

**PARENT'S GUIDE TO
PUBLIC SCHOOL DISCIPLINE
IN WASHINGTON**



ACLU
Washington

Parents' Guide to Public School Discipline in Washington

This pamphlet provides nuts-and-bolts advice for parents and guardians whose students are facing discipline in public schools. Exclusionary discipline like suspensions and expulsions can increase the chances of a student dropping out or ending up in the juvenile justice system. Parents can help their students succeed by engaging with school officials when there are discipline problems.

The guide is divided into three parts and an appendix. Part I provides an overview of the discipline process. Part II describes steps for families of general education students. Part III describes steps for families of students who receive special education services or other accommodations for disability under section 504 of the Rehabilitation Act. The appendix includes additional resources.

DISCLAIMER

This guide is not meant to provide legal advice. This guide explains the general rights of students in Washington's public schools. Different rules may apply in private schools, tribal schools, or public colleges and universities. Parents and guardians should consult their district's handbook first and to use this guide as an additional tool.

ACKNOWLEDGMENTS

Thanks to Marty Jacobs, Elizabeth Pring, Jeanette Cohen, Liz Allen, Lara Hrsuka, and Mary Griffin, who contributed to the revisions of this guide.

Published November 2017

A project of the American Civil Liberties Union of Washington

INTRODUCTION

Your student is accused of breaking rules at school. You are unsure what to do and want to know what legal rights your student may have. This guide is here to help.

In some cases, you might agree with the decision to suspend or expel your student, but you want to make sure that the situation doesn't happen again. In other cases, you might not agree with the school's decision to suspend or expel your student, or you might feel that the discipline the school wants to impose is unfair or inappropriate.

This guide is organized in question-and-answer format and provides advice for parents or guardians of students facing discipline.

PART I: OVERVIEW OF SCHOOL DISCIPLINE

What types of discipline can the school impose?

Schools have a wide variety of tools that they can use to address student behavior. Generally, discipline is divided into in-school consequences and exclusionary discipline.

In-school consequences can include:

- *Revoking Privileges.* This could mean barring students from extracurricular activities or clubs, or preventing students from using optional computer or library time.
- *Imposing Extras.* Schools can require students to complete extra projects (such as writing an apology letter), complete community service, make amends to someone hurt by the student's actions, or pay for lost or damaged property.
- *Detention.* Schools can require students to stay after school, during lunch-time, or on Saturday for a period of time, typically seated in a study hall or quiet room.
- *Exclusion or removal.* The student is barred from a particular teacher's class or activity, for up to two days.

Exclusionary discipline can include:

- *Short-term suspension:* The student may not attend school for 10 or fewer school days. Some schools assign students to in-school suspension, where the student may not attend his or her regular classroom but remains in a study hall or quiet room.
- *Long-term suspension:* The student may not attend school for a definite period of time longer than 10 days, but less than 1 semester or trimester during the current school year. The school must tell you in writing the end date of the suspension.
- *Expulsion:* The student may not attend school for a length of time up to 1 semester or trimester. The school must tell you in writing the end date of the expulsion.
- *Emergency Removal:* If the student's conduct causes an immediate and continuing danger to others or to the educational process, the school may take action without first providing the student an opportunity to be heard. An emergency removal takes the student out of a single class or classes, but cannot last for more than 1 day.
- *Emergency Expulsion:* The school can exclude a student from school for up to 10 days. At the end of 10 days, the emergency expulsion must end or be changed to a different form of discipline. If the school wants to extend the discipline, it must send you a letter changing the emergency expulsion into a long-term suspension or expulsion.

How long can a suspension or expulsion last?

Short term suspensions can last for up to 10 days. Schools cannot use repeated short-term suspensions, if the short term suspensions would add up to more than 10 days for grade K-4 students or 15 days for grade 5-12 students.

A long-term suspension lasts for between 10 days and up to one academic term.

Expulsion can last for up to one academic term, although a superintendent can extend that period if he or she finds that the student's return would pose a risk to health and safety in the school.

Are schools required by law to suspend or expel students for certain behavior?

Washington law does not require schools to suspend or expel students for any behavior, except possession of a firearm on school grounds. If a student possesses a firearm on school grounds, the school must expel the student (although the school superintendent has authority to modify or shorten the expulsion).

For all other offenses, school districts can set their own policies about whether or not to suspend or expel a student for the behavior. You can check your school district's discipline policy to see what the rules are in your school.

Can schools punish all misbehavior, even minor incidents, by suspending or expelling students?

A law passed in Washington in 2016 says that schools *cannot use long-term suspension or expulsion* to punish students unless the student has committed a serious violation listed in the law. These serious violations include possession of a weapon, violent offenses, sex offenses, behavior involving drugs or alcohol, or other behavior that "adversely impacts the health or safety of other students or staff." For a more comprehensive list of the offenses that can be punished with long-term suspension or expulsion, see Appendix B.

If your student has violated a less serious school rule (like disobedience or defiance), schools can use in-school consequences, or, at most, short-term suspension, as a consequence.

Can schools suspend or expel my student if this is the first time my student has misbehaved?

Generally, schools cannot suspend or expel students unless the school has first tried other ways to address the behavior. The exception to this rule is for behavior that a school district has labeled "exceptional misconduct." Exceptional misconduct refers to range of behaviors (usually published in school rules) that can be punished immediately by suspension or expulsion.

Can early elementary school students be suspended or expelled?

Students in grades K-4 cannot be long-term suspended. That means schools can, at most, suspend a K-4 student for up to 10 days. In addition, a school cannot repeatedly short-term suspend a K-4 student, if the suspensions add up to more than 10 days.

Do I have a right to challenge school discipline if I think the discipline is unfair or inappropriate?

Yes. If your student has been given in-school consequences, you can challenge the consequence through informal processes like meetings with the school principal or teachers.

If your student has been given exclusionary discipline like suspension or expulsion, schools have to give you a fair chance to challenge the discipline. This is called “due process” and typically requires that students and families are notified of the incident and given a chance to present their side of the story before discipline is imposed. Rules for due process vary depending on the level of discipline. The more severe the discipline, the more formal and structured the process.

Do identical rules apply to students who are in general education and students who receive special education services?

