

Help Your Child Stay In School

A Guide for Parents to Understand
School Discipline Procedures &
Advocate for their Children



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We accomplish our mission by:

- Educating the people of Delaware about important civil liberties issues;
- Providing legal assistance to secure the benefits of constitutional protections when necessary; and
- Protecting and advancing civil liberties by advocating for necessary public policy change.

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INTRODUCTION

In Delaware, all residents ages 5 through 20, have a right to free public school education. However, this right can be denied through harsh discipline policies and a disproportionate application of school rules that push students out of schools.

The purpose of school discipline policies are to improve behavior by teaching students proper conduct and to ensure the safety and welfare of all students. However, in the last decade, we have seen a rise in zero-tolerance policies and the use of suspension and expulsions as a means of addressing behavior issues within schools instead of focusing on teaching students how to improve behavior. An excessive use of suspensions and expulsions can impact a student's likelihood of graduating on time or even at all.

This guide is designed to help you as parents and guardians understand and advocate for your students' rights regarding school discipline processes. If your child is being disciplined in school, you may not agree with the punishment the school wants to impose or there may be parts of the disciplinary process that do not seem fair. You may even not agree with the school about what happened. This guide offers you suggestions on how to handle all of these situations.

There are three basic steps most parents find helpful in understanding and challenging school discipline:

Step One: Gather Information

Step Two: Develop a Strategy

Step Three: Advocate Your Position

Each step is described on the following pages, organized around the questions you should be asking.

GET ORGANIZED!

As you gather your facts, keep careful notes of everything!

- The timeline of events
- Whom you met with or talked to
- What you talked about

Keep copies of:

- All written materials from the school (including emails!)
- All written materials you send to the school

STEP ONE: GATHER INFORMATION

In order to respond effectively to school discipline, you will need to understand the situation from both your child's and the school's point of view. Start by gathering information about what happened. Some questions to ask are:

1. What happened – in your child's words?

Ask your child about what happened and who was involved. Find out what punishment the principal or teacher said they would impose. Use this opportunity to find out if your child feels misunderstood or wrongly accused. Also, ask if there are problems that your child was reacting to, like being bullied or having trouble keeping up in class.

2. What is your child accused of doing?

Talk to your child's teachers, principal or counselors to learn what your child is accused of doing. If there is a disagreement about what happened, see if other eyewitnesses can clarify the facts. These witnesses may include other students, teachers, staff, or parents.

3. What rule is your child accused of breaking?

Schools should only punish students who have violated the rules. Ask the school to identify the written rule(s) your child allegedly broke.

School rules can be found in the Student Code of Conduct. A copy of your district's code of conduct should have been given to your child upon entry into school and orientation to the student code of conduct should be held at the beginning of each school year.

If you do not have a copy of the code of conduct, ask your child's school for a copy or access it online in two places:

- Your school districts website
- On the Delaware Department of Education's website: http://www.doe.k12.de.us/infosuites/students_family/climate/Codes.shtml



4. What punishment will the school impose?

It is important to get a clear statement from school officials about exactly what type of punishment they want to impose. Different rights are afforded to students and parents depending on the punishment.

Types of Punishment

Expulsion: The exclusion of a student from school on a permanent basis or a period of time determined by the district’s disciplinary body. By state law, students expelled from any public school are not permitted to attend a public school in Delaware during the period of expulsion. Expulsion also denies the student attendance in any and all regular school programs/activities.

Alternative Placement: A program intended to meet the educational needs of expelled students or those with less severe infractions, formally know as a “Consortium Discipline Alternative Program site.” Alternative programs are not considered public schools. They may be located at the student’s home school, another district school or an approved site outside the district.

Language Barriers

If English is not your primary language, ask the principal or the district office for a copy of the student code of conduct written in your language.

Or, if necessary, call the principal or the district office to ask for a written or spoken translation.

Out of School Suspension: The temporary exclusion of a student from regular school attendance and activities for a period no longer than 5 to 10 days depending on the school district, unless extended by the district Superintendent.

