

Overview

School Discipline and Bullying

In this section of the **Education Toolkit**, you will find information and resources about the rights of students to be appropriately disciplined (and not inappropriately removed from school), and the requirements for schools to address bullying when it is reported.

School Discipline

All students have due process rights that can be invoked when they are being subject to inappropriate school discipline, and special education students have additional protections under the law that prevent suspension for behavior that may be related to their disability. There are different rules and policies depending on where a student is enrolled. For DCPS students, schools follow the D.C.M.R.; for students enrolled in charter schools, the specific charter school's disciplinary policy (often in the parent handbook) applies; and, for students enrolled in PG County Public Schools, the PG County administrative procedures apply. However, the Student Fair Access to School Amendment Act of 2018 created new provisions of law for both DCPS's and public charter schools' use of discipline.

Additional legal resources for special education students are included in the tip sheets in this section, as well as in the [Special Education and Section 504 of the Rehabilitation Act](#) section of this practice kit.

Bullying

Given the increased awareness of bullying in schools and the long-term negative impact of bullying, schools are more and more frequently adopting (or being required to adopt) policies as to how a school will address bullying if it is reported by a student, parent or school staff. In DC, all schools are legally required to have a policy in effect regarding how the school will address bullying. Charter schools are supposed to have developed individual policies, and DCPS follows the DCPS District-Wide Bullying Prevention Policy. In PG County Public Schools, the PG administrative procedures apply.

Legal Resources & Polices

Federal

- [34 C.F.R. § 300.530 et seq.](#) (Discipline Regulations regarding Students with a Disability)

District of Columbia

- [D.C. Code § 38-235 et seq.](#) (Student Fair Access to School Amendment Act of 2018)
- [5-B D.C. Mun. Regs. §§ 2500-2599](#) (Discipline Regulations for DCPS)
- [1 D.C. Mun. Regs. §§ 2900-2909](#) (Regulations for DCPS Student Discipline Hearings at OAH)
- [D.C. Code § 2-1535.01-.09 et seq.](#) (Youth Bullying Prevention Act of 2012)

Maryland

- [Md. Code Regs. 13A.08.01.11](#) (Discipline Regulations)
- [Md. Code Regs. 13A.08.03](#) (Discipline Regulations regarding Students with a Disability)

CLC Tip Sheet

Student Discipline in DC Schools

What governs school discipline for students enrolled in DC schools?

The laws or policies governing how students are disciplined in school depend on where they attend. However, recently enacted reform legislation has created several uniform limitations on when schools can use out of school suspension and expulsion, covering both DCPS and public charter schools. Most charter schools maintain their own policies regarding discipline and students' rights. For students enrolled in DCPS, the disciplinary regulations can be found at 5-B D.C.M.R. § 2500 and 1 D.C.M.R. § 2901 *et seq.* **NOTE:** Some DCPS and public charter school discipline policies may be revised as a result of the new law, but the DCPS subsection of this document (see below) describes DCPS regulations as of July 2018. Special education students also have some disciplinary protections granted by federal law (for more information, see the Tip Sheet on [Special Education and Discipline](#) in this Section).

Do DC's school discipline laws apply to DC public charter schools as well?

The recently enacted Student Fair Access to School Amendment Act of 2018 applies to both DCPS and public charter schools, including the schools' pre-kindergarten programs. The new law contains several limits on the use of out of school suspension, involuntary transfer, and expulsion. See [D.C. Act 22-398](#), D.C. Code § 38-235 *et seq.*, and summary sheet.

Can a school send a student home for misconduct, if the student would miss less than half of the school day?

No, under the Student Fair Access law, this is an out-of-school suspension and must be counted as such. It is not permissible for a school to remove a student for misconduct at any point in the school day without complying with the requirements of DC's discipline laws.

How long can a student be suspended from school?

- **Elementary School (Grades K-5):**
 - 1-5 consecutive school days per individual incident
- **Middle & High School (Grades 6-12):**
 - 1-10 consecutive school days per individual incident
- **All Grades (Total per Student):**
 - 20 cumulative school days per school year, EXCEPT IF
 - The head of the LEA provides written justification to the student and parent OR
 - The student's conduct resulted in an emergency removal and written justification is provided to the student and parent by the head of the LEA. See D.C. Code § 38-238(b)(3).

Can students who are suspended make up work missed during the suspension?

Yes; all schools are required to create a general plan to ensure the continuity of education for students who are subject to a suspension (in-school or out-of-school). While the plan can be modified to meet the needs of an individual student, it must ensure students:

- Continue their studies during the suspension and receive all appropriate assignments for the duration of the suspension;
- Can communicate with school personnel regarding their academic work; and
- Can make up any school work missed during the suspension, if it cannot be completed during the suspension.

DCPS-Specific School Discipline

How is discipline defined in the DCPS regulations?

Disciplinary responses are divided into 5 tiers. Tier 1 is for minor infractions and Tier 5 covers the most severe infractions. Each tier has allowable consequences that correlate with the severity of the violation.

What are some examples of permissible disciplinary responses?

For lower tier offenses: verbal redirection, teacher/student conference, parental contact, temporary removal from the classroom, in-school disciplinary action or development of a behavioral contract. For higher tier offenses: all of the previously listed interventions/responses, plus on-site short term suspension with interventions, off-site medium to long-term suspensions, or expulsion as warranted; however, expulsion and any form of school exclusion should always be the last resort.

