

Know Your Rights Suspension in Schools

New York Civil Liberties Union

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Student's Rights and Responsibilities

- All schools have codes of conduct which must be printed and given to each student every year
- Schools can respond to and even discipline students for problems that occur off campus that might cause a problem when students are at school
 - Example: bullying or harassment, whether in person or happening via text, phone messages, or email.

REMEMBER

A student can only be suspended for breaking a rule that is explained in the school's Code of Conduct

How are students disciplined?

- When students break “less serious rules,” they may be called to the principal’s office.
- Students could also receive an “**in-school suspension**”
 - An in-school suspension means a student goes into a room at the school designated for students serving an in-school suspension instead of class.
- More often, students are suspended out of school for their violations of the school’s code of conduct
 - Under New York State Education Law, schools can suspend a student “who is insubordinate or disorderly or violent or disruptive, or *whose conduct otherwise endangers the safety, morals, health or welfare of others.*”

What is suspension?

- **Suspension** (also known as temporary exclusion) is a mandatory leave assigned to a student as a form of punishment that can last anywhere from one day **to more than a year**, during which time the student is not allowed to attend regular school lessons
- Of the 49 million students enrolled in public schools in 2011-2012:
 - **3.5 million** students were suspended in-school;
 - **3.45 million** students were suspended out-of-school;
 - **130,000** students were expelled.
- Students with disabilities and students of color are disproportionately impacted by such practices.

Principal's Suspension vs. Superintendent's Suspension

- Short-Term – Principal's Suspension
 - 1-5 days
 - Must send notice of suspension with 24hours
 - Date and specific details
 - Request conference with Principal
- Long-Term – Superintendent's Suspension
 - 6-180 days
 - Must send notice of suspension
 - You have a right to a hearing and must be notified one day before

Principal's Suspension – Written Notice

- Only a principal can give a short-term or principal's suspension.
- **Written notice** of the charged misconduct must be provided to the student and the parent/guardian before a suspension begins.
- This notice must include:
 - The reason for the proposed suspension
 - Inform parent/student of their right to request an immediate informal conference with the principal (not the assistant principal)
 - Date when suspension starts
 - Date when child can return to school
- A phone call is NOT a substitute for written notice.

Principal's Suspension – Informal Conference and Appeal

- Must take place PRIOR to the suspension, unless the student's presence in school poses a continuing danger to persons or property or an ongoing threat of disruption
- Child is allowed to tell his/her story
- You can question the complaining witness (in principal's presence)
- Parent can ask if suspension is best way to handle situation***
- Parent/Guardian can write a note about the suspension which will become a part of the student's school records.
- Principal must issue a written decision about the suspension after the conference.
- A parent may appeal the decision of the Principal.
- Appeal must be in writing, submitted within 10 business days of written decision (see pg. 58 of Yonkers Code of Conduct).

Principal's Suspension – Home Instruction

- During any suspension, the school district must provide **HOME INSTRUCTION** every day for your child in a local place (i.e. a public library) or in the child's home if your child is of compulsory school age
 - Compulsory school age is the age for which a child is required by law to attend school, that is between the time your child turns 6 until the child turns 16 (districts can set the compulsory age at 17 – check your district)
- Grades 1-6: District is required to provide one hour of Home Instruction each Day
- Grades 7-12: District is required to provide two hours of Home Instruction each Day

Home Instruction

- Home instruction is NOT just sending homework home for your child
- Home Instruction should begin immediately
 - Request it right away
 - If school fails to provide home instruction as soon as suspension becomes, write to the Superintendent and ask for **compensatory time**.
- **Home instruction counts as attendance:** If you refuse home instruction or your child does not attend, your child will be considered absent from school

Superintendent's Suspension Written Notice

- Letter must be sent explaining charges against your child.
- Must include statement of rights – you have a right to legal representation
- Must include date & time of the hearing and must be sent BEFORE the hearing is going to be held
- You can request a meeting with the principal about the suspension
 - The principal can withdraw the suspension ***

Step One: Get the Suspension Packet from the School

- Suspension Packet includes
 - written statements from your child or any witnesses
 - Incident reports
 - Your student's academic records (you always have a right to request a copy)
 - Any evidence the school plans to use at hearing, including video
- Schools usually do NOT give the packet until the date of the hearing, but you have a right to review materials before the hearing, so make the request for the suspension packet as soon as you receive the suspension notice and schedule to pick it up as soon as possible.

