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This guide does not constitute legal advice. This guide attempts to summarize existing policies or laws without stating the opinion of AFC. If you have a legal problem, please contact an attorney or advocate.
This guide applies to students attending traditional public schools in New York City. If your child who attends a charter school is facing a suspension, please ask your child’s school for its discipline policy and see Advocates for Children’s Charter School Fact Sheet, available at: http://www.advocatesforchildren.org/sites/default/files/library/charter_questions_answers.pdf. Charter schools must follow state and federal law as well as their own discipline policies, but do not have to follow the NYC Discipline Code or NYC Chancellor’s Regulations.

KEY DOCUMENTS

The NYC Department of Education Discipline Code
Officially called the “Citywide Standards of Intervention and Discipline Measures,” this document lists all of the reasons that your child may be disciplined, along with the range of possible responses by the school. You can find the Discipline Code at: http://schools.nyc.gov/RulesPolicies/DisciplineCode/default.htm.

The NYC Department of Education Chancellor’s Regulations
Section A-443 of this document describes your rights related to school discipline, including principal’s and Superintendent’s suspensions. It also describes special education protections related to discipline. You can find the Chancellor’s Regulations at: http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm.

WHEN CAN MY CHILD BE SUSPENDED?

• A school can suspend your child if your child has violated the NYC Department of Education’s (DOE’s) Discipline Code. When disciplining students, schools can choose from a range of responses, from warning the student to giving a year-long suspension, or even expulsion, depending on the student’s age and what the school says he or she did.

• Your child cannot be removed from his or her classroom, placed on a partial-day schedule, or made to stay home from school unless the school follows the procedures outlined in the Chancellor’s Regulations.
WHAT CAN I DO IF MY CHILD HAS BEEN SUSPENDED?

Make sure your child is getting academic instruction.

- Your child may be suspended in school or may be suspended to an alternate site (“out-of-school suspension”). Either way, your child must continue to receive homework, class work, and instruction at his or her grade level and that allows your child to earn academic credit.
- In the case of an out-of-school suspension, the school must assign an alternate site where your child will attend classes.
- Your child should begin going to the alternate site as soon as you receive notice of the location, or else he or she will be marked absent.
- Your child has the right to take any citywide and state tests, including Regents exams.

Determine whether your child has received a principal’s suspension or a Superintendent’s suspension.

- A principal’s suspension lasts from one to five school days; a Superintendent’s suspension can last from six days up to one year.

Make sure you have received notice of the suspension.

- When a school decides to suspend your child, the school must inform you immediately by phone and within 24 hours in writing. The written notice should include the charges against the student (what the school accuses your child of having done), the time and place of the conference or hearing, and, if your child is being asked not to return to school during the suspension, the location of the alternate site where your child will attend classes.
- If you do not receive this written notice with the necessary information, the suspension is not official and your child should return to school.
If your child has a disability …

- Your child may be entitled to special protections. Please see the section called “What if my child has a disability?” on page 16 for more information.

If your child received a principal’s suspension …

- The principal must let your child know what he or she has been accused of doing, explain the evidence, and give your child a chance to tell his or her side of the story.
- The principal must schedule a conference with you within five days of the date of the letter you received telling you about the suspension.
- At the conference, you can discuss or challenge the suspension as well as brainstorm ways to address your child’s behavior so that your child will not be suspended again. You have the right to bring an attorney, advocate, or other person to assist you during the conference.
- The principal must issue a written decision about the suspension after the conference.
- The principal may dismiss (overturn) your child’s suspension, or may suspend your child for one to five school days.

IF YOUR CHILD RECEIVED A SUPERINTENDENT’S SUSPENSION …

A Superintendent’s suspension is for six days or more. Your child’s suspension will not be finalized until a formal hearing has been held. The suspension notice will tell you the date, time, and place of the hearing. At the hearing (kind of like a mini-trial), a Hearing Officer (kind of like a judge) will decide if your child did what the school accuses your child of having done, and if so, what an appropriate consequence is.