Students who receive special education services are entitled to the same protections in the discipline process that are given to students who are in general education. Part II of this guide applies to all students, regardless of whether or not they receive special education.

In addition, state and federal laws provide some *additional protections* for students who receive special education services, discussed in Part III of this guide.

PART II: GENERAL EDUCATION LAW & PROCEDURES

SUMMARY

Your student has been disciplined at school. As a parent, you should (1) gather information, (2) decide what you want to accomplish, and (3) advocate for your position.

STEP ONE: GATHER INFORMATION

To respond effectively to school discipline, you will need to understand the situation from both your student's and the school's point of view.

Start by gathering information about what happened.

Keep careful notes during this process. Keep a timeline of events, individuals contacted and what was discussed. Be sure to keep copies of all letters (including e-mails!) from the school and all letters you send to the school. Be sure to note the date of the discipline, the type of discipline imposed, and the timelines that apply, as many of the timelines for responding are short.

Some questions to ask are:

1. What happened - in your student's words?
2. What has the school accused your student of doing?
3. What rule is your student accused of breaking?
4. What discipline does the school want to impose?
5. What will the lasting impacts be?

What happened – in your student's words?

Ask your student what happened and who was involved. The sooner you ask, the more accurate the information will be. Find out what discipline the principal or teacher said they would impose (detention, suspension, expulsion, etc.). Use this opportunity to find out if your student feels misunderstood or wrongly accused. Also, ask whether there are other problems at school that your student was reacting to, like being bullied or having trouble keeping up in class.

What has the school accused your student of doing?

Talk to your student's teachers, principal, or counselors to learn from them what your student is accused of doing. If your student has been suspended or expelled, you should also receive a notice about the incident from the school. If there is a disagreement about what happened, see if other eyewitnesses can clarify the facts. Witnesses may include other students, teachers, staff, or parents.

What rule is your student accused of breaking?

Schools should only punish students who violate school rules. Insist that the school identify in writing which rule(s) your student is accused of breaking. School rules may be found in two different places:

- *Student Handbook.* Most schools in Washington pass out student handbooks at the beginning of the year that include school rules and other information. If you do not have your copy, ask the school for a new one.
- *School District Policies.* Each school board adopts a variety of policies that control its actions, including policies on school discipline. The sections most relevant to you will probably be found under the headings "Students" or "Discipline."

School districts are required by law to provide parents with a copy of policies related to student discipline every year. In addition, many districts publish their policies online. If you need a copy of your school district's policies, you can submit a request under Washington's Public Records Act (PRA) for district policies and other public records. If you submit a PRA request, the district has 5 days to respond.

If English is not your primary language, ask the principal or the district for copies of the student handbook and policies translated into your language. Or, if necessary, call the principal or the district office to ask for a written or spoken translation.

Will my student be suspended, expelled, or face other consequences?

It is important to get a clear statement from the school about exactly what type of discipline school officials want to impose and if there are other conditions that school officials are placing on either the discipline or your student's ability to return to school.

Parents have different rights depending on the type of discipline imposed. See Step Three for information about the rights that students have, depending on the discipline the school wants to impose.

How will the discipline impact my student?

Your decision to oppose school discipline may depend on the consequences. Make sure you fully understand how the school intends to record the discipline and how it may impact your student's education.

- **Grades.** Schools *are required* under Washington law to provide alternative education services to students who have been suspended or expelled. If a student participates in alternative education, the student should not fall behind in grades. See Step Three for more information on getting students educational services and getting them back into school.
- **Discipline Record.** You should also consider the future impact of your student's long-term disciplinary record. Disciplinary records are usually destroyed after graduation, but you should find out how long your school keeps them. Also ask whether they are kept separately from academic information. Disciplinary information should not appear on a student's transcript.

Colleges: Many college applications ask students to report discipline. In addition, FERPA allows high schools to disclose discipline records to a college where your student is seeking to enroll, so long as the school notifies you (either in a letter or through an annual disclosure). You should check your school district's policies and talk to the school's college counselors to better understand what (if any) discipline records the district may disclose to colleges.

DISCIPLINARY RECORDS

You can request your student's education records through the Family Education Rights and Privacy Act (FERPA), a federal law that gives parents the right to review all the education records of their student. After receiving a request from a parent, a school has 45 days to let parents inspect and review their student's education records.

The request does not have to be in writing, but it is recommended.

Other public schools:

If your student transfers to a different school, the original school can send your student's discipline records to the new school without your consent.

If your student moves to a different district, the new school cannot refuse to enroll your student because of a disciplinary record in the old district, although it can refuse to accept your student if the student is suspended or expelled at the time of the application for enrollment. If your student has not moved, and you are requesting a transfer to a school in the same or a different district, your student's disciplinary record might be considered by the new school in their decision whether to enroll your student.

- **Referral to police or prosecutor.** Sometimes school discipline incidents are referred to police and can result in criminal charges against the student. This may occur when the school makes a police report, or when the school has in place a "school resource officer" or other police officer stationed at the school.

If a discipline incident is referred to the police or prosecutor, you should try to find an attorney immediately. Your student should avoid making any statements to school administrators, the police officer or school resource officer, until he or she has talked to an attorney. An attorney can help protect your student's rights and help develop the best strategy for addressing the potential criminal and school disciplinary issues.

STEP TWO: DECIDE WHAT YOU WANT TO ACCOMPLISH

What are some things my family could accomplish by engaging with the school around discipline?

Families generally approach discipline issues in one of three ways:

- *REVERSE* or *REDUCE* the discipline. Sometimes, families disagree with the school's decision to discipline a student and think that the discipline is either unfair or too harsh.
- *ENSURE EDUCATIONAL SERVICES* for your student. Even if you agree with the school that the discipline is appropriate, you should still take action to help ensure that your student continues his or her education.

- **ADDRESS UNDERLYING ISSUES.** Sometimes, student misbehavior is a symptom of another problem. You may think that the school or your student can do something different to avoid discipline problems. You can use the discipline process to start these conversations.

Think About the Long Term:

When thinking about your goals, remember that you and your family will likely need to maintain an ongoing relationship with the school. Your student might have several years left in the same school or school district. You can use the disciplinary process to develop relationships with school officials who might be able to help you get better educational services for your student in the future.

