

DID YOU KNOW?
STUDENTS HAVE THE RIGHT TO ATTEND
SCHOOL UNTIL THE AGE OF 21.

READ THIS BOOKLET FOR INFORMATION
ON STUDENTS' RIGHTS TO AN EDUCATION
AND SUPPORT SERVICES

What Are Schools Required to Provide to Students?

Q. Can a school kick out a student who is over 17?

A. NO

FACT: Any student who has not received a regular high school diploma is entitled to attend a public school until the age of 21.¹ State law mandates full-time instruction for students until they are past compulsory school age.

Q. What is “Compulsory School” Age in New York City?

A. Almost 18.

FACT: Students who turn 17 in a school year ARE REQUIRED to attend school until the end of that school year. This is tricky, since the official school year starts on July 1st. Thus, any student who turns 17 after July 1st must attend the next year of school.

Q. Can't Schools Just Discharge Students Who are Too Old or Not Doing Well in School?

A. NO!

FACT: Schools are generally prohibited from asking students to leave, involuntarily discharging or transferring them or steering students into GED programs. Even when they do ask students to leave, they must explain that they have the right to return and re-enroll until the age of 21.

Q. What About Students Who Don't Come to School -- Can Truant Students Be Discharged?

A. Sometimes, But Schools Must Offer Other Services Before Discharge, If Appropriate, and Provide Appropriate Notice of Rights. Students Must Be Informed of the Right to Return Until the Age of 21

FACT: Regular education students between the ages of 18-21 can be dropped from enrollment due to truancy – an absence of 20 school days *in a row* (one full month). Cutting class doesn't count—it has to be absence from school. Even if a student is discharged, s/he has the right to re-enroll at any time.

Q. If A School Wants to Discharge A Student Who Does Not Come To School, Can They Just Tell Them Not to Come Back?

¹ NY Ed. Law § 3202(1).

A. NO!

FACT: Before a student can be discharged for truancy, a process must be followed:

- 1) The principal or superintendent shall schedule and notify, in writing and at the last known address, both the student and the parent (or person in parental relation) of an informal conference. At the conference, the school administrator shall determine both the reasons for the absence and whether reasonable changes in the pupil's educational program would encourage and facilitate his or her re-entry or continuance of study;
- 2) The pupil and the person in parental relation shall be informed orally and in writing of the pupil's right to re-enroll at any time (until the age of 21) in the public school maintained in the district where he or she resides;
- 3) If the pupil and the parent fail, after reasonable notice, to attend the informal conference, the pupil may be dropped from enrollment provided that the student and the parent are notified in writing of the right to re-enter at any time (until the age of 21).²

Q. Should Truant Students with a History of Poor Educational Performance Be Screened for a Possible Learning Disability?

A. Yes.

FACT: Students who are truant and who have trouble doing well in school should also be screened to determine if they should be referred for an evaluation for suspected disability.

Q. Can Schools Discharge Students with IEPs/Special Education Services Based on Truancy?

A. Sometimes, if they are over the compulsory school age. But schools must offer other services before discharge, if appropriate, and provide appropriate notice of rights. Students must be informed of the right to return until the age of 21

FACT: Students with disabilities cannot be discharged without parental consent and other notices. However, schools should beware -- State and Federal law mandate that certain intervention services be provided to students who are at-risk or truant. That means a school has to consider whether it should be offering more services to a truant special education student before s/he is discharged.

² Education Law § 3202(1)(a).

Q: What Kind of Procedures Should Be Followed for Kids with Disabilities?

A: Notice, Re-evaluation, Opportunity for Mediation or a Hearing, the Right to Stay in School, among others.

Fact: Students with disabilities cannot be discharged or transferred against their parents' wishes unless a series of procedures are followed. These include but are not limited to (1) re-evaluation, (2) parental notice of federal rights and (3) parental consent. Students who were denied FAPE [Free and Appropriate Public Education] or discharged in violation of the law may be entitled to compensatory services including tutoring or services past the age of 21.

