

Help Your Child Stay In School

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



ACLU of Delaware is a nonprofit, membership organization devoted to defending and expanding the individual rights and liberties guaranteed by the U. S. and Delaware Constitutions.

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.

For more information, go to:

www.aclu-de.org

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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 you 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.

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. Even if you are not looking for legal aid, we are interested in hearing your story.

If you have a story to share, please email us at aclu@aclu-de.org with “School Discipline” in the subject line.

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, you may find other resources to help in advocating for your child in school discipline matters at:

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>

Conclusion

This guide is designed for 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 decision 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!



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 the use of zero-tolerance policies and exclusionary discipline as a means of addressing behavior issues within schools instead of focusing on teaching students how to improve behavior. An excessive use of exclusionary discipline 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, 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.

*Students with an IEP may attend school through the age of 21.

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 school 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. Your school 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 at the school, district or Delaware Department of Education websites.



Suspension for Less than 10 days or Lesser Forms of Discipline:

Students with disabilities may be suspended or given any other lesser form of punishment in the same way that these options are used for students without a disability. However, schools may not suspend students with disabilities for more than 10 school days (consecutively or in total). This is known as the "10 day rule" and counts for both in and out of school suspensions.

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, an Individualized Education Program (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/her disability, the procedures outlined in the Student Code of Conduct governing all students in the district will be followed.

Alternative Placement

A school administrator 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 to themselves or another,
- ✓ Brings a weapon or firearm to school or a school function, and/or
- ✓ Knowingly possess, uses, or sells illegal drugs at school.

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

Restitution/Restoration: The payment for and/or restoration of property or articles that have been damaged by a student.

Other: Schools have flexibility to impose punishments such as revoking certain privileges, or having a student do extra schoolwork, perform a service for the school or community, 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. No form of discipline should be enforced in a way that prevents a student from completing a grade or meeting graduation requirements.

Academic Grades and Credit

Expulsion/Alternative Placement: Expulsion and alternative placements can have serious impact on a student's grades and academic achievement. Schools should help expelled students enroll in an alternative school or program, or find another way to continue their education. If enrolled in an alternative placement, make sure your student receives the required credits and courses to continue or move on to the next grade once they return to their home school.

Out of School Suspension: Days spent out of the classroom due to suspension should always count as excused absences. If your child is given a suspension, be sure that he/she requests make-up assignments and tests, knows when make-up work should be submitted and if he/she will be eligible to receive full or partial credit.

In School Suspension or Lesser Forms of Discipline: Lesser forms of punishment should not affect grades or the 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.

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



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.

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 a formal hearing.

District Level Hearing: The formal hearing will be conducted by a hearing officer selected by the Superintendent. He/She 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.



There are slight variations in the expulsion process by school district. For more details, refer to your district's Student Code of Conduct.

Other Public Schools: If your child transfers schools, his/her discipline records will be sent to the new school without your consent. If you move to a new district, your child's disciplinary record may impact the enrollment decision of the district. In Delaware, a district can refuse to enroll your child because of his/her disciplinary record.



Colleges: The federal Family Educational Rights and Privacy Act (FERPA) gives parents access to most school records and prevents their release to most third parties, including colleges, 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 may ask students about their disciplinary history.

Referral to Police

The state of Delaware has a mandatory reporting process for school employees in which certain criminal violations must be reported to the authorities. The following incidents require mandatory reports.

- When a student, school volunteer, or a school employee, has been the victim of:
 1. A violent felony,
 2. An assault III, or
 3. An unlawful sexual contact III,which occurred on school property or at a school function.
- When a student has been the victim of:
 1. A violent felony
 2. An assault III,
 3. Or any sexual offense,and the offense was committed by another school employee regardless of where the offense occurred.

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 discipline issues.

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 administrators to challenge the discipline. Most schools will also allow you to bring along a 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.

Watch Out for Deadlines!

- Take special note of any time limits for requesting hearings and requesting an appeal.
- Appeal rights may be lost if they are not asserted in time!

1. What are the proper notice and appeal procedures?

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 can be found in the Student Code of Conduct.

Suspension and other Short-term Disciplines

Prior to any form of discipline that will deprive a student of classroom time 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;
- Know that his/her actions were in violation of the established rules or regulations.

The following should occur 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.

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, however, because school administrators will typically side with the staff in any "he said/she said" disputes.

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

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 school administrator, or to a police officer, including a School Resource Officer.

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 administrators 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.

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 administrators 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 in your district's Student Code of Conduct and are briefly outlined in the next section of this guide.

- ✓ 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 unintentional 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.

Carefully choose your strongest and most persuasive arguments. Whenever you write to or talk to school administrators, bring up these arguments first and spend more time on them than on weaker ones. If necessary, make an outline so that you do not forget what you want to say under the pressure of a meeting or hearing.