Why could a school district change its discipline decision?

School authorities will not change their mind about how to discipline unless you convince them there is something wrong with their decision. Depending on the circumstances, one or more of the following arguments might be persuasive.

- *Your student is innocent.* Sometimes students are wrongly accused, wrongly identified, or there are misunderstandings about students' actions. It can be difficult to win in these cases, because school administrators may side with staff who accused your student. It will help to:
 - Present witnesses or evidence to back up your student's explanation
 - Explain how your student was misunderstood
- *Your student did not actually violate a rule.* In some cases, the student did what the school alleges, but the student's actions did not violate any school rule. This may be the case if the school is attempting to punish the student for violating unwritten rules. It will help to:
 - Ask the school to show you in writing the rule they believe your student violated.
- *The rule or policy is invalid.* Sometimes, schools try to punish students for violating a written school rule, but the rule is

legally invalid and should not be enforced. For example, it is not fair to punish students for violating rules that are so vague that students could not have known they were doing something wrong. In other cases, a rule or policy might wrongly try to cover off-campus conduct that has no impact on the school, when a school has no authority to regulate such behavior.

A district may not want to change its rules in the middle of a disciplinary proceeding. But you can try to convince officials not to enforce the rule if it is invalid. Even if the school will not change its position, you should mention your concerns at the discipline hearing or in a letter to the school. That will keep the issues on the table in case you decide to appeal. A court could overturn a school rule that punishes student conduct protected by the state or federal constitutions. It will help to:

- Explain why the rule is invalid when applied to your student's circumstances
- Mention your concerns at a hearing or in a letter, even if the school will not change its position
- The discipline is excessive. Sometimes, even when a student violates a written rule, the discipline is too harsh. Unless there are exceptional circumstances, a student should not be suspended or expelled for a first offense. In addition, long term suspension and expulsion should not, under state law, be used to punish violations of "discretionary" discipline rules, including disrupting school, failure to cooperate, or violations of the school dress code. In this circumstance, it will help to:
 - Explain what other circumstances may have contributed to the situation.
 - Explain what you think the appropriate consequence should be.
- Your student was unfairly singled out for discipline. Sometimes students are unfairly singled out for discipline on the basis of race, ethnicity, sexual orientation, gender, disability or other factors. It can be difficult to prove discrimination. Questions to consider include whether you know of other students who received different discipline for similar behavior, or whether school staff made any inappropriate remarks about your student's identity

If you believe that your student has been treated differently because of his or her race, gender, sexual orientation, national origin, or disability, you should contact an attorney.

- *The school violated the required procedure.* You can find detailed information about the required processes in the Washington Administrative Code.
 - For short-term suspensions, a school must hold a conference with the student before the suspension begins to explain the rule violation and the discipline to be imposed. The student must be able to share their side of the story. If the suspension is for more than one day, the parent or guardian must be notified.
 - For long-term suspensions and expulsions, the process is more formal. The school district must provide written notice of an opportunity for a hearing before the long-term suspension or expulsion is imposed. The notice must be in the language spoken at home and must explain the misconduct, the rule violated, the discipline proposed and explain the right to a hearing. Your student or you must request a hearing within 3 business days. If you do request a hearing, your student should remain in school until a decision is reached after the hearing.

Procedural problems alone will not likely cause a school to change its disciplinary decision. But, you could be given another hearing or opportunity to explain based on procedural problems. Therefore, you should still:

- Point out any procedural violations in the notice or hearing.
 - Ask the school to correct its errors and give you a fair chance for a hearing.
- *The school misused emergency expulsion.* Emergency expulsion should be used only in a real emergency, to avoid danger or disruption to the educational process. It should not be imposed as a form of discipline, or to keep a student out of school while the school performs factual investigation or sorts out what form of discipline to impose. Emergency expulsion must be changed to a different form of discipline or ended within 10 days. Unfortunately, some schools abuse the emergency expulsion rule or do not follow the law. It can help you to:

- Ask the school to let your student return to class while you resolve disputes and determine the final discipline.
- *Your student is ready to apologize.* School personnel are much more likely to reduce discipline if they feel confident that the student will not cause more problems. If your student violated a rule and feels sorry, consider having your student apologize and agree to avoid the behavior in the future. Explain how the student has learned a lesson thanks to the discipline served, discipline at home, or through other means like counseling. It will help to:
 - Consider having your student apologize and agree to avoid the behavior in the future.
 - Make sure any agreement is fair and reasonable.

Carefully pick your strongest and most persuasive arguments. Whenever you write to or talk to school officials, raise your best arguments first and spend more time on them than on weaker ones.

What are alternatives to suspension or expulsion?

There are many evidence-based practices that can keep students in school and learning while promoting positive and safe school learning environments. These can include:

- *Restorative Justice or Restorative Practices:* Restorative practices is an approach that emphasizes relationships, bringing together all affected by an action to address the needs and responsibilities of all involved, repair harm, and rebuild community.
- *School-wide Positive Behavior Interventions or Supports (PBIS):* Schools that implement PBIS explicitly teach shared behavior expectations and positively recognize students who meet those expectations. PBIS also uses data-based decision making and analysis, and increasing levels of support for students with higher-level behavioral, emotional, and mental health needs.
- *Social Emotional Learning:* Social Emotional Learning (SEL) specifically teaches students emotional and social skills in an academic setting. SEL programs teach social and self-awareness, decision-making, self-management, and cooperation and communication in relationships.

- *Trauma-Sensitive Schools:* Trauma-informed or trauma-sensitive schools seek to respond to students who have been exposed to trauma in a way that does not exacerbate behavioral issues. Instead, trauma-sensitive schools offer resources such as classes on coping with stress, support groups, and more intensive services to address behavioral health needs.

You can ask if your school uses any of these approaches, and talk about how to address the discipline incident without suspension or expulsion. In addition, you can think about other consequences for your student, such as:

- *Revoking Privileges.* This could mean barring students from extracurricular activities or clubs, or preventing students from using optional computer or library time.
- *Imposing Extras.* Schools can require students to complete extra projects (such as writing an apology letter), complete community service, make amends to someone hurt by the student's actions, or pay for lost or damaged property.
- *Detention.* Schools can require students to stay after school, during lunch-time, or on Saturday for a period of time, typically seated in a study hall or quiet room.

