



## **Juvenile Charges and Students with Disabilities: General Procedures When a Minor is Charged with a Crime**

If the school system, another agency, or an individual files a juvenile complaint against your child, a child intake counselor from the Department of Juvenile Justice will determine whether the complaint will proceed to court. If the complaint goes to court, a judge will decide the question of guilt and your child's punishment, if found guilty of the charges. At every step of the process, it is important to make sure the counselor, judge, and attorneys know that your child has a disability, and how the disability affects his or her behavior.

### **Step 1: Meet with the Intake Counselor**

The intake counselor will contact you to schedule a meeting with you and your child. It is important that you attend this meeting and provide the counselor with all pertinent information relating to your child and his or her disability. Be prepared to share the following information:

- Details about the incident that led to the charges and your child's version of what happened;
- Evaluations of your child's mental, physical, or emotional health diagnoses;
- A list of medications your child takes;
- Counseling or mental health treatment your child has had; and
- School records including your child's Individualized Education Program (IEP), school evaluations, and Behavior Intervention Plan (BIP).

After speaking with you and your child and reviewing this information, the intake counselor will decide whether to dismiss the charges, enter into a diversion plan, or proceed to court. The counselor has 15 to 30 days to decide how to proceed.

### **Step 2: Dismissal, Diversion, or Court?**

**Dismissal of Charges:** If the counselor dismisses the charges, the complaint will not proceed any further and your child will have no further involvement with the juvenile court regarding this particular case. The prosecutor and/or the judge also may dismiss the charges after the complaint has proceeded to court.

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**Diversion of Charges:** Diversion is a way to avoid your child being formally processed in the juvenile justice system. If the counselor decides to divert the charges, your child will most likely enter into a diversion plan ordered by the court. This plan may include such actions as:

- Restitution to the victim (for example, reimbursement for broken school equipment)
- Community service
- Counseling, a substance abuse program, or teen court
- School performance requirements (for example, attend school regularly, earn passing grades, and remain free of charges for a certain period of time)

Successful completion of the diversion plan will result in the complaint being dismissed. If your child does not comply with the diversion plan, the intake counselor can decide to move ahead with filing the complaint in court.

**Filing of Charges – Going to Court for Trial:** If the counselor decides to file the charges, the complaint proceeds to juvenile court and you and your child must appear in court. If your child is “alleged delinquent” (that is, possibly responsible for breaking the law) in this complaint, he or she is entitled to an attorney. The court may appoint an attorney, or you may hire one. It is important that you share all relevant information concerning your child’s disability with the attorney as well.

About three weeks to six weeks after the complaint is filed, your child will have a court date on the charges. You and your child must attend court on that date. At this first appearance, the judge will appoint an attorney for your child if he or she does not already have one.

After meeting with the attorney, your child will either admit or deny doing the acts described in the complaint. If your child admits, the judge can conduct a dispositional hearing (see below) at that time or schedule one for another date. If your child denies, an adjudicatory hearing will be scheduled.

An adjudicatory hearing is like a trial. It will include the presentation of evidence, witness testimony, and arguments for and against delinquency. The allegations must be proved beyond a reasonable doubt. The judge will decide whether your child is guilty (delinquent) or not guilty. If your child is found not guilty, there is no further action in the court. If your child is found guilty (delinquent), then the case proceeds to a dispositional hearing.

### **A Dispositional Hearing**

A dispositional hearing is where the judge determines the punishment for your child. The judge has several options, including dismissal, continuance for up to six months, probation, custody, restitution, counseling and community programs, or placements such as group homes, wilderness camps, detention, or youth development centers. Probation is the most common disposition.

All hearings will occur in the courthouse of the county where the incident occurred. The judge decides whether these hearings are open or closed to the public; however, if your child requests that the hearing be open to the public, the judge must allow it.

### **Important Definitions**

**Adjudicatory Hearing:** a hearing where the juvenile court judge hears the evidence and arguments by the prosecutor and the defense attorney and determines guilt or innocence.

**Complaint:** a legal document submitted to the juvenile court that gives the reasons why the individual writing the complaint believes a juvenile committed a delinquent act.

**Court Counselor:** a state employee who works with juveniles in the justice system.

**Delinquent:** a legal description for a juvenile at least six years old and not yet 16 (18 in some circumstances) who is found responsible for breaking the law.

**Dismissal:** a decision by an intake counselor, prosecutor, or judge not to proceed with the complaint.

**Dispositional Hearing:** a hearing where the court determines what will happen to a juvenile found guilty of a delinquent act.

**Diversion:** a decision by an intake counselor to not proceed with a complaint, and instead create a plan that requires the juvenile to take certain actions to keep the complaint out of court.

**Intake Counselor:** the court counselor who meets with the juvenile and the parents, gathers information, and decides whether to dismiss, divert, or file the complaint.

**Undisciplined:** a legal description for a juvenile at least six years old but not yet 16 (18 in some circumstances) who commits a less serious offense such as excessive absences from school or running away from home for more than 24 hours.

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Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Contact us for assistance or to request this information in an alternate format.

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