Can a DCPS student be suspended for missing school or attending without a uniform?

No. The DC disciplinary regulations specifically prohibit DCPS schools from suspending or expelling students for unexcused absences or failing to adhere to a mandatory uniform policy.

Can disciplinary action be taken against a student for actions that occur anywhere or at any time?

No. In order to take disciplinary action against a student in a DCPS school, the behavior must have occurred: 1) on school grounds; 2) on or off school grounds while participating in and attending a school function or activity, including field trips, extracurricular activities, or athletic events; 3) off school grounds and traveling in transportation provided by DCPS.

Students can also be disciplined for committing a prohibited offense during before-school or after-school programs, committing a prohibited offense off school grounds, or outside regular school hours that results in significant disruption to the school environment.

What due process rights should DCPS schools provide to students whenever a suspension or expulsion is being recommended?

- **Right to Written Notice:** The student and parent must be given written notice of all disciplinary action no later than 1 day after the disciplinary action is recommended.
 - That notice should include:
 - A description of the infraction and the rules upon which the action is based;
 - A summary of the facts;
 - The length of the proposed suspension or expulsion;

- The recommendation for an education plan or alternative educational setting; and
 - Information about the student’s right to appeal.
- **Right to a Student Conference:** A school official must convene a conference with the student before taking disciplinary action to get their version of events.
 - The conference may include the parent or guardian and or the student’s legal representative, but their participation is not required.
- **Right to Remain in School Until a Final Disciplinary Determination is Made:** Only where emergency conditions exist (see below) should a student be restricted from attending school prior to a conference or hearing.
- **Right to a Disciplinary Hearing** (whenever expulsion or a suspension of 11+ days is recommended): In these instances, the case is automatically referred to OAH for a disciplinary hearing. For more information on the hearing process, read below.
 - NOTE: Beginning September 25, 2018, a suspension of 6 days or more will be considered a long-term suspension for purposes of due process. See D.C. Code § 38-238(g).
- **Right to Inspect Records:** The student has a right to examine the student’s records and the official report of the incident.
- **Right to Appeal the Disciplinary Action:**
 - **Short to medium-term suspensions:** When a student has been suspended for fewer than 11 days, the parent or guardian must request an appeal orally or in writing within 2 school days of receiving notice of the disciplinary action; appeal should be heard by principal or Chancellor’s designee within 1 school day. Upon request, the time for an appeal may be extended up to three school days. A decision must be issued within 1 school day of the appeal being heard. A short-term suspension may be appealed to the principal, and a medium-term suspension may be appealed to a person designated by the Chancellor.
 - **Long-term suspensions or expulsions:** A DCPS student who has been suspended for 11 days or more or who has been expelled will have a disciplinary hearing, as prescribed by Chapter B25 of Title 5 of the DCMR; this is mandatory pursuant to 5-B DCMR § 2505.15. A hearing will be automatically held, and will occur not more than 4 school days after a written notice regarding disciplinary action is provided to the parent or guardian or adult student. The hearing may be postponed for not more than five days upon request of the parent, guardian, adult student, or his/her representative to allow time to prepare for the hearing. All hearings will be convened by the Office of Administrative Hearings (OAH) and scheduled by the Office of Youth Engagement (OYE). Parents and guardians should contact OYE at (202) 939- 3618 to ascertain the date of their student’s disciplinary hearing. Note that DCPS will not proceed to request the OAH hearing for a student until their system indicates that a Manifestation Determination Review has occurred.
 - NOTE: Beginning September 25, 2018, a suspension of 6 days or more will be considered a long-term suspension for purposes of due process and will supersede the above regulations. See D.C. Code § 38-238(g).

Who oversees the disciplinary hearings for long-term suspensions and expulsions?

DC's OAH oversees the disciplinary hearings for DCPS Students; the hearings are scheduled by DCPS's OYE. An Administrative Law Judge (ALJ) presides over the hearing. The parent should receive a notice of the hearing several days prior to the scheduled hearing date and all hearings are conducted at the OAH offices located at: One Judiciary Square, 441 4th Street, NW, Suite 450 North, Washington DC 20001 (next to the Judiciary Square metro stop).

If you are working with a family and a student has been given a long-term suspension or expulsion, contact OAH to see if a hearing has been scheduled; if not, contact DCPS's OYE to ensure the hearing is timely scheduled.

What is the purpose of the disciplinary hearing?

The hearing gives both the parent/student and the school an opportunity to present their version of the facts. At the conclusion of the hearing, the ALJ will decide:

- Whether the student committed the alleged violations;
- The proper Disciplinary Tier for any violation committed; and
- Whether due process procedures have been followed.

Is there any time that a student can be suspended or expelled from school immediately without following the above procedures?

A student may only be excluded from school prior to a conference or hearing if they are contributing to an emergency situation at the school (defined at 5-B D.C.M.R. § 2504.4). An emergency situation may exist either because of general conditions in the school (e.g., a series of fires or false alarms, a large number of abuses of property) or because the behavior of an individual student is so disruptive or dangerous that it poses a real and immediate threat to the health and safety of the school community or the ability of the school to continue normal operations.

What are the student's due process rights in the conduct of disciplinary hearings?