Think creatively about what will meet your student's needs and address any school concerns.

How can I make sure that discipline doesn't hurt my student academically?

Under Washington law, school districts are required to provide educational services when students are suspended or expelled. This means that even if your student can be removed from a particular classroom or particular school, the district still has a responsibility to educate the student. You can work to make sure that the education services meet your student's needs.

Alternative Education Services

Under Washington law, a school must provide alternative education services to students who have been suspended or expelled. This means that even if your student is removed from a particular classroom or school, he or she must be educated.

Alternative education services should be “*comparable, equitable, and appropriate*” to the regular education services a student would have received” without the suspension or expulsion. Some examples are make-up assignments, alternative schools, one-on-one tutoring, and online learning.

As soon as your student is suspended or expelled, contact the school and ask what alternative education services they are going to offer your student. Some questions to ask include:

- Will these education services keep my student on track to move to the next grade or graduate?
- Do the education services offer the same curriculum and standards as my student’s school?
- How will the work be graded?
- Will my student be able to re-enroll in his or her school after the period of suspension and expulsion? How will credits be transferred back to my student’s school?
- Will my student be able to connect with teachers if he or she has questions or needs assistance?
- Does my student have the resources he or she needs to succeed in the alternative education program? For example, if the district is offering online education, does my student have a computer and reliable internet access?

Can I use the discipline process to get my student more support or change the way the school deals with behavior situations?

Student misbehavior is often a symptom of another problem, such as bullying, problems at school or home, an undiagnosed disability, or inappropriate services at school. You can use “re-engagement meetings” triggered by the discipline process to discuss those issues with the school and develop a plan for how to meet your student’s needs and prevent similar incidents.

Formal Re-engagement Meetings

If your student has been suspended or expelled from school for 10 days or more, the school must contact you for a meeting to develop a plan to re-engage the student in school. This meeting must happen within **20 days of the suspension or expulsion, but no more than 5 days before the end of the suspension or expulsion.**

At the meeting, the school staff and parent must discuss a plan to re-engage the student in a school program. At the meeting, the district should:

- Consider shortening the length of time that the student is suspended or expelled.
- Get the family's input on support for the student inside and outside of the school that will help the student return to school successfully. These can include behavioral supports or academic supports.
- Create a re-engagement plan tailored to the student's individual circumstances, including consideration of the incident that led to the student's long-term suspension or expulsion.

By law, re-engagement plans must be *culturally relevant and culturally responsive*. At a minimum, the school must offer the family and student a meaningful opportunity to contribute to the re-engagement plan. The school should not have a form or standard reengagement plan that it uses for every student.

These meetings provide an excellent opportunity to support your student's transition back into the classroom and for you to ensure that proper behavioral and academic support is in place. Come to the meeting prepared! Appendix C provides a list of questions you can ask to discuss at reengagement meetings.

Informal Re-engagement Meetings

Students who have been short-term suspended don't have a right to a reengagement meeting, but you can still ask for a meeting with the school principal and other staff to talk about what happened and how the school and family can work together to prevent similar incidents from happening in the future. Appendix C provides a list of questions used in formal re-engagement meetings that you can ask to discuss.

STEP THREE: ADVOCATE YOUR POSITION

If your student is disciplined, you have the right to meet with school officials, and in some cases to have a formal hearing to challenge or "appeal" the discipline.

What are the steps to advocating for my student who was given a short-term suspension (less than 10 days)?

If your student is given an in-school consequence or short-term suspension, you have the right to have meetings with the school principal and superintendent, and to bring your concerns to the school board.

1. Notice

Before imposing a short-term suspension or any lesser discipline, the school should give your student an explanation of the allegedly broken rule, the evidence against him or her, and the discipline it wants to impose. It should also give your student a chance to be heard.

If a short-term suspension will last more than 1 day, schools must give parents oral or written notice, as soon as possible.

2. An informal conference with the principal

Any teacher or staff person who was involved in the incident will be given the opportunity to attend this conference and ask questions. You can also ask questions of the teacher or staff person. Students can request a conference on their own, but we recommend that the student seek guidance from a trusted adult or advocate to help them through the process.

DEADLINES!

Watch out for deadlines. Take special note of any time limits for requesting meetings, hearings, or appeals. These deadlines are often as short as **2-3 days** from receiving notice. Appeal rights may be lost if they are not asserted in time. Be sure to appeal in writing and keep copies of all your correspondence!

3. A meeting with the superintendent

If the information conference with the principal does not bring results, you may pursue a grievance with the superintendent. You must give the superintendent at least 2 days' advance notice that you want to present your grievance.

4. A meeting with the school board

If you remain unsatisfied, you may pursue your grievance with the school board (or in very large districts a disciplinary appeals panel chosen by the board). You must give the school board at least 2 days advance notice that you intend to present your grievance at the board's next regular meeting. A grievance hearing for a short-term suspension or lesser discipline is less formal than an appeal, and typically does not include a right to call witnesses.

5. Appeal to the Superior Court

If you are not satisfied with the board's decision, you have 30 days to appeal to the Superior Court in your county.

What are the steps to advocating for a student who was given a long-term suspension (10+ days), expulsion, or emergency expulsion?

If your student faces a long-term suspension, expulsion, or emergency expulsion, you will be entitled to a formal hearing process before a judge.

1. Notice

The school must first provide a notice. The notice should inform you of the alleged misconduct, the rule that was violated, the discipline the school proposes, and your rights to a hearing to challenge the suspension or expulsion.

For long-term suspensions or expulsions, schools must give parents a written notice, either hand-delivered or sent by certified mail, before the school imposes the suspension or expulsion.

For emergency expulsion, the school must give parents written notice, either hand-delivered or sent by certified mail, within 24 hours after the expulsion.

2. Request a hearing

Once you receive notice of a long-term suspension, expulsion, or emergency expulsion, the first step is to request a hearing. Students can also request a hearing on their own, but we recommend that students seek guidance from a trusted adult or youth advocate to help them through the process.