Step Two: Review Notice of Suspension and Suspension Packet

- Read the charges
 - What part of the school code of conduct does the alleged act(s) violate?
- Talk to your child about what happened
 - What happened leading up to the incident?
 - What happened after the incident?
- Review what is in the suspension packet
 - Inconsistent statements?

Step Three: Adjourn, Plead No Contest, or Go Forward with the Hearing

ADJOURNING THE HEARING

- You CAN adjourn (postpone) the hearing to gather witnesses or to hire an attorney (recommended), but your child will remain out of school until the hearing if you request a delay.
- **To adjourn the hearing:** Call the superintendent or hearing officer's office before the day scheduled for the hearing or go to the office the morning of the hearing and ask to postpone the hearing.

Step Three: Adjourn, Plead No Contest, or Go Forward with the Hearing (continued)

PLEADING NO CONTEST

- If you do not want to fight the charges against your child, you can plead "no contest," which means you accept the charges and give up your child's right to challenge the charges.
- A hearing officer will decide the length of your child's suspension based on the charges themselves and other documents submitted by you and/or the school that are unrelated to the incident (i.e. academic record, information about prior incidents or letters in support of your child submitted by you).
- You can plead "no contest" by calling the Hearing Officer on a date prior to the day of the scheduled hearing or by going to the Hearing Office on the morning of the hearing, and stating you want to plead "no contest."
- If you plead "no contest" in person on the day of the hearing, you may still request to have the part of the hearing to discuss the length of the suspension in front of a hearing officer ("The Dispositional Phase").

No Contest Plea - Can I Change My Mind?

- You must be informed either in writing or at the hearing that you are giving up your right to a hearing.
- After you plead no contest, you will receive a letter from the Superintendent or the Board of Education confirming that you plead no contest and informing you of how long the suspension will be.
- You **can** change your mind about the plea within seven days of the date of the date on the letter or within three days from when you actually receive the letter – whichever is later.
- If you do change your mind, a new hearing date will be scheduled.

Superintendent's Suspension – The Hearing

- The hearing will be conducted by either the superintendent or a designated "hearing officer"
- You and your child must attend the hearing
- You can call witnesses and present evidence to support your child
- You have the ability to question all witnesses – the district can also question your witnesses
- The hearing officer can also question any witness
- The hearing should be recorded
- Testimony is under oath
 - If your child testifies, that testimony could be used against him/her in a Court

Superintendent's Suspension Hearing Know your Rights!

Bring an advocate to the hearing

- You have the right to bring a lawyer or other advocate, including a friend or relative, to represent you at the hearing.
- The suspension notice should include a list of free & low-cost legal services and advocates who may be able to help you.

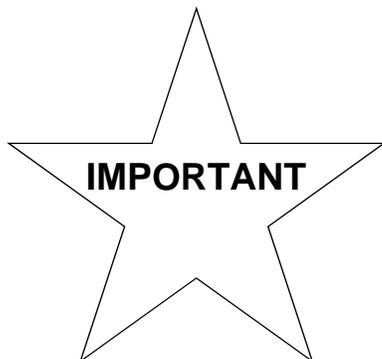
Have a translator at the hearing

- The hearing office must provide you with a translator for the hearing if you speak a language other than English.
- If you need a translator, call the Hearing Office before the hearing to ask for one.
- If you know someone you would like to translate for you, you can bring that person to the hearing.