- **Right to a continuance:** The parent/student may request to postpone the hearing up to 5 school days to prepare and secure witnesses for the hearing.
 - OAH has a standard form parents (or attorneys) can file to request another hearing date, accessible here: <http://oah.dc.gov/node/176542>.
- **Right to inspect records:** The parent/student has a right to inspect and see copies of the student's entire disciplinary file.
 - These records can be requested from OYE if the school cannot produce copies.
- **Right to bring a representative of the student's choice:**
 - It is highly recommended that GALs attend these hearings to defend their client's interests.
 - If you intend to serve as an attorney for the child at the hearing, you should file a notice of appearance to OAH in advance of the hearing – the standard form and filing instructions can be accessed on OAH's website: <http://oah.dc.gov>.
 - Attorneys planning to appear at an OAH hearing should also contact OAH to obtain the case number and the ALJ assignment, and request the DCPS evidence packet prior to the hearing.
- **Right to call witnesses and present documentary evidence in support of their case:**

- The judge and school district representative may ask questions of any witness presented.
- **Right to ask questions of any witness presented by the school and challenge any of their exhibits.**

When will OAH issue a decision and what impact does that decision have on the student?

The ALJ shall issue findings of fact and conclusions of law within one school day after the record closes. If the decision concludes that the student committed the alleged offense, DCPS is bound by the ALJ's findings of facts and conclusions of law, but has the discretion to decide the appropriate punishment within the proper tier found by the ALJ. If the decision concludes the student did not commit the alleged offense, DCPS is bound by that decision and cannot take further disciplinary action.

If the ALJ recommends that a suspension be reduced to fewer days in his/her decision, the school can ignore that recommendation and still issue a longer suspension?

Yes, so long as a longer term suspension is permitted within the applicable Tier as decided by the ALJ, the school has that discretion.

What can a parent do if they disagree with the ultimate disciplinary action recommended by the school?

The parent can appeal the final notice of discipline to either OYE or the Chancellor within 5 school days of receiving the notice.

CLC Tip Sheet

Student Fair Access to School Amendment Act of 2018 Summary

On July 12, 2018, the District of Columbia enacted uniform school discipline reforms applying to both DC Public Schools (DCPS) and public charter schools—the Student Fair Access to School Amendment Act of 2018 (Act 22-398). This new law helps ensure children with disabilities, children of color, and children in the foster care system will no longer be marginalized by being regularly sent home from school instead of receiving the educational supports they need to stay in the classroom and continue learning. Children’s Law Center, along with members of the Every Student Every Day Coalition, helped shape the legislation, which also drew from the experience of parents, teachers, lawyers and experts in the field to determine how to best keep students in school and learning.

Below is a summary of the new law. Unless otherwise noted, provisions are expected to go into effect beginning September 25, 2018. Some of the changes will go into effect immediately, other reforms will be phased in at later dates, and still others will go into effect only if there is funding available.

Reforms to Shorten Removals & Stop Removals for Non-Violent Behavior

The Student Fair Access to School Amendment Act sets limits on schools’ use of suspensions, expulsions, and involuntary transfers as disciplinary consequences.

Attendance-Related Discipline Outlawed: Schools are prohibited from using out-of-school suspensions, expulsions, or involuntary transfers for unexcused absences or late arrivals to schools. However, students can be unenrolled after accumulating 20 or more consecutive full-school-day unexcused absences.

Out-of-School Suspension Limit of 5 Days in Elementary School (Effective Date: October 1, 2018):

The duration of each out-of-school suspension cannot exceed **five consecutive school days** in Kindergarten through Grade 5.

Out-of-School Suspension Limit of 10 Days in Middle & High School (Effective Date: October 1, 2018):

The duration of each out-of-school suspension cannot exceed **ten consecutive school days** in Grades 6 through 12.

Out-of-School Suspension Limit of 20 Days Total in All Grades (Effective Date: October 1, 2018):

Regardless of grade, a student cannot be suspended from school for more than **twenty cumulative school days** in a school year. However, an exception may be made if the head of the LEA provides written justification to the student and parent of the student’s conduct resulted in an emergency removal and written justification is provided by the head of the LEA to the student and parent.

Limits on Exclusionary Discipline Use in Elementary & Middle School (Effective Date: Upon funding but no earlier than SY2019-2020; was not funded in DC’s Fiscal Year 2019 [FY19] budget): The use of

out-of-school suspensions, expulsions, and involuntary transfers in Kindergarten through Grade 8 is limited to incidents where a student's behavior poses a safety or emotional distress concern.

Limits on Exclusionary Discipline Use in High School (Effective Date: Upon funding but no earlier than SY2020-2021; was not funded in DC's FY19 budget): In Grades 9 through 12, an out-of-school suspension, expulsion, or involuntary transfer cannot be used consequently for any dress code violation, willful defiance, or any incident occurring off school grounds that is not part of a school-sponsored activity (unless the student's behavior poses a safety or emotional distress concern),

Uniform Definitions

The Student Fair Access to School Amendment Act provides uniform definitions applicable to all DCPS and public charter schools.

"Out-of-School Suspension" Definition Includes Partial Days: The "out-of-school suspension" definition clearly includes disciplinary removals from school attendance that are less than full school days and includes "involuntary dismissals." An "involuntary dismissal" is the removal of the student from school attendance for less than half of a school day.

