

PARENTS' GUIDE TO PUBLIC SCHOOL DISCIPLINE IN WASHINGTON



Parents' Guide to Public School Discipline in Washington

This guide provides nuts-and-bolts advice for parents and guardians whose children are facing disciplinary proceedings in public schools.

It is not meant to provide legal advice. Students who want to advocate for themselves can also use this guide, but we recommend that they seek the advice of a youth advocate to help them through the process.

This guide explains the rights of students in Washington state's public schools. Different rules may apply in private schools, tribal schools, or public colleges and universities.

For more information, please see the American Civil Liberties Union of Washington publications, **Parents' Guide to School Board Advocacy in Washington**, **Parents' Guide to Truancy in Washington**, and **Know Your Rights – A Guide for Public School Students in Washington**, available on our Web site: www.aclu-wa.org.

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INTRODUCTION

The law allows schools to discipline students in order to ensure an effective learning environment and to teach students about proper conduct. If your child has misbehaved, school discipline proceedings can offer a valuable opportunity to improve communication with teachers and principals.

In some cases, however, you might not agree with the school about what actually happened. There may be parts of the disciplinary process that do not seem fair. You might feel that the punishment the school wants to impose is inappropriate. This guide offers suggestions for all of these situations.

Even if your main goal is to reverse a punishment you disagree with, you can use the opportunity to explore common ground. At school discipline meetings, you can also discuss other related subjects such as:

- class assignment or scheduling changes
- ► counseling
- ▶ tutoring
- ► special education
- ▶ accommodation of a handicap; or
- ▶ protection from bullying or harassment

Remember, school discipline decisions often result from angry situations, and they can sometimes provoke anger in turn. School personnel – and your child – may feel that their pride and ego are on the line. Try to make a special effort to remain calm and approach school personnel without being confrontational. In school discipline matters, you are likely to reach a more successful outcome if you can remain level-headed and diplomatic. There are three basic steps most parents find helpful in understanding and challenging school discipline:

Step One: Gather Information Step Two: Develop a Strategy Step Three: Advocate Your Position

Each step is described below, organized around the questions you should be asking.

STEP ONE: GATHER INFORMATION

To respond effectively to school discipline, you will need to understand the situation from both your child's *and* the school's point of view.

Start by gathering information about what happened. Some questions to ask are:

- 1. What happened, in your child's words?
- 2. What has the school accused your child of doing?
- 3. What rule is your child accused of breaking?
- 4. What punishment does the school want to impose?
- 5. What will the lasting impacts be?

As you gather your facts, **keep careful notes**! Before you forget, write down what you think happened.

Make note of:

- Keep copies of:
- ► The timeline of events
- ► All letters (including e-mails!) and forms from the school
- ► Whom you met with or talked to
- All letters you send to the school
- ▶ What you talked about

1. What happened – in your child's words?

Ask your child about what happened and who was involved. Find out what punishment the principal or teacher said they would impose (detention, suspension, expulsion, etc.). Use this opportunity to find out if your child feels misunderstood or wrongly accused. Also, ask whether there are problems at school that your child was reacting to, like being bullied or having trouble keeping up in class.

2. What is your child accused of doing?

Talk to your child's teachers, principal, or counselors to learn from them what your child is accused of doing. If there is a disagreement about what happened, see if other eyewitnesses can clarify the facts. These witnesses may include other students, teachers, staff, or parents.

3. What rule is your child accused of breaking?

Schools should only punish students who have violated school rules. Insist that the school identify the written rule(s) your child allegedly broke. School rules can be found in two different places:

- Student handbook. Most schools pass out student handbooks at the beginning of each year that include school rules and other information. If you do not have your copy of the student handbook, ask the school for a new one.
- School district policies. Each school board adopts a variety of policies that control its actions, including policies on school discipline. The policies most relevant to you will probably be found under the headings "Students" or "Discipline." District policies are available at the district office, at your child's

Getting District Policies

If you are having any trouble getting copies of school policies, let the district office know that you are making a request under Washington's Public Records Act, RCW 42.56. The school is required to respond within 5 days of your request. It must either provide you with the records or explain why it will take them longer.

school, or sometimes online. You can request school policies and other school records by contacting your school or district office. They should give them to you right away.