- Your child cannot be suspended from school for more than five days unless this hearing is held or unless you waive your right to the hearing by pleading no contest (see the section called “Pleading No Contest” on page 7 for more details).
**Step 1: Get the suspension packet from your child’s school.**

The suspension packet is different from the suspension notice you received from the school. It should include written statements from your child and any witnesses to the incident, the incident report, the student’s academic records, and any other evidence the school plans to use at the hearing, including video-tapes.

You have the right to review all of this information before the hearing, but schools often do not give parents the suspension packet until the morning of the hearing. To make sure you have enough time to prepare for the hearing, request the suspension packet from the school as soon as you receive the suspension notice. Schedule a time with the school for you to pick up the suspension packet from the school.

**Step 2: Review the notice of suspension and the suspension packet.**

The first thing you should do is read the charges against your child (included as part of the suspension notice you got in the mail). At the suspension hearing, it will be the school’s job to show that your child did what the charges say he or she did.

If you haven’t already done so, talk to your child about what happened. Did your child do what the school accuses your child of doing? What happened leading up to the incident? What happened after the incident?

Next, review the written statements in the suspension packet. Note any inconsistencies between the statements. Do the statements say that your child did what the charges say your child did?

**Step 3: Decide whether to adjourn the hearing, plead no contest, or go forward with the hearing.**

**ADJOURNING THE HEARING**

You may want to adjourn (postpone) the hearing to another date if you can’t attend the hearing on the date scheduled, if you need more time to prepare for the hearing, or if you need more time to find an advocate or get advice. You can adjourn the hearing by calling the Hearing Office before the day of the scheduled hearing, or by going to the Hearing Office on the morning of the scheduled hearing and asking to postpone the hearing.

If you adjourn the hearing, your child will continue to serve the suspension until the new hearing date.
If the school adjourns the hearing, your child can return to school until the new hearing date.

**PLEADING NO CONTEST**

If you do not want to fight the charges against your child, you can plead “no contest,” which means you accept the school’s charges and give up your right to challenge the charges. You will not have a hearing about the charges. The school will not be able to enter any witness statements or other evidence about the charges. A Hearing Officer will decide the length of your child’s suspension based on the charges themselves and other documents submitted by you and/or the school that are unrelated to the incident (e.g., academic records or information about prior incidents that the school submits or letters in support of your child that you submit). You can plead no contest by calling the Hearing Office before the day of the scheduled hearing, or by going to the Hearing Office on the morning of the scheduled hearing and stating that you want to plead no contest.

You may want to plead no contest if you agree that your child did what the charges say and do not want to challenge the charges.

If you plead no contest in person on the day of the scheduled hearing, you may still request to have the dispositional part of the hearing (the part of the hearing to discuss the length of the suspension) in front of a Hearing Officer. Please read the section called “The Dispositional Phase” on page 12 for more details.

You can change your mind about your no contest plea. After you plead no contest, you will receive a letter from the DOE confirming that you pled no contest and letting you know how many days long the suspension will be. You can change your mind about the plea within seven days of the date on the letter or within three days from when you actually receive the letter – whichever is later. If you do change your mind and want to challenge the charges against your child, a new hearing date will be scheduled.

**GOING FORWARD WITH THE HEARING**

The hearing process is explained in the section called “The Superintendent’s Suspension Hearing.”
You may want to get to the Hearing Office early, since families are often seen in the order that they arrive.

Before the hearing begins, you will have a conference with the Hearing Officer (called a Pre-Hearing Conference) during which he or she will inform you of your rights. The Hearing Officer will explain your options: adjourning the hearing, pleading no contest, or going forward with the hearing (see page 6 for details).

The suspension hearing itself will be held in a small room with a table in the center. You and your child will sit on one side of the table, the school will sit on the other side, and the Hearing Officer will sit at the head of the table. The hearing will be recorded. There are two parts to the hearing: the fact-finding phase and the dispositional phase.

Know Your Rights!

You and your child have a right to:

**Bring an advocate to the hearing.**
You have the right to bring an attorney or any other advocate, including a friend or relative, to represent you at the hearing. The suspension notice you received should include a list of free and low-cost legal services and advocates who may be able to provide help.