Involuntary Transfers Are Same as Expulsions: The definition of "disciplinary unenrollment" is found in several provisions of the law that limit its use and includes both "expulsions" and "involuntary transfers."

"Willful Defiance" Defined: Research shows that students of color are seen as insubordinate, defiant, or disrespectful in situations where their white peers are not seen that way for the same behaviors. As such, the definition of "willful defiance" was included to cover such situations.

Right to Due Process Hearing for Shorter Suspensions

Higher Level of Due Process Required Earlier: For purposes of due process before deprivation of the attending school, a suspension of **six school days or more** is now a "long-term suspension." DCPS must provide a hearing at the Office of Administrative Hearing and public charter schools must provide a comparable type of hearing for any out-of-school suspensions of six days or longer.

Improved Disability Protections

Schools Must Consider whether ALL Disabilities were Root Cause of Behavior: In a manifestation determination review (MDR), all of a student's disabilities, of which the school had prior knowledge, must be considered. Schools must stop only considering the Primary Disability listed on the Individualized Education Program as they determine whether the child's conduct was caused by the child's disabilities.

Lack of Parent Attendance Cannot Prolong Suspensions

Outlaws Extended Suspensions because a Parent Has Not Come to the School: Schools cannot keep children out of school longer than the original suspension because a parent/guardian has not come to the school. This includes requiring a parent/guardian to accompany the student to school or attend a conference.

School Policies

The Student Fair Access to School Amendment Act fosters reform in local education agencies' (LEA) policies for school climate and discipline, including an emphasis on positive behavior.

School Policy Changes: LEAs are required to develop more transparent, robust, and evidence-based school discipline policies, in consultation with school personnel, students, and parents. The policies must ensure students can access their educational program and clearly state the due process rights and procedures available to students and parents/guardians. In addition:

- The LEA/school must provide students and parents/guardians a copy of its school discipline policy and explanations of the policy, including explanations of expectations, rights, and responsibilities of students under the policy.
- The LEA/school must make the school discipline policy publicly available, including on the LEA/school's website.

Continuity of Education Plan: Schools are required to have a general plan for continued education for any student suspended (in-school or out-of-school). While the plan can be modified to meet the needs of an individual student, it must ensure students:

- Continue their studies during the suspension and receive all appropriate assignments for the duration of the suspension;
- Can communicate with school personnel about academic work; and
- Can make up any school work missed during the suspension, if it cannot be completed during the suspension.

School and Educator Supports

The Act creates additional supports provided by the Office of the State Superintendent of Education (OSSE) to promote trauma-informed educational settings.

School Safety and Positive Climate Fund: OSSE is required to support schools with technical assistance, high-quality professional development, and the facilitation of postsecondary degree/certificate programs, including a trauma-informed educator certificate program. The fund will be used to support these requirements, as well as additional needed school supports for interventions.

School Supports (Effective Date: Upon funding; was not funded in DC's FY19 budget): OSSE is also required to provide LEAs with any needed additional supports for interventions that allow them to reduce their use of exclusionary discipline.

CLC Tip Sheet

Special Education & Discipline

Students who receive special education services under the federal Individuals with Disabilities Education Improvement Act (IDEA) have additional protections. This tip sheet details some important disciplinary provisions in federal and local law and regulations for special education students that you can use to advocate in your cases.

Continued Services

If a special education student has been removed from his or her current school placement for 10 days in a school year, the school system must continue to provide services that allow the child to participate in the general education curriculum and make progress toward their IEP goals. *See* 34 C.F.R. § 300.530.

- These services may be provided in an interim alternative educational setting, as decided by the IEP team. *See* 34 C.F.R. § 300.531.

Change of Placement

A removal of 10 or more consecutive days in a school year is a change of placement. A pattern of removals totaling more than 10 days in a school year that involves similar behaviors may also be a change of placement. *See* 34 C.F.R. § 300.536.

Manifestation Determination

There cannot be a change of placement without the school system holding a meeting, called a manifestation determination, to determine if the behavior resulting in the discipline is a manifestation of the child's disability. *See* 34 C.F.R. § 300.530(e-f).

- If it is determined that the school district has failed to implement the IEP or that the child's behavior was a manifestation of the child's disability, the child must be allowed to return to the original placement and not be suspended or removed unless the parent and school agree otherwise. A functional behavior assessment (FBA) must also be conducted or an existing behavior intervention plan be revised.
- **NOTE: Pursuant to the Student Fair Access to School Amendment Act of 2018, ALL of a student's disabilities, of which the school had knowledge, must be considered in a manifestation determination review. See D.C. Code § 38-239.**

Exception for Dangerous Behaviors

Regardless of the manifestation determination, a school system may remove a child to an interim alternative setting for certain behaviors, such as bringing a weapon to school or inflicting serious bodily injury on a person at school, for up to 45 days. *See* 34 C.F.R. § 300.530(g).

Right to Appeal

Parents or the LEA can appeal disciplinary decisions relating to special education students. Decisions about manifestation determinations and placement can be appealed to a hearing officer. *See* 34 C.F.R. § 300.532.

- Disciplinary due process hearings are expedited and follow state timelines.

Students Who Have Not Yet Been Found Eligible for Special Education

Students who do not receive special education services may still be eligible for the special education disciplinary protections if the school system had knowledge that the child had a disability, e.g. if the parent had requested an evaluation. *See* 34 C.F.R. § 300.534.

