

## School Discipline in Pennsylvania

**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 for a referral, or contact an attorney of your choice.**

*This fact sheet applies to all public schools, including charter schools, in Pennsylvania.*

If a district or charter school wants to discipline your child, here are some things you should know:

### **SOME GENERAL TIPS**

- Read all papers the school sends you. Make sure you know about meetings or hearings that are scheduled concerning your child. **Do NOT agree to anything you don't understand.**
- Talk with your child, and anyone else who might know about what happened.
- If school staff don't seem to be following legal requirements mentioned in this fact sheet, point that out. Show school officials this fact sheet, if necessary.
- Attend all meetings and hearings that are held for your child and take notes. Take a friend or someone else with you if you can.
- Make sure that school officials hear your child's side of the story.

### **SCHOOL RULES**

Each school district and charter school must publish a **code of student conduct** and give copies to students and their families. The rules must be reasonably clear, so that students know what is expected of them. Schools can punish students if they break rules listed in the code of conduct.

While public schools have wide latitude to create rules, 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 legal advice.

School rules can cover student behavior while at school and on the way to and from school. The law is not clear about how far schools can go in punishing students for behavior off school grounds and/or outside of school hours. If your child is facing disciplinary action for conduct engaged in off school grounds and/or outside of school hours, you may wish to seek further advice from a private attorney or the Education Law Center.

## **SUSPENSIONS: IN-SCHOOL AND OUT-OF-SCHOOL**

**In-school suspension.** Before a student can be penalized with in-school suspension for a violation of school rules, **the student must be informed of the reason for such punishment** and given a chance to tell his or her 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 is for more than ten (10) days in a row, the student must be offered an "informal hearing" (see below for information on informal hearings).

**Out-of-school suspension.** Before a student can be penalized with out-of-school suspension for violation of school rules, **the student must be informed of the reason for such punishment and given a chance to respond.** Parents must be notified in writing. An out-of-school suspension can only last **up to ten (10) school days** in a row.

- Only the principal or person in charge of the school, such as an assistant principal, can suspend the student.

**Informal Hearing.** An informal hearing allows the student to meet school officials to explain the circumstances surrounding the event related to the suspension. It is held to bring forth all relevant information and for parents, guardians, and school officials to discuss ways by which future offenses might be avoided. Regardless of whether or not the parent attends the informal hearing, the student has the right to return to school once the out-of-school suspension is over, and to complete any assignments he or she missed.

**Informal hearing requirements.** If the suspension is for more than three (3) school days, the family must be offered an "informal hearing" within the first five (5) days of the suspension. The school must follow these procedures:

1. The parents and student must receive written notice of the reasons for the suspension.
2. They must have sufficient advance notice of the time and place of the hearing.
3. The student has the right to question any witnesses present at the hearing.
4. The student has the right to speak and to produce witnesses on his/her own behalf.

*Note:* school staff cannot simply send a child home without following these rules. Out-of-school suspension rules apply whenever a child is kept out of school for up to ten (10) days.

## **TRANSFERS TO ALTERNATIVE EDUCATION PROGRAMS**

Transfer to an Alternative Education for Disruptive Youth ("AEDY") program generally means that the student is assigned to a special program for "disruptive" students. In Pennsylvania a student must demonstrate one of seven criteria to be considered disruptive:

- 1) disregard for school authority, including persistent violation of school policy and rules;
- 2) display or use of controlled substances on school property or during school activities;
- 3) violent or threatening behavior on school property or during school activities;
- 4) possession of a weapon on school property, as defined under 18 Pa. C.S. §912;
- 5) commission of a criminal act on school property or during school-affiliated activities;
- 6) misconduct that would merit suspension or expulsion under school policy; and
- 7) habitual truancy.

**Informal Hearing.** School officials must hold an informal hearing before a transfer can occur. The school must notify the family in writing of the time and place of the hearing. Make sure you go to the hearing! It is your only opportunity to explain why the school should not transfer your child. School staff may ask the family to sign a “waiver” - by signing the waiver, you are agreeing to the transfer. *If you do not want the school to transfer your child, do not sign the waiver!*

The procedures at a transfer hearing are the same as those detailed above for an out-of-school suspension hearing. However, the district may transfer your child before you have had a hearing if the student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process.

Students in the Pittsburgh and Philadelphia School Districts are entitled to a formal hearing prior to transfer.

**Rights at the Informal Hearing.** At any time before or during the hearing, you can look at your child’s records and any witness statements. You can bring an attorney to the hearing. At the hearing, you can question the school’s witnesses and offer witnesses and evidence of your own.

At the hearing, you and your child should explain the circumstances surrounding the misbehavior and why you believe she should not be sent to an alternative school. The hearing officer may look into issues such as attendance, grades, previous discipline actions against the student, and the student’s conduct as a member of the community. The hearing officer will already have a copy of the student’s grades and attendance records.

Even if the school district is recommending an alternative disciplinary school, you can ask that your child be transferred to another regular school instead. You should give reasons supporting your request. You can also ask that your child be placed in the alternative school for a shorter period of time (perhaps 45 days instead of 180 days).

**The decision.** The hearing officer will give you a written decision, sometimes at the end of the hearing, or sometimes mailed to you a week or two after the hearing. The decision will tell you whether your child is being transferred, and, if so, what school they are being transferred to.