**Have a translator at the hearing.**
The Hearing Office must provide you with a translator for the hearing if you speak a language other than English. If you need a translator, make sure to call the Hearing Office before the hearing to ask for one. If you know someone you would like to translate for you, you can bring that person to the hearing.
Based on this part of the hearing, the Hearing Officer will determine whether the charges against your child are true. It is the school’s job to show that your child did what the school said your child did. The school will present its case first. You’ll be able to question the school’s witnesses and argue against their evidence. Then, you will have a chance to present your own witnesses and evidence and the school will have a chance to ask questions and argue against your evidence. The Hearing Officer may ask questions to anyone who testifies. If your child has a disability, be sure to read the section called “What if my child has a disability?” on page 16 for additional information.

**Opening Statements**
Each side will have the opportunity to make an opening statement. It is up to you whether or not to present an opening. You cannot present evidence during your opening statement; rather, you should summarize what you believe the evidence presented during the hearing will show.

**The School’s Case**
The first person to testify will likely be the person from the school who was in charge of investigating the suspension (often the “investigating dean” or an assistant principal). The investigating staff person should have spoken with everyone who witnessed the incident and should have asked for written statements from all of them, including your child. The investigator should NOT have forced your child to write a statement. Also, the investigating staff person should have provided you with written notice within 24 hours of the suspension.

When it is your turn to question the investigating staff person, you may want to ask questions about whether these procedures were followed.

The school may also call other witnesses to testify and submit other evidence against your child, including witness statements. Remember that only the *specific charges against your child* can be discussed at the hearing. This means the school cannot bring up other times that your child has gotten in trouble, before or after the incident for which your child was suspended. If any of the school’s testimony or evidence is not related to the charges, you should **object** by stating: “Objection” and ask the Hearing Officer to stop the DOE from discussing other incidents.
When it is your turn to question the school’s witnesses, you may want to ask them questions that will help you and the Hearing Officer understand what happened. This is an opportunity to show that the school is incorrect or does not have enough information about the events that led to your child’s suspension.

- Is the witness missing any information?
- Is there something the witness did not see?
- Does everything the witness says make sense?

The school must have an eyewitness testify at the hearing. An eyewitness means someone who actually saw the event for which your child was suspended. A written statement from an eyewitness is not enough. If no eyewitness testifies, you should ask the Hearing Officer to dismiss the charges. The one exception to this rule is if your child confessed to the charges, either in a written statement or verbally to a school staff member who testifies at the hearing.

Remember that you have the right to have seen all of the evidence against your child before the hearing. If the school tries to give the Hearing Officer a witness statement or other evidence that you have not seen, you should object by stating: “Objection.”

**Your Case**

At the hearing, it is the school’s job to show that your child did what the school accuses your child of doing. The Hearing Officer will only uphold the suspension if the school shows that your child did what the school says your child did. So, it is up to you whether to present any evidence or testimony to show your child’s side of the story.

You have the right to call witnesses to testify on your child’s behalf. Your witnesses can be anyone who can support your child’s version of events, including other students and school staff. You should talk to potential witnesses about coming to the hearing at least a few days before the date of the hearing.
It is important to talk to your witnesses before the hearing to find out exactly what they saw and what they will say at the hearing. Just because someone saw the events that day does not mean they would be a good witness for your child.

If a witness you need refuses to come to the hearing, you have the right to ask the Hearing Office for a subpoena. A subpoena is a legal letter from the Hearing Office that says that the witness must come to the hearing and testify. You must ask for subpoenas at least two days before the hearing by calling the Hearing Office with your request. Note that if you are asking for another student to testify, the student’s parent must give permission, even if there is a subpoena.

Another option is to ask any witness who can’t come to the hearing to write a statement describing what he or she saw. Make sure that you are present when the witness writes the statement, and that each statement is hand-written, dated, and signed by the witness.

It is up to you and your child whether or not your child testifies at the hearing. Your child cannot be forced to testify. Remember that if your child does choose to tell his or her side of the story, your child may be asked questions about the incident by the school and/or the Hearing Officer. If your child has been arrested for the same incident, you should speak with your child’s attorney. Your child’s testimony will be recorded and may be used in a court case.

If the school failed to follow the proper procedures following the incident, you may want to testify about that.

