

Student Discipline Reform – What it Means for Your District



*School Client Conference
January 12, 2024*

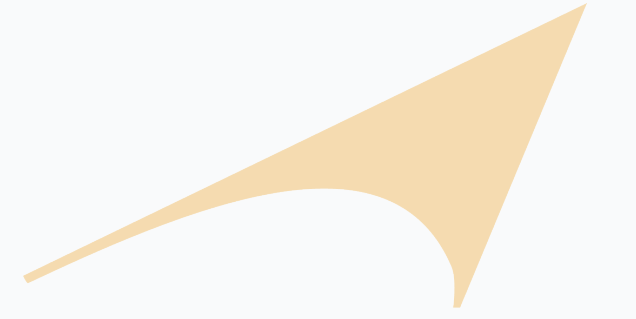
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Agenda

- Introduction
- Types of Restorative Justice Practices
- Restorative Justice Scenarios
- Reminders – Student Discipline
- Questions?



Introduction



Introduction

- Student discipline reform has been a “hot topic” for several years now but began to make headway in New York last year.
- Senate Bill S1040A, the “Solutions, Not Suspensions Act” seeks to amend, among other things, the education law “in relation to school climate and codes of conduct on school property and disciplinary action following violation of such codes of conduct.”
- Legislation was first introduced in 2015 and was not passed.
- Advocates, such as the New York Civil Liberties Union (“NYCLU”) and others, created a coalition in support of the Solutions Not Suspensions Act,” calling student discipline reform a “civil rights crisis.”
- Local advocates launched a “[Suspension Intake Hotline](#)” to allow advocates to help parents and students with the suspension process, including representation at hearings, filing appeals or joining in restorative conferences. Families may leave a voicemail and will be contacted by a coalition member for assistance.



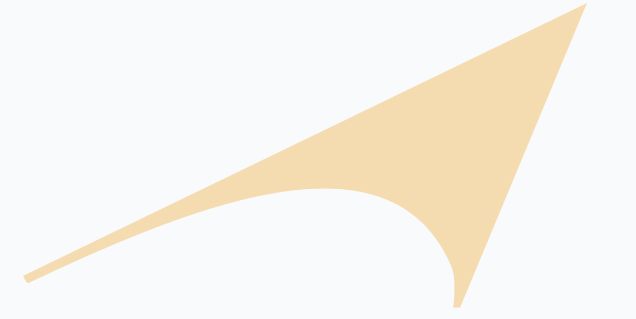
Introduction

- The push for legislation and local lobbying is a result of the disproportionate affects of “exclusionary discipline” practices to which students of color and LGBTQIA+ students are suspended more frequently than their counterparts.
- According to NYSED, approximately 23 days of school are lost due to out of school suspension (“OSS”) per 100 students, with large disparities by student race/ethnicity.
 - A NYSED study evidence progress New York City schools have had by adopting restorative justice practices. It is reported an overall decrease in suspensions: (1) overall, (2) for insubordination, (3) of K – 2 students (4) across racial groups, and (5) average length of suspension across racial groups.



Introduction

- Recent Commissioner decision appeared to have a “Solutions, Not Suspensions Act” undertone. See Appeal of R.M. and C.M., 63 Ed Dept, Decision No. 18344 (2023).
 - Holding that the District denied the student due process by not affording them an opportunity to discuss the proposed [1-day] in-school suspension prior to its imposition
- Despite the recent push in advocacy and support from NYSED, the Solutions Not Suspensions Act has stalled in the New York Legislature and is, again, unlikely to pass.