Q. What if a Student Needs a Residential School?

A. Ask the School District to Make an IEP or Section 504 Plan for a Residential Placement

FACT: The school district should consider whether to place a student with a disability who is truant into a boarding or residential school. Sometimes students with mental health needs are not identified as students with disabilities by the school district (though they often should be) and districts don't offer appropriate services, including the opportunity to attend a residential school. Schools should not be encouraging parents to file PINS [Persons in Need of Supervision] petitions on their students who need residential placements.

Q. Can a School Transfer a Student to GED Programs or Other Schools Against the Wishes of the Parent or Student?

A. NO.

FACT: New York State law contains provisions that protect students from being transferred out of a school or into a GED program without their consent and/or agreement from their parents. A principal can initiate a non-requested transfer if a more appropriate education is available elsewhere, provided the school holds a pre-transfer conference with the parents, provides written notice, and offers an opportunity for a full hearing.³

Q. Can a School Discharge a Student Due to Bad Behavior or Cutting Class?

A. NO.

³ See NY Ed. Law § 3214(5) and Chancellor's Regulation A-450.

FACT: State and local laws contain detailed procedures that must be followed before a student is suspended or expelled. No student can be kicked out, expelled, suspended or excluded from school based on behavior without a full hearing and must receive alternative instruction during the period of suspension.⁴

Q. Can a School Discharge a Student Due to Age, Lack of Credits or Bad Grades?

A. NO.

FACT: The law does not allow students to be discharged or expelled for any of these reasons.

Q. Can the Department of Education Force an Older Student to Enroll in a GED Program Instead of a Regular School?

NO.

FACT: Unless a student is over the compulsory school age and has been suspended the law does not allow students to be deprived of the right to obtain a regular diploma. Each school district offers all students in its schools the opportunity to meet all the requirements for and receive a Regents high school diploma. Students must have the opportunity to take Regents courses in grades 9 through 12 and, when appropriate, in grade eight.⁵

Q: What Kind of Services Must Schools Provide To Help Students Who Are Academically Struggling, Truant or Having Behavior Problems?

A: Guidance Services, Academic Intervention Services, Educationally Related Support Services and Tutoring If The Student Attends a Failing School. If a Student Has a Disability, He Must Also Be Offered Special Services and Accommodations.

Q: What Are Guidance Services and Who Is Eligible?⁶

A: Advisory Services for Career and Academic Progress & Counseling

FACT: Students in grade 7 through 12 are supposed to get an annual review of their educational progress and career plans (individually or in small groups) by school counselors and instruction at each grade level about careers and career planning skills. In addition, students are entitled to

⁴ See NY Ed. Law Section 3214 and Chancellor's Regulation A-443.

⁵ 8 NYCRR 100.2(e)

⁶ *NYCRR 100.2(j)

advisory and individual or group counseling to enable them to benefit from the curriculum, and help them develop and implement postsecondary education and career plans. Guidance services can also be used to assist students who exhibit any attendance, academic, behavioral or adjustment problems and to encourage parental involvement. ⁷

Q: What Are Academic Intervention Services (AIS) and Who Is Eligible?⁸

A: AIS are for students who are having trouble meeting promotion or graduation standards

FACT: Students in grade 9 through 12 are entitled to receive academic intervention services when they:

(i) score below the State designated performance level on one or more of the State intermediate assessments in English language arts, mathematics, social studies or science, or score below the State designated performance level on the RCTs or Regents examinations; or

(ii) are limited English proficient (LEP) and are at risk of not achieving State learning standards through English or the student's native language; or

(iii) are determined, through a district-developed or adopted procedure to be at risk of not achieving any of the state learning standards.