**Your child’s placement while awaiting the decision.** Normally, your child can stay in her regular school from the time of the incident until you receive the hearing officer’s decision. However, if the school determines that the student is a threat to school safety, the school can assign her to an alternative school while the hearing process moves forward (an “interim placement”).

**Returning to regular school.** Districts must review each student transferred to an alternative education program at the end of each semester to see if the student is ready to return to regular school. Ask your district what your child must do to be ready to return to regular school. School districts have considerable freedom in deciding what criteria a student must meet in order to return to regular school. However, if you believe that the criteria chosen by your district are unreasonable, you may wish to discuss this matter with the Education Law Center.

## EXPULSIONS

**What Is An Expulsion?** An expulsion is any removal from school for more than 10 days in a row. Expulsions can be for a fixed period (such as a semester or a year) or may be permanent.

**When Can A Student Be Expelled?** A school can only expel a student for a violation of a school rule. School rules should be listed in a published code of student conduct that has been officially adopted and distributed to all students and parents/guardians.

**Formal Hearing.** The school must hold a formal hearing before an expulsion. The school must give at least three (3) days notice of the time and place of the hearing. You may ask to reschedule this hearing if you can show good reason. The hearing must be held before the school board, before a committee, or before a hearing officer appointed by the board.

**Rights at the Formal Hearing.** Before the hearing, the student and parent/guardian have the right to the names of any witnesses against the student and copies of the witnesses' statements - you should ask the school district for this information, both in writing and orally, as soon as possible. The family also has the right to bring a lawyer to the hearing; present its own witnesses and evidence; and question the school's witnesses. The hearing must be recorded, and the family has a right to get a copy of the record at the family's expense.

**Advice For The Hearing.** At the hearing explain the circumstances surrounding your child's misbehavior, and why you believe he or she should not be expelled. You may want to bring:

- A letter from a teacher or community member stating his or her opinion that the student is a positive member of the school/ community.
- If the student sees a therapist, either bring the therapist as a witness or bring a letter expressing the therapist's opinion about the right school placement.
- Bring any information that could explain the misbehavior or explain why the student should not be expelled.

At the hearing, you may also want to ask what educational services the school district would provide if your child is expelled. If you are dissatisfied with the answer you should describe the services you think your child would need if expelled, such as placement in another school.

**If your Child Is Expelled.** In the event that your child is expelled as the result of a formal hearing, you can appeal the decision to the local county Court of Common Pleas. Consult a lawyer about this – and do so quickly, since the appeal must be filed within 30 days of the expulsion. If you waive the hearing and the child is expelled, that decision cannot be appealed.

An expelled student under age 17 must continue to receive an education. The parent must arrange for continued education, either by enrolling their child in another school or by arranging for homeschooling. If you are unable to arrange such a program, promptly notify the district or charter school in writing. The district or charter school must then provide for the child's education.

If you move to another district in Pennsylvania, the new school district must place your child in regular school unless your child was expelled for having a weapon. In such cases, the new school district may place your child in alternative education for the duration of the expulsion.

*For more information and advice about expulsions, see the fact sheet: [Expulsions in Pennsylvania at www.elc-pa.org](http://www.elc-pa.org).*

## SPECIAL POPULATIONS

### STUDENTS WITH DISABILITIES

The procedures described above apply to students with disabilities. There are additional disciplinary protections for students with disabilities who receive special education services.

**Suspension or Expulsion.** Students with disabilities who receive special education services can be suspended and expelled from school. However, special rules apply if a school wants to expel a student with an Individualized Education Program (IEP) or suspend such a child for more than 15 total school days in a school year. In both situations, a team of people knowledgeable about the child – including the parent – must decide whether the misbehavior was a “manifestation” of the disability *before* the discipline can take place. If it was, the child cannot be expelled or suspended for more than 15 school days. If the team decides it was not a manifestation and the parent disagrees with the team’s decision, the parent has the right to a special education hearing. Even if a special education student is expelled, the school district or charter school must still arrange for him or her to receive an appropriate educational program.

A child with intellectual disabilities cannot be suspended for any length of time without the parent’s agreement, the agreement of the state Department of education, or an order from a hearing officer or judge.

**Transfer to AEDY.** A special education student can be transferred to an alternative education program for up to 45 school days if the student brings a gun, pocket knife with a blade longer than 2½ inches, or another weapon to school; uses, buys, or sells illegal drugs at school; or causes serious bodily injury at school. Any decision to transfer the child must be made by the child’s IEP Team. The parent can ask for a special education hearing if he or she believes the placement is inappropriate, but the transfer can be made in the meantime.

In cases *not* involving weapons or drugs, the student’s IEP Team can recommend a transfer to an alternative education program. 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 or that the alternative program is an appropriate placement for the student.

### STUDENTS FORMERLY ADJUDICATED DELINQUENT OR CONVICTED OF A CRIME

When a student returns to a school district from a delinquency placement, the school district cannot automatically place a child in an alternative education program for disruptive youth merely because the child has been adjudicated delinquent. **Each specific case must be examined on an individual basis.** Students returning from delinquency placement are entitled to an informal hearing prior to being placed in an alternative education program.

### STUDENTS AND FAMILIES WHOSE NATIVE LANGUAGE IS NOT ENGLISH

Non-English-speaking parents and students have the right to receive information concerning disciplinary matters in their native language. This includes the code of student conduct, and notices concerning disciplinary hearings and decisions. A translator must be made available at meetings and hearings if the family requests.