



FACT SHEET

SUSPENSION & EXPULSION TOOLKIT

August 2023

This toolkit was developed to assist families and advocates to respond to efforts to suspend or expel students. It applies to all public schools (including charter schools) in Pennsylvania. If a school district or charter school seeks to suspend or expel your child or send them to an alternative education for disruptive youth (AEDY) setting, you may also find this toolkit helpful.

Suspension and expulsion, similar to other forms of exclusionary discipline, disproportionately harm Black and Brown students, including students with disabilities displaying these identities.¹ Although studies confirm that Black and Brown students follow school rules at the same rates as their white peers, they are excluded from classrooms and schools at higher rates.² With root causes stemming from systemic racism and individual racial bias, including inadequate school funding, highly punitive school codes, and lack of culturally responsive curricula, racially disproportionate use of suspension and expulsion causes significant educational disruption and other collateral individual and community harm.³

This toolkit provides concrete strategies to challenge the improper suspension and expulsion of individual students.

I JUST FOUND OUT MY STUDENT MAY BE SUSPENDED – NOW WHAT?

REMEMBER TO:

- Read all papers the school sends you. This includes all emails you receive relating to the incident and your child's schooling.
- Make sure you are aware of any meetings or hearings that are scheduled concerning your child. Talk to your child's school about the meeting and any questions you have about the incident, such as the students involved in the incident and the adults who were present.
- Talk with your child and anyone else who might know about what happened.
- If school staff are not following legal requirements mentioned in this toolkit, point that out. Show school officials this information, if necessary.
- Attend all meetings and hearings that are held for your child. 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.
- Consult your school’s code of student conduct immediately – schools can only punish students if they break rules listed in the code. In many cases, a student code of conduct identifies the level of punishment that may be imposed.
- **Tip:** Document and log all phone calls; who called, at what time of day, what did they discuss, did they follow up in writing after the call, and what was the result of the call?
- **Most importantly, do NOT agree to anything you do not understand.**

ASK YOUR SCHOOL ADMINISTRATOR:

Is the alleged behavior or statement something my child can be punished for?

If the alleged action does not violate a previously published school rule or item within the school’s code of conduct, then it is **not** an action the student can be punished for.⁴ School officials may punish students for behavior that occurred in school, traveling to and from school, and at school-sponsored activities.⁵ In some situations, students can be punished for out-of-school conduct that disrupts school programs when it has a strong connection to school.⁶

If the situation involves conduct out of school, ask how the conduct is related to school and how the alleged conduct has “substantially” disrupted the school.

Was I fully notified by the school?

Schools must provide a certain level of “due process” before handing down serious punishments like suspensions or expulsions. Therefore, the school must:

- Explain to you and your child what they are accused of (in most cases, in writing as explained below). This can look different – an incident report, a written statement from school staff or your child’s peers, a formal notification of suspension, an email from the school principal, etc.
- Share what the outcomes of the punishment might be.
- Give the student the opportunity to share their side of the story.

What kind and how many days is the potential suspension?

<i>Discipline Type</i>	Due Process Rights	Educational Rights
<i>In-school suspension</i> (<i>< 10 days</i>) ⁷	<ul style="list-style-type: none"> • Informed of reason • Parental notice • Present your side of story 	School must make some provision for student's education.
<i>In-school suspension</i> (<i>10+ consecutive days</i>) ⁸	<ul style="list-style-type: none"> • Written notice with reasons • Informal hearing (meet with school, explain, present, and question witnesses) 	School must make some provision for student's education.
<i>Out-of-school suspension</i> (<i>1-3 days</i>) ⁹	<ul style="list-style-type: none"> • Written notice with reasons • Opportunity to respond 	School must allow child to make up missed work.
<i>Out-of-school suspension</i> (<i>4-10 days</i>) ¹⁰	<ul style="list-style-type: none"> • Written notice with reasons • Informal hearing (with sufficient advanced notice; meet with school; explain, present, and question witnesses) 	School must allow child to make up missed work.
<i>Expulsion (out-of-school suspension</i> <i>>10 days</i>) ¹¹	<ul style="list-style-type: none"> • Written notice with reasons • Formal hearing (officer of the board, witnesses, records) • Appeal to court (within 30 days) 	Any student excluded for more than 10 days prior to a formal hearing shall receive alternative education. If parent cannot secure schooling for expelled child, school must provide it after 30 days & written notification.
<i>Transfer to alternative discipline school</i> ¹²	<ul style="list-style-type: none"> • Criteria for "disruptive youth" • Written notice with reasons • Informal hearing (meet with school; explain, present, and question witnesses; records) 	Alternative school must provide at least 20 hours per week of academic instruction, provide behavioral supports, and provide a plan for return to school within 45 days.

