

School Discipline in New Jersey

A toolkit for students, families,
and advocates

ELC EDUCATION
LAW CENTER

for ADVOCATES
CHILDREN OF NEW JERSEY 



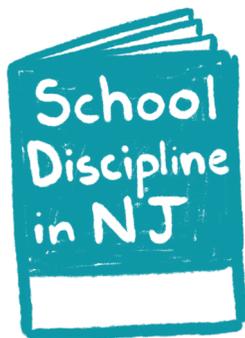
Graphic
advocacy
project

Acknowledgments

Shira Baron, former Equal Justice Works fellow at the Education Law Center (ELC), and **Ariana Fink**, former Rutgers Law School fellow, extend their deepest thanks to the Boston Student Advisory Council (BSAC), the Lawyers' Committee for Civil Rights and Economic Justice, and LaShanda Chirunga, whose toolkit, *Measuring Up: How to make sure your school complies with Massachusetts' student discipline laws*, serves as the basis for this New Jersey focused toolkit. Ariana and Shira similarly wish to thank BSAC, POWER-PAC (Chicago), and CADRE (Los Angeles) for allowing the illustrated stories of their organizing efforts to be included in this adaptation as well. You can review that toolkit and learn more about each of these organizations' work to stop school pushout at the following websites: <http://www.youthonboard.org/bsac>, <http://lawyerscom.org/school-discipline/>, <http://www.cofionline.org/>, and <http://cadre-la.org/>, as well as through www.dignityinschools.org. The *Measuring Up* toolkit was developed with a generous grant from the Hyams Foundation. www.hyamsfoundation.org.

Advocates for Children of New Jersey (ACNJ) funded this toolkit and provided valuable feedback. ACNJ identifies children's needs through research, policy and legal analysis and raises awareness of those needs through strategic communications and working with elected officials and other decision-makers to enact effective responses.

The Graphic Advocacy Project (GAP) designed and illustrated this toolkit. GAP is a non-profit organization that uses visual communication tools to explain legal concepts. www.graphicadvocacy.org



How to use this booklet

All students and their families should know their rights, whether or not they seek to challenge a disciplinary decision. Well-informed students, families, educators and community stakeholders can use this information to advocate for fair disciplinary practices in their school and district.

This booklet has a lot of internet links that you can and should use to improve your school's approach to discipline, get connected to other families and organizations working on changing school discipline, and get more information about protecting your rights. If you have any trouble accessing these links, please contact the Education Law Center for printed versions of each link.

Know that this booklet is based on New Jersey state law. **While your school's code of conduct can give you more rights than this, it cannot give you fewer.** Be sure to review your local code, and contact the Education Law Center if it does not comply with state law.

If you or your student is facing a suspension or expulsion, please turn to the Know Your Rights section on page 4 and the School Discipline Checklist on page 26.

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School Discipline Facts

Why suspend less?

- Suspension predicts dropout.
- Repeated suspensions don't change behavior.
- As a state, we over-rely on suspension to address minor offenses.
- We disproportionately use it against students of color and students with disabilities, especially for minor offenses.
- There are better, proven ways to improve classroom management.

New law in NJ:

- Applies to students in **grades K-2** in traditional schools or charter schools
- **Bans out-of-school suspension**, except when the suspension is based on conduct that is of a violent or sexual nature that endangers others
- **Bans expulsions** except as provided in the “Zero Tolerance for Guns Act”

- Students with disabilities
- Students without disabilities



Entire NJ student body



Suspended students

While **students with disabilities** make up **15%** of students enrolled in NJ public schools, they make up **29%** of the students who receive out-of-school suspensions.

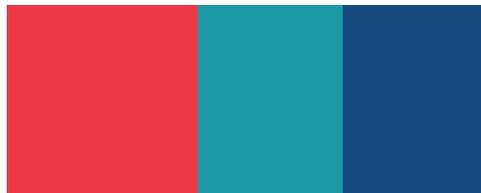
But...

- Students in grades 3-12 continue to experience the negative consequences of exclusionary discipline.
- Students of color and students with disabilities are still more likely to be suspended than their peers.
- Students who are suspended are more likely to make contact with the criminal justice system.
- Some families report that schools are not formally suspending students, but are requiring them to be picked up and kept out. **This is against the law.**

■ African-American ■ Latino ■ Other



Entire NJ student body



Suspended students

While **African-American students** make up **15%** of students enrolled in NJ public schools, they make up **40%** of the students who receive out of school suspensions. **Latino students** make up **23%** of students enrolled in NJ public schools, but they make up **29%** of the students who receive out-of-school suspensions.