If English is not your primary language, ask the principal or the district office for copies of the student handbook and policies written in your language. Or, if necessary, call the principal or the district office to ask for a written or spoken translation.

Students with Disabilities

Students with disabilities have additional rights relating to school discipline. If your child is receiving special education services or might be eligible for them, be sure to ask for policies and procedures for the discipline of students with disabilities.

✓ Consider seeking additional guidance from a special education advocate.

4. What punishment will the school impose?

It is important to get a clear statement from school officials about exactly what type of punishment they want to impose. State regulations give parents and students important rights that differ according to the punishment imposed.

Going from most to least severe, the forms of punishment commonly used in Washington are:

- Expulsion. The student may not attend school for an indefinite period of time.
- ► Long-term suspension. The student may not attend school for a definite period of time longer than 10 days.
- ► Short-term suspension. The student may not attend school for 10 or fewer school days. Some schools assign students to in-school suspension, where the student may not attend his or her regular classroom but remains in a study hall or quiet room.
- Exclusion. The student is barred from a particular teacher's class or activity.
- ► Detention. The student must stay after school, during lunchtime or on Saturday for a period of time, typically seated in a

study hall or quiet room.

- ► School or community service. The student must perform a service for the school or community, such as cleaning up graf-fiti or picking up litter.
- ► Other. Schools have flexibility to impose punishments such as revoking library, computer, or sports privileges, or having the student do extra schoolwork, pay for lost or damaged property, or apologize to persons affected by the misconduct.

These forms of discipline should only be imposed after: (1) giving the student some oral or written notice that punishment is being considered and (2) giving the student some opportunity to be heard.

Emergency expulsions and emergency removals

If the student's conduct causes an immediate and continuing danger to others or to the educational process, the school may take action without providing the student an opportunity to be heard first. A student can be removed from a single class, or removed from the school entirely on an emergency basis.

- Emergency removals are removals from a classroom. They may last no more than 1 day.
- Emergency expulsions are expulsions from school. They have no fixed time limit. But emergency expulsions should last only as long as the student's presence causes an immediate danger.

Additional limits on punishments

There are some additional limits on the type of punishment schools can impose, including:

- The length of *any* suspension or expulsion must be appropriate in light of the student's behavior.
- Students generally should not be suspended or expelled for a first-time offense, unless their actions constitute "exceptional misconduct" as determined by the school district. Your school's

handbook and/or school district policies should list the offenses that your district considers "exceptional misconduct" and their standard punishments.

- Students cannot be suspended for unexcused absences unless the school has taken several prior steps. Schools must have given the parent written notice of the student's absences in the parent's primary language; scheduled a conference to discuss the absences; and taken appropriate steps to reduce or eliminate absences.
- Students in grades K-4 may not be put on long-term suspensions,

Zero Tolerance Policies

Some districts have "zero tolerance" policies for certain offenses, like bringing firearms or drugs to school. They are called zero tolerance policies because they establish standard punishments regardless of individual circumstances. The punishments are often severe, even for first-time offenses.

Even if a school has a zero tolerance policy, Washington law says school officials must be able to consider the circumstances of each case and reduce the punishment if appropriate.

and may not be suspended for more than 10 days per semester.

Check your school's policies to see if there are other limitations.

5. What is the lasting impact of the discipline?

Your decision to challenge school discipline may depend on the consequences. Make sure you fully understand how the school intends to record the discipline and what effect it will have on the rest of your child's education.

Academic grades and credit

Expulsion: Expulsion can have the most serious impact on a student's

grades and academic achievement. Students who are expelled may face an extended period of time out of school. However, no form of discipline should be enforced in a way that prevents a student from completing a grade or a subject, or meeting graduation requirements. Schools should help expelled students enroll in an alternative school or program, or find another way to continue their education.

Long-term suspension: A suspension may also affect a student's grades. But schools cannot impose any single long-term suspension if it causes the student to lose more than 1 semester's grade or credit in a single year. Depending on the length of the long-term suspension, students should ask the school for help in enrolling in a different program or finding an alternative way to continue their education.

Short-term suspension: Any student who receives a short-term suspension must have the opportunity to make up assignments and tests that could otherwise significantly affect grades or prevent the student from receiving credit for the course.