- If a request for an evaluation is made while a student is in a disciplinary removal, the evaluation must be conducted on an expedited basis.

Before a Student is Suspended or Expelled

- Be proactive, especially if the student has previously struggled with school discipline.
 - When sending records requests, include a specific request for all disciplinary records, and ask that they be contemporaneously provided to you.
 - For students not yet found eligible for special education and related services, notify the school system that you believe they are eligible and should be afforded the protections of an eligible student until the eligibility process is completed.
 - Determine, at the outset of each school year, how the “chain of command” works with respect to discipline in the student’s school, e.g., are suspension requests signed off on by specific school personnel, or are they supposed to be? Ensure that all correspondence regarding eligibility is copied to that individual, as well as the special education coordinator or principal where appropriate.
- Make sure your client informs you of suspension days that may not be formal suspensions --- e.g., the student being sent home early or the parent being told to keep the student home for a field trip or other school day.

When Your Client Receives a Short-Term Suspension

- Immediately contact the school and request all documentation regarding the suspension.
- If documentation is not received contemporaneously, ask directly (or have your client ask) the student what happened, and (if appropriate) memorialize your client’s version of events as well as the fact that documentation was not provided.
- Keep track and provide the school with notice when the student has been suspended out of school (including send homes) for 10 days.
 - Please visit the CLC Tip Sheet on [Multiple Short-Term Suspensions](#) for additional guidance.

When a Student Receives a Long-Term Suspension or Expulsion

- If a student is referred for a long-term suspension (10 days or more, or an out of school suspension that brings the student over the 10th day), the school must hold a Manifestation Determination Review (MDR) meeting before the student serves the 10th day to prevent a denial of FAPE.
- Students may be suspended for long-term periods without the MDR being held first, but only in cases of extreme risks to health and safety. Push the school district to be very clear about why a student is a safety risk if they are advocating the student be suspended for these reasons, especially if they are not recommending a change in placement.
- If the student is suspended for more than 10 days they will be referred for a hearing at the Office of Administrative Hearings.

- If the alleged infraction has resulted in, or the school is threatening, criminal charges, consider connecting the student with the Public Defender Service for further advice.

At the Manifestation Determination Review Meeting (MDR)

- Prior to the MDR meeting, you should be provided with all of the student's records. If you have not, note this objection at the outset of the MDR meeting. Also make sure to discuss with the student beforehand whether they have given any reports or statements about the incident and what they plan to say at the MDR.
- Sometimes it is best to have the student write a letter or statement to use as a guide for their discussion or in lieu of providing an oral statement, as the student may become upset or frustrated when the incident is discussed or different versions of the incident are shared. Students should not be encouraged to give written or other statements without an attorney present; this is particularly true if there is an open delinquency matter related to the alleged infraction.
- Advocate for extended discussion at the MDR of both the impact of the student's disability, and whether or not the school district is implementing the IEP or if there are other violations of the IDEA, including whether or not the school has timely developed a Functional Behavioral Assessment and Behavioral Intervention Plan.
- During the MDR, develop a plan for the student to make up any missed work, discuss any compensatory education that may be warranted for missed IEP services, and discuss any warranted increase in services under a student's IEP.

If a Student is Suspended

- Make sure they have been placed in an interim alternative education setting that can implement their IEP. In the case of charter schools, make sure the alternate educational setting is identified at the MDR. Charter schools cannot place students at DCPS's alternative placement (called "CHOICE" Academy) and often don't have an identified alternative placement for disciplinary purposes. As a result, they are often confused about where to place a student, but long-term discipline removal must be to an appropriate interim alternative educational setting that can implement the student's IEP, which most likely cannot be done in the student's home or at a local library (as schools often propose).

Legal Resources & Policies

Federal

- [20 U.S.C. §§ 1415\(k\)\(1\)\(C-G\)](#): Manifestation determination/placement
- [20 U.S.C. § 1415\(k\)\(2\)](#): Interim Educational Setting determined by IEP team
- [20 U.S.C. § 1415\(k\)\(3\)](#): Appeal of placement or manifestation determination
- [34 C.F.R. § 300.530 et seq.](#)
- Dear Colleague Letter on the Inclusion of Behavioral Supports, 8/1/2016, available at: <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

District of Columbia

- [D.C. Code § 38-235 et seq.](#) (Student Fair Access to School Amendment Act of 2018)
- [5-B D.C.M.R. § 2510](#) (DCPS Regulations regarding Discipline of a Student with a Disability)
- Charter School Handbooks: Most are available on the charter school website and/or the Public Charter School Board website

CLC Tip Sheet

Advocacy Tips for Multiple Short-Term Suspensions

Actions to Take If a Student Incurs Several Shorter Suspensions in a School Year

- Attorney should total the number of days of suspension, including official out-of-school suspensions, in-school suspensions and any “unofficial suspensions” (when a school requires a parent to pick a child up early but no suspension is documented).
 - For in-school suspensions, attorneys should determine if the child received education and related services while in suspension. If so, it will be harder to argue that this is a day of suspension that counts towards the 10 total days.

- If the child has a disability or the school has been on notice in writing of a suspected disability, prior to day 11 of a child being excluded for the school year, the school must hold a Manifestation Determination Review.
 - Unless the school can show emergency circumstances as defined in the law, the school may not exclude a child with a disability or suspected disability for more than 10 total school days in the school year.
 - If the school does not schedule one on their own, attorney should demand an MDR before additional days of suspension go forward.
 - **Evaluations:** Consider whether you should request evaluations while the child is suspended so that they will be expedited pursuant to 20 U.S.C. § 1415(K)(5)(d)(ii).

