

## SCHOOL DISCIPLINE FAQ FOR PARENTS/GUARDIANS

Where can I find the rules and policies on school discipline and punishment?

- School districts must give parents a written handbook or code of conduct that outlines school rules and the consequences for violating each school rule.
- School rules must be written so that you can understand what conduct is prohibited. They cannot be so vague or overbroad that a reasonable person cannot understand them.
- Codes of conduct must outline punishments that are reasonable and proportional to the severity of behavior and past discipline history. This is called progressive discipline.
- Students in preschool through the third grade cannot be suspended or expelled for more than 5 days during the school year without first receiving certain supports, unless the student commits violations involving weapons possession, illegal drugs, or behavior that endangers the physical safety of other students or school personnel.
- School districts must allow parents to be involved in developing and updating school codes of conduct.

What rights do students have during an investigation of an alleged school rule violation?

- Students do not have to answer questions or sign documents about alleged acts that could lead to school punishment or criminal charges. Students may ask to have their parent/guardian or a lawyer present during any questioning.
- If the SRO or other law enforcement official questions the student or is present during questioning, the student must receive Miranda warnings.
- Students have the right to not be unreasonably searched. School officials must have reasonable suspicion and conduct a search in a reasonable manner.
- You should not provide juvenile court records to the school. Most juvenile court records are sealed and confidential. School districts cannot use juvenile court records to support punishing a student.

What rights do students have when the school wants to suspend a child for 10 school days or less?

- At a minimum, students must be given verbal or written notice of the charges, and if a student denies them, the student must be given an explanation of the evidence and an opportunity to give their side of the story.

What rights do student have when the school wants to suspend or expel a child for more than 10 school days?

- Students have the right to a discipline hearing or tribunal before an independent hearing officer or panel, that must happen no later than 10 days from the beginning of the suspension.
- Students have the right to written notice within a reasonable amount of time prior to the hearing. The notice must state:

(1) the alleged charges and factual statement supporting the charges,

(2) date, time, location, and nature of the hearing,

(3) all evidence that will be used to support the charges, including a list of potential witnesses, copies of document evidence, and any video evidence must be made available to view before the hearing,

(4) rights of the student to present evidence and witnesses and to be represented by an attorney (if you wish to have a witness present, you should ask the school what their procedures are for making sure a witness is present), and

(5) the proposed or potential punishment if the charge is proven by the school.

Can I come to an agreement with the school instead of having a hearing?

- Often schools will ask the student to waive the hearing by entering into an agreement. This is called a waiver.
- When a student signs a waiver, they are accepting the punishment in the waiver and agreeing to waive all student rights described below.
- If you decide to sign a waiver, you should ask that the waiver state that the student will accept the punishment, but does not admit to guilt.
- If you feel that the school does not have enough evidence or you think the punishment is too harsh, you should not sign a waiver.
- No matter what, you do not have to sign a waiver.

What occurs at a discipline hearing?

- A discipline hearing is held in two phases. First, a hearing officer or panel decides whether the student actually violated the charged rule. Second, if the student is found to have violated the rule, the student's punishment is decided.
- During the first phase, the school has the burden to prove that the student violated the rules as charged. The school will present evidence first, then the student will be allowed to present evidence.
- During the second phase, the school will present evidence of the student's past discipline history, attendance, and grades. The school may make a recommendation for punishment. The student has the right to present evidence and witnesses that may testify to the student's character.
- Anyone who testifies at the hearing must be sworn under oath to tell the truth.
- The school must make sure that both phases of the hearing are recorded and must give the recording and any documents entered into the record to the student.

What rights do students have during the discipline hearing?

- The student has the right to obtain an attorney for the hearing.
- The burden is on the school to prove that the student broke a school rule. The student is not required to testify and probably should not testify if the student has pending criminal charges.
- You, as the parent/guardian, have the right to be present during the entire hearing. The school has the right to have a representative present during the entire hearing. All other witnesses should be out of the room unless they are called to testify. This ensures that a witness does not hear what other witnesses testify to.

- The school must use witnesses to present admissible evidence. This means that the school cannot rely on speculation or opinions, nor can it rely on witnesses who do not have first-hand personal knowledge of the actual incident. If someone from school testifies about what happened but was not an actual eye witness, this is considered “hearsay,” and you should object to it being considered.
- Each side’s representative is given a turn to ask questions to any witnesses that testify.
- For any documents or physical evidence that the school wishes to enter into the record, the school must first show that the evidence is authentic. You have the right to see any documents, recordings, or physical evidence before the hearing officer or panel sees it.
- Each side is allowed to give a final closing statement before the decision is made.
- If the school violates any of these requirements, you should object and give a reason why the testimony or evidence is not relevant, lacks personal knowledge, is based on speculation, or the evidence is not authentic. When an objection is made, the hearing officer will make a decision on whether the evidence or testimony can come into the record.
- You should also object if you believe that the school did not comply with the notice requirements listed above.
- If the student is suspended or expelled, you should ask that the student be allowed to attend an alternative school during the suspension or expulsion. (schools are not required to provide transportation to and from alternative school).
- At the conclusion of the hearing, the student is entitled to a final decision in writing within 10 days after the hearing. This written decision must explain how the student can appeal the decision if you disagree.