**Closing Statement**
At the end of the fact-finding part of the hearing, each side will have the opportunity to make a closing statement. It is up to you whether or not to present a closing. In your closing statement, you can’t present new evidence. Rather, the closing is your opportunity to summarize everything that came up at the hearing that supports your child’s side of the story and/or that shows the school didn’t present enough evidence to prove that your child actually did what the school says he or she did. You may want to consider discussing statements and/or testimony that contradict each other, lack of information about what actually happened, and procedures that the school didn’t follow correctly.
After all of the witnesses have finished testifying and each side has had the chance to make a closing statement, the Hearing Officer will begin the “dispositional phase” of the hearing. The question in the dispositional phase is how long your child should be suspended if the Hearing Officer decides the charges against your child are true. The school will make a recommendation about the length of the suspension. The Discipline Code lists the maximum length of suspension for different infractions for students in different grades. Depending on the incident with which your child has been charged and his or her grade, the school may be able to recommend:

- Immediate reinstatement (This means that your child would return to school right away.)
- Suspension for 6 to 10 school days
- Suspension for 30 to 90 school days
- One year suspension
- Expulsion (This is extremely rare and is only an option if your child is over 17 years old.)

You should also state your recommendation, which will most likely be “Immediate Reinstatement.”

At this point the school will submit records about your child to the Hearing Officer. The school may submit grades, progress reports, and information about your child’s disciplinary history (e.g., prior suspensions or incidents), if any. During this part of the hearing, the school is not permitted to submit or discuss anything about the incident that led to your child’s current suspension. Also, just as with the evidence presented during the fact-finding part of the hearing, you have the right to have seen all of these records before the hearing. If the school tries to give the Hearing Officer something negative about your child that you have not seen, you should object.

Next, you may submit any materials to the Hearing Officer that you think would be helpful to show your child in a positive light. You may want to consider submitting letters from teachers, coaches, or anyone else who knows your child and can discuss the positive attributes and actions of your child, as well as any other evidence of your child’s positive contributions to his or her community, such as certificates or awards from school, after-school, or summer programs. During this part of the hearing, you cannot submit any evidence that discusses the incident for which your child was suspended.
During the dispositional phase of the hearing, you may request that your child be placed in a different school when the suspension is over instead of returning to his or her original school. There is no guarantee that the transfer will be granted. If you are interested in a transfer, it is a good idea to have a few schools in mind to suggest. If possible, you should call the schools beforehand to see if they have space for your child – the likelihood of your request being granted is greater if the school to which you want to transfer your child has an open spot.

You should also ask that the suspension be expunged (removed) from your child’s school record at the end of the school year. Finally, you may want to ask the Hearing Officer to recommend additional, non-disciplinary interventions for your child, such as counseling or peer-mediation. You can find a list of these “Guidance Interventions” in the Discipline Code.

After the hearing, the Hearing Officer will make a decision as to whether the school has proven the charges against your child and what steps should be taken next. Within two school days after the hearing, you should receive notice that the charges were either sustained (found to be true) or dismissed (thrown out), and, if the charges were sustained, how long the suspension will last. Within five school days, the Hearing Office should mail a letter to you explaining the Hearing Officer’s decision.

- If the Hearing Office fails to meet these timelines, contact the Hearing Office and your child’s school; your child should be able to return to school while you are waiting for the decision.

- If the charges are dismissed, your child has the right to return to school immediately and all records of the suspension must be removed from your child’s school record.

- If the charges are sustained, your child may be suspended for a particular length of time (see the section called “The Dispositional Phase” on page 12 for more details). The decision letter will let you know how long the suspension will last and when the suspension will be removed from your child’s school record.
• If your child was suspended for between 31 and 90 school days, he or she will have an automatic review for early reinstatement after 30 or 60 school days. If your child was suspended for one year, he or she may have a review for early reinstatement after six months. The review is an informal conference that takes place at your child’s suspension site and should include you, your child, staff from the alternate site, and staff from your child’s home school. During the conference, your child’s attendance, progress reports, and teacher recommendations should be discussed to determine whether your child will be recommended for early reinstatement to school.

• If your child has a disability or you suspect your child of having a disability, he or she may be entitled to special protections. Please see the section called “What if my child has a disability?” on page 16 for more information.