Other: Lesser forms of punishment that do not involve

suspension or expulsion from school should not affect a student's grades or ability to graduate.

Make Sure Your Child Can Keep Up in School

If your child is put on a short-term suspension:

✓ Be sure to get make-up assignments and tests

If your child is put on a long-term suspension or expulsion:

- Try to get your child enrolled in an alternative school; or
- ✓ Work with the school to arrange another way for your child to continue learning, in a school or communitybased program, or at home.

Discipline records

You should also consider the future impact of discipline records. Disciplinary records are usually destroyed after graduation, but you should find out how long your school keeps them. Also ask whether they are kept separately from academic information.

Disciplinary information should not appear on a student's transcript.

Colleges: Colleges should not have access to a student's disciplinary history. The federal Family Educational Rights and Privacy Act (FERPA) gives parents access to most school records and prevents their release to most third parties without parents' written consent. So schools may not release disciplinary records to colleges without written consent from a parent, or from students who are 18 years old or legally emancipated. However, some colleges ask students who are applying whether they were ever disciplined in high school.

Other public schools: If your child transfers to a different school, the original school can send your child's discipline records to the new school, without your consent.

If your child *moves* to a different district, the new school cannot refuse to enroll your child because of a disciplinary record in the old district. If your child has not moved, and you are *requesting* a transfer to a school in the same or a different district, your child's disciplinary record might be considered by the new school in their decision whether to enroll your child.

Referral to police or prosecutor

Sometimes school discipline incidents are also referred to the police or the prosecutor.

If a discipline incident is referred to the police or prosecutor, you should try to find an attorney immediately. An attorney can help protect your child's rights and help develop the best strategy for addressing the potential criminal and school disciplinary issues.

STEP TWO: DEVELOP A STRATEGY

Preparation is an important ingredient for success. School administrators cannot do what you want unless they understand what you are asking for and why.

1. What is your goal?

Think carefully about what you want to achieve. Goals to consider include:

- ► Reversing the discipline
- Keeping the same discipline, but taking steps to reduce its academic impact (for example, making sure the absences will not affect the student's grades)
- Returning the student to school as soon as possible
- Reducing the length or severity of the punishment
- Scheduling suspension days or detentions so they do not conflict with academic or family schedules
- Accepting a reduced punishment in exchange for certain promises by the family (for example, an apology by the

As you prepare to meet with school officials

- Think about your goal. What outcome do you want?
- Think about why the school should change its mind; and
- Make an outline! That way you will not forget what you want to say under the pressure of a meeting or hearing.

student, an agreement for improved behavior, a psychological evaluation, therapy, or substance abuse treatment)

 Changing classes to avoid personality conflicts with particular teachers or students

- Establishing or modifying an individualized education plan for disabled or special education students
- ► Transferring to another school in the same district or a different school district

Think about the long term: When thinking about your goals, remember that you and your family will likely need to maintain an ongoing relationship with the school. Your child might have several years left in the same school or school district. It might work against you in the long term if you take an aggressive position that antagonizes school officials. On the other hand, you can use the disciplinary process to develop relationships with school officials who might be able to help you get better educational services for your child in the future.

2. Why should the school change its decision?

School authorities will not change their mind about how to discipline your child unless you can convince them there is something wrong with their decision. Depending on the circumstances, one or more of the following arguments might be persuasive.

- ► Your child is innocent. Sometimes students are wrongly accused, wrongly identified, or there are misunderstandings about students' actions. It can be difficult to win in these cases. But, it helps if you can find witnesses or evidence to back up your child's explanation of what actually happened. It also helps if you can explain how your child was misunderstood or falsely accused. However, if school administrators must pick one side in a "he-said-she-said" dispute, they will typically side with the staff.
 - ✓ Look for witnesses or evidence to back up your child's explanation.
 - \checkmark Explain how your child was misunderstood.

