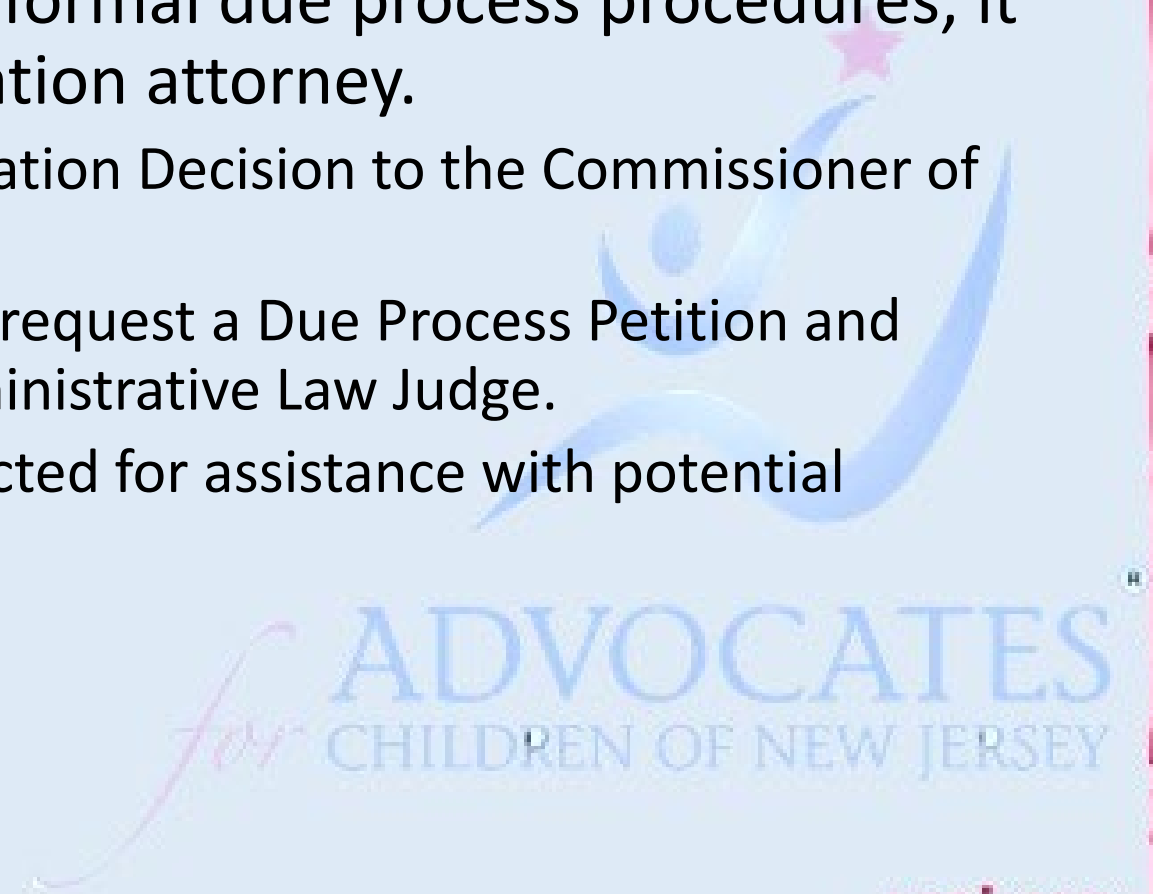
After the Board Hearing

- The board will issue a written decision to the parent within five days of the hearing, which should include:
 - Charges and summary of the evidence considered;
 - Factual findings and determinations regarding each charge;
 - Education services that will be provided during suspension;
 - Terms and conditions of suspension; and
 - Information about the right to appeal the board decision, including the right to appeal to the commissioner of education within 90 days.



Appealing the Board of Education/Superintendent Decisions

- When appealing using the following formal due process procedures, it is advisable to consult with an education attorney.
 - Parents should appeal a Board of Education Decision to the Commissioner of Education.
 - For students with IEPs, parents should request a Due Process Petition and Request for Emergent Relief to an Administrative Law Judge.
 - The Office of Civil Rights may be contacted for assistance with potential discrimination claims.



Appealing a School Discipline Record

- Parents and adult students may request the removal of a suspension from the record for the removal of inaccurate, irrelevant or improper information.
- They may also request that information/reasonable comments explaining the record be added.
- Parents and adult students may request that record not be shared pending a determination of an appeal.