• Your child has the right to an expedited (faster than usual) special education evaluation (conducted within 15 school days) if you make a request for an evaluation at any time during the suspension. If you suspect your child of having a disability or if you would like a reevaluation for your child with a disability, you may want to consider making a request to your child’s school. The expedited evaluation request should be in writing, dated, and signed by you.
ACADEMIC INSTRUCTION DURING SUSPENSION

No matter how long your child is suspended, he or she must continue to receive academic instruction throughout his or her suspension. In most cases, your child will continue to attend the site he or she attended before the suspension hearing.

Remember that your child has the right to receive homework and class work assignments and to take any citywide or state tests that are given during the suspension period. (See the section called “Make sure your child is getting academic instruction“ on page 4 for more details.) Also, your child must be given the chance to be promoted to the next grade, including earning credit for his or her work during the suspension.

APPEALING THE DECISION

You can appeal the Hearing Officer’s decision if you think your child should not have been suspended or if the suspension is too long. If the school failed to follow proper procedures in dealing with your child’s situation, appealing the decision may help prevent the school from doing the same thing to other students and parents.

To appeal the decision, the first step is to ask for the transcript of the hearing from the Hearing Office. You can ask for the transcript at the end of the hearing, or anytime after, by calling the Hearing Office.

Once you have the transcript, you should use it to help you write your appeal. In your appeal, you are only allowed to discuss the evidence that was presented at the hearing and should explain why the Hearing Officer’s decision is wrong based on the evidence presented at the hearing, or why the suspension is too long. The appeal should be in the form of a letter to the Chancellor. It must be sent within 20 school days after you receive the full decision letter from the Hearing Office, or 10 school days after you receive a copy of the transcript—whichever is later.

You should mail your appeal to:
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007

You should receive a response to your appeal within 15 school days after the appeal was filed.
A federal law called the Individuals with Disabilities Education Act (IDEA) gives extra protections to students with disabilities facing suspensions. These protections apply to students who have Individualized Education Programs (IEPs) and, under certain circumstances, to students whom the school has reason to suspect may have a disability. There are also protections available for students who have Section 504 Plans. In general, the law prohibits schools from suspending a student for behavior that is closely related to that student’s disability.

**Before the hearing:**
Read your child’s latest IEP carefully. Is there any connection between the incident for which your child was suspended and his or her disability? Were all of your child’s services in place on the day of the incident? If your child has a Behavioral Intervention Plan (BIP), was it being followed?

**At the hearing:**
Ask questions to witnesses that will help get out any information about your child’s disability or services that you think are important to showing that the charges against your child should not be sustained (upheld). During the dispositional phase of the hearing, discuss any information related to your child’s disability or services that the Hearing Officer should consider when deciding the appropriate consequences for the incident. The Hearing Officer must consider the circumstances surrounding the incident leading to the suspension and any existing IEP or BIP in determining whether to sustain or overturn the suspension, and in determining the length of the suspension.

If you would like a reevaluation of your child with a disability, see page 14 for information on how to request an expedited evaluation.

**MANIFESTATION DETERMINATION REVIEW (MDR)**

A Manifestation Determination Review (MDR) is a meeting that happens at your child’s school with you and other members of your child’s IEP team to determine the relationship, if any, between your child’s disability and the behavior leading to the suspension. You have the right to bring an advocate or attorney with you to the MDR.
If your child is suspended for more than 10 days for the incident, the school must conduct an MDR. The school must also hold an MDR if your child has been removed or suspended from his or her classroom multiple times for a total of more than 10 days during the current school year and the removals/suspensions are for similar types of behavior. If your child has been removed or suspended for more than 10 days total, ask your child’s school to hold an MDR.

Everyone at the MDR must review and consider all relevant information in your child’s file, including his or her IEP, evaluations, teacher observations, and any other information that you provide. If your child works with someone (like a counselor or a psychologist) from outside the school who can explain how your child’s actions were related to his or her disability, you may want to consider asking that person to come to the MDR, participate by telephone, or write a letter explaining the connection between your child’s behavior and his or her disability.

If the school finds that your child’s behavior had a direct and substantial relationship to your child’s disability OR if your child’s behavior was the direct result of the school’s failure to fully implement your child’s IEP, the school must determine that your child’s behavior was a “manifestation” of his or her disability.