In-School Suspension: The temporary placement of a student in a supervised area other than that indicated by his/her regularly assigned schedule.

Detention: An established time outside the regular instructional time when a student is detained in a supervised area. The student must stay after school, during lunchtime or on Saturday for a period of time, typically seated in a study hall or quiet room.

Restitution/Restoration: The student must perform a service for the school or community, such as cleaning up graffiti or picking up litter in order to make up for the damage or loss that he/she caused.

Other: Schools have flexibility to impose punishments such as revoking library, bus, computer, or sports privileges, or having a student do extra schoolwork, pay for lost or damaged property, or apologize to persons affected by the misconduct.

5. What is the lasting impact of the discipline?

Make sure you fully understand how the school intends to record the discipline and what effect it will have on your child's education.

Academic Grades and Credit

Expulsion/Alternative Placement: Expulsion can have the most serious impact on a student's grades and academic achievement. However, no form of discipline should be enforced in a way that prevents a student from completing a grade or a subject, or meeting graduation requirements. Schools should help expelled students enroll in an alternative school or program, or find another way to continue their education.

Out of School Suspension: If your child is given an out of school suspension, be sure that they receive make-up assignments and tests, know when make-up work should be submitted and if they will be eligible to receive full or partial credit.

In School Suspension or Lesser Forms of Discipline: Lesser forms of punishment should not affect a student's grades or ability to graduate.

Discipline records

You should also consider the future impact of discipline records. 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.

Other public schools: If your child transfers to a different school, the original school will send your child's discipline records to the new school without your consent. If your child moves to a new school in another district, your child's disciplinary record might be considered by

the new school in their decision whether to enroll your child. In the state of Delaware, a district can refuse to enroll your child because of a disciplinary record in another district.

Colleges: Colleges should not have access to a student's disciplinary



history. The federal Family Educational Rights and Privacy Act (FERPA) gives parents access to most school records and prevents their release to most third parties without the parents' written consent. So schools may not release disciplinary records to colleges without written consent from a parent, or from students who are 18 years old or legally emancipated. However, some colleges ask students who are applying whether they were ever disciplined in high school.

Referral to Police

The state of Delaware has a mandatory reporting process in which certain crimes committed by students on school property must be reported to the police.

Mandatory Reports to Police

- Violent felonies
- Assault against a student, school employee or volunteer
- Terroristic threatening against a school employee or volunteer
- Offensive touching against a school employee or volunteer
- Unlawful sexual contact against a student, school employee or volunteer
- Possession of a dangerous instrument or deadly weapon by a student
- Possession of an unlawful controlled substance including: prescription drugs, counterfeit drugs

If a discipline incident is referred to the police or prosecutor, you should try to find an attorney immediately. An attorney can help protect your child's rights and help develop the best strategy for addressing the potential criminal and school disciplinary issues.

STEP TWO: DEVELOP A STRATEGY

Preparation is an important ingredient for success in addressing school discipline matters. School administrators cannot do what you want unless they understand what you are asking for and why.

1. What is your goal?

Think carefully about what you want to achieve, possibilities include:

- Reversing the discipline
- Keeping the same discipline, but taking steps to reduce its academic impact (for example, making sure the absences will not affect the student's grades)
- Reducing the length or severity of the punishment
- Accepting a reduced punishment in exchange for certain promises by the family (for example, an apology by the student, an agreement for improved behavior, a psychological evaluation, therapy, or substance abuse treatment)

Think about the long term: Remember that you and your family will likely need to maintain an ongoing relationship with the school. Your child might have several years left in the same school or school district. It might work against you in the long term if you take an aggressive position that antagonizes school officials.



2. Why should the school change its decision?

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

Your child 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 will typically side with the staff.

- ✓ Look for witnesses or evidence to support your child's explanation.
- ✓ Explain how your child was misunderstood.

Your child did not violate any school rule. In some cases, the student did what the school alleges, but the student's actions did not violate any school rule. The school cannot punish a student for violating unwritten rules.