Suspension Hearing – Fact-Finding Phase

- **Opening Statements**
 - Each side can present a summary of what you believe the evidence will show
- **The School's Case**
 - The person investigating the incident will testify
 - The investigator should NOT have forced your child to write a statement
 - Other witnesses will testify
 - The school cannot bring up other times that your child has been in trouble before or after the incident at issue.
 - If the school's testimony or evidence is not related to the charges, you should object by stating "**Objection**"

EYEWITNESS TESTIMONY



- The school must have an eyewitness at the hearing.
- A written statement from an eyewitness is NOT enough.
- If no eyewitness testifies, you should **ask the hearing officer to dismiss the charges**
 - **EXCEPTION:** Charges will not be dismissed if your child confessed to the charges in either a written statement or verbally to a school staff member who testifies at the hearing.

Suspension Hearing – Fact Finding Phase

Your Case

- You have a right to call witnesses and present testimony
- If a witness refuses to come in voluntarily, you can ask the hearing officer for a **subpoena**.
 - You must ask for a subpoena *at least two days* before the hearing.
- If you are asking another student to testify, that student's parent must give permission, even if there is a subpoena
- If a witness can't come to the hearing, ask them to write a statement
 - Be present when they hand-write the statement
 - Have it signed, dated, and signed by a witness

Closing statement

- Optional – Summarize everything that came up in the hearing.

Suspension Hearing -Dispositional Phase

- This is the phase where the hearing officer will decide if your child should be suspended and for how long.
- You should recommend immediate reinstatement.
- The school can submit your child's grades, progress reports, and information about our child's disciplinary hearing.
 - You have a right to see all of these records before the hearing.
 - If the school tries to give the hearing officer a document you haven't seen, you should **object**.
- You may submit materials that will portray your child in a positive light (i.e. letters from teachers, coaches, church, etc).
- You should also asked that the suspension be expunged (removed) from your child's record at the end of the school year.

After the Suspension Hearing

- Within two days after the hearing, you should receive notice that the charges were either sustained (found to be true) or dismissed, and, if the charges were sustained, how long the suspension will be
- Within five school days, the hearing office should mail you a letter explaining the hearing officer's decision.
- If the hearing office fails to follow these timelines, contact them because your child should be returned to school while awaiting a decision.
- If the charges are dismissed, your child has the right to return to school immediately and all records of the suspension should be removed from your child's school records.

Appealing the Decision

- Parent or student can file a written appeal to the secretary to Board of Education within 30 business days of the date of the Superintendent's decision (Pg. 60 of Yonkers Code of Conduct).
- In addition to stating your grounds for appeal, be sure to request that the suspension be expunged (removed) from your child's record.
- Final decisions of the Board may be appealed to the New York State Commissioner of Education within 30 days of the Board's decision
- The Board will make its decision based solely upon the record before it and it may adopt in whole or in part the decision of the Hearing Officer.
- If the Board of Education upholds the hearing officer's decision, the decision may then be appealed to the Commissioner of Education within 30 days of the Board's decision.

What if my child has a disability?

- Federal Law: The Individuals with Disabilities Act (IDEA) gives extra protections to students with disabilities facing suspension.
- Under IDEA, a suspension in excess of 10 school days constitutes a change in placement.
- "Ten days" can either mean 10 consecutive days or a series of short-term suspensions that add up to 10 days if they are a part of a pattern of suspensions in the same school year.
- If a school district is seeking to suspend a student with a disability for longer than 10 days, it must conduct a manifestation determination review (MDR) to determine if the student's behavior is a manifestation of his or her disability

Manifestation Determination Review (MDR)

Before the Meeting

- You must receive written notice of meeting
- Read your child's IEP or Section 504 Plan and/or Behavioral Intervention Plan
- If you intend to bring an attorney or an advocate, you must inform the CSE prior to the meeting.
- Consider asking your child's counselors or a psychologist to attend to explain how your child's actions are related to his/her disability