The time to request a hearing is very short: within 3 days for long-term suspension and expulsions; and within 10 days for emergency expulsions. It is always best to make this request in writing and deliver it in person to be sure it is received by school officials. Always keep copies with proof you delivered your request on time.

If you request a hearing in time, the school should schedule it to start within 3 days of receiving your request. In the case of long-term suspension and expulsions, if you request a hearing in time, your student is entitled to remain in school until after the hearing.

3. Attend the hearing

The next step will be a hearing before a “hearing examiner,” a neutral person designated by the school district to decide disciplinary appeals. In small districts, the hearing examiner may be a school administrator who has had no prior involvement in the incident.

At the hearing examiner level, you will have the opportunity to review the school’s evidence in advance, call witnesses, question the school’s witnesses, introduce exhibits, and be represented by an attorney, at your own expense. School officials do not have to produce student witnesses, and they are allowed to have an administrator summarize what a student witness has told them. Be sure to ask for all the witness statements so you can see what the student witnesses said in their own words.

INTERPRETERS:

If you speak a language other than English, a notice should be written in your language. The school should provide you with an interpreter for any conference or hearing related to school discipline. Let the school know as far in advance as possible that you will need an interpreter. If necessary, you can ask that a conference or hearing be rescheduled to allow the school to get an interpreter for you.

4. Appeal to the school board

After the hearing examiner’s decision, the next step is an appeal to the school board (or a disciplinary appeals panel). If you want to appeal to the school board or appeals panel, you must:

- Submit your notice of appeal within 3 days of receiving the hearing examiner’s decision.
- Put your notice in writing.
- Deliver it to the district office or the hearing examiner.

In any district, once you are at the level of the board or appeals panel, first there will be an informal conference to decide the most appropriate means of resolving the appeal. At the conference, you have a right to be heard, and be represented by an attorney at your own expense, and may be able to call witnesses and introduce testimony. Before the end of the conference, the board or appeals panel must decide if it will make its decision based on the evidence already presented, accept further argument, or hold a new hearing.

If the board decides to hold a new hearing, you will have the opportunity again to call witnesses, question the school’s witnesses, introduce exhibits, and be represented by an attorney at your own expense.

5. Appeal to the Superior Court

If you are not satisfied with the final decision of the school board or disciplinary appeals panel, you have 30 days to appeal to the Superior Court of your county.

If the school's actions violate the law or the student's constitutional rights, it is possible to file a lawsuit in state or federal court without going through the district's appeal procedures. Unless there is severe time pressure and you have good grounds to believe that internal appeal has no chance to succeed, judges prefer that you go through the district's appeal channels before coming to them. You should consult an attorney before filing any court actions.

How far should I appeal?

At each stage of the process, you can decide whether it is worthwhile to continue appealing.

At any time, you and the school can agree to alternatives to discipline. If that happens, you can stop the formal appeal. Sometimes more can be accomplished informally. However, you should put any agreements you reach with the school in writing. It does not need to be in the form of a contract, but you should have the principal put the substance of your agreement in a letter so it can be consulted in the future.

Should I get a lawyer when my student has been suspended or expelled?

Lawyers are entitled to participate in school discipline proceedings, but you will have to pay for the lawyer or find a lawyer who can represent you without payment. Some factors you can consider in deciding whether to pay for a lawyer include how serious the discipline or consequences are, whether you are involved in a formal appeal or informal process, and how complicated the facts or law are. If you cannot afford to hire a lawyer, you can find more resources for lawyers who sometimes represent clients without advance payment in Appendix A.

Instead of a lawyer, a non-attorney advocate might be able to accompany you to discipline hearings. These may include psychologists, counselors, or retired educators for issues involving students with particular needs. Also, most schools will allow you to bring along a supportive clergy person, relative, or family friend if their presence will help you make a better presentation and keep the meetings courteous and productive. Give the district advance notice of whom you will bring with you.

PART III: SPECIAL EDUCATION LAW & PROCEDURES

SUMMARY

Students who receive special education services are protected by the same laws that apply to students in general education. But, students with disabilities also have *additional protections* under federal laws, most notably the Individuals with Disabilities Education Act (IDEA) and section 504 of the Rehabilitation Act. Therefore, you can address the discipline using both the procedures for general education described in section 2, and the procedures for special education in this section.

Please keep in mind that special education law is very complex, and this guide is not intended to be a comprehensive resource for all situations or a substitute for legal advice.

STEP ONE: GATHER INFORMATION

What laws protect students with disabilities who are facing suspension or expulsion?

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act are federal laws designed to ensure that students with disabilities are included in the public school system and educated with their peers.

Both laws also recognize the important role that parents and guardians can play in the education of their students. Therefore, you, as a parent or guardian, should feel empowered to act as an advocate for your student.

Under the IDEA, a student with a disability should not be excluded from school because of behavior that is a result of the student's disability. It is important to fully understand the type of proposed discipline, the underlying behavior, how the behavior relates to the student's disability, and what additional supports may be available in order to fully advocate for your student.

Do you need to pick up your student every time the school calls?

If you have been called to pick up your student because of behavioral issues, you should first ask whether your student has been suspended. If your student has not been officially suspended, the school cannot force you to pick up the student.

If you choose to pick up your student when he or she has not been suspended, the school may not record the removal from class and may not trigger additional protections (such as manifestation determination hearings) that apply when students with disabilities are removed from school for 10 days or more. It is also important to document when your student has been removed from class for part of the day and what happens when your student is removed. Any time your student misses class time because of a behavior problem, it may be considered a discipline and should be considered as counting towards the 10 days that would be a “change of placement” under the law and trigger additional protections.

If your student is having behavioral problems that do not lead to suspension, you may suggest that the IEP team should consider holding an IEP meeting to reevaluate your student’s behavior supports, or that the 504 team meet to consider changes to the accommodation plan.

Has the school already developed a plan for how to help my student address this type of behavior?

Students who have a disability for the purposes of the IDEA are entitled to an Individualized Education Program (IEP). An IEP is a plan or program developed to ensure that students with disabilities receive the special instruction and related services they will need to meet their learning goals. IEPs should address both traditional academic needs and other needs that result from the student’s disabilities.