If the school determines that your child’s behavior was a manifestation of his or her disability, your child has the right to return to school immediately. If the school determines that your child’s behavior was not a manifestation, your child’s suspension will continue until the end of the suspension period determined by the Hearing Office. During your child’s suspension, he or she must be provided with appropriate special education services that allow him or her to progress toward his or her IEP goals. If the suspension is for longer than 10 days, your child’s suspension site must create a suspension plan that describes how your child’s special needs will be met during his or her suspension. You must be invited to participate in the creation of the suspension plan.

If you do not agree with the result of your child’s MDR, you have the right to an expedited (faster than usual) Impartial Hearing to appeal the decision. See Advocates for Children’s Impartial Hearing Guide, available at http://www.advocatesforchildren.org/sites/default/files/library/impartial_hearings.pdf, or call AFC’s Helpline for more information on Impartial Hearings.
FUNCTIONAL BEHAVIORAL ASSESSMENTS (FBAs) AND BEHAVIORAL INTERVENTION PLANS (BIPs)

What is an FBA?
An FBA is an evaluation that tries to determine what causes your child’s behaviors that get in the way of learning. The FBA must include a description of the problem behavior(s), the factors that contribute to the behavior(s), and thoughts as to why the behavior(s) is/are happening. Your child’s FBA must be based on multiple sources, including direct observation of your child, information from your child’s teachers and/or related service providers, as well as a review of the your child’s history of behavior.

What is a BIP?
A BIP is a plan that is based on the results of the FBA and, at a minimum, includes a description of the problem behavior, thoughts as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.

FBAs and BIPs are tools that can help students with disabilities who have behavioral challenges. The need for an FBA and BIP must be considered when the behavior of a student with a disability is consistently getting in the way of his or her learning or that of others. If your child with a disability is struggling with his or her behavior, you may want to consider asking the school to conduct an FBA and develop a BIP.

Also, for a student with a disability who does not have a BIP, an FBA must be conducted within 10 days of a classroom removal or suspension which leads to the student being excluded from his or her classroom for more than 10 school days that school year. If your child already has a BIP, it must be reviewed within that same timeframe.

For more information on FBAs and BIPs, see Advocates for Children’s Fact Sheet on FBAs and BIPs, available at http://www.advocatesforchildren.org/sites/default/files/library/fba_positive_intervention_bilingual_span_eng_info_sheet.pdf. Also see the Department of Education website at http://www.schools.nyc.gov/Offices/District75/Departments/PBS/pbs_forms.htm.
## CONTACT INFORMATION: Borough Suspension Offices

<table>
<thead>
<tr>
<th>Borough</th>
<th>Address</th>
<th>Phone #</th>
<th>Fax #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bronx</td>
<td>501 Courtlandt Avenue, 2nd Fl. Bronx, NY 10451</td>
<td>(718) 742-6550</td>
<td>(718) 742-6569</td>
</tr>
<tr>
<td>Brooklyn</td>
<td>335 Adams Street Brooklyn, NY 11201</td>
<td>(718) 923-5120</td>
<td>(718) 923-5130</td>
</tr>
<tr>
<td>Manhattan</td>
<td>209 West 125th Street, 3rd Fl. New York, NY 10027</td>
<td>(212) 932-1058</td>
<td>(212) 932-2169</td>
</tr>
<tr>
<td>Queens</td>
<td>28-11 Queens Plaza North, 2nd Fl. Long Island City, NY 11101</td>
<td>(718) 391-6055</td>
<td>(718) 391-6022</td>
</tr>
<tr>
<td>Staten Island/</td>
<td>1106 East 95th Street, 2nd Fl. (at Conklin Avenue) Brooklyn, NY 11234</td>
<td>(718) 566-6100</td>
<td>(718) 566-6150</td>
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Our Mission
AFC promotes access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. We use uniquely integrated strategies to advance systemic reform, empower families and communities, and advocate for the educational rights of individual students.

Still have more questions?

Please Call
The Jill Chaifetz Education Helpline
Monday through Thursday
10AM to 4PM
866-427-6033 (toll free)

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