If it is an **in-school suspension for less than 10 days**, you are entitled to:

- Information regarding the reason for the suspension.
- The opportunity for your child to present their side of the story.
- Receive make-up work for your child (sometimes only upon request).¹³

If it is an **in-school suspension for 10 days or more OR an out-of-school suspension for four to 10 consecutive days**, you are entitled to:

- An **informal hearing** to meet with the school.
 - At the hearing, all relevant information about the event for which the student may be suspended should be discussed. Parents, students, and school officials should discuss ways by which future offenses might be avoided.
- Receive **written notice** with reasons for the suspension, and with sufficient notice of the time and place of the hearing, which should take place within the first five days of the suspension.
- Question any witnesses present at the hearing and bring your own witnesses.¹⁴
- For more information on suspensions, consult our [Suspensions in Pennsylvania fact sheet](#).

If it is an **out-of-school suspension for over 10 days**, also known as an **expulsion**, you are entitled to:

- A **formal hearing** (also called expulsion hearing, superintendent’s hearing, or a hearing before the board or some members of the board) is required in all expulsion cases, with at least three days’ notice of the time and place. The formal hearing shall be held within 15 school days of the notification of charges unless mutually agreed to by both parties.
 - **NOTE:** Schools cannot keep students out of school for more than 10 days. If the school is attempting to extend the suspension beyond 10 days, they need to *either*:
 - Obtain parental consent to keep the student out longer. If you do NOT consent, put this in writing. Send an email after a meeting or phone call that documents your disagreement.
 - Make a specific finding after an informal hearing that the student’s presence in their normal class would constitute “a threat to the health, safety, or welfare of others,” and it is not possible to hold a formal hearing within the suspension period.

A student may not be excluded from school for longer than 15 school days unless mutually agreed upon by the parties.

- **Notification of the charges** sent by certified mail.
- **A copy of the expulsion policy** with notice that legal counsel may represent the student if requested by the parent and an explanation of the procedures of the hearing and the rights of the student.¹⁵ These rights include:

- Right to a formal hearing within 15 school days or later by agreement.
- Right of the student to bring an attorney to the hearing. (Note: there is no requirement to provide you with counsel in an expulsion proceeding so the hearing may proceed without counsel.)
- Right of the student to receive the names of witnesses who will testify against the students and copies of witness statements.
- Right to request that witnesses appear in person and be questioned and cross-examined.
- Right of the student to testify on their own behalf at the hearing.
- Right to receive a copy of the written transcript or audio recording of the hearing upon request for a fee.¹⁶
- A student can also **bring people**, such as community members or mentors, to the hearing to help the hearing officer to understand a student's circumstances

For more information on expulsions, consult our [Expulsions in Pennsylvania fact sheet](#).

If a school district or charter school is suggesting your child be placed in an **Alternative Education for Disruptive Youth (AEDY) program**, you are entitled to:

- A **transfer hearing** within five days of the out-of-school discipline where you may argue why your child should not be moved to an AEDY program.
 - Under PA law, students can only be placed in AEDY programs for a short period of time to achieve behavioral goals. Once these goals are met, presumably within 45 days or less, a child must transition back into the traditional school setting.
 - Only middle and high school students may be sent to AEDY programs.
 - Even if the school moves your child immediately, you still have the right to a hearing.
- Knowing the time and place of the hearing in advance with sufficient time for you to prepare.
- A notice in writing explaining why the school wants to move your child to an AEDY placement.
- Ask questions about whether the program meets all the requirements under the law and your child's needs.
- Ask whether the school has exhausted all other options before seeking to transfer your child. (Schools are required to use other supports and services to help your child succeed in school before recommending an AEDY program.)¹⁷
- For more information on AEDY or how to challenge those decisions, see our fact sheet [here](#).