Therefore, IEP’s can be a way to help your student meet goals for his or her behaviors and as a way to prevent discipline issues. Even if your student hasn’t been suspended or expelled, you can request an evaluation or re-evaluation for an IEP if you think that your student’s disability is impacting his or her behavior. That evaluation can include an evaluation of behavioral or social and emotional status.

Similarly, students who have disabilities under Section 504 are entitled to accommodations, aids and services in order to participate in or benefit from the district's education program, spelled out in a Section 504 plan. These plans can address behavioral needs arising from the student's disability.

Does my student have additional protections because the discipline is a “change of placement” under the law?

When a student with disabilities is disciplined, the school has to take special steps if the discipline is a “change of placement.” If your student's discipline is a “change of placement,” the school district is *required to hold a meeting* to determine whether your student's behavior is a result of his or her disability. That meeting can lead to the discipline being reversed, and your student receiving additional evaluations and changes to his or her education plan.

Whether discipline counts as a change of placement depends in part on how long the discipline lasts. If your student is suspended or expelled for more than 10 consecutive school days, that is always a “change of placement.” Your student is entitled to a *manifestation determination review*, to determine whether or not the student's behavior is a manifestation of his or her disability.

Discipline for less than 10 school days in a row may still be a change of placement, if it is part of a *pattern*. Some of the factors considered in determining whether a change of placement has occurred are:

- whether there have been a series of removals totaling 10 or more school days in a school year (and half-days count here);
- whether the behavior leading to each disciplinary incident is substantially similar;
- whether the removals occurred close in time to each other.

If your student is suspended or expelled for less than 10 days and the discipline is not part of a pattern, your student has the same rights as students in general education. In addition, you can raise concerns about your student's education plan through the process for developing or revising individual education plans.

Is the behavior a manifestation of my student's disability or a result of the school district's failure to implement the IEP or provide 504 accommodations?

If the proposed discipline is a change in placement, your student is entitled to a *manifestation determination review* meeting. This meeting has important consequences. The goal of the meeting is to decide whether or not your student's behavior is a "manifestation" of or related to the disability.

If the meeting participants determine that the student's behavior is a result of the student's disability or a failure to implement the student's IEP, the student must:

- be allowed to return to his or her typical education placement (except in special circumstances) and
- receive a functional behavior assessment and behavior intervention plan to help address the behavior and prevent future incidents.

If the meeting participants determine that the student's behavior is not a result of his or her disability, the student has the same rights as others in general education. But, you can raise concerns about your student's education plan through the process for developing or revising individual education plans.

STEP TWO: DECIDE WHAT YOU WANT TO ACCOMPLISH

What can I accomplish by advocating for my student with disabilities who has been disciplined?

Think carefully about what you want to achieve. In addition to the goals outlined for students in general education, goals to consider for students with disabilities include:

- *REVERSING* the discipline and *RETURNING* your student to his or her education placement.
- Developing a *PLAN*, based on *ASSESSMENT*, to support your student's behavior in the future.
- *REVISING* your student's individualized education plan to include additional supports.
- *CHANGING* your student's educational placement to one that is more appropriate for his or her needs and strengths.

You can use both the discipline process and the process for developing and revising IEPs or 504 plans to help achieve your goals.

Can I reverse the suspension and get my student back in class?

Schools cannot generally remove students from the classroom of school because of behavior that is a manifestation of their disability. So, the first step to reversing discipline is proving that your student's behavior is related to his or her disability.

How can I show that my student was suspended for behavior is related to his or her disability?

A manifestation determination review is a formal meeting to consider whether a student's behavior is related to his or her disability. At that meeting, participants will discuss the issue and make a decision. You should be prepared to show how your student's behavior is related to his or her disability. To help you prepare, consider:

- Has your student engaged in similar behaviors in other settings?
- What events or environments have led up to those behaviors?
- What have been the consequences when your student engages in those behaviors?
- Does the evaluation or IEP address the behaviors? Are the services identified in the IEP appropriate to address the behaviors? If so, is the IEP being implemented?
- Are there any evaluations or diagnoses that connect your student's behavior to his or her disability?
- Do I have other records that would be helpful for the team to consider?

SPECIAL CIRCUMSTANCES

There are certain special circumstances where schools are allowed to remove students immediately. These include when the disciplinary incident involves weapons, drugs, or serious bodily injury, or if a judge determines that the student's behavior is dangerous and justifies removal. In those special circumstances, the school may remove your student for up to 45 days. Still, the school must provide your student with educational services in an interim alternative education setting.

Remember, if your student isn't entitled to a manifestation determination meeting, you can raise these issues in an IEP meeting or in a meeting about your student's 504 plan.

Who should attend a manifestation determination meeting?

The law requires that the parent and relevant members of the IEP team or 504 team attend a required manifestation determination meeting. This usually includes the school principal, a general education teacher, a special education teacher, and the student's parent or guardian.

In addition, you can request that people who have special knowledge or expertise regarding your student attend. For example, you can request that your student's therapist, doctor, coaches, family members, or other community supports attend.

How can I help the school develop a plan to address my student's behavior, including additional supports or changes to the school environment?

Additional supports or accommodations may help address challenging behaviors. If your student's behavior is determined to be a manifestation of his or her disability, he or she is entitled to an additional assessment of the reasons for the behavior and a plan to address it. This typically includes a "functional behavior assessment" and a "behavior intervention plan."

What is a Functional Behavior Assessment?

A functional behavior assessment (FBA) is a tool used to understand a student's behaviors and the potential reasons for the student's behaviors. An FBA begins with identifying the target behavior in specific, observable, and measurable terms. It could also include a description of:

- *Student's Strengths:* The student's behavioral strengths, such as positive interactions with staff, ignoring the inappropriate behavior of peers, accepting responsibility, etc.
- *Description of Behavior:* The frequency, duration, and intensity of the behavior(s).
- *Setting(s):* The setting(s) in which the behavior occurs (physical setting, time of day, persons involved).
- *Antecedents:* The events that happened before the behavior or that may have triggered the behavior.

