



## ADVOCATING FOR A STUDENT IN FOSTER CARE

**By Eric Fisher**

Taylor English Duma LLP

[efisher@taylorenghish.com](mailto:efisher@taylorenghish.com)

**U**nder Georgia law, K-12 public school students faced with proposed out-of-school suspensions of more than 10 days, or with expulsion, are entitled to dispute the proposed disciplinary action at an administrative hearing often called a “tribunal.” When the Georgia Appleseed Center for Law and Justice heard concerns about the availability of qualified counsel to assist students, especially indigent students, in the proceedings, Appleseed’s Young Professionals Council (the “YPC”) responded.

### Representing Students

In 2013, The YPC created the *Representing Students in School Tribunals in Georgia* Attorney Training Manual and CLE program to provide attorneys with an understanding of the laws and procedures involved in a Georgia school tribunal hearing so they can represent students in need at these tribunals. The YPC has presented at least two CLE’s every year since then and has trained over 100 attorneys throughout Georgia.

### Youth in Foster Care

In 2015, the YPC formed a partnership with the Office of the Child Advocate to help children in foster care remain in school despite school disciplinary problems. This program was created because disruptions in school stability can have cascading and devastating results for youth in foster care. Youth in foster care who are suspended or expelled from school may exhibit destructive behavior in their foster home or other placement and may even be forced to leave the placement and/or the school. School stability is directly related to placement stability and permanency.

### Expulsion

The student whom I volunteered to represent at a Fulton County School System tribunal was accused of threatening and intentionally intimidating a teacher. Expulsion through the end of the school year was the recommended punishment; it was only late August. Georgia Appleseed volunteers received notice of the hearing on a Wednesday afternoon, and the

hearing was scheduled for the following Tuesday morning. Other than being given a summary of the charges against her, I was told that the student, Megan (not her real name), was 12 years-old and that she was a foster child in the Fulton County Division of Family and Child Services (“DFCS”) system.

### Someone Was in Her Corner

The first thing I did for Megan was learn as much as I could about her from her Foster Care Case Manager. Megan had been in and out of foster care since she was a toddler. Most recently, she was returned to foster care after her elderly great-aunt could no longer care for her. Megan was currently living in a hotel with several other foster children because the group foster homes were overcrowded.

In Georgia Appleseed’s Student Tribunal Hearing Training, I learned that the punishment recommended by the school was meted out on most occasions. While I was not optimistic that I could do much to help keep Megan in school, I hoped that by simply showing up as a trained representative, I might at least make Megan feel like someone was in her corner. Even if a student broke the school’s rules, extenuating circumstances may result in the student’s punishment being reduced.

### Temper in Check

Another lesson I learned from Georgia Appleseed’s CLE was to ascertain whether Megan had a disability. If a student with a disability acts in a manner that violates school rules but her improper behavior is simply a manifestation of her disability, the school usually cannot punish that student with out-of-school suspension. Moreover, a student with a disability must be provided with an education even if her improper behavior is not a manifestation of her disability. Therefore, upon out-of-school suspension or expulsion, a student with a disability is entitled to be sent to an alternative school or provided with some other form of alternative education. Megan, like many other foster children, had been identified as a student with a disability, and had a behavior improvement plan in place.

Unfortunately, since being returned to foster care, Megan had not been keeping up with the medication that was supposed to keep her temper in check. Prior to my involvement, the school refused to acknowledge the connection between Megan's disability and her improper behavior at school.

## Compromise

I met with Megan for a short time before her hearing. Megan knew that she did not want to be placed in one of Fulton County's alternative schools; she had heard stories about them from other foster children. Fortunately, I was able to make some headway with the school's attorney just before the hearing started. As Georgia Appleseed's training taught me, I presented Megan as a troubled youth who deserved another chance before being tossed from her middle school for the entire school year. After two hours of negotiations, we reached a compromise that allowed Megan to remain in school, on probation, for as long as she could behave. Megan, with the help of her Foster Care Case Manager, agreed to take her medication on a regular basis and avoid any contact with the staff member with whom she had an altercation. Without Georgia Appleseed, Megan would have certainly spent the school year in an alternative school. Instead, she got a second chance and, last I heard, has been doing well and staying out of trouble. ■

For more information about this project, please visit Georgia Appleseed's [website](#) or contact [Alison Ballard](#), [Eric Fisher](#), [Craig Friedman](#), or [Rachel Platt](#). For a link to the training manual, please go to <https://gaappleseed.org/media/docs/representing-students.pdf>.