- ✓ Ask the school to show you, in writing, the rule they believe your child 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 when a school has no authority to regulate such behavior.

A district might 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, in case you decide to appeal. A court could overturn a rule that punishes student conduct protected by the state or federal constitutions.

- ✓ Explain why the rule is invalid.
- ✓ Mention your concerns at a hearing or in a letter, even if the school will not change its position.

The punishment is excessive. Often, even when students violate a rule, the punishment is too harsh. This can be the case if the school has a zero tolerance policy and the standard punishment is a long-term suspension or expulsion.

- ✓ Ask the school to reduce the punishment to one that is appropriate in light of your child's behavior and/or age.

Caution: Possible Criminal Charges!

If there is any chance that your child may face criminal charges, you should **consult with an attorney before** your child makes any statement about the incident!

This includes any statement to a principal or other school official, or to a police officer, including a School Resource Officer.

Your child was unfairly singled out for discipline. Sometimes students are unfairly singled out for discipline on the basis of race, ethnicity or other factors. Research shows that students of color are disciplined more often and more harshly than their peers, giving evidence that there can be discrimination in discipline practices.

But discrimination in a specific situation can be difficult to prove. Questions to consider include whether you know of other children who received different disciplinary punishments for similar behavior, or whether school staff made any inappropriate racial or ethnic remarks.

School staff cannot disclose information about other students' disciplinary records to you, so it can be difficult to find evidence.

- ✓ Point out specific facts that lead to your concerns.
- ✓ Be clear about what actions you want the school to take.

There were procedural violations. School officials must follow certain procedures when disciplining a student. If the school does not follow the district rules on procedures for notice and hearing, the discipline is improper. Procedural problems alone will not likely cause a school to change its disciplinary decision, but you should point out any violations in case you decide to appeal the discipline.



The proper procedures for all forms of discipline can be found on the last two pages of this guide or in your district's code of conduct.

- ✓ Point out any procedural violation (in the notice or hearing).
- ✓ Ask the school to correct its errors and give you a fair chance to challenge the discipline.

Your child is sorry and ready to apologize. School personnel are much more likely to reduce punishment if they believe the student will not cause more problems. Explaining that the conduct was uninten-

tional or that your child has learned a lesson due to the discipline served or discipline by parents at home may be beneficial to getting the punishment reduced.

- ✓ Consider having your child apologize and agree to avoid the behavior in the future.
- ✓ Make sure any agreement is fair and reasonable.

STEP THREE: ADVOCATE YOUR POSITION



If your child is being disciplined and you do not agree with the punishment, you have the right to meet with school officials to challenge the discipline. Most schools will also allow you to bring along another family member, clergy person, counselor or a trusted friend to help make your case.

When the time comes to explain your position, it is important to remain polite and diplomatic. Express an interest in working together to improve your child's education. Like anyone else, school administrators will resist if they feel personally attacked or insulted.

1. **What are the proper notice and appeal procedures?**
2. District regulations spell out exactly what sort of notice and appeal rights you and your child are entitled to if your child is suspended or expelled. This information is also available in your district's code of conduct.

Suspension and other Short-term Disciplines

Prior to any form of discipline the student should:

- Be given some oral or written notice of the charges being considered and on what evidence the decision is being made;
- Be given the opportunity to present his/her side of the story;
- Have had the opportunity to know that his/her actions were in violation of the established rules or regulations.

When a student is suspended or a recommendation for expulsion is made:

- An attempt should be made to notify the parents by telephone to request that the student be picked up from school.
- There will be a **written** follow-up notification of the suspension delivered to the student's home that must state the cause and duration of the punishment.

Appealing a Suspension or Lesser Form of Punishment: The steps to challenge the discipline are:

- Conference with the administrator that enforced the punishment. Students can request a conference on their own, but we recommend that they seek guidance from a parent or trusted adult or advocate to help them through the process.
- Conference with the principal. If the conference with the administrator who enforced the punishment fails to resolve the issue, you may pursue a grievance with the principal. If the principal fails to resolve the issue, you will be given a written statement by the principal stating the reason for the principal's decision.
- Conference with the Superintendent. If you remain unsatisfied, you may file a written appeal with the Superintendent. The Superintendent will review the written records and/or schedule a conference and will issue a decision, in writing, after the conference. The Superintendent's decision will be sent to all parties involved.