If your child has an IEP or 504 plan, has a manifestation determination review been triggered?

If a school wants to suspend a student with an IEP for more than 10 days in a single school year, the school must have a manifestation determination review to determine if the student's behavior was a manifestation of the student's disability – that is, whether it was caused by, or had a direct and substantial relationship to the disability, or the direct result of the school's failure to follow the student's IEP.¹⁸ If so, the student cannot be suspended or expelled. Additionally, the IEP team must then conduct a **functional behavioral assessment** or revise a child's **positive behavior support plan**.¹⁹ If it is determined that the behavior is not a manifestation, you have the right to request a special education hearing to challenge that determination.

Has your child been subjected to racial discrimination?

Racial bias and systemic racism are well-documented drivers of disproportionate suspension and expulsion referrals of Black and Brown students.²⁰ Discrimination based on race is illegal under federal and state laws, as well as the U.S. Constitution and Pennsylvania's Constitution.²¹ Schools have a legal obligation to ensure that students are not denied opportunities, treated differently, discriminated against, or harassed because of their race, color, or national origin.

There are steps that you can take if you believe that your child experienced racial discrimination in any stage of the exclusionary discipline, including the incident, the immediate response, the notice or other documentation regarding the discipline, the informal hearing, the formal hearing, or the decision:

- **First**, it is important to communicate and document your child's discriminatory experience. This can be done in writing or orally, at the informal or formal hearing.
- **Second**, you can consider [filing a complaint under the Pennsylvania Human Relations Act \(PHRA\)](#), the commonwealth's key anti-discrimination law, on your own.²² The Pennsylvania Human Relations Commission (PHRC) enforces this state law, which prohibits discrimination in schools on the basis of race and sex (including gender identity and sexual orientation) as well as discrimination based on other protected class statuses such as disability, national origin, ancestry, family status, and religion.²³ The PHRA affords broad protections against racial and sex-based discrimination to students in all public schools, including charter schools (encompassing cyber charters).
- **Third**, you can consider filing complaints under federal law. Complaints can be filed with the U.S. Department of Justice (DOJ) to challenge a school district's failure to address racial discrimination in school. You may file a DOJ complaint on your own or with the help of a lawyer, [using this link](#).²⁴ Alternatively, you may file a complaint

with the U.S. Department of Education Office of Civil Rights (OCR) [here](#).²⁵ In general, a complaint submitted to OCR must be filed within 180 days of the last act of discrimination or harassment.²⁶ Both agencies have a duty to investigate complaints and issue corrective action to remedy violations as necessary.

Racism has no place in our schools. Schools must proactively acknowledge and confront the fact that the education system in this country was built on a foundation of systemic anti-Black racism that continues today. School communities must focus on developing an affirming and equitable school climate for students of color.

TIPS FOR AN EXPULSION HEARING

Expulsion hearings usually have two parts. First, the school must prove that your child violated a written school rule. Second, the school must prove that expulsion is the correct punishment for your child's misbehavior. At the hearing, you should focus on explaining your child's conduct and any circumstances that may have contributed to the conduct. For example, if a fight in school happened because your child was being bullied for reasons related to your child's disability or racial bias, the failure of the school to follow your child's IEP, or the failure to evaluate your child to determine eligibility for special education services or accommodations for a disability, you should mention that at the informal hearing and again at the hearing.

You should also focus on reasons that your child should not be expelled, such as that your child has never been in serious trouble at school before; that they will lose ground academically or will not receive needed language instruction for a multilingual learner; that requests to meet with the school to discuss issues concerning your child have been ignored; or that your child has suffered a recent loss or other trauma.