National statistics

In the 2013-14 school year:

- Students with disabilities were more than **twice as likely** to receive out-of-school suspensions as students without disabilities
- African-American K-12 students were **3.8 times as likely** to receive out-of-school suspensions as white students
- African-American students were **2.2 times as likely** to receive a referral to law enforcement or be subject to a school-related arrest as white students
- American Indian or Alaska Native, Latino, Native Hawaiian or other Pacific Islander, and multiracial boys were also disproportionately suspended from school, representing **15%** of K-12 students but **19%** of K-12 students receiving out-of-school suspensions.



Know Your Rights

4.

New Jersey state law

gives you more rights — in addition to your rights under federal law — when your student is being disciplined. This section reviews your rights for each type of disciplinary consequence. The longer the suspension, the more rights you have. **And no matter what, your school must:**



Communicate with you in a language you understand



Offer your student an opportunity to explain her version of events



Use intervention and referral services *before* resorting to exclusionary discipline



Allow your student to make up work if she is suspended



Call us!

ELC: (973) 624-1815
ACNJ: (973) 643-3876
SPAN: (973) 642-8100

Going to a disciplinary hearing?

Use this section to learn your rights and bring the Checklist in the back (pages 26-31) to make sure your school follows the law. If it doesn't, **call us**.

Is your student being disciplined in a way that's not mentioned in the following pages? Call the Education Law Center (ELC), Advocates for Children of New Jersey (ACNJ), or Statewide Parent Advocacy Network (SPAN).

Check out other great resources for disciplinary issues your student is experiencing: <http://spanadvocacy.org/> and http://www.edlawcenter.org/assets/files/pdfs/publications/StudentDisciplineRights_Guide_2012.pdf

Know your rights:

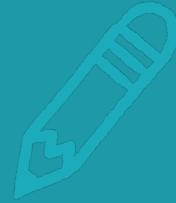
Kinds of Discipline

Parent tip: In addition to asking for your student's disciplinary records, **you can get a copy of your student's behavior write ups** that didn't lead to disciplinary action to learn what the school has done or not done in the past to assist your student. Those write ups may include: discipline records, attendance records, academic records, and copies of school's intervention and referral plan.

Short-term suspension

In-school or out-of-school suspension

No more than 10 school days in a row



Notice. The school must notify you *before* the end of the school day—in a language you understand—and explain why it plans to suspend your student and for how long.



Hearing. You have the right to an informal hearing. Before suspending your student, the school will tell your student why it thinks she broke the rules. Your student has the right to tell her side of the story. If the school decides your student broke the rules, you can suggest consequences other than suspension that better address your student and the situation.



Appeal. The school must provide an appeals process for any short-term suspension. Every district must include due process appeal procedures and policies for short-term suspensions in its code of conduct. The appeals process must allow for the student to appeal the decision to the district superintendent and then to the board of education.



Education. The school must provide academic instruction within 5 days of suspension. These services must address Core Curriculum Content Standards.

Long-term suspension

In-school or out-of-school suspension

More than 10 consecutive school days



Notice. The school must notify you *before* the end of the school day—in a language you understand—and explain why it plans to suspend your student and for how long. The school must also provide you with written notice of the suspension—in a language you understand—within 2 days of the suspension.



Hearing. Your student has all the rights of a short-term suspension informal hearing (page 7) *plus* the right to a formal hearing. The school must provide you with written notice of your opportunity to attend a Board Hearing, where you will have the chance to defend your student's conduct and advocate for her return to school.

The Board Hearing must take place within 30 days of the suspension. Before the hearing, you can review the information the school is using to suspend your student. You have the right to bring an attorney or advocate. You have the right to present your own evidence, bring your own witnesses, and question the school's witnesses. You can request a recording of the hearing.

If your student was suspended—in school or out of school—for **more than 10 days in a row**, it counts as a long-term suspension, and **you have more rights**.



NOTE. If your school decides your student broke the rules, **the school must show that it tried an alternative to suspension before it can suspend.** (See pages 20–22, 28.)



Appeal. The school board must give you a written decision within 5 days of the hearing which should include: the charges considered, a summary of evidence considered, factual findings and legal determinations regarding each charge, educational services that will be provided to your student, the terms and conditions of suspension, and information about your right to appeal. You have 90 days to appeal the Board decision to the State Commissioner of Education.