- *Consequences & Educational Impact:* The result of the behavior (i.e. – the student is removed from class, not able to complete assignments/tests, etc.), and the impact on the student, peers, and the instructional environment.
- *Other Potential Variables:* Any other factors/variables that may affect the behavior, such as medication, weather, diet, sleep, substance abuse, attendance, social factors, etc.
- *Prior Interventions:* The behavioral interventions that have been implemented in the past, including the date(s) of implementation, length of intervention, the impact of the intervention on the student's behavior, etc.
- *Hypothesis of Behavioral Function:* The team's hypothesis of the relationship between the behavior and the environment in which it occurs – what function is this behavior serving for the student? What is the student trying to get? What is he/she trying to avoid?
- *Summary/Recommendations:* Recommendations for prevention of the target behavior, replacement skills/behavior(s) to be taught, and reinforcements for positive behaviors.

Your student is entitled to an FBA if the behavior is a manifestation of his or her disability. If the behavior is not determined to be a manifestation of disability, you may request an FBA or the district may choose to conduct an FBA to help address the behavior or ensure that the student is making progress towards meeting the goals in his or her IEP.

What is a Behavioral Intervention Plan?

A Behavior Intervention Plan (BIP) lays out steps to address behavior, based on the information in a functional behavioral assessment (FBA). A BIP is incorporated into the student's individualized education plan (IEP), and describes (something is missing here): it is used as the basis to develop measurable annual behavioral goals as well as the BIP. By state law, a BIP is a plan incorporated into a student's IEP.

A BIP can include a description of:

- *Pattern of Behavior:* The pattern of behavior(s) that impedes the student's learning or the learning of others.
- *Instructional and Environmental Conditions or Circumstances:* The conditions or circumstances that trigger/contribute to the pattern of behavior(s) being addressed.

- *Positive Behavioral Interventions and Supports:* The systems of data-based decision making, monitoring of student behavior, and systematic implementation of evidence-based practices that will support a positive and safe school climate.
- *Alternative Behaviors and Skills to be Taught and Monitored:* The alternative behaviors and skills to be taught and monitored in order to address the pattern of behaviors and the instructional and environmental conditions/circumstances previously described:
- *Reinforcement of Desired Behaviors:* The tools or tactics that will be used to give positive reinforcement when the student uses the desired behavior.
- *Methods to Ensure Consistency of Implementation:* Methods that will be used to ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities (e.g. data collection, frequency, assessment of effectiveness of BIP, etc.

How can I revise my student's individual education plan to include additional behavior supports?

Even if your student isn't entitled to a manifestation determination meeting (or if the team decides the behavior isn't related to disability), you can still address behavior issues through the IEP process.

IEPs have to be reviewed annually, and should be revised to address a lack of progress towards the goals in the student's IEP and in the general education curriculum. If you believe that behavior is contributing to a lack of progress, you can ask for a review of the IEP. Parents have a right to request an IEP team meeting at any time, and schools must generally grant a reasonable request for an IEP team meeting.

In addition, all IEP teams are required to consider the use of positive behavior interventions and supports, along with other strategies to address behavior for any student with a disability whose behavior impedes his or her learning or the learning of others.

What are positive behavior interventions and supports?

Positive behavior interventions and supports is a multi-tiered behavioral framework that provides instruction and clear behavioral expectations for all students, targeted intervention for small groups not experiencing success, and individualized supports and services for those needing the most intensive support. The United States Department of Education has published a number of resources on positive behavior intervention and supports, available at www.ed.gov/rethinkdiscipline and <http://ccrs.osepideasthatwork.org>.

What are some other supports that I can ask for?

Some of the supports you can ask for include:

- Counseling, including for mental health issues
- Life skills training
- Social skills instruction
- Social work services in school
- Instruction and reinforcement of school expectations
- Violence prevention programs
- Anger management groups
- Parent training and counseling to include acquiring the necessary skills that will allow you to support the implementation of your student's IEP
- Para-educators, aids, or other staff
- Staff or teacher training
- Program modifications

The law requires behavior supports to be based on evidence, and so you can ask for additional expert evaluation to determine whether the behavior supports offered to your student are appropriate.

STEP THREE: ADVOCATE YOUR POSITION

If your student with disabilities is disciplined, you have the same rights to a meeting and appeal procedures for challenging the discipline that students in general education have.

In addition, in some cases, you have the right to a formal meeting with members of the IEP team to determine whether your student's behavior was related to his or her disability. In some cases, you may have the right to have the discipline be reversed and your student be returned to his or her previous educational setting.

What if I disagree with the school or district decision?

If you disagree with any placement decision, the determination of whether your student's behavior is a manifestation of disability, otherwise believe that the discipline violates the student's rights, or believe that the district is failing to comply with other obligations under the IDEA or Section 504, you may request a special education due process hearing. The steps for a special education due process hearing are:

1. Request due process hearing

You should request a hearing in writing. The request should include your student's name, address, and contact information for the student, the name of the school and school district, a description of the problem and the facts related to the problem, and the outcome you'd like to see.

You should send a due process hearing request to the school district and to the Office of Superintendent of Public Instruction, Administrative Resource Services, P.O. Box 47200, Olympia, WA 98504-7200.

2. Attend a resolution meeting

If a parent has filed for a due process hearing related to a discipline incident, state law requires the school district to arrange a resolution meeting within 7 days after they receive your request. The purpose of the meeting is to try to resolve the dispute. The parent and district can agree in writing to waive the meeting. If the parent and school are unable to resolve the disagreement within 15 days of the due process hearing request, the case will go to a hearing.

3. Attend the hearing

The next step is a hearing before an administrative law judge (ALJ). If a special education due process hearing involves discipline, the ALJ will hear the case within 20 school days of the request and make a decision (including written findings) within 10 school days of the hearing.

4. File suit in state or federal court

If you disagree with the decision of the ALJ, you may file a civil lawsuit in state superior court or federal district court. You must file the case within 90 days of the ALJ's decision.

CONCLUSION

We hope this guide will be a useful tool in dealing with situations that can be difficult for both guardians and students.

By taking advantage of your right to challenge the school's initial decisions on discipline, you can work to ensure that your student does not spend unnecessary time out of class. When some discipline is appropriate, you can help make sure it is fair and reasonable in light of your student's behavior.

Remember, school discipline conferences can provide a valuable opportunity to work with your student's teachers and principal to make sure your student receives the best education possible!