At the Meeting

- At the meeting, it will be determined if your child's behavior is directly caused by their disability.
- Record the meeting
- IEPs, evaluations, and teacher's observations will be reviewed.
- Ask witnesses questions that will show information about your child's disability or questions about the services your child receives

Manifestation Determination Review

BEHAVIOR WAS A MANIFESTATION

- If the school finds that your child's behavior had a direct and substantial relationship to your child's disability OR if your child's behavior was the direct result of the school's failure to implement your child's IEP, the school must determine that the behavior was a manifestation of your child's disability.
- If they make this finding, your child has a right to return to school immediately.
- They must also conduct a Functional Behavioral Analysis ("FBA") and Create a Behavioral Intervention Plan ("BIP") or modify one if it already exists.
- They may also change your child's school placement at your request or on request of the CSE.

BEHAVIOR WAS NOT A MANIFESTATION

- If no manifestation is found, child will continue to serve his/her suspension as determined by Hearing Officer
- During suspension, your child must be provided with appropriate special education services to allow him/her to progress towards IEP goals
- If you do not agree with the result of your child's MDR, you have a right to an expedited Impartial Hearing to appeal the Manifestation Determination.

Weapons, Drugs, Serious Bodily Injury Exception

- Permits suspension/removal even when the conduct is determined to be a manifestation of the disability.
- Applies when a student:
 - Carried a weapon to school or school function
 - Knowingly possessed or used illegal drugs while at school or school activity
 - Sold or solicited the sale of a controlled substance while at school or school activity, or
 - Inflicted serious bodily injury upon another person while
- After guilt phase of hearing, Superintendent can give the student a suspension of up to 45 days in an interim alternative education setting, where the child will continue to receive special ed services.

What is a School Resource Officer?

A school resource officer, by federal definition, is a career law enforcement officer with sworn authority who is deployed by an employing police department or agency in a community-oriented policing assignment to work in collaboration with one or more schools.

- *National Association of School Resource Officers*

SRO Involvement – Know Your Rights

- You have the right to feel safe and welcome in your school.
- You still have the right to remain silent
- If an officer wants to talk to you about a crime, they must get parents or guardian's permission, principal must be present
- School must tell parent or guardian if you are arrested
- Same search rules apply

SRO Involvement – Questioning

- Questions must be related to an event that happened at school
- The SSO, SRO, or police officer are not permitted to question you during school about events that have nothing to do with school
 - Ex. You cannot be questioned about a store robbery
- You never have to answer questions, even if your parents says it is okay for you to be questioned
- Again, you have the right to remain silent

SRO Involvement - Searches

- Must be related to the crime or rule violation you are being suspected of committing
- Must be reasonable suspicion
 - SRO must believe student broke a school rule or criminal law based on KNOWN FACTS.
 - Cannot be a feeling, rumor, skin color, clothes, etc.
 - Examples: matching a description, running from a crime scene, congregating in groups in high crime areas
- SROs MUST get principal's permission before searching student and your things except for emergency situations.
- SRO conducting the search should be the same sex as student unless not available
- Strip searches are not allowed, EVER
- The right to privacy does not apply to what has been deemed "school property," such as lockers

SRO Involvement - Arrests

- An officer must have probable cause to arrest a student in school
 - The officer must know FACTS (not rumors or is guessing) that led them to believe that is *more likely than not* the student committed a *crime*
- You have the right to remain silent
- Document the interaction
- Memorize phone numbers you would want to call

You Have the Right to Make a Complaint

- You can file a complaint if a school safety officer or police officer:
 - Physically assaults you (punching, kicking, slapping, hair pulling)
 - Curses at you.
 - Touches you inappropriately or makes inappropriate comments.
 - Makes negative comments about your race, religion, gender, accent, national origin, sexual orientation, or disability.
 - Disrespects you.

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