Expulsions

If your child faces an expulsion, he/she will be entitled to a formal hearing process. Since expulsion is such a serious matter, please consider involving a lawyer (at your own expense) or a non-legal advocate early in the process. The process will include:

School Level Investigation: The principal will conduct an investigation including a conference with you and your child. You will be informed of the charges and your child will be given the chance to tell his/her side of the story. If the principal concludes that your child committed the offense, a recommendation for expulsion, with a summary of the investigation, will be submitted to the district Superintendent or an appropriate district officer.

District Level Review: The Superintendent or an appropriate district officer will review the principal's materials and will notify you and your child of the intent to expel.

Notification will be sent via certified mail or hand delivered and will include the reason for expulsion, the date, time, and location of a formal hearing, and a copy of the rules of procedure for the conduct of formal hearings.

Interpreters

If English is not your primary language, the school should provide you with an interpreter for any conference or hearing relating 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.

District Level Hearing: The formal hearing will be conducted by a hearing officer selected by the Superintendent. They may be an employee of the district, but they must be impartial. If you believe that your hearing officer is not impartial and cannot make a fair judgment, you should contact the Superintendent. The hearing officer will have the authority to control the conduct of the hearing, including the authority to admit or exclude evidence and witnesses.

Your child will have the following rights during the hearing:

- To be represented by counsel, at your own expense.
- To request the names of witnesses and copies of the statements and affidavits of those witnesses.

- To request that any witnesses appear in person and answer questions or be cross-examined.
- To testify and produce witnesses on his/her behalf.
- To obtain, at your own expense, a copy of the transcript or tape of the formal hearing.

Board Level Review: After the hearing, the hearing officer will prepare a report for the Superintendent and School Board. The Superintendent and/or Board will make a final decision as to whether your child should be expelled, allowed to return to school or be assigned to an alternative placement.

The table on the last two pages of this guide outlines any variation by district in expulsion procedures.

Appealing an Expulsion: According to Delaware law, a student has the right to appeal a District's decision to expel or any other disciplinary decision by filing an appeal with the State Board of Education within **thirty days**.

Petition for Re-admission: You may apply for re-admission to your child's school at the end of the expulsion period. If recommendations were made at the time of expulsion, such as rehabilitative counseling, you may need to show that conditions for readmission have been met. Schools may also ask that you and your child agree to certain conditions before being re-admitted, such as counseling, or that your child is placed on probation following re-admittance.

Before agreeing to any conditions, be sure they are fair, and that your child will be able to live up to them!

2. How far do you want to appeal?

You can decide whether it is worthwhile to continue appealing at each stage of the process.

You can propose alternatives to the school at any time, and if the principal or district agrees with them, you can reach an informal resolution and terminate 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.

3. Should you get an attorney?

You are entitled to be represented by an attorney – at your own expense – during an expulsion hearing. Most principals will allow you to bring an attorney to attend an informal conference if they are given advance notice. You may always consult with an attorney for advice without notifying the district.

Whether the expense of an attorney is worthwhile depends on a variety of factors, including:

- Whether you decide to request a formal hearing
- How serious the charges are against your child
- How certain you are that the discipline is improper
- How complex the situation is, and how many witnesses you will need to present your side of the story
- Whether your child faces criminal prosecution, truancy court proceedings, or is otherwise under court supervision
- How comfortable you are representing yourself and your child
- How school officials will react to your having an attorney
- Whether the laws relating to disabilities and special education are involved
- Whether you can find a lawyer at a suitable cost

In place of an attorney, **a non-attorney advocate should be able to accompany you to discipline hearings.** If appropriate, you might ask for help from a counselor, a retired educator, a supportive clergy person, social worker, relative, or family friend. Give the district advance notice

of whom you will be bringing along. If the school refuses to allow you a non-attorney advocate, please contact the ACLU of Delaware by going to our Web site at www.aclu-de.org and filing a complaint or email legal@aclu-de.org.