- ► Your child did not violate any school rule. In some cases, the student did what the school alleges, but the student's actions did not violate any school rule. This may be the case if the school is attempting to punish a student for violating *unwritten rules*.
 - ✓ Ask the school to show you, in writing, the rule they believe your child violated!
- ► The rule or policy is invalid. Sometimes, schools try to punish students for violating a written school rule, but the rule is legally invalid and should not be enforced. For example, it is not fair to punish students for violating rules that are so vague that students could not have known they were doing something wrong. In other cases, a rule or policy might wrongly try to cover off-campus conduct when a school has no authority to regulate such behavior.

A district might not want to change its rules in the middle of a disciplinary proceeding. But you can try to convince officials not to enforce the rule if it is invalid or unfair. Even if the school will not change its position, you should mention your concerns at the discipline hearing or in a letter to the school. That will keep the issues on the table in case you decide to appeal. A court could overturn a school rule that punishes student conduct protected by the state or federal constitutions.

- ✓ Explain why the rule is invalid when applied in your child's circumstances.
- ✓ Mention your concerns at a hearing or in a letter, even if the school will not change its position.
- ► The punishment is excessive. Often, even when students violate a written rule, the punishment is too harsh. Unless there are exceptional circumstances, a student should not be suspended or expelled for a first offense. If the school has a zero

tolerance policy, and the standard punishment is a long-term suspension or expulsion, it may be too harsh in light of your child's behavior.

- ✓ Ask the school to reduce the punishment to one that is appropriate in light of the circumstances of your child's behavior.
- ► Your child was unfairly singled out for discipline. Sometimes students are unfairly singled out for discipline on the basis of race, ethnicity or other factors. Research shows that students of color are disciplined more often and harshly than their peers, giving evidence that there is discrimination in discipline practices.

But discrimination in a specific situation can be difficult to prove. Questions to consider include whether you know of other children who received different disciplinary punishments for similar behavior, or whether school staff made any inappropriate racial or ethnic remarks. School staff cannot disclose information about other students' disciplinary records to you, so it can be difficult to find evidence.

 \checkmark Point out specific facts that lead to your concerns.

- \checkmark Be clear about what actions you want the school to take.
- ► There were procedural violations. Students (and in some cases parents) are entitled to *notice* and an *opportunity to present their side of the story* before discipline is imposed. If the school does not follow the state laws on procedures for notice and hearing, the discipline is improper. Procedural problems alone will not likely cause a school to change its disciplinary decision. But you should point out any violations. That way the school can correct them and give you a fair chance for a hearing.

The notice and hearing requirements for different punishments

are described below. You can find more detailed information in the Washington Administrative Code, in Title 392, Chapter 400 (WAC 392-400), available at: http://apps.leg.wa.gov/wac/.

- ✓ Point out any procedural violations (in the notice or hearing).
- ✓ Ask the school to correct its errors and give you a fair chance for a hearing.
- ▶ Your child is sorry and ready to apologize. School person-

nel are much more likely to reduce punishment if they believe the student will not cause more problems. If your child violated a rule and feels sorry, consider having your child apologize and agree to avoid the behavior in the future. Point out if the conduct was unintentional. Explain how the student has learned a lesson thanks to the discipline served, discipline by parents at home, or to some other means.

Caution – Possible Criminal Charges!

If there is any chance that your child may face criminal charges related to the incident, **you should consult** with an attorney before your child makes any statement about the incident! That includes any statement to a principal or other school official, or to a police officer, including a "School Resource Officer."

- ✓ Consider having your child apologize and agree to avoid the behavior in the future.
- \checkmark Make sure any agreement is fair and reasonable.
- ► The school misused the emergency expulsion. Emergency expulsion should be used only in a real emergency. It should not be imposed as a form of punishment in and of itself. And it should not be used as temporary punishment while the

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school investigates the facts or sorts out what punishment to impose. Unfortunately, many schools abuse the emergency expulsion rule.

✓ If there is no real emergency, ask the school to let your child return to class while you resolve any disputes.

Carefully pick your strongest and most persuasive arguments. Whenever you write to or talk to school officials, bring up these arguments first and spend more time on them than on weaker ones.

STEP THREE: ADVOCATE YOUR POSITION

If your child is disciplined, you have the right to meet with school officials, and in some cases, to have a formal hearing to challenge, or "appeal" the discipline. The appeal procedures for each type of discipline are spelled out below.

