



Education Law Center

*Making sure that all of Pennsylvania's children
have access to quality public schools*

SCHOOL DISCIPLINE IN THE PHILADELPHIA SCHOOL DISTRICT

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us or an attorney of your choice.

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SOME GENERAL TIPS

- Read all papers that the school sends you. Make sure you know about any meetings or hearings that are scheduled concerning your child. Don't agree to anything you don't understand.
- Talk with your child, and anyone else who might know about what happened.

- Learn what the law says about school discipline (that's what this pamphlet is about). If school staff don't seem to be following legal requirements, point that out. Show school officials this pamphlet if necessary.
- Consider contacting a lawyer, especially if the school wants to expel your child. Your local bar association may be able to refer you to an attorney. The Education Law Center (see our number at the end of this pamphlet) may also be able to offer suggestions or advice.
- Attend all meetings and hearings. Make sure that school officials hear your child's side of the story. If you think that the school is not following the law, point that out. Take notes.
- Talk with a lawyer about the possibility of an appeal if you disagree with the school's decision.

SCHOOL RULES

Rules and consequences. The School District's "Code of Student Conduct" lists the rules that students must follow. The Code is found in each school's Handbook, and on the internet at <http://www.phila.k12.pa.us/offices/administration/policies/118.pdf>. The Code lists "Level I" and "Level II" offenses. Level I offenses can lead to mild consequences (such as a meeting with the teacher), or more serious consequences (such as suspension or Saturday detention). Level II offenses can lead to transfer to an alternative school, or expulsion. There are special rules (see below) for special education students and for families whose native language is not English.

When and where the rules apply. The Code of Student Conduct covers students when they are *on school grounds*, or on the way *to or from* school. The rules also cover behavior at school events off grounds, as well as *any* off-grounds behavior (including behavior in the neighborhood) that is likely to lead to disruption at school. (The law is not clear on how far schools can go in punishing students for misbehavior that occurs off grounds or outside of school hours. If your case is of this type, you may wish to seek further advice from a private attorney or the Education Law Center.)

The Code of Student Conduct, and the procedures discussed here, apply to students in *all* School District schools, including those managed by private companies and other groups.

Students have certain rights to express themselves and practice their religion, as long as they do so without disrupting school activities. If you think that school officials are trying to punish your child for exercising these rights, you should seek further advice.

SUSPENSION: IN-SCHOOL AND OUT-OF-SCHOOL

In-school suspension. Before any in-school suspension or detention, the student must be informed of the reasons and given a chance to tell her or his side of the story. Parents must also be notified. The student's education must continue during the in-school suspension. If the in-school suspension lasts for more than 10 days, the student must be offered an "informal hearing" (see below for information on informal hearings).

Out-of-school suspension. Before any out-of-school suspension, the student must be told the reasons for the suspension and given a chance to respond. Parents must be notified immediately in writing when the student is suspended. An out-of-school suspension can be for no more than five (5) school days, unless the student's behavior creates a threat of disruption or a threat to school safety. In that case, the suspension can be for up to 10 school days.

If the suspension is for three (3) days or more, the family must be offered an "informal hearing" no later than the fifth day. This is a meeting with a school official, at which the student and parents can express their views about what happened, including reasons why the student should not be suspended. The family can question anyone present at the hearing, and can also bring people to speak on the student's behalf. Whether or not the parent attends the informal hearing, the student has the right to return to school once the suspension is over, and to complete assignments missed. Be sure to ask for the make-up work while your child is suspended so your child does not fall behind academically.

TRANSFER TO AN ALTERNATIVE PROGRAM

Most disciplinary transfers are to alternative schools. These include such schools as Boone as well as schools operated by private companies (such as Community Education Partners, or CEP).

"Behavior Performance Review." Before transferring a child to an alternative school, the District must review the child's behavior and performance (a "Behavior Performance Review"). The purpose of the review is to decide whether the child needs a special education evaluation. The family can provide information for use in this review, and has a right to be notified of the results and get a copy of the report. If the District finds that there *is* a need for a special education evaluation, the evaluation must be arranged immediately, and the transfer put on hold. If the District finds that a special education evaluation is *not* needed, the District can begin the transfer process.

Steps in the transfer process:

- **Conference with the student**, usually held on the same day as the incident.
- **Parent notice and conference.** The school must send the family a written notice concerning the reasons for the transfer, and must offer the parents a conference. At the conference, the student and parents can review the student's records and any witness statements, discuss the student's side of the story, and let school officials know their views on the transfer proposal.
- **Hearing.** If the family disagrees with the decision at the conference, they may, within five (5) days, ask for a hearing. The District then sends the family a notice concerning the date, time and place of the hearing, and the student's rights at the hearing.
- **Rights at the hearing.** At any time before or at the hearing, the family can review student records and any witness statements. The hearing is run by an impartial "hearing officer," and is recorded. The family can question the District's witnesses and offer witnesses and evidence of their own. (If you want to have particular school employees present at

the hearing, you should notify the School District in advance.) The hearing officer issues a written decision. Generally, these decisions cannot be appealed to court.