Students with Disabilities

Federal and state laws require school districts to follow specific rules when disciplining students with disabilities. If your child is receiving special education services or might be eligible for them, ask your school for policies and procedures for the discipline of students with disabilities. Some of these rules are outlined below.

Suspension for Less than 10 days or Lesser Forms of Discipline

Students with disabilities may be suspended or given a detention or any other lesser form of punishment in the same way that these options are used for any other student without a disability.

Expulsion or Suspension in Excess of 10 days

If a student with a disability is recommended to be suspended for more than 10 days or expelled, a special education (IEP) team must hold a “Manifestation Determination” meeting to determine whether:

- ✓ The behavior is related to the student’s disability; and/or
- ✓ The student was inappropriately placed at the time of the offense.

If the student’s behavior is determined to be a manifestation of the disability, then suspension and/or expulsion are not acceptable behavior management or discipline procedures. However, the student’s placement will be reviewed. If the offense is not a result of his or her disability, the procedures outlined in the Student Code of Conduct governing all students in the district will be followed.

A principal may place a special education student in an alternative setting without an IEP meeting or parent’s permission for no longer than 45 days if the student:

- ✓ Causes serious injury themselves or another
- ✓ Brings a weapon or firearm to school or a school function
- ✓ Knowingly possess, uses, or sells illegal drugs at school

If you believe that your child’s rights have been comprised due to their special education status, consider seeking additional guidance from a special education advocate.

More Information for All Parents

Links to other resources on zero tolerance discipline policies and school push out can be found on the back cover of this guide.

Conclusion

This guide is designed for the parents and guardians of middle school and high school students so that you can help your children stay in school until graduation. Research shows that the majority of students who leave school without graduating, do so in **9th grade**. That means that preventing and reducing trouble with school authorities, suspensions and expulsions during the middle schools years of 6th, 7th and 8th grades are critical to student success.

This guide has given you some of the information and ideas you will need to effectively deal with school discipline issues — situations that are difficult for both parents and students. By taking advantage of your right to challenge the school's initial decisions on discipline, you can help ensure that your child does not spend any more time out of class than is necessary. When discipline is appropriate, you can help make sure it is fair and reasonable in light of your child's behavior.

We hope that this guide has helped you to better understand school discipline procedures and will ensure that your child receives the best education possible!

Maybe the ACLU Can Help

The ACLU of Delaware is committed to helping students to stay in school until graduation. Higher graduation rates correlate with less interaction with law enforcement and the criminal justice system, a reduction in the “school to prison pipeline,” and, ultimately, lower incarceration rates and less disruption to our community. If you believe that your child has been unfairly targeted or disciplined due to his/her race, ethnicity, sexual orientation or student with disability status, you may file a complaint with us on the Web at www.aclu-de.org or email legal@aclu-de.org.

ACLU-DE has a small staff and we are able to help only a small handful of families, but if your situation is particularly serious or unfair, we would like to know about it. We only accept written complaints. No phone calls, please. Again, go to www.aclu-de.org.