Education. The school must provide academic instruction within 5 days of suspension. These services must address Core Curriculum Content Standards.

Expulsion

A student's educational services, or the payment for those educational services, is discontinued



Notice. The school must notify you *before* the end of the school day—in a language you understand—and explain why it plans to expel your student. The school must also provide you with written notice of the expulsion—in a language you understand—within 2 days of expelling your student.



Hearing. Your student has the same right to an informal hearing and Board Hearing described on pages 7 and 8.



Appeal. You have the same right to appeal described in the long-term suspension section on page 9.



Education. Before expelling your student without any educational services, the school district must provide your student with an *alternative education placement*. The current regulations say that the district can expel a student without providing any educational services if it's the student's second expellable offense and they provided alternative education after the student's first offense. *But* under the NJ Constitution, the district still has to prove that depriving the student of all educational services is the narrowest way to achieve school safety and order.

Discipline for behavior off school grounds

The school can discipline your student for conduct that happened off school grounds **only if**:

- such discipline is **reasonably necessary** for the physical or emotional safety, security, and well-being of your student, other students, or staff on school grounds, *and*
- the conduct **materially and substantially interferes** with the requirements of appropriate discipline in the operation of the school.

NOTE. Discipline may include removal of extracurricular activities and privileges.



Was your student disciplined in some way that is not on this list? Did the school call you to pick up your student because of his/her behavior? **Call us.** Under state law, schools are not allowed to send students home for misconduct—even for a few hours—without giving you the rights described in this section.

Call us!

ELC: (973) 624-1815
ACNJ: (973) 643-3876
SPAN: (973) 642-8100

Know your rights:

Special Needs

If your student has special needs, she gets **extra protections**.

Short-term suspension

A school may suspend a student with a disability for up to 10 consecutive school days, as long as the suspension doesn't constitute a "change in placement."

School staff decides whether a "change in placement" occurred. In making this decision, they consider:

- whether the series of suspensions total more than 10 school days in a school year,
- whether the student's behavior is similar to her behavior in previous incidents that resulted in the series of suspensions, *and*
- additional factors such as the length of each suspension, the total amount of suspension time, and the proximity of the suspensions to one another.

If school staff determines suspension is a change in placement, long term suspension rules apply.

Long-term suspension

A school may impose a long-term suspension of more than 10 consecutive days on a student with a disability if:

- the student's Individualized Education Program (IEP) does not provide otherwise, *and*
- the student's conduct is determined not to be a "manifestation" of the child's disability.

What is a manifestation determination?

The district must hold a meeting within 10 school days from the date of suspension to determine whether the student's conduct was a manifestation of the student's disability.

If conduct *is not* a manifestation, the student may be suspended more than 10 days

If conduct *is* a manifestation, the student must return to school placement immediately, unless the 45-day exception applies. The school must conduct a functional behavioral assessment. This assessment identifies the causes of a student's problem behavior(s), and helps the school develop a plan to address those causes.

What is the 45-day exception?

A school may place a student with a disability in an alternative educational setting for 45 days, even when the behavior was a manifestation of the student's disability, for the following behaviors:

- possession of a weapon
- knowing possession or use of illegal drugs
- infliction of serious bodily injury upon another person

Questions?

If your student has special needs and you have additional questions about her rights, **contact Disability Rights New Jersey**: (609) 292-9742



Call DRNJ!
(609) 292-9742



More resources

Here are some more resources that could be helpful:

- Rutgers Helps NJ Resource Guide: <https://www.rutgershelpsnj.org/search?p=35&t=>
- Family Support Organizations: <http://www.nj.gov/dcf/families/support/support/>

And learn about your student's rights here:

- The Right to Special Education in New Jersey: A Guide for Advocates: http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf

Know your rights:

Newark Public Schools

Do you or your student attend a school run by Newark Public Schools (NPS)?

You have more school discipline rights in addition to the statewide protections on pages 7–11. For example:

Suspension length is limited

- **In-school suspension** cannot exceed *2 consecutive school days* per incident, or *4 total days* per school quarter or marking period
- **Out of school suspension**—the removal of a middle or high school student from school—cannot exceed *4 consecutive days* per incident or *8 total days* per school year
- An **extended suspension** cannot exceed *25 consecutive days* (unless required by law)

You can't be suspended for:

- Being late to school or class, or being absent
- Dress code or uniform rule violations
- Minor behavior infractions, like insubordinate behavior, defiance, disobedience, disrespect, or disruptive or rowdy behavior

Get Involved

Your school and district must ensure their codes of conduct are in line with state and federal law. And, each year, all New Jersey high schools have to update their codes and involve school councils in the process.

