

Suspension, Expulsion, and Due Process Rules

Office of Superintendent of Public Instruction

This information is not meant to provide legal advice

Washington schools and school districts are authorized by state statutes and administrative rules to impose student discipline to maintain order and correct misbehaviors. However, they are also constrained by those same rules. This page provides a general overview of the disciplinary actions a school district may take and the requirements in place to protect student rights and insure fair treatment.

Student Rights and Responsibilities:

In the often-quoted case *Tinker v. Des Moines (1969)*, the Supreme Court noted that *students do not shed their constitutional rights at the schoolhouse gate*. In other words, students in our public schools have the same constitutional rights as they and other citizens enjoy away from school. However, because of the special environment of the school, the courts have also ruled that *some* restriction of rights may be permissible if necessary to support the central functions of the school.

Additional student rights are provided in WAC 392-400-215, which states that each public school student shall possess these substantive rights which may not be limited without good and sufficient cause:

- Students may not be denied equal educational opportunity or be discriminated against because of national origin, race, religion, economic status, sex pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory handicap.
- All students possess the constitutional rights to freedom of speech and press, to peaceably assemble, to petition the government and its representatives, to the free exercise of religion, and to have their schools free from sectarian control or influence, with reasonable limitations on the time, place and manner of exercising these rights.
- All students possess the constitutional right to be secure from unreasonable searches and seizures of their person, papers, and belongings.
- All students have the right to be free from unlawful interference while attending school.
- Students may not be deprived of the right to an equal educational opportunity without due process of law.

Students also have the responsibility to attend school and attend to their assignments along with the duty to follow the written rules of the school and submit to reasonable corrective actions imposed by teachers and school administrators (WAC 392-400-210).

Definitions:

Understanding the special terminology used by the school system is important to being able to communicate about school discipline issues. These terms are commonly used in Washington schools, and are defined in state administrative code.

Discipline: Discipline is all forms of corrective action or punishment other than suspension or expulsion. Discipline can include being removed from class for the remainder of a class period, or restriction from non-educational activities such as recess, field trips, transportation, or sports. Common examples of discipline also include detention, Saturday School, loss of privileges, or special assignments. (WAC392-400-205)

Suspension: A suspension is a restriction from attending school or any portion of a student's school program (such as a single course), for a stated period of time. Examples: a 3-day suspension from school, or a 5-day suspension from shop class.

Short-term Suspension: is a suspension that is up to 10 consecutive school days.

Long-term Suspension: is a suspension that is more than 10 consecutive school days.

In-School (In-House) Suspension: is a temporary removed from the regular classroom for disciplinary purposes where the student remains under direct supervision of school personnel. (CEDARS P09)

Expulsion: An expulsion is a denial of attendance from any class or subject or for the student's full schedule of classes for no longer than one calendar year unless an application for re-admission is granted.

Emergency Removal: An emergency removal (see WAC 392-400-290) permits a student to be immediately removed from a class or activity when there is good and sufficient reason to believe that the student's presence poses an immediate and continuing danger or a continuing threat of substantial disruption. This is a short-term action which can continue until the danger or threat ceases, or the principal or designated school authority acts to impose discipline, a short-term suspension, a long-term suspension or an expulsion, or an emergency expulsion

Emergency Expulsion: An emergency expulsion is a denial of attendance for no more than 10 days, imposed only while a student poses a continuing danger or continuing risk of substantial disruption. An emergency expulsion must end or be converted to another form of corrective action within that 10 day period.

Due Process Rules for School Discipline:

Students must be provided due process before their right to a public education can be restricted or denied for disciplinary reasons. In plain language, “due process” means that the student (or their parent or guardian) has a right to a fair and impartial proceeding before discipline or punishment is imposed, as well as a right to appeal to a higher authority if they don’t agree with the discipline proposed. This right stems from the 14th Amendment that prohibits the deprivation of liberty or property without due process of law, and the right is also protected by the Washington State Constitution and the Washington Administrative Code.

The due process rules vary for different levels of discipline and other corrective actions. In general, the more severe the disciplinary action, the more formal and structured the due process requirements. For most cases, the grievance process begins with the school principal, can be appealed to the district superintendent, and finally the school board; grievances may in some cases be appealed to the courts if a resolution or satisfaction is not achieved within the school system.