AIS are required to start no later than the beginning of the semester following a determination that a student needs such services and must continue until he meets or exceeds State performance level on the next assessment or is shown to be likely to meet that level through achievement on a City assessment. Parents of eligible students are supposed to be notified in writing by the principal about a summary of the AIS, the reason the student needs services, the consequences of not achieving expected performance levels, as well as progress reports and notice when services are no longer needed.

Q: What Are Educationally Related Support Services (ERSS)⁹ and Who Is Eligible?¹⁰

⁷ *NYCRR 100.2(j). Each High School Superintendency must submit a separate plan for guidance services, which should be filed in the district offices and be made available for review by any individual (including a parent). Thus, one can investigate how these services are being provided.

⁸ *NYCRR 100.2(j)

⁹ NYS Ed. Law § 3602(32); 8 NYCRR 100.2(v)

¹⁰ *NYCRR 100.2(j)

A: ERSS can include psychological, social work and non-career counseling, speech and language improvement services, small group instruction, modified curricula, individualized tutoring, and other such strategies.

FACT: The following students may be eligible for ERSS: (a) students who evidence educational, behavioral, personality or social difficulties that are situational and/or amenable to intervention or a speech impairment that does not adversely affect the student's educational performance; (b) secondary students under suspension, (c) students transferring back from juvenile placement or (d) students identified as having a disability but not eligible for special education services. Students must be able to receive and benefit from services in regular education and maintain placement in regular education if ERSS are provided.

Q: What Instruction Is Available for English Language Learner Students?

A: ELL students are required to receive specific services to help them learn the English language and, where necessary, bi-lingual instruction and written materials.

FACT: State law requires that every person from seventeen to twenty-one years of age who is unable to speak, read and write English as required for the completion of the fifth year of the elementary school course of study, and who is not attending equivalent day instruction shall be provided the opportunity to attend evening instruction.¹¹

Fact: [Insert more about ESL and Bilingual Legal Requirements]

Q: If a Student Has Been Held Back or Is Not Passing Regents Exams, What Should Be Done?

A: If a student is being repeatedly held over, is simply not able to earn credits or is exhibiting significant behavioral problems that are preventing him from learning, screening for a learning disability or emotional problem should be considered.

FACT: In addition to the services outlined above, many students who are struggling academically or who are chronically truant may be exhibiting behavior or performance problems that may lead a reasonable school administrator to suspect a student has a disability that is affecting his or her ability to learn or is justifying the need for accommodations or modifications, must be screened to determine whether a disability is present. Federal law requires that the school system have procedures to screen potentially disabled students who are being discharged voluntarily. Moreover, State law specifically requires a limited screening of all students

¹¹ Education Law § 3207. It is not clear how this provision of the law is to be enforced.

who score comparable to level 2 on the Regents preliminary competency test.¹²

Q: What Is A Failing School and How Can Students Who Attend One Get Tutoring?

A: Good Question. It's a Little Complicated.

FACT: The No Child Left Behind Act (a Federal law) says that any child who attends a school that is not meeting a certain target for academic performance has to offer students the opportunity for tutoring. However, in NYC the deadline for the 2002-2003 school year was November 27th.

Q: What About Students Who Get Special Education or Take Medication in School (like Ritalin) – Should They Get Special Help?

A: YES

FACT: Federal and State law provides that students with disabilities (i.e. those who receive or who have received special education services, Section 504 accommodations, medication in school, etc.) are entitled to receive a Free Appropriate Public Education [FAPE] until the age of 21 or until they graduate with a regular high school diploma (not a GED). If you have had experience with the special education system, you are probably discouraged because that system often fails to meet the needs of the City's children. However, students have rights to special services that you may not know about – like private tutoring, smaller schools and job training. Get an advocate or attorney to explain your rights.

Q: Can Students With Disabilities Get a Diploma Without Taking the Regents?

A: YES

FACT: Students with disabilities entering 9th grade between 1996-2004 also have a "safety net" for graduation: they may obtain a local diploma by taking the RCT test instead of Regents exams, provided certain conditions are met.

¹² See NY CLS Educ § 3208.