Check your school's code of conduct

Want to make sure your code of conduct measures up to the new state law? Compare it with the Checklist in the back (pages 29-31).

Bring your school's code in line with the law

Want to make sure your principal, superintendent, and board of education know what they need to do to keep their code in line with the law? Use the School Discipline Facts (page 1) and your data (page 18) to:

- Hold a family forum about discipline.
- Arrange a teacher working group on discipline.
- Call for a meeting with your school and district leaders.
- Testify at a board of education meeting.
- Write an op-ed in your local paper.

Get the Data

Want to know more about...

- School discipline rates (for in-school and out-of-school suspension, etc.)?
- Disciplined students' race, gender, disability status, socioeconomic status, and English learner status?
- Suspensions?
- School-based arrests?
- Restraint and seclusion?

18.

Use the U.S. Department of Education's website for additional data:

<http://ocrdata.ed.gov/>



File a Complaint

Students, families, educators, & community members:

Are **students' civil rights** being violated by your school's discipline practices?



Call us!

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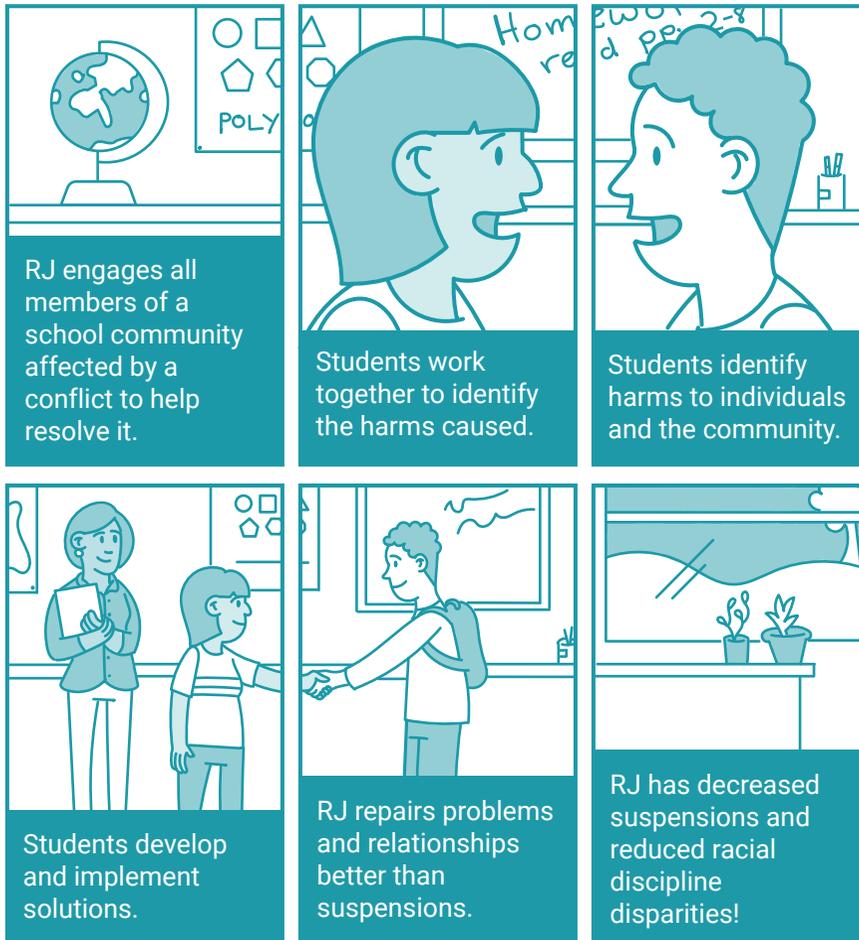
In addition to the individual appeal rights discussed on the previous pages, you can also contact the U.S. Department of Education Office for Civil Rights (OCR) or the N.J. Division on Civil Rights (DCR) if students are being disciplined differently based on race, ethnicity, national origin, gender identity, or disability in schools: <http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>, <http://ed.gov/school-discipline>, and <http://www.nj.gov/oag/dcr/filing.html>.

You don't need an attorney to file a complaint with either agency, but it can be helpful to talk with someone familiar with state and federal law when developing a complaint. You can also use resources provided by the Education Law Center at www.edlawcenter.org.