- **Manifestation Determination Review Meeting:**
 - **Prepare for the MDR:**
 - Review student records and flag:
 - Any links between behavior and previous documented behavior/disability impact (e.g., IEP notes regarding child’s impulsivity); and
 - Any indication IEP was not being implemented (missed behavioral support services).
 - Request any missing records from the school.
 - Prepare client/student for MDR
 - Discuss what client/educational decision-maker will say, and what student will say (if anything).
 - If criminal charges have been, or may be, filed, consider consulting with a defense attorney for the student.
 - Consult with expert/outside providers regarding their input on manifestation, and consider inviting to MDR.
 - **At the MDR:**
 - Note any violations of IDEA (e.g., MDR scheduled too late, records not provided).
 - Advocate for finding that behavior is a manifestation of the child’s disability and that child be allowed to immediately return to school.
 - If school agrees behavior is a manifestation:

- Request an FBA and updated BIP per statutory requirements;
 - Develop a plan for student making up any missed work;
 - Discuss compensatory education for missed services; and
 - Discuss increased services.
 - If school finds behavior is NOT a manifestation:
 - Advise school that parent/educational decision-maker will be appealing determination and invoking stay put, if suspension is ongoing; and
 - If representing the parent/educational decision-maker, file Due Process Complaint, Motion for Expedited Hearing and Motion for Stay Put Injunctive Relief. Note that hearing timelines will be expedited.
- Conduct 504 or IEP meeting to request disciplinary accommodations, behavior improvement plan creation/changes, changes to social emotional services/goals and any additional evaluations needed.

CLC Tip Sheet

Bullying and School Safety Issues

The Basics: Defining Bullying and School Responsibilities

Bullying is generally understood as unwanted, aggressive behavior, repeated over time, where the aggressor is more powerful than the victim (whether this is a real or perceived power imbalance). It is important to note, however, that power need not consistently be held by the aggressor – a student who bullies one day can be a victim the next.

District of Columbia

In DC, “bullying” is defined as “any severe, pervasive or persistent act or conduct, whether physical, electronic or verbal that [...] may be based on the youth’s actual or perceived race, color, ethnicity, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, intellectual ability, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, or any other distinguishing characteristic [...] and can be reasonably predicted to (a) place the youth in reasonable fear of physical harm to his or her person or property; (b) cause a substantial detrimental effect on the youth’s physical or mental health; (c) substantially interfere with the youth’s academic performance or attendance; or (d) substantially interfere with the youth’s ability to participate in or benefit from [school activities or services]” See D.C. Code § 2-1535.01(2)(A).

Under the Act, all DC agencies that provide “services, activities or privileges to youth” must have a policy to address bullying that includes this definition. See D.C. Code § 2-1535.01 *et. seq.* Additionally, DCPS’s policy notes that “bullying also occurs when a student or group of students maliciously spread rumors about another student.” See the “DCPS District-Wide Bullying Prevention Policy” (link available in the Toolkit).

Maryland:

Maryland law defines “bullying, harassment, or intimidation” as “intentional conduct, including verbal, physical, or written conduct, or an intentional electronic communication that [...] (i) creates a hostile educational environment by substantially interfering with a student’s educational benefits, opportunities, or performance, or with a student’s physical or psychological well-being and is [...] motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attribute, socioeconomic status, familial status, or physical or mental ability or disability; or, threatening or seriously intimidating; and [...] (ii) occurs on school property, at a school activity or event, or on a school bus; or, substantially disrupts the orderly operation of a school.” See MD Code Educ. § 7-424.1(a)(2).

This law requires the Maryland State Board of Education to develop a model policy prohibiting bullying for in schools, using either the definition set forth in the code or a definition that was no less inclusive. See MD Code Educ. § 7-424.1(b)(2)(iii).

What Actions Steps Should I Take if a Student Reports Being Bullied?

- **TALK TO THE STUDENT/CLIENT FIRST.** Discuss the student's ideal approach to resolving the situation – some examples are: meeting with a neutral adult and the other student to mediate a solution or requesting a safety transfer to another school. Be sure to discuss what details the student is comfortable sharing with particular persons before making disclosures.
- **DOCUMENT** all bullying incidents in your own files and request that the school document all bullying incidents in accordance with their existing policies.
 - **DCPS:** Under DCPS's current policy, DCPS must investigate each and every reported incident of bullying within 30 days of the report and create a written record of the incident.
 - **PGCPS:** Under PG County Public School's current policy, reports of bullying must be made in writing (but can be made electronically). Once a report of bullying is received, the school then has two school days to investigate.

As part of the reporting and investigation process, both DCPS and PGCPS bullying policies direct the school to develop an intervention plan to address the impact of reported bullying on the student.