Discipline Grievances: This applies to “discipline” other than suspension or expulsion. When a student, parent, or guardian disagrees with the discipline imposed by a school employee, they have a right to an informal conference with the school principal (or other designated person). During the meeting, the principal may question any person involved; the student, parent, or guardian may also question the employee who imposed the discipline. If the grievance is not resolved, a written or oral appeal may be made to the school district superintendent (or other designated person) within two business days. If the grievance is not resolved at the superintendent level, a written or oral appeal may be made to the school board at the next regular meeting if notice is given within two business days. Unless the principal decides to delay the disciplinary action, it may be imposed during the appeal process.

Due Process for Short-Term Suspensions: State law authorizes the use of “informal” due process for short-term suspensions. This means the principal (or other designated person) must have a conference with the student and explain the alleged violation of the rules, the evidence supporting the allegations, and the proposed corrective action or punishment. The student must be given an opportunity to present his or her explanation. When the suspension exceeds one calendar day, the parent or guardian must be notified of the reason for the suspension, the duration of the suspension, and the right to appeal as provided in WAC 392-400-255.

Appeals for Short-Term Suspensions: If the student or parent disagrees with a proposed short-term suspension, they have the right to an informal conference with the school principal to resolve the grievance. During the conference, the principal may question any person involved; the student, parent, or guardian may also question the employee who imposed the discipline. If the grievance is not resolved, a written or oral appeal may be made to the school district superintendent (or other designated person) within two business days. If the grievance is not resolved at the superintendent level, a written or oral appeal may be made to the school board at the next regular meeting if notice is

given within two business days. Unless the principal decides to delay the suspension, it may be imposed during the appeal process.

Due Process for Long-Term Suspension and Expulsions: Due process for long-term suspensions and expulsions is a more formal process. State law *requires* a school district to provide a written notice of an opportunity for a hearing before the long-term suspension or expulsion is imposed. The notice must be in the predominant language of the student or parent/guardian, must explain the alleged misconduct and rule violated, specify the proposed punishment, and explain the right to a hearing. The student or parent/guardian must request a hearing within **3 business days** or the right to a hearing will be waived and the suspension/expulsion may be imposed. In most cases, if the student or parent request a hearing, the student is entitled to remain in school until a decision is reached after the hearing (the common exception would be emergency expulsions).

Hearing Process and Requirements: The requirements for hearings are essentially the same for long-term suspensions and expulsions, and can be found in WAC 392-400-265 and 392-400-280.

- If a request for a hearing is received within 3 business days, the district must schedule a hearing to begin within three business days the request was received.
- The student and the parent/guardian have the right, before the hearing, to inspect the evidence and any documents the district intends to introduce.
- The student and the parent/guardian have the right to be represented by an attorney provide at their own expense. The district may allow a representative other than an attorney.
- The student and the parent/guardian have the right to question and cross-examine witnesses of the district, unless there is evidence of good reason that the district should not produce a witness (generally for safety concerns).
- The student and the parent/guardian have the right to present an explanation of the alleged misconduct and support their explanation through witnesses, introduction of documents, or through other physical evidence.
- The district employee assigned to present the district's case has the right, before the hearing, to inspect any evidence the student or parent/guardian plans to introduce.
- The hearing officer or persons hearing the case may not be a witness, and the guilt or innocence of the student must be determined entirely on the evidence presented in the hearing.
- The hearing must be either tape-recorded or a verbatim record of the hearing must be made.
- A written decision of the hearing officer(s) must be provided to the student and parent/guardian or their attorney. The decision may either uphold the long-term suspension or

expulsion, or may impose a lesser form or corrective action or punishment. A suspension or expulsion upheld by a hearing will commence

Appeals: If a student or parent/guardian disagrees with the decision of a hearing officer(s), they may file a written request for appeal within **3 business days** of receiving the decision. The district may, at its choosing, accept an oral request for appeal. An appeal may be heard by the school board, or by a school district disciplinary appeals council if established by the school board. If a request for appeal is heard, the school board or appeals council must schedule a meeting within 10 business days. In most cases, the suspension or expulsion may be continued while an appeal is made to the school board or appeals council.

Board-level hearing procedures are provided in WAC 392-400-315. If a student or parent/guardian disagrees with the decision of the school board or disciplinary appeals board, they may appeal the matter to superior court within 30 days.

Due Process for Emergency Expulsions: Notice and due process rights must be provided when an emergency expulsion is converted to another form of corrective action. (RCW 28A.600.015)

- Spring 2014