Exercising your rights

- Try to bring a lawyer to the hearing.²⁷ You can also bring a nonlegal advocate or support person with you to assist you at the hearing.
- Before the hearing, the school must tell you the witnesses and provide the documents they plan to present in their case against your child.²⁸ It is best to immediately request these materials AND all records relating to the incident, including but not limited to witness statements made after the incident, all recordings, any correspondence, police reports, etc. relating to the incident. Request to view any videos at the school in advance of the hearing. Always ask for it in writing. You should also ask for the student's education records.

- You have the right for the school’s witnesses to be present in person so you may question them. You should request that all witnesses appear in person as soon as possible.²⁹
- There should be a witness who actually saw your child violate the rules and who has firsthand knowledge of the incident. Witnesses who just testify about what they “heard” from another person (for example, a dean testifying about a student’s statement) is hearsay. The decision to expel a student cannot be made on hearsay alone. There must be sufficient evidence to support a hearing officer’s decision.
- Your child has the right to testify and tell their side of the story³⁰ if helpful, and they should be prepared to explain what happened.
- You have the right to present your own witnesses and documents on behalf of your child.³¹ You can bring someone you think would be a good witness to the incident or to discuss your child’s good character. It is important to present “character” witnesses who can talk about how a yearlong or permanent expulsion will harm the student.
- If you want to spend more time to build the case, you can request a postponement of the expulsion hearing by asking for a continuance. This may be granted for “good cause.”
- Request any evaluations you think your child may need prior to the hearing.
- Check the school code of conduct to verify whether the alleged violation is eligible for expulsion. If not, raise this issue at the hearing as a defense.
- Ask that your child remain in school until the due process proceeding is completed and a decision is rendered. Explain that this is important so that the student does not fall further behind.

Preparing to cross-examine school witnesses

Talk to your child about each witness: who they are and how they know your child. Find out what happened, who witnessed the incident, and what occurred before, during, and after the incident.

Consider the following: Did this witness see the incident? Did they have a good look at what occurred from their angle? Is the witness biased in any way? Is the story they are telling NOW consistent with any earlier version of the story provided in a statement or during the informal hearing?

Preparing your witnesses for the hearing

Talk to each of them and draft questions they are comfortable answering: *e.g.*, How do you know the student? In your experience is the student truthful? Respectful? Do you believe that they did this? Why not? What will be the impact of an expulsion on this child? *You must be able to explain why you are calling each witness.*

Character witness: a neighbor, family, friend, witness from a place of work, worship, community volunteer program, etc.

Student witness: Fellow students who observed incident or know about history of bullying.

Social worker/guidance counselor: Are you currently working with the student to address his behaviors?

Your child: Did you do this? If no, explain. If yes, do you feel remorse for what happened?

Parent or other family member: Did the student tell you that they were being bullied?

Hearing process: What will happen at the hearing?

- **The hearing officer will explain the rules of the hearing.** As this is an agency hearing, the rules of evidence are relaxed. Hearsay is permitted – *i.e.*, statements made by another party outside the hearing. The school has the burden of proving that (1) the student violated a school rule; (2) the conduct is eligible for expulsion based on a preponderance of the evidence; and (3) the duration of a proposed expulsion is warranted.
- **Opening statements:** This is your chance to explain WHY your child should not be expelled. Talk about your child – their strengths and interests and how an expulsion harms them, not only educationally but also impacting their future. If your child has stated that they engaged in the conduct, talk about how you are addressing the conduct outside of an expulsion and how expulsion will serve no purpose.
- **The school will present their witnesses first, followed by cross-examination by you.** Once the district presents their last witness, the hearing officer will invite you to present your case through your witnesses.
- **Closing argument:** Talk about what the evidence showed and why your child should not be expelled.
- **Decision:** The board members often share their recommended disposition following the due process hearing.
- **Attend the school board meeting** where your child's expulsion decision will be considered and voted on by the full board. You can testify and request that the board reject the recommendation and/or significantly reduce the duration of the expulsion.
- **Appeal:** You **MUST** file an appeal within 30 days of the school board's adjudication, not 30 days from the letter you receive attaching the board's decision.