- **INFORMAL APPEALS:** If a school fails to investigate a report of bullying, in accordance with the school district's policy, or if the parent or student is not satisfied with the outcome of the investigation, an appeal may be made for further assistance:
 - **DC (DCPS and public charter schools):** Contact Suzanne Greenfield, Director, Citywide Youth Bullying Prevention Program. Ms. Greenfield is responsible for assisting all DC schools and other District agencies in complying with DC's Youth Bullying Prevention Program. Ms. Greenfield may also be a helpful contact if you are working with a charter school that has not yet developed a bullying prevention policy. See Citywide Youth Bullying Prevention Program, available at <http://ohr.dc.gov/bullyingprevention>.
 - **PGCPS:** Contact the Department of Student Services at 301-567-8670. The Department may conduct an independent review and investigation, meet with the parent and school-based personnel, and develop alternate strategies or supports.

What Can I Do If a Bullied Student Wants to Change Schools?

DCPS

The parent may request a safety transfer for the student to another school, if the parent or student believes that the student is no longer safe at his or her school placement. If the student has been the victim of a violent crime, the student may be eligible for an "Individual Student Victim Transfer" under 5-E D.C.M.R. § 3809. If not, the parent may still request that the student be transferred due to safety concerns related to bullying, although there is no codified process for doing so. Such a request should be made to the school principal and the instructional superintendent.

PGCPS

PG County's Administrative Procedure on Student Transfers (included in this Toolkit) allows for school transfers where the student has been the victim of a violent criminal offense. Students may also request transfers in other situations, but it is in the discretion of the school to approve them based on space and availability.

What Can I Do if the School Fails to Respond or Does Not Respond Appropriately to a Report of Bullying?

District of Columbia

- File a Complaint with the DC Office of Human Rights or the US Department of Education Office for Civil Rights (see Toolkit section on Dispute Resolution).
- For special education students, consider filing a due process complaint or a state complaint (see Toolkit section on Dispute Resolution).

What Protections Against Bullying Apply to Special Education Students?

Special education students are not afforded distinct protections by the current bullying policies. However, the U.S. Department of Education has informed schools that bullying of a student with a disability, to the extent that it adversely impacts the student's ability to receive meaningful educational benefit, constitutes a denial of a free appropriate public education ("FAPE"). Where a student with a disability is experiencing bullying, schools may need to convene an IEP team meeting to assess whether the student's needs have changed as a result. See Letter from Ms. Melody Musgrove and Mr. Michael K. Yudin, U.S. Dept. of Education – Office of Special Education and Rehabilitative Services, "Dear Colleague – Bullying of Students with Disabilities," dated August 20, 2013.

Where Can I Find Additional Bullying Resources in DC & MD?

District of Columbia

- Model Bullying Policy (DC), available at <http://ohr.dc.gov/bullyingprevention/policy>.
- "Know Your Policy Web Portal" (<https://ohr.dc.gov/page/knowyourpolicy>) to look up the policy of a specific DC school or agency.
- Bullying Prevention and Intervention in DC Educational Institutions: A Training Toolkit – available at <https://ohr.dc.gov/node/1061302>.

Maryland

- Maryland Department of Education – Bullying Prevention, available at <http://marylandpublicschools.org/about/Pages/DSFSS/SSSP/Bullying/index.aspx>.
- Maryland's Model Policy to Address Bullying, Harassment or Intimidation, available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/Bullying/ModelBullyingPolicy2016.pdf>.

DC Student Discipline Reform Legislation Effective Dates

PROVISION	EFFECTIVE DATE
Key Term Definitions Apply to Both DCPS and Public Charter Schools: Terms with new universal definitions include: Bodily Injury; Disciplinary Unenrollment; Emergency Removal; Emotional Distress; Exclusion; Expulsion; In-School Suspension; Involuntary Dismissal; Involuntary Transfer; Out-of-School Suspension; Suspension; and Willful Defiance.	September 25, 2018 DC Code § 38-235
“Out-of-School Suspension” Definition Includes Partial Days: “Out-of-school suspension” definition clearly includes disciplinary removals from school attendance that are less than full school days and includes “involuntary dismissals.” “Involuntary dismissal” is the removal of the student from school attendance for less than ½ of a school day.	September 25, 2018 DC Code § 38-235
Involuntary Transfers Are Now Equivalent to Expulsions: “Disciplinary unenrollment” definition is found in several provisions of the law that limit its use and includes both “expulsions” and “involuntary transfers.”	September 25, 2018 DC Code § 38-235
Definition “Willful Defiance”: “Willful defiance” is disrupting school activities or intentionally defying the valid authority of school staff.	September 25, 2018 DC Code § 38-235
School Policy Changes: LEAs must develop more transparent, robust, and evidence-based school discipline policies that ensure students can access their educational program and that clearly state the due process rights and procedures available to students and parents/guardians.	September 25, 2018 DC Code § 38-237
Limits on Exclusionary Discipline Use in Elementary & Middle School: The use of out-of-school suspensions, expulsions, and involuntary transfers in Kindergarten through Grade 8 is limited to incidents where a student’s behavior poses a safety or emotional distress concern.	Beginning SY2019-2020 or upon funding (whichever is later) DC Code § 38-238(a)(1)
Limits on Exclusionary Discipline Use in High School: In Grades 9 through 12, an out-of-school suspension, expulsion, or involuntary transfer cannot be used consequently for any dress code violation, willful defiance, or any incident occurring off school grounds that is not part of a school-sponsored activity (unless the student’s behavior poses a safety or emotional distress concern).	Beginning SY2020-2021 or upon funding (whichever is later) DC Code § 38-238(a)(2)
Out-of-School Suspension Limit of 5 Days in Elementary School: The duration of each out-of-school suspension cannot exceed 5 consecutive school days in Kindergarten through Grade 5.	October 01, 2018 DC Code § 38-238(b)(1)
Out-of-School Suspension Limit of 10 Days in Middle & High School: The duration of each out-of-school suspension cannot exceed 10 consecutive school days in Grades 6 through 12.	October 01, 2018 DC Code § 38-238(b)(2)