APPENDIX

APPENDIX A: ADDITIONAL RESOURCES

1. The Office of the Education Ombuds
(free dispute resolution & information)
155 N.E. 100th St. #210, Seattle, WA 98125
866-297-2597 or <http://oeo.wa.gov/>
2. TeamChild *(free legal services for qualifying low-income children)*
1225 S. Weller St., Suite 420, Seattle, Washington 98144
(206) 322-2444 or www.teamchild.org
3. CLEAR/The Northwest Justice Project
(free legal services for qualifying low-income people)
1-888-201-1014 or www.nwjustice.org
4. ACLU of Washington
206-624-2180 *(Legal Intake)* or www.aclu-wa.org
5. The Arc of Washington State *(support and advocacy for people with intellectual and developmental disabilities)*
2638 State Avenue NE, Olympia, WA 98506
260-357-5596 or www.arcwa.org
6. PAVE *(support & advocacy for people with disabilities)*
6316 South 12th St., Tacoma WA 98465
1800-5-PARENT or www.wapave.org
7. Washington Autism Alliance and Advocacy *(offering support & advocacy for people with autism)*
16225 NE 87th St., Suite A-2, Redmond, WA 98052
425-894-7231 or www.washingtonautismadvocacy.org
8. Office of the Superintendent of Public Instruction (OSPI)
K-12 Student Discipline *(offering information)*
360-725-6100 or <http://www.k12.wa.us/studentdiscipline/default.aspx>
Office of Equity and Civil Rights *(complaints & technical assistance)*
260-725-6162 or www.k12.wa.us/equity

APPENDIX B: BEHAVIORS THAT MAY LEAD TO LONG TERM SUSPENSION OR EXPULSION

As of June 2016, Washington law prohibits school districts from imposing long-term suspension or expulsion as a form of “discretionary discipline.” Discretionary discipline includes any disciplinary action taken for any student behavior that violates school rules, except for those specifically listed in the law. In other words, schools can only use long-term suspension and expulsion to punish students for limited offenses listed in statutes. These are:

- Carrying or possessing a firearm on school premises, facilities, or transportation in violation of RCW 28A.600.420
- Conviction, adjudication, or entry into a diversion agreement in criminal court for the following offenses, or an attempt to commit any of the following offenses:
 - *Any class A felony*
 - *Arson* in any degree; reckless burning
 - *Assault* or assault of a child in any degree
 - *Harassment or stalking*: Harassment; malicious harassment; stalking; violation of a protection order
 - *Drug or alcohol offenses*: Being a minor under the influence of alcohol in a public place; furnishing liquor to minors; possession or consumption of liquor by a person under 21; possession, manufacturing, delivery, or possession with intent to deliver of a controlled substance; inhaling toxic fumes
 - *Kidnapping*: Kidnapping in the first or second degree
 - *Gang Offenses*: Criminal gang intimidation; criminal street gang tagging
 - *Sex offenses*: Allowing a minor on the premises of a live erotic performance; child molestation; commercial sex abuse of a minor; communication with a minor for immoral purposes; incest; indecent liberties; possession of, dealing in, or viewing depictions of a minor engaged in sexually explicit conduct; promoting commercial sex

abuse of a minor; rape in the first or second degree; rape of a child (any degree); sexual exploitation of a minor; sexual misconduct with a minor (any degree); sexually violating human remains; voyeurism

- *Violent offenses:* Drive-by shooting; homicide by abuse; manslaughter in any degree; murder in any degree; reckless endangerment; robbery in the second degree; vehicular assault under influence or by recklessness; vehicular homicide
- *Weapons offenses:* manufacture, sale, or possession of certain dangerous weapons; unlawful possession of a firearm
- *Other offenses:* Extortion in the first degree; failing to summon assistance for victim of a crime; interfering with the reporting of domestic violence; malicious mischief in any degree; promoting a suicide attempt; unlawful discharge of a laser in the first degree.
- Two or more violations of the following laws within a three-year period
 - Criminal gang intimidation
 - Possession of a dangerous weapon on school property
 - Gang activity on school grounds
 - Willfully disobeying the orders of school administrator to leave school property, if the person refusing to leave is under the influence or disturbing school
 - Defacing or injuring school property
- Other behavior that adversely impacts the health or safety of students or staff

APPENDIX C: SAMPLE RE-ENGAGEMENT MEETING QUESTIONS

Overall:

- What are the student's goals for the meeting?
- What are the parent or guardian's goals?
- What are the school's goals?
- What are shared goals?

Academic:

- How will the school ensure that the student continues academic progress (towards graduation or completion of the grade) during and after the period of suspension and expulsion?
- What education services will the school district provide to the student during the period of suspension or expulsion? Some education services may include one-on-one tutoring, online learning, or alternative high schools.
- Are those education services comparable, equitable, and appropriate to the regular education services the student would have received without the suspension or expulsion?
- Will the student require education services after the period of suspension or expulsion to ensure that the student continues to make academic progress? Services may include meeting with counselors or mentors, or credit recovery.

Corrective Actions

- Should the district shorten the length of time the student is suspended or expelled?
- Should the district use other forms of corrective action instead of suspension or expulsion, such as restorative justice practices?

Behaviors

- What behavior(s) led to the student being suspended or expelled?
- What (if any) circumstances or environments contributed to the student behavior(s)?
- Does the school need more information to understand or address the behavior(s)? Should the school complete a functional behavioral assessment or other behavioral assessment?
- What accommodations or supports can the school provide to help the student prevent, manage, or address the behavior(s)?
- What, if any, support can the family or community provide to help the student prevent, manage, or address the behavior(s)?
- Should the school facilitate restorative practices that will help the student make amends for any harm caused by the behavior(s)? Are restorative practices appropriate?

Communication & Assessment

- Which school staff members should be informed about the student's reengagement plan?
- How will the school monitor the student's success after reengagement and report to the student and family?
- Who at the school will be responsible for reviewing and responding to any student and family concerns?

Resources for Students and Families

- What other resources may be available to support the student? Some potential resources include youth or young adult programs or support groups, counseling, mental or behavioral health assessments and support services, community service, or mentoring.
- What other resources may be available to help support the student's parents or guardians?

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901 Fifth Avenue #630, Seattle, WA 98164
(206) 624-2184
www.aclu-wa.org
11/2017

