

School Discipline and Suspension at a Glance*

INTRODUCTION

In New York State, a student younger than 21 who has not attained a high school diploma has a right to attend public school. This right is protected by Law. When a school wants to exclude or suspend a student from school, there are rules a school must follow.

WHEN CAN A STUDENT BE SUSPENDED?

A student may be suspended when they have violated the School District's Code of Conduct.

SHORT TERM SUSPENSIONS

Short Term suspensions may last up to 5 days. They are sometimes called Principal's Suspensions.

Notice:

Notice is written letter explaining the suspension. The notice must be received within 24 hours, be in a parent's native language and include the following:

- A clear description of the incident that led to the suspension and the date it occurred.
- An explanation of your right to request an informal conference with the principal and your right to question "complaining witnesses".
- An explanation of how to obtain alternative instruction.

Conference:

This conference gives you the opportunity to discuss the incident with the principal and tell your side of the story.

- The conference must be requested by the parent - it is not automatic.
- You may bring an attorney or an advocate but you should give the school advance notice of who you intend to bring.
- You may question witnesses but you should give advance notice that you would like to question witnesses.
- You may ask to view - or have the principal view - surveillance tapes of area where the incident occurred but you should give advance notice of this.
- You may ask that no suspension be imposed or the school consider utilizing Restorative Justice.

Alternative Instruction:

A student has the right to receive instruction during a period of suspension.

LONG TERM SUSPENSIONS

Suspension of six school days or more must be approved by the Superintendent and is sometimes called a Superintendent's suspension. Before a student can be suspended for six days or more, the parent must be given written **NOTICE** and a **HEARING**.

Notice:

Written notice, an explanation of the suspension must be provided.

The Notice Must: ;

- be received more than one day before the hearing;
- be in writing - a phone call is not enough;
- be in the parent's Native Language;
- contain a clear description of the incident that led to the suspension with the date it occurred;
- contain information about the formal hearing date and time and location and your right to participate in the hearing;
- contain information about your right to be represented by an attorney, or other trusted individual at the hearing;
- contain an explanation of your right to question complaining witnesses at the hearing.
- contain an explanation of your right to present witnesses at the hearing.

Hearing:

The hearing is automatic and will occur even if you do not attend. The hearing may be adjourned (postponed) at the parent's request. If you postpone the hearing the student will remain out of school until the hearing is held. The hearing happens in two parts (three if you are a student with a disability). The fact-finding hearing is where it is determined whether you did what you are accused of doing. The dispositional hearing is where the length of continued suspension, if any, is determined.

RIGHTS AT A SUSPENSION HEARING

You have the right to bring Counsel; if you intend to bring counsel notify the school in advance.

You may present evidence and question witnesses.

You may testify and tell your side of the story.

You may present witnesses; if your witness is a student you will need their parent's permission.

You may request a subpoena to compel a witness to testify.

YOU MAY REMAIN SILENT and CANNOT BE COMPELLED OR FORCED TO ANSWER QUESTIONS

NOTE: If there are criminal charges or a juvenile delinquency matter, you should consult with a criminal attorney.

Dispositional Hearing (Part 2 of Hearing)

If the student is found to have violated the code of conduct at the fact finding portion of the hearing, the hearing will continue with the dispositional phase. In the dispositional phase, the Hearing Officer will decide how long your child will be suspended. They may consider the charges, your child's age and grade and the past behavioral history, the school may recommend immediate reinstatement (your child returning to school immediately) or continued suspension.

The decision will be based on your child's school records, including grades, progress reports, and information about your child's disciplinary history (e.g., prior suspensions or incidents), if any.

You have the right to review all of the records considered before the hearing.

You may submit any materials to the Hearing Officer that you think would be helpful to show your child in a positive light, including letters from people who know your child, inside or outside the school.

The Superintendent must render a written decision within a few days stating the date your child may return to school.

You may ask the Hearing Officer to recommend non-disciplinary interventions for your child, such as in-school counseling or peer-mediation or restorative justice.

Alternative Education

If a student is 16 or younger (17 in some districts), they have the right to continue their schoolwork while suspended. The parent will have to arrange with the District for this instruction. The work provided to the student must be substantially equivalent to the work they were doing while in school. If you are taking a lab science, the school must provide you with access to complete labs. • If you are older than 16 or 17 (the age of compulsory school), the school district does not have to provide you with an alternative education. Often the Districts will provide this if asked.

Appealing the Decision

You have the right to appeal the Decision of the Superintendent if you believe that your rights were violated. The appeal process is governed by the rules of the school board, which sets timelines and procedures.

NOTE: Some districts have very short timeframes for appeal.

To appeal the decision, you will need to request the hearing transcript.

REASONS TO APPEAL:

- Overturn a wrongful suspension.
- Shorten the amount of time you spend out of school.
- Get the suspension off your academic record

NOTE: *There are special considerations for classified students(IEP) and those with a Section 504 Plan*

Special Considerations in light of Covid-19:

As outlined by NYSED schools are encouraged to approach student discipline through restorative, rather than punitive, practices. This means schools are urged to create policies and practices that keep students connected to their learning environment, which is critical to maintaining academic growth and supporting students' social and emotional learning. If you are suspended from in-person learning, you can ask your school to maintain regular access to your online learning platforms, so your education is not interrupted.

*The material highlighted is for informational purposes and not intended nor should it be construed as legal advice. Should you have questions about your specific rights and remedies we encourage you to reach out to The Long Island Advocacy Center www.theliac.org or other legal counsel.