

## SUSPENSIONS IN PENNSYLVANIA

August 2023

This fact sheet applies to all public schools, including charter schools, in Pennsylvania. If a school district or charter school seeks to suspend your child, here are some things you should know.

A suspension is an exclusion from school for one to 10 school days in a row. Even a suspension for part of a day constitutes one day of suspension. A suspension may be imposed by a principal or other person in charge of a school.

### 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 your school is not 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. 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.

### DISPARATE HARM CAUSED BY SCHOOL SUSPENSIONS

Nationally and in Pennsylvania, Black and Brown students experience suspension at a higher rate than their white peers across every grade level, including preschool.<sup>1</sup> Although Black and Brown students follow school rules at the same rates as their white peers, they experience higher rates of exclusionary suspension in schools due to individual racial bias and systemic racism.<sup>2</sup> As a result of the collateral disruption and damage caused by suspension, students who experience even *one* out-of-school suspension are more likely to be pushed out of school before graduation, leading to long-term career and economic consequences.<sup>3</sup> Suspending students does not deter negative behaviors, nor does it increase safety in the classroom.

Students with disabilities, particularly Black and Brown students displaying these identities, are also disproportionately harmed by suspension. Despite federal and Pennsylvania laws that provide additional protections against discriminatory suspensions, 1 out of 11 students with disabilities has experienced an out-of-school suspension, which is more than double the rate of suspension of peers without disabilities.<sup>4</sup> For students with disabilities, the behavior for which the student is suspended may be a manifestation of the student's disability, leading to them being pushed out of the classroom for a protected action.

### SCHOOL RULES

Each school district and charter school must publish a **code of student conduct** and give copies to students and their families.<sup>5</sup> The rules must be reasonably clear – so that students know what

is expected of them – and should not be subjective. Schools can only punish students if they break rules listed in the code of conduct.<sup>6</sup>

While public schools have wide latitude to create rules, students have the right to express themselves and the right to practice their religion, as long as they do so without disrupting school activities.<sup>7</sup> 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.<sup>8</sup> There are also some circumstances when a child may be punished for conduct that occurred off school grounds and/or outside of school hours, such as at a school-sponsored event or when the conduct has a substantial impact on school.<sup>9</sup> This is a changing area of law. If your child is facing disciplinary action for conduct they engaged in that was 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.

## IN-SCHOOL SUSPENSIONS

An in-school suspension is an exclusion from a classroom for disciplinary purposes where the student remains under the direct supervision of school personnel. Before a student can be penalized with an in-school suspension for a violation of school rules, **the student must be informed of the reason for such punishment** and be given a chance to tell their 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 10 days in a row, the student must be offered an “informal hearing” (see below for information on informal hearings).<sup>10</sup>

## OUT-OF-SCHOOL SUSPENSIONS

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 immediately.<sup>11</sup> An out-of-school suspension can only last **up to 10 school days** in a row. Anything over 10 consecutive school days is an “expulsion” and comes with additional rights to a formal hearing.<sup>12</sup> To learn more, see the fact sheet [Expulsions in Pennsylvania](#).

If the suspension is for three days or less, **the student and parent must be informed of the reason for such punishment** and be given a chance to respond prior to imposing punishment. If the suspension is for more than three consecutive school days, the family must be offered an “informal hearing” within the first five days of the suspension.<sup>13</sup>

**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.<sup>14</sup>

**Informal hearing requirements:** The school must follow these procedures whenever a suspension exceeds three consecutive days:

1. The parents and student must receive written notice of the reasons for the suspension.
2. They must have enough 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 their own behalf.
5. The informal hearing must be held **within the first five days** of the suspension.<sup>15</sup>

**Note:** School staff cannot simply send a child home or ask the parent to pick up the child from school without following these rules. **Out-of-school suspension rules and rights apply whenever a child is kept out of school for up to 10 days, even if the school does not call it a “suspension.”**<sup>16</sup>

Regardless of whether the parent attends the informal hearing, the student has the right to return to school once the suspension is over and to complete any assignments they missed. A school cannot require a “reinstatement” meeting as a condition for returning to school. Students have the responsibility to “make up exams and work missed while being disciplined by suspension and shall be permitted to complete these assignments within guidelines established by the governing board.”<sup>17</sup>

## INFORMAL SUSPENSIONS/VIRTUAL EXCLUSIONS

Recently, more schools have begun to exclude children from school by forcing them to participate in school virtually, rather than in person. For example, a school may discipline a child by telling their parent to pick the child up and advising them that the child must complete the rest of the school week online. Any time a school is excluding a child from the school building, a parent should argue that this is in fact an out-of-school suspension, and all of the above-mentioned protections should apply (i.e., any virtual exclusion for more than three days should require an informal hearing). Show the school this fact sheet, ask that they provide you with the reason for the discipline in writing, and ask that the school grant you any additional rights (such as the right to a hearing) as laid out in this fact sheet.