Consider the Alternatives

New Jersey law requires schools to implement intervention and prevention strategies before using suspensions. **Restorative Justice (RJ)** and **Positive Behavior Interventions and Supports (PBIS)** are two examples. Read about more examples on page 28.

Restorative Justice (RJ)

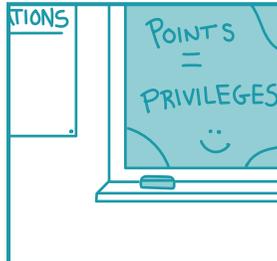


Excerpted from *Measuring Up: How to make sure your school complies with Massachusetts' student discipline laws.*

Positive Behavior Interventions & Supports (PBIS)



PBIS is a framework for a healthy learning environment.



Schools teach clear expectations for behavior and encourage it with positive feedback.



Members of the school community monitor discipline trends to develop interventions.



Example: if a lot of referrals come from hallway incidents, a school can place more adults there and clarify hallway expectations.



A better climate allows schools to prioritize support for those who need it most.



PBIS reduces suspension and supports gains in achievement, attendance, and safety!

Excerpted from *Measuring Up: How to make sure your school complies with Massachusetts' student discipline laws.*

Get Organized

The next few pages describe three ways students and families are changing school discipline across the country. Want more? Visit www.dignityinschools.org

In Boston...

The Boston Student Advisory Council (BSAC) is a group of high school student leaders in Boston Public Schools (BPS).



Each year, BSAC conducts a Listening Project across the city.

Guided by what they heard, BSAC designed an app for their peers to know their discipline rights.



Suspensions have dropped and BSAC and BPS are using the app to ensure state law is followed.

Images on pages 24 and 25 are excerpted from *Measuring Up: How to make sure your school complies with Massachusetts' student discipline laws*.

Meanwhile, in Chicago...

POWER-PAC parent leaders created and run Parent Peace Centers at several Chicago Public Schools. They won funding for them too!



The Centers guide students through **restorative justice** and help resolve conflicts.

POWER-PAC has also won the removal of “zero-tolerance” from the district’s code of conduct. Together, these efforts have reduced both violence and suspension. <http://www.cofionline.org/>

And out in Los Angeles...

CADRE, a parent organizing group, and its allies won big changes to discipline in LA: a dignity framework and PBIS in every school.



CADRE parents tour schools and sit in on classes to monitor implementation.

CADRE’s documentation and advocacy helped win bigger changes, ending suspensions for minor offenses in LA. <http://cadre-la.org/>

School Discipline Checklist

The next few pages include tips, important information, and a list of questions you should ask if your student is disciplined for a school-based offense. You can bring these pages with you to a school hearing!

Are you going to a suspension hearing?

1. Find out why. Before the hearing, your school must tell you why—and for how long—it plans to discipline your student. Families: find out from your student what happened. Take notes before and during the hearing.

2. Consider alternatives. Before it can suspend your student, your school must make an individualized determination in light of the nature of your student’s behavior, her developmental age, and her history of problem behaviors and performance and consider ways to re-engage your student in learning. You know your student. Would any of the alternative disciplinary responses on page 28 be a better solution than suspension? Help your school understand why.

3. Know your rights. Review this booklet, and read your local code of conduct—it can give you more rights than our state law, but it cannot give you fewer. Bring these next pages with you to make sure your rights are respected.

4. Don’t stop learning. Students have the right to make academic progress during discipline. The longer the consequence, the stronger this right. If your student is suspended, do not leave the hearing without a plan for them to continue their work. (See pages 4-10.)

5. Disagree? Appeal. If you disagree with the outcome, you can appeal suspensions and expulsions. (See pages 4-10).

If you think your student is eligible for special educational services, they have additional disciplinary rights. (See pages 12-14). Learn more: http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf



Alternative disciplinary responses

As the old saying goes, “the punishment must fit the crime.” The more a consequence addresses the actual harm or behavior, the better it works. Here are some examples of alternative disciplinary responses that you can ask your school to consider:

- Restorative justice: Support the student and those harmed by her actions in identifying solutions together (See page 21)
- Written reflection and apology
- Loss of a privilege at school or at home
- Caregiver and student/teacher conference
- Community service
- Schedule adjustment
- Written warning
- Referral to community based organizations for additional support
- Meeting with school counselor/psychologist
- Mentoring program inside or outside of school
- Daily/weekly check-ins between student and an adult mentor at school
- Behavioral contract/plan between student and teacher