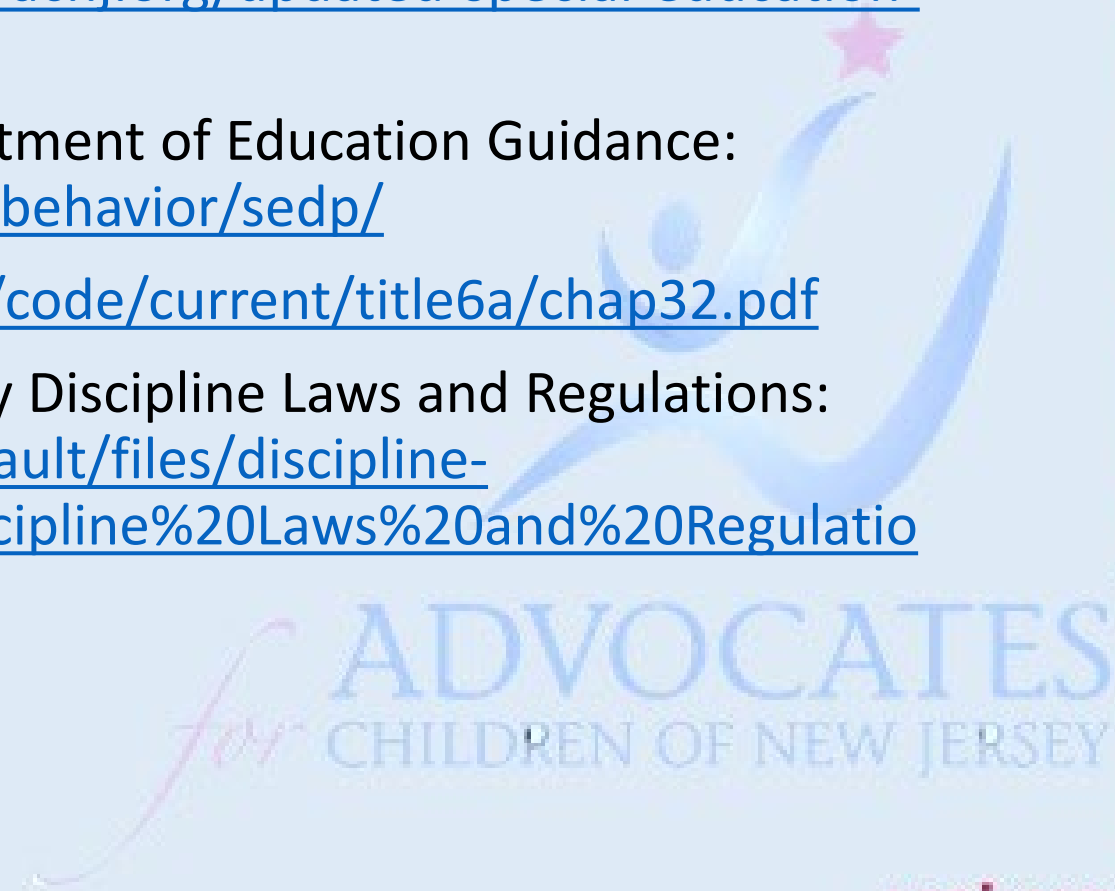
How to appeal a record?

- Parent must write to the superintendent and explain the basis for the request.
- The superintendent must respond within ten school days and if not in agreement, meet with the parent to resolve the issues.
- The superintendent's decision may be appealed to the board of education within ten days, and then to the commissioner of education.
- **Regardless of outcome, the parent is always permitted to add a statement to the record.**

ADVOCATES
FOR CHILDREN OF NEW JERSEY

Resources

- Discipline Manual: https://edlawcenter.org/assets/files/pdfs/publications/Student_discipline_manual.pdf
- ACNJ's Basic Guide to Special Education: <https://acnj.org/updated-special-education-guide-released/>
- New Jersey Statutes and Regulations and Department of Education Guidance: <https://www.nj.gov/education/students/safety/behavior/sedp/>
- Record Appeals: <https://www.nj.gov/education/code/current/title6a/chap32.pdf>
- US Dept of Education Compilation of New Jersey Discipline Laws and Regulations: <https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/New%20Jersey%20School%20Discipline%20Laws%20and%20Regulations.pdf>



We hope this information is helpful!

For further assistance, you may contact:

Nina Peckman, Esq. Staff Attorney at:

npeckman@acnj.org or 973-643-3876, ext. 226