## RIGHT TO APPEAL SCHOOL DISCIPLINE DECISIONS

**A school exclusion exceeding 10 days is clearly reviewable by a court. Appeals from expulsion decisions must be filed within 30 days from “entry” of the expulsion decision, i.e., the written decision required by law.**<sup>18</sup> Some courts have held that a suspension of less than 10 days is not reviewable because it is imposed by a principal and is not an adjudication by a local agency.<sup>19</sup> Appeals in discipline cases are generally filed in the local court of common pleas.<sup>20</sup> From there, appeals go to Commonwealth Court<sup>21</sup> and may potentially be reviewed by the Pennsylvania Supreme Court.

## STUDENTS WITH DISABILITIES

The procedures described above apply to all students, including students with disabilities. However, there are additional protections for students with disabilities. Most importantly, students who have individualized education programs (IEPs) and students with “qualifying disabilities” who don’t need an IEP but may need accommodations in school under a “504 Plan” cannot be disciplined on the basis of their disability.<sup>22</sup>

Special rules apply if a school wants to suspend a student with an IEP for more than 10 days in a row or 15 total days in a school year or wants to expel the student.<sup>23</sup> These are all considered “changes in placement.” Federal law also provides that school officials may transfer a child to an alternative setting for up to 10 days if the child has violated a code of student conduct, but only to the extent such alternatives are applied to children without disabilities.<sup>24</sup>

In all of these 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 be imposed. This meeting – called a “manifestation determination review” – must take place within 10 days of the decision to change the child’s placement.<sup>25</sup> A manifestation is found if the misconduct “was caused by, or had a direct and substantial relationship to,” the disability, or “was the direct result of the [local education agency’s] failure to implement the IEP [individualized education

program].”<sup>26</sup> Importantly, this test does not require that a child’s disability caused the conduct in question. Rather, an IEP team must consider the extent to which the disability influenced the behavior.<sup>27</sup> Manifestation determinations that are conducted improperly by failing to consider the relationship between a student’s disability and their conduct are subject to reversal on appeal.<sup>28</sup>

If the conduct was a manifestation, the child cannot be expelled or suspended for more than 10 days in a row or 15 school days in the school year. In addition, the IEP team must also conduct a Functional Behavioral Assessment or revise a child’s Positive Behavior Support Plan.<sup>29</sup> 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.<sup>30</sup> If the team decides it was *not* a manifestation, but the parent disagrees with the team’s decision, the parent has the right to request a special education hearing.

**If a student with disabilities is suspended or expelled (for whatever length of time), the school district or charter school must still arrange for the student to receive a free, appropriate public education in accordance with the child’s IEP during the entire time the student is out of school.**<sup>31</sup>

There is a special exception to these rules that permits school officials to transfer the student to an alternative setting for up to 45 days even without a parent’s consent if the student (1) carries or possesses a weapon, (2) knowingly possesses, uses, or sells illegal drugs or a controlled substance, or (3) inflicts serious bodily injury.<sup>32</sup> In those cases, this transfer may be challenged through a due process hearing on an expedited basis.

Importantly, a child who has not yet been identified as eligible for special education services may also assert these protections if (1) the parent has previously expressed concern in writing to school officials that the child needs special education; (2) the parent has requested a special education evaluation; or (3) the teacher or other school staff has expressed concern about the behavior of the child to special education officials.<sup>33</sup>

While the strict timelines relating to manifestation determinations do not apply to students who have 504 Plans, federal regulations require schools to conduct an evaluation of whether the student’s misconduct was caused by the child’s disabilities prior to suspending or expelling the student.<sup>34</sup> These students are also entitled to due process protections, including notice and an opportunity to be heard in an impartial hearing.

For more information, see ELC’s handbook, [The Right to Special Education in Pennsylvania](#).

## STUDENTS AND FAMILIES WHOSE NATIVE LANGUAGE IS NOT ENGLISH

Parents/guardians and students who do not speak English 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. Families have the right to use translation and/or interpretation services throughout the discipline process, including all meetings and hearings. They can bring a translator/interpreter or request that the district provide one.<sup>35</sup>

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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, trainings, 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, multilingual 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](http://www.elc-pa.org/contact) or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.

<sup>1</sup> 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).

<sup>2</sup> *Id.*

<sup>3</sup> Harold Jordan, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* (2015), [https://www.aclupa.org/sites/default/files/field\\_documents/10497b\\_56b2ce93961c47eda1db0bfb6b3b3b58.pdf](https://www.aclupa.org/sites/default/files/field_documents/10497b_56b2ce93961c47eda1db0bfb6b3b3b58.pdf).

<sup>4</sup> 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* 7 (2021).

<sup>5</sup> 22 Pa. Code §§ 12.3(c) and 12.6.