When the time comes to explain your position to the school district, it is important to remain polite and diplomatic. Express an interest in working together to improve your child's education. Like anyone else, school administrators will resist if they feel personally attacked or insulted about their decisions.

1. What are the appeal procedures?

State regulations spell out exactly what sort of notice and hearing you are entitled to if your child is suspended or expelled. School districts should explain any variations on these procedures in their student handbooks.

Interpreters: If English is not your primary language, the school should provide you with an interpreter, if possible, for any conference or hearing relating to school discipline. Let the school know as far

in advance as possible that you will need an interpreter. If necessary, you can ask that a conference or hearing be rescheduled to allow the school to get an interpreter for you.

Short-term suspensions and other discipline

Before imposing a short-term suspension, or any lesser punishment, the school should give your child an explanation of the allegedly broken rule, the evidence against him or her, and the punishment it

wants to impose. It should also give your child a chance to be heard.

If a short-term suspension will last more than 1 day, schools must give parents:

✓ Oral *or* written notice, as soon as possible.

Watch Out for Deadlines!

Take special note of any time limits for requesting hearings and requesting an appeal. Appeal rights may be lost if they are not asserted in time!

For short-term suspensions and any lesser discipline, the steps to challenge the discipline are:

1. An informal conference with the principal

Any teacher or staff person who was involved in the incident will be given the opportunity to attend this conference and ask questions. You can also ask questions of the teacher or staff person. Students can request a conference on their own, but we recommend that they seek guidance from a trusted adult or advocate to help them through the process.

2. A meeting with the superintendent

If the informal conference with the principal does not bring results, you may pursue a grievance with the superintendent. You must give the superintendent at least 2 days advance notice that you want to present your grievance.

3. A meeting with the school board

If you remain unsatisfied, you may pursue your grievance with the school board (or in very large districts a disciplinary appeals panel chosen by the board). You must give the school board at least 2 days advance notice that you intend to present your grievance at the board's next regular meeting. A grievance hearing for a short-term suspension or lesser discipline is less formal than an appeal, and typically does not include a right to call witnesses.

4. Appeal to the Superior Court

If you are not satisfied with the board's decision, you have 30 days to appeal to the Superior Court in your county.

Long-term suspensions, expulsions and emergency expulsions

If your child faces a long-term suspension, expulsion or emergency expulsion, you will be entitled to a formal hearing process.

For long-term suspensions or expulsions, schools must give parents:

written notice, either hand-delivered or sent by certified mail, *before* imposing the suspension or expulsion.

In the case of an emergency expulsion, the school must give parents:

written notice, either hand-delivered or sent by certified mail, *within 24 hours* after the expulsion.

The notice should inform you of the alleged misconduct, the rule that was allegedly violated, the punishment the school proposes and your rights to a hearing to challenge the suspension or expulsion.

If you speak a language other than English, the notice should be written in your language, if feasible. Once you receive notice of the long-term suspension, expulsion, or emergency expulsion, the first step is to request a hearing. The time for requesting a hearing is very short.

- ✓ To appeal long-term suspensions and expulsions, you must request a hearing within 3 days.
- ✓ To appeal emergency expulsions, you must request a hearing within 10 days.

Students can also request a hearing on their own, but we recommend that students seek guidance from a trusted adult or youth advocate to help them through the process.

If you request a hearing in time, the school should

schedule it to start within 3 days of receiving your request.

2. Hearing before a neutral "hearing examiner"

The next step will be a hearing before a "hearing examiner," who is a neutral person designated by the school district to decide disciplinary appeals. In small districts, the hearing examiner may be a school administrator who has had no prior involvement in the incident.

At the hearing examiner level, you will have the opportunity to review the school's evidence in advance, call witnesses, question the school's witnesses, introduce exhibits, and be represented by an attorney, at your own expense.

3. Appeal to the school board

After the hearing examiner's decision, the next step is an appeal to the school board (or a disciplinary appeals panel).

If you want to appeal to the school board or appeals panel, you must:

- ✓ submit your notice of appeal within 3 days of receiving the hearing examiner's decision
- \checkmark put your notice in writing
- \checkmark deliver it to the district office or the hearing examiner

In any district, once you are at the level of the board or appeals panel, first there will be an *informal conference* to decide the most appropriate means of resolving the appeal. At the conference, you have a right to be heard, and be represented by an attorney at your own expense, and may be able to call witnesses and introduce testimony. Before the end of the conference, the board or appeals panel must decide if it will make its decision based on the evidence already presented, accept further argument, or hold a new hearing.