Type of Consequence	Questions to ask
<p>Short-term suspension:</p> <p>A student is removed from school for 10 days or fewer.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Did the school tell you why it planned to suspend your student? Did it tell you in your preferred language? <input type="checkbox"/> Was your student invited to an informal hearing to discuss the incident <i>before</i> she was suspended? Did the school tell you why it thought your student broke the rules? Were you allowed to tell your student’s side of the story? Did the school provide an interpreter for you? <input type="checkbox"/> If the school decided your student broke the rules, were you allowed to tell the school more about your student and suggest other ways to discipline her besides suspension? Did the school consider other ways to re-engage your student in learning? <input type="checkbox"/> If suspended, was your student allowed to make up work and take quizzes/tests that they missed during the suspension? <input type="checkbox"/> Did the school send you a letter with how long the suspension lasts and the day it starts? <input style="border: 2px solid red;" type="checkbox"/> Was your student suspended for more than 10 days in a row? If yes, it is a long-term suspension (below).
<p>Long-term suspension:</p> <p>A student is removed from school for more than 10 days in a row.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Did the school tell you—orally and in writing—why it planned to suspend your student? In your preferred language? <input type="checkbox"/> Was your student invited to an informal hearing to discuss the incident <i>before</i> she was suspended? Were you invited to a formal hearing within 30 days of the suspension? <input type="checkbox"/> Before the formal hearing, were you allowed to review your school’s evidence for why it thought your student broke the rules? <input type="checkbox"/> At the formal hearing, were you allowed to bring an attorney or advocate? Were you allowed to present your own evidence, bring your own witnesses, and question the school’s witnesses? Did the school provide an interpreter? <p><i>(Continued on page 30)</i></p>

<p>Long-term suspension (continued)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Did the school try other alternatives, like mediation or conflict resolution, before suspending? In most cases, the school must show that it tried alternatives before issuing a long-term suspension. <input type="checkbox"/> If your student was suspended, did the school give you a letter that says how long the suspension lasts, the day it starts, and information on how to appeal it if you disagree? <input type="checkbox"/> Did the school provide your student with academic instruction within 5 days of suspension? Did the instruction meet Core Curriculum Content Standards?
<p>Expulsion:</p> <p>A student's educational services, or the payment for those educational services, is discontinued.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Did the school tell you why it planned to expel your student? In writing? In your preferred language? <input type="checkbox"/> Were you invited to a hearing to discuss the incident before your student was expelled? <input type="checkbox"/> At the hearing, were you allowed to bring an attorney or advocate? Were you allowed to present your own evidence, bring your own witnesses, and question the school's witnesses? <input type="checkbox"/> If your student was expelled, did the school give you a letter that says how long the expulsion lasts, the day it starts, and information on how to appeal it if you disagree? <input type="checkbox"/> Did the school provide your student with an alternative education placement?
<p>Out-of-school conduct</p> <p>A student is disciplined for behavior that happened off school grounds.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Is the discipline reasonably necessary for the physical or emotional safety, security, and well-being of that student, other students, staff on school grounds? <input type="checkbox"/> Did the student's conduct materially and substantially interfere with the requirements of appropriate discipline in the operation of the school?

Type of Consequence	Additional questions to ask for special education students
Short-term suspension	<input type="checkbox"/> Did the school consider whether the suspension constitutes a “change in placement” by looking at factors like: 1) whether the series of suspensions total more than 10 school days in a school year, 2) whether the student’s behavior is similar to her behavior in previous incidents that resulted in the series of suspensions, and 3) additional factors such as the length of each suspension, the total amount of suspension time, and the proximity of the suspensions to one another?
Long-term suspension	<input type="checkbox"/> Did the school determine whether the student’s IEP allows her to be suspended for more than 10 days? <input type="checkbox"/> Did the school determine that the student’s conduct was <i>not</i> a manifestation of her disability? <input type="checkbox"/> If the school determined that the student’s conduct was a manifestation of her disability but placed her in an alternative educational setting under the 45-day exception, was the student disciplined for possession of a weapon, knowing possession or use of illegal drugs, or infliction of serious bodily injury upon another person?



Is your student being disciplined in a way that’s not on this list? Is your school violating your student’s due process rights? **Call us!** ELC: (973) 624-1815 | ACNJ: (973) 643-3876 | SPAN: (973) 642-8100



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