	STEP 1: School Level Investigation	STEP 2: District Level Review
B R A N D Y W I N E	<p>Principal's investigation, including conference with student and parent/guardian, should be completed within 3 school days of incident.</p> <p>If principal concludes that student committed offense, recommendation for expulsion must be submitted to Superintendent within 1 school day of investigation.</p>	<p>If Superintendent agrees with recommendation, student will be notified by Superintendent of the school's intent to expel and details of hearing within 10 days of incident.</p> <p>If Superintendent does not agree, assignment to educational alternatives may be considered.</p>
C O L O N I A L	<p>Principal's investigation, including conference with student and parent/guardian, should be completed within 3 school days of incident.</p> <p>If principal concludes that student committed offense, recommendation for expulsion must be submitted to Superintendent.</p>	<p>If Superintendent agrees with recommendation, student will be notified by hearing officer of school's intent to expel and details of hearing within 5 school days of completion of investigation.</p>
C H R I S T I N A	<p>Conference with principal, student, and parent/guardian will occur within 5 school days of incident.</p> <p>Principal's recommendation for expulsion must be submitted to Superintendent within 2 school days of conference or 7 school days of incident, whichever is sooner.</p>	<p>Superintendent will review principal's materials to guarantee appropriate discipline procedures were followed.</p> <p>Student will be notified by Superintendent of school's intent to expel and details of hearing via certified mail.</p>
R E D C L A Y	<p>Principal will hold conference with student, and parent/guardian to initiate process to determine appropriate disciplinary action.</p> <p>Principal's recommendation must be submitted to district level administrator within 3 school days of conference.</p>	<p>District level administrator will forward recommendation to Superintendent.</p> <p>Student will be notified of principal's recommendation and details of hearing within 7 school days of conference via certified mail.</p>

STEP 3: District Level Hearing	STEP 5: Board Level Review
<p>Hearing will occur not less than 5, nor more than 10, school days after notification is given.</p> <p>Within 3 school days following hearing, hearing officer will submit a report to Superintendent.</p>	<p>If hearing officer does not recommend expulsion, student will be allowed to return to school pending Superintendent's review of materials.</p> <p>If hearing officer recommends expulsion, the Board will review materials and make a final decision at next scheduled Board meeting.</p>
<p>Hearing will occur not less than 3, nor more than 7, school days after notification has been mailed.</p> <p>Within 3 school days following hearing, hearing officer will submit a report to the Board.</p>	<p>If hearing officer does not recommend expulsion, student will be allowed to return to school pending a review of materials by the Board.</p> <p>If hearing officer recommends expulsion, Board will review materials and make a final decision.</p> <p>If Board decides to expel student, Superintendent will make alternative placement recommendations.</p>
<p>Hearing will occur not less than 2, nor more than 10, business days after receipt of notification.</p> <p>Within 5 business days following hearing, hearing officer will submit a report to Superintendent.</p> <p>Superintendent will accept or modify hearing officer's recommendation within 5 business days of receiving report.</p>	<p>If Superintendent recommends expulsion, Board will review materials and make a final decision at next scheduled public Board meeting.</p> <p>Student and parents/guardian will be notified of Board's decision within 10 business days of Board meeting.</p>
<p>Hearing will occur not less than 3, nor more than 7, school days after notification has been mailed.</p> <p>Superintendent will review all materials and submit a written report to Board.</p> <p>Superintendent will provide student and parent/guardian with written notification of decision and details of when Board will vote on recommendation.</p>	<p>Once Board has made decision, Superintendent will provide written notice of Board's decision to student and parent/guardian.</p>

More Information

Additional resources regarding school discipline issues can be found at:

ACLU <http://www.aclu.org/racial-justice/school-prison-pipeline>

Dignity in School Campaign <http://www.dignityinschools.org/>

The Advancement Project <http://www.stopschoolstojails.org/>

For Parents of students with disabilities, other resources include:

Delaware Community Legal Aid Society

DECLASI provides legal consultation and representation for Delaware residents with physical or mental disabilities through their Disabilities Law Program. You can find more information at:

<http://www.declasi.org/index.php/disabilities-law-program>

Parent Information Center of Delaware

PIC offers information and support for parents of children with special needs, including a wide range of workshops in English and Spanish on dealing with special education and disability matters in Delaware schools. For more information visit: <http://www.picofdel.org/index.asp>

Share Your Story

We would like to hear from you. The ACLU of Delaware is trying to more fully understand how discipline is applied in schools throughout Delaware. If you have a story to share, please email us at aclu@aclu-de.org with “School Discipline” in the subject line. If your child is facing a serious issue of school discipline, please submit a written complaint at www.aclu-de.org. Thanks!