- **Student's placement.** Normally, the student can stay in her/his regular school while the hearing process is going forward. However, if the student poses a threat of disruption or a threat to school safety, s/he can be transferred immediately, with the hearing to follow. As soon as you learn that the school wants to transfer your child to a disciplinary school, ask the school and/or the Regional Office that your child remain in her/his regular school pending the outcome of the transfer hearing.

Please see ELC's publication, *Transfers to Alternative Schools*, at www.elc-pa.org/, for more information.

TRANSFER TO ANOTHER REGULAR SCHOOL

Transfers to other *regular* schools usually occur only in cases involving young children. The process begins with a student conference, followed by a parent conference. If, after these conferences, the District still wants to transfer the child, the family has the right to a hearing. This hearing is run by a member of the Regional Office, or Central Office, staff. The family can present evidence and witnesses, and can question the District's witnesses.

The hearing will be recorded if the family requests, and a written decision is issued. Normally, the student's school assignment does not change until the hearing is completed. However, if the student poses a threat of disruption or a threat to school safety, s/he may be transferred immediately, with the hearing to follow.

EXPULSION

Any removal from the School District for more than 10 days in a row is called an expulsion. Expulsions can be for a fixed period (such as a semester or a year) or may be permanent.

"Behavior Performance Review." Before recommending expulsion, the District must conduct a "Behavior Performance Review." (See the section on transfers to alternative schools, above.) If the review shows that a special education evaluation is needed, the expulsion must be put on hold until the evaluation is completed.

Steps in the expulsion process:

- **Conference.** The parents and student have the right to a conference at the Regional Office.
- **Expulsion hearing.** The parents and student have the right to a hearing before a hearing officer appointed by the School Reform Commission. The family must be notified of the date, time and place of the hearing at least three (3) days in advance.
- **Rights at the hearing.** The family has the right to get, before the hearing, the names of any witnesses against the student and copies of their statements, and the right to request that witnesses and school officials involved in the incident be present at the hearing. The family also has the right to bring a lawyer to the hearing, present witnesses and evidence, and question the District's witnesses. The District must record the hearing, and the family has a right to get a copy of the written record (which will be needed if the family appeals to court) at the family's expense.
- **After the hearing.** The hearing officer makes a recommendation to the School Reform Commission, which votes on the recommendation at a public meeting. A parent may speak at the School Reform Commission meeting if s/he desires. Call the District's Office of Communications in advance if you wish to reserve time to speak.

Once the decision is approved by the School Reform Commission, it can be appealed to the local Court of Common Pleas. It's best to consult a lawyer about filing an appeal - and to do so quickly, since the appeal must be filed within 30 days. There may also be other legal options; consult a lawyer about these as well.

An expelled student under age 17 must continue to receive an education. The parents must make arrangements for this, either by finding another school or by arranging a program of homeschooling. However, if the parents are unable to do so, they should promptly contact the School District, which must then make arrangements for the child's education.

Please see ELC's publication on Expulsions at www.elc-pa.org for more information.

STUDENTS WITH DISABILITIES

The rules are somewhat different for students with disabilities. **See ELC's fact sheet on "School Discipline and Special Education,"** at www.elc-pa.org, for more complete information.

A student with disabilities who receives special education services cannot be *suspended* for more than 15 *total* days in a school year, unless the parent agrees or a special education hearing officer (appointed by the state, not the school system) or judge approves the suspension. A child with mental retardation cannot be suspended without the parent's agreement, the agreement of the state Department of Education, or an order from a hearing officer or judge.

A special education student can be *transferred to an alternative school* for up to 45 days, if the student brings a gun, a pocket knife with a blade longer than 2- $\frac{1}{2}$ " , or another weapon to school; or uses, buys, or sells illegal drugs at school. Any decision to transfer the child must be made by the child's IEP ("Individualized Education Program") Team. The parent can ask for a special education hearing if s/he believes the transfer is inappropriate, but the transfer can be made in the meantime.

In cases *not* involving a weapon or drugs, the student's IEP Team can recommend a transfer to an alternative school. If the parent disagrees and requests a hearing, the transfer cannot be made unless a hearing is held and the hearing officer or a judge decides that the student is dangerous.

In all of these cases, the IEP Team must also decide whether the child's behavior was a "manifestation" of her/his disability. If the parent disagrees with the Team's decision, s/he has the right to a special education hearing.

If the District is considering *expulsion* of a special education student, the IEP Team must decide whether the misbehavior was a "manifestation" of the disability. If it was, the child cannot be expelled. The parent has the right to a special education hearing if she/he disagrees with any other aspect of the expulsion recommendation. And even if a special education student is expelled, the School District must still arrange for her/him to receive an appropriate educational program.

Students with disabilities who do not need special education (sometimes called "protected handicapped students" or "Chapter 15" students) may have certain rights in the disciplinary process. Seek further advice if this is your situation.

FAMILIES WHOSE NATIVE LANGUAGE IS NOT ENGLISH

Non-English-speaking parents and students have the right to information concerning disciplinary matters in their native language. This includes the Code of Student Conduct, and notices concerning disciplinary hearings and decisions. Also, a translator must be made available at meetings and hearings if the family requests.

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