If the board decides to hold a new hearing, you will have the opportunity again to call witnesses, question the school's witnesses, introduce exhibits and be represented by an attorney at your own expense.

4. Appeal to the Superior Court

If you are not satisfied with the final decision of the school board or disciplinary appeals panel, you have 30 days to appeal to the Superior Court of your county.

If the school's actions violate the law or the student's constitutional rights, it is possible to file a lawsuit in state or federal court without going through the district's appeal procedures. Unless there is severe

Your Child Can Stay in School! In the case of long-term suspensions and expul-

sions, if you request a hearing in time, your child is entitled to remain in school until after the hearing. time pressure and you have good grounds to believe that the internal appeal has no chance to succeed, judges prefer that you go through the district's appeal channels before coming to them. You should consult an attorney before filing any court actions.

Petitions for re-admission

A student who has been suspended or expelled may ask for permission to return to school or to have the length of the discipline reduced **at any time**. This is typically done by submitting a "petition for readmission." Ask your principal or your school district office for a copy of their policy explaining how to file a petition for re-admission.

Even if you miss the time to appeal, you can still file a petition for re-admission at any time!

Typically, schools will only consider re-admitting the student if the family can show some specific change of circumstances, such as entering the student into a counseling, therapy, or substance abuse program. It may also be possible to show that the time out of school has caused unusual or unexpected difficulties for the student, and the discipline has been more harsh than originally intended.

Schools may ask that you and your child agree to certain conditions before being re-admitted.

Before agreeing to any conditions, be sure they are fair, and that your child will be able to live up to them!

How far do you want to appeal?

You can decide whether it is worthwhile to continue appealing at each stage of the process.

You can propose alternatives to the school at any time, and if the principal agrees with them, you can reach an informal resolution and terminate the formal appeal. Sometimes more can be accomplished informally. However, you should put any agreements you reach with the school in writing. It does not need to be in the form of a contract, but you should have the principal put the substance of your agreement in a letter so it can be consulted in the future.

Should you get an attorney?

You are entitled to be represented by an attorney – at your own expense – during suspension and expulsion hearings. Most principals will allow you to bring an attorney to attend an informal conference if they are given advance notice. You may always consult with an attorney for advice without notifying the district.

Whether the expense of an attorney is worthwhile depends on a variety of factors, including:

- Whether you decide to request a formal hearing before the school board or hearing officer
- ► How serious the charges are against your child
- How certain you are that the discipline is improper
- How complex the situation is, and how many witnesses you will need to present your side of the story
- Whether your child faces criminal prosecution, truancy court proceedings, or is otherwise under court supervision
- How comfortable you are in expressing yourself independently

Can't Afford an Attorney?

The Northwest Justice Project and TeamChild offices sometimes provide attorneys for qualifying low-income families with school discipline problems.

To access the Northwest Justice Project, TeamChild and other legal services providers throughout the state, call CLEAR, the Northwest Justice Project's statewide legal advice and referral service, at 1-888-201-1014.

- ▶ How school officials will react to your having an attorney
- ► Whether the laws relating to disabilities and special education are involved; and
- Whether you can locate someone to represent you at a suitable cost

Instead of an attorney, a non-attorney advocate might be able to accompany you to discipline hearings. If appropriate in your case, you might ask for help from psychologists, counselors, or retired educators. Also, most schools will allow you to bring along a supportive clergy person, relative, or family friend if their presence will help you make a better presentation. Give the district advance notice of whom you will be bringing along.

CONCLUSION

We hope this guide will be a useful tool in dealing with situations that can be difficult for both parents and students.

By taking advantage of your right to challenge the school's initial decisions on discipline, you can help ensure that your child does not spend any more time out of class than is necessary. When some discipline is appropriate, you can help make sure it is fair and reasonable in light of your child's behavior.

Remember, school discipline conferences can provide a valuable opportunity to work with your child's teachers and principal to make sure your child receives the best education possible!

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