Common examples of arguments at the hearing or on appeal:

- The district did not meet its burden of showing by a preponderance of the evidence that the student violated the code.
- The district relied on hearsay evidence alone to prove their case. This evidence is not competent, in and of itself, to support a finding in an administrative hearing. See, e.g., *In Re: M.S. v. Mid-West School District*, No. 1069 CD (Pa. Commw. Ct. Dec. 19, 2008) (reversing expulsion of student accused of smoking marijuana because the district provided only uncorroborated hearsay testimony as evidence)
- The student is being discriminated against on the basis of her disability: the conduct is directly related to her disability or the school's failure to follow her IEP.
- The proposed duration of the expulsion is disproportionate to the conduct alleged and will deprive the student of his right to a quality education.
- The proposed placement will not meet the educational needs of this student who has a disability or is an English learner.

CALL!

In Philadelphia, if a student is facing suspension or a disciplinary transfer, call the [School Discipline Advocacy Service](#) (SDAS) at 215-204-8812 to see if a law student advocate can provide assistance.

If a student is facing an expulsion, call an attorney right away. ELC can connect you with one if you call our Helpline at 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA).

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ Pa. Advisory Comm'n to the U.S. Comm'n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* 12 (2021).

² Melanie Leung-Gagne et al., *Pushed Out: Trends and Disparities in Out-of-School Suspension* vi, 18 (2022); Pa. Advisory Comm'n to the U.S. Comm'n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* 12 (2021).

³ Pa. Advisory Comm’n to the U.S. Comm’n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools 2-3* (2021).

⁴ 22 Pa. Code § 12.3(c) and § 12.6 (board must “define and publish the types of offenses that would lead to exclusion from school”).

⁵ 24 P.S. §§ 5-510, 13-1317

⁶ 24 P.S. § 5-510. See e.g., *J.S. v. Bethlehem Area School District*, 807 A.2d 847 (Pa. 2002) (discipline upheld where student created offensive website off grounds, but accessed it while at school, creating “an upheaval” among staff and students there).

⁷ 22 Pa. Code § 12.7.

⁸ *Id.*

⁹ 22 Pa. Code § 12.6, 12.8.

¹⁰ *Id.*

¹¹ *Id.*

¹² 24 P.S. § 19-1901-C.

¹³ 22 Pa. Code § 12.7.

¹⁴ 22 Pa. Code § 12.6, 12.7, 12.8.

¹⁵ 22 Pa. Code § 12.8(b) (outlining procedural requirements for formal disciplinary hearings)

¹⁶ 22 Pa. Code § 12.6, 12.8.

¹⁷ 24 P.S. § 19-1901-C.

¹⁸ 34 C.F.R. § 300.530(e).

¹⁹ 34 C.F.R. § 300.530(f).

²⁰ Skiba, R.J., Michael, R.S., Nardo, A.C., & Peterson, R. *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* (2002) URBAN REVIEW, 317-324.

²¹ 42 U.S.C. 2000d et seq.; 43 PA. STAT. ANN. §§ 951–963; Pennsylvania Fair Educational Opportunities Act, 24 PA. STAT. ANN. §§ 5001–5010; U.S. Const. amend. XIV; Pa. Const. art. I, § 29.

²² Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 953.

²³ *Id.*; *id.* § 954(l).

²⁴ *Filing a Complaint*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/crt/filing-complaint>.

²⁵ *OCR Complaint Forms*, U.S. DEPARTMENT OF EDUCATION, <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

²⁶ *Id.*

²⁷ 22 Pa. Code § 12.8(b)(4).

²⁸ 22 Pa. Code § 12.8(b)(5).

²⁹ 22 Pa. Code § 12.8(b)(6).

³⁰ 22 Pa. Code § 12.8(b)(7).

³¹ *Id.*