Out-of-School Suspension Limit of 20 Days Total in All Grades: Regardless of grade, a student cannot be suspended from school for more than 20 cumulative school days in a school year, except if the LEA head provides written justification to the student and parent or if the student’s conduct resulted in an emergency removal and written justification is provided by the LEA head.	October 01, 2018 DC Code § 38-238(b)(3)
Attendance-related Discipline Outlawed: No out-of-school suspensions, expulsions, or involuntary transfers for unexcused absences or late arrivals to school. However, students can be unenrolled after accumulating 20 or more consecutive full-school-day unexcused absences.	September 25, 2018 DC Code § 38-238(c)
Continuity of Education Plan: Schools are required to have a general plan for continued education for any student suspended (in-school or out-of-school).	September 25, 2018 DC Code § 38-238(b)(4)
Lack of Parent Attendance Cannot Prolong a Suspension: Schools cannot make a parent/guardian’s presence at their child’s school a prerequisite to the student’s return to school post-suspension.	September 25, 2018 DC Code § 38-238(e)
Higher Level of Due Process Required Earlier: For purposes of due process, a suspension of 6 school days or more is considered a “long-term suspension.” We believe that DCPS must provide a hearing at Office of Administrative Hearings and that PCS schools must provide a roughly comparable type of hearing.	September 25, 2018 DC Code § 38-238(g)
Manifestation Determination Reviews Must Consider All Disabilities: All of a student’s known disabilities, not just the primary disability on an IEP, must be considered in a manifestation determination review.	September 25, 2018 DC Code § 38-239
School Safety and Positive Climate Fund: OSSE is required to support schools with technical assistance, high-quality professional development, and the facilitation of postsecondary degree/certificate programs, including a trauma-informed educator certificate program. The fund will be used to support these requirements, as well as additional needed school supports for interventions.	October 01, 2018 DC Act 22-398 (Section 207)
School Supports: OSSE is required to provide LEAs with needed additional supports for interventions that allow them to reduce their use of exclusionary discipline.	Upon funding DC Code § 38-240

Discipline and Bullying

Resources and Links

District of Columbia

- **DCMR Chapter 25, Title 5: Student Discipline** (discipline regulations in DCPS)
 - <https://www.dcregs.dc.gov/Common/DCMR/RuleList.aspx?ChapterNum=5-B25&ChapterId=226>
- **DCPS Chief of Schools Guidance Regarding Select Chapter 25 Provisions** (DCPS' guidance to schools regarding Chapter 25 and the District's interpretation thereof)
 - Behavior and Disciplinary Responses (Version 1.0) – August 2015:
<https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Guidance%20Regarding%20Select%20Chapter%2025%20Provisions%20Behavior%20and%20Disciplinary%20Responses.pdf>
 - Alternatives to Suspension (Version 1.5) – January 2016:
<https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Chapter%2025%20Provisions%20Alternatives%20to%20Suspension%20Version%201-5.pdf>
- **DCPS District-Wide Bullying Prevention Policy**
 - <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Bullying%20Prevention%20Policy.pdf>
 - The purpose of the DCPS's district-wide approach to bullying prevention is to promote strategies at the district and school level that will ensure that all students can learn in a safe, healthy, and supportive environment that is free from bullying. The above policy explains DCPS's four key areas of focus in preventing bullying.

Maryland

- **PGCPS Administrative Procedures:**
 - **5052: Alternative Schools and Programs for Expelled and Disruptive Student and the Incarcerated Youth Program:** provides expelled, court involved, or disruptive students from PGCPS with opportunities to progress toward a high school diploma during the expulsion period, or when attendance at a regular school is not an appropriate option
 - **5115: Student Appeals of Long-Term Suspensions and Expulsions:** provides procedures for use in student appeals of long-term suspensions and expulsions before the PGCPS's Board of Education.
 - **5062: Student Behavior Interventions:** provides PGCPS's guidance and procedures which assure compliance with regulations pertaining to student behavior interventions.
 - **5144: Cooperation with Law Enforcement Officers Contacting Students:** establishes PGCPS's procedures to govern contacts by law enforcement personnel with students at school.
 - **5143: Bullying, Harassment, or Intimidation:** outlines PGCPS's approach to maintaining a safe school environment that is conducive to learning. This also details the expectations of school administrators and staff to promote the prevention of bullying, harassment, and intimidation as well as prohibit reprisal or retaliation against individuals who report these acts.

- **Student Rights & Responsibilities Handbook**

- http://www.pgcps.org/student_rights_responsibilities.htm
- The purpose of this handbook is to provide a framework for academic standards and positive student behavior. The contents promote positive, supportive and inclusive learning environments to maximize students' academic achievements and minimize students' behavior issues. The handbook creates a structure where students, parents and teachers forge education partnerships and relationships critical to student's success.

* Please visit the CLC Tip Sheet on Bullying and School Safety Issues for additional bullying policies and resources pertinent to DC and Maryland schools.