<sup>6</sup> See, e.g., *Schmader v. Warren County School District*, 808 A.2d 596, 599 (Pa. Commw. Ct. 2002).

<sup>7</sup> 22 Pa. Code § 12.9(b).

<sup>8</sup> 24 P.S. §§ 5-510, 13-1317

<sup>9</sup> 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).

<sup>10</sup> 22 Pa. Code § 12.7.

<sup>11</sup> 22 Pa. Code § 12.6(b)(1)(iii).

<sup>12</sup> 22 Pa. Code §§ 12.6(b)(2) and 12.8.

<sup>13</sup> 22 Pa. Code §§ 12.6(b)(1)(iv), 12.8(c).

<sup>14</sup> 22 Pa. Code § 12.8(c).

<sup>15</sup> 22 Pa. Code §§ 12.6(b)(1)(iv), 12.8(c). See e.g., *Dissinger v. Manheim Twp. Sch. Dist.*, 72 A.3d 723, 730 (Pa. Commw. Ct. 2013), *as amended* (June 21, 2013) (suspension requires written notice of time and place of informal hearing; notice that student may produce witnesses on his own behalf and question witnesses and other specifics prior to an informal hearing commencing); *Mifflin County School District v. Stewart*, 503 A.2d 1012 (Pa. Commw. Ct. 1986) (invalidating suspension that was not preceded by written notice of charges).

<sup>16</sup> *Big Beaver Falls Area School Dist. v. Jackson*, 624 A.2d 806, 808 (Pa. Commw. Ct. 1993) (any exclusion from school for 10 days or less is defined as a suspension, and procedural requirements apply even if the school sends the child home without using the “suspension” label).

<sup>17</sup> 22 Pa. Code § 12.6(b)(1)(vi).

<sup>18</sup> 2 Pa.C.S.A. § 555.

<sup>19</sup> See, e.g., *Burns by Burns v. Hitchcock*, 683 A.2d 1322 (Pa. Cmwlth 1996) (school board special meeting affirming principal’s 10-day suspension of two students for consuming alcohol on school trip deemed “gratuitous gesture” rather than local agency adjudication, and thus suspension was unreviewable); *Haas v. W. Shore Sch. Dist.*, 915 A.2d 1254, 1258 (Pa. Commw. Ct. 2007) (board’s hearing regarding 18-day expulsion qualified as local agency adjudication, triggering right of appeal).

<sup>20</sup> 42 Pa.C.S.A. § 933(a)(2) (providing for review of local agency action).

<sup>21</sup> 42 Pa.C.S.A. 762(a)(4)(i) (providing for review of decisions in cases arising under school code),

<sup>22</sup> See Individuals With Disabilities Education Act, (IDEA), 20 U.S.C. § 1400 *et seq.*, 34 C.F.R. Part 300; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, 34 C.F.R. Part 104. State regulations, 22 Pa. Code Chs. 14 and 15 provide some additional rights and protections.

<sup>23</sup> 22 Pa. Code § 14.143(a).

<sup>24</sup> 34 C.F.R. § 300.530(b)(1).

<sup>25</sup> 34 C.F.R. § 300.530(e).

<sup>26</sup> 20 U.S.C. § 1415(k)(1)(E)(i)(I); 34 C.F.R. § 300.530(e)(1)(i), (ii).

<sup>27</sup> *D.G. v. Bethlehem Area School District*, ODR File No. 6816/06-07 LS (SEA PA Oct. 13, 2006). See *N.R. v. MaST Community Charter School*, ODR File No. 7061-06-07 LS (SEA PA Nov. 9, 2006). (student’s disabilities can affect their perception of safety and thereby be substantially related to possession of a weapon at school).

<sup>28</sup> *Columbia Borough Sch. Dist.*, 115 LRP 10010, ODR File No. 15762-14-15 (SEA PA Feb. 21, 2015) (reversing inappropriate manifestation determination because student’s possession of a “pointed object” at school had a direct and substantial relationship to their emotional disturbance, and ordering school district to complete an IEE); *East Allegheny Sch. Dist.*, 119 LRP 31890, ODR File No. 22149-18-19 (SEA PA, June 5, 2019) (ordering return to former placement as a result of improper manifestation determination); *R.T. v. Penn Hills School District*, ODR File No. 20320-17-18 (SEA PA Apr. 5, 2018).

<sup>29</sup> 34 C.F.R. § 300.530(f).

<sup>30</sup> 22 Pa. Code § 14.143(b).

<sup>31</sup> 20 U.S.C. § 1412(a)(1).

<sup>32</sup> 34 C.F.R. § 300.530(f)(2), (g).

<sup>33</sup> 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534(b).

<sup>34</sup> See *Washington (CA) Unified Sch. Dist.*, 29 IDELR 486 (OCR 1998).

<sup>35</sup> See, e.g., <http://www.ed.gov/about/offices/list/ocr/eeolep/index.html> (last visited June 6, 2023).