What if a student is charged with fighting or physical contact, but the student was acting in self-defense?

- A student cannot be punished for exercising their right to self-defense.
- You should raise the fact that the student was acting in self-defense at the hearing.
- To prove self-defense, you must show that reasonable and necessary force or threat was used to defend yourself or a third-party from another person’s imminent use of unlawful force.
- To show self-defense, the student cannot be the initial aggressor, provoke someone in order to use self-defense, or mutually agree to fight.
- In order to invoke self-defense, a student is not required to first retreat, be struck first, or lose the fight.
- Any school rule, policy, or regulation that does not comply with self-defense is void and cannot be used against the student.

What if the alleged charge happened off-campus?

- If a school wishes to punish a student for off-campus conduct, the school must prove that (1) the student’s conduct constitutes a felony, AND (2) the alleged conduct makes the student’s continued presence at school a potential danger to persons or property at the school or will disrupt the educational process. If the school does not prove both of these elements, the student cannot be punished for off-campus conduct.
- Schools cannot use juvenile court records for purposes of discipline.

The hearing officer or tribunal decided to find the student guilty and punish the student. What appeal rights do I have?

- If you disagree with the tribunal decision, you may submit a written notice of appeal within 20 days from the date of the tribunal decision. In your written notice, you should also request a copy of the record.
- The final tribunal decision should have instructions on how to submit the notice of appeal; otherwise, you should submit the written notice of appeal to the school superintendent.
- The student's local board of education will review the record and make a decision about the appeal within 10 days of receiving the notice of appeal. If you would like to submit a written argument in support of your appeal, you should ask for more time to submit a written statement. Some local boards will allow you to appear before the local board and make an argument in person.
- The local board must provide the student with a written decision, which should include further appeal rights to the State Board of Education.

The local board of education upheld the tribunal decision on appeal. What further appeal rights do I have to appeal the local board's decision?

- If you wish to appeal the local board decision, you should submit a written appeal to the school superintendent within 30 days of the local board's decision. In the written appeal, you should request a copy of the record and transcript of the hearing if you have not already received it.
- You may be responsible for paying the cost of the transcript. If you cannot afford to pay the cost, you can submit to the school superintendent a written affidavit (signed before a notary public) stating that you are unable to pay the costs, and the school will cover the costs.
- You should make sure that you have a copy of the entire record that is being sent to the State Board.
- Next, you will receive a letter from the State Board, which explains next steps. Read this letter carefully.
- You will have 20 days to submit a written argument to the State Board. Then, the Local Board will have 20 days to submit their written argument to the State Board. If you do not submit a written argument, your appeal will be dismissed.
- If you would like to present oral argument in person before the State Board hearing officer, you must notify the State Board in writing within 10 days of the letter.
- If you asked for oral argument, you will receive another letter with date, time and location of the oral argument.
- The State Board usually issues a decision in approximately 30 to 60 days afterwards.

What if I disagree with the State Board decision?

- If you disagree with the State Board, you are entitled to appeal to the Superior Court in the same county where the school is located.
- Directions to appeal to Superior Court will be explained in the State Board decision letter.

What if the school wants to discipline a student who has an IEP or 504 plan?

- Anytime a school wishes to suspend or expel a student with an IEP or 504 plan for more than 10 school days in one school year, the school must have a Manifestation Determination Review (MDR).
- During an MDR, members of the student’s IEP or 504 team must review all relevant information, including the IEP or 504 plan, and determine whether:
  - (1) the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability, or
  - (2) if the conduct in question was the direct result of the school’s failure to follow the IEP or 504 plan.
- If the answer to either of these two questions is yes, the student cannot be punished.
- If the answer to both of these questions is no, the student can be suspended or expelled from the general education school, but the school still has to provide the student with a meaningful and appropriate education during the suspension or expulsion.
- During the MDR, you are entitled to invite the student’s health care providers or other individuals that may have a relevant opinion to the student’s disability.
- MDRs are separate from the school discipline hearings. MDR discussions should not be part of the discipline record. The discipline hearing officer or panel should not take part in the MDR discussion or decision.
- The MDR decision must be made available to you in writing and should contain appeal rights.

#### Top 10 Takeaways

1. School districts must provide parents with a written handbook or code of conduct.
2. If a student is accused of violating a school rule, they do not have to answer questions without a parent or guardian present.
3. For suspensions over 10 school days, a discipline hearing must be scheduled no later than 10 days from the beginning of the suspension.
4. School’s must give students written notice in a reasonable time explaining what rules they are accused of violating, the facts supporting the allegations, when and how a hearing will be held, and the rights the student has during the hearing.
5. Students have the right to see all evidence that the school plans to present before the hearing.
6. Students may have an attorney present at the hearing.
7. The school has the burden of proving that the student violated school rules.
8. Students may question school witnesses, submit evidence and call their own witnesses.
9. Students do not have to testify at tribunal hearings and should not if they have any pending criminal charges.
10. Students may appeal unfavorable tribunal decisions to the local board in writing within 20 days, and students have the right to further appeal to the State Board and Superior Court.

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