Restorative Justice Practices



Restorative Justice Practices

- According to a [NYSED Restorative Justice training](#), Restorative Justice Practices are philosophical and practical approaches that focus on the relationship between all people who make up a community.
- In the school context, this includes:
 - Teachers
 - Students
 - Parents
 - Staff
 - Administrators
 - The Board of Education, and
 - Community stakeholders



Restorative Justice Practices

- Restorative justice encompasses an array of practices that, when implemented, create a culture that is more connected, supportive, and accountable.
- Restorative justice practices have been linked to increased academic achievement, improved school engagement, decreased emotional distress, and fewer negative behaviors.
- Began as a method to limit exclusionary discipline and other discipline inequities.
- According to a [study](#), presented by NYSED, exclusionary discipline:
 - Has long-term, cumulative negative effects, especially on our students of color and students with special needs.
 - Does nothing to solve the underlying issues or root causes.



Restorative Justice Practices

- Restorative justice practices in action allow for teachers and students to engage in restorative circles and/or conferences for students engaged in certain misconduct.
 - Restorative justice circles and/or conferences are highly structured dialogue processes that hold those responsible for harm accountable for their actions while also providing the support they need to be positive members of the school community.
 - Supports those who have been harmed as well by providing them a voice when an incident happens and the tools they need to heal from the experience.



Restorative Justice Practices

- Restorative justice practices are being encouraged and utilized throughout the nation. Research shows that restorative practices have been shown to:
 - Strengthen school climate,
 - Respond constructively to conflict and incidents of harm,
 - Reduce reliance on suspensions and other punitive approaches to discipline,
 - Reduce forms of discipline that negatively impact school attendance, achievement, and engagement, and
 - Promote social emotional learning and trauma-informed responses to student behavior.



Restorative Justice Scenarios



Restorative Justice Scenarios

- Andrew and Jeff were in foundations when Jeff expressed difficulty with the math problem Ms. Menasco had given for students to work on. After expressing frustration, Jeff kicked Andrew's chair and screamed out "I hate school!" Andrew was not injured, but cried as the kick startled him. Andrew said to Jeff "you suck at math and you are mean!"
- How should Ms. Menasco handle this incident with a restorative justice model?

Scenarios Where Restorative Justice May Be Appropriate



- ANSWER: Ms. Menasco should engage in the following dialogue:
- “I can tell you both were really upset during class today and I heard some language that sounded very hurtful to each one of you as well as to the other students and me. We must work through what happened to ensure the situation is dealt with and therefore doesn’t happen again. I am going to ask each of you to share your responses with one another to the Restorative Questions Reflection Form I asked you to complete.”
- Ask who wants to begin, and then proceed to ask the first question to each student.
 - What happened between the two of you and what were you thinking as it was happening?
 - Now that a little time has passed, what are you thinking about what happened?
 - Who are all the people that were affected by the heated altercation you had and how were they affected?” (make sure they address how the other students in the class were affected, and you as the educator. Feel free to share how you, personally were affected).
 - What about this situation has been hardest for you?
 - What needs to happen to make things as right as possible for both of you as well as the entire class?

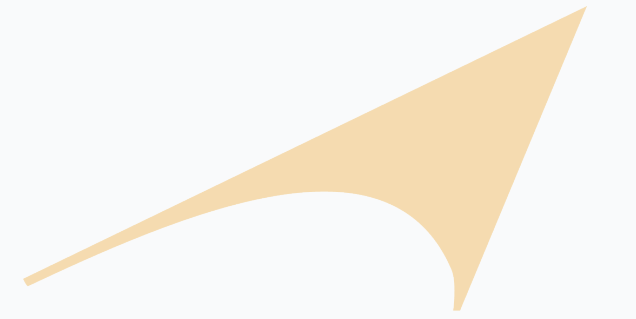
Scenarios adopted by <https://www.nyscfss.org/restorative-practices>.

Scenarios Where Restorative Justice May Be Appropriate



- Jeff was particularly rude and inappropriate in class one day. Mr. Kristoff decides that he would like to have a discussion with him after class about it
- How should Mr. Kristoff handle this incident with a restorative justice model?

Scenarios Where Restorative Justice May Be Appropriate



- Engage in a restorative dialogue:
- “Jeff, I’ve been noticing something different about your communication with others lately and I would really like to understand what your experience is like in our class. I have some time right after our class today or immediately after 3rd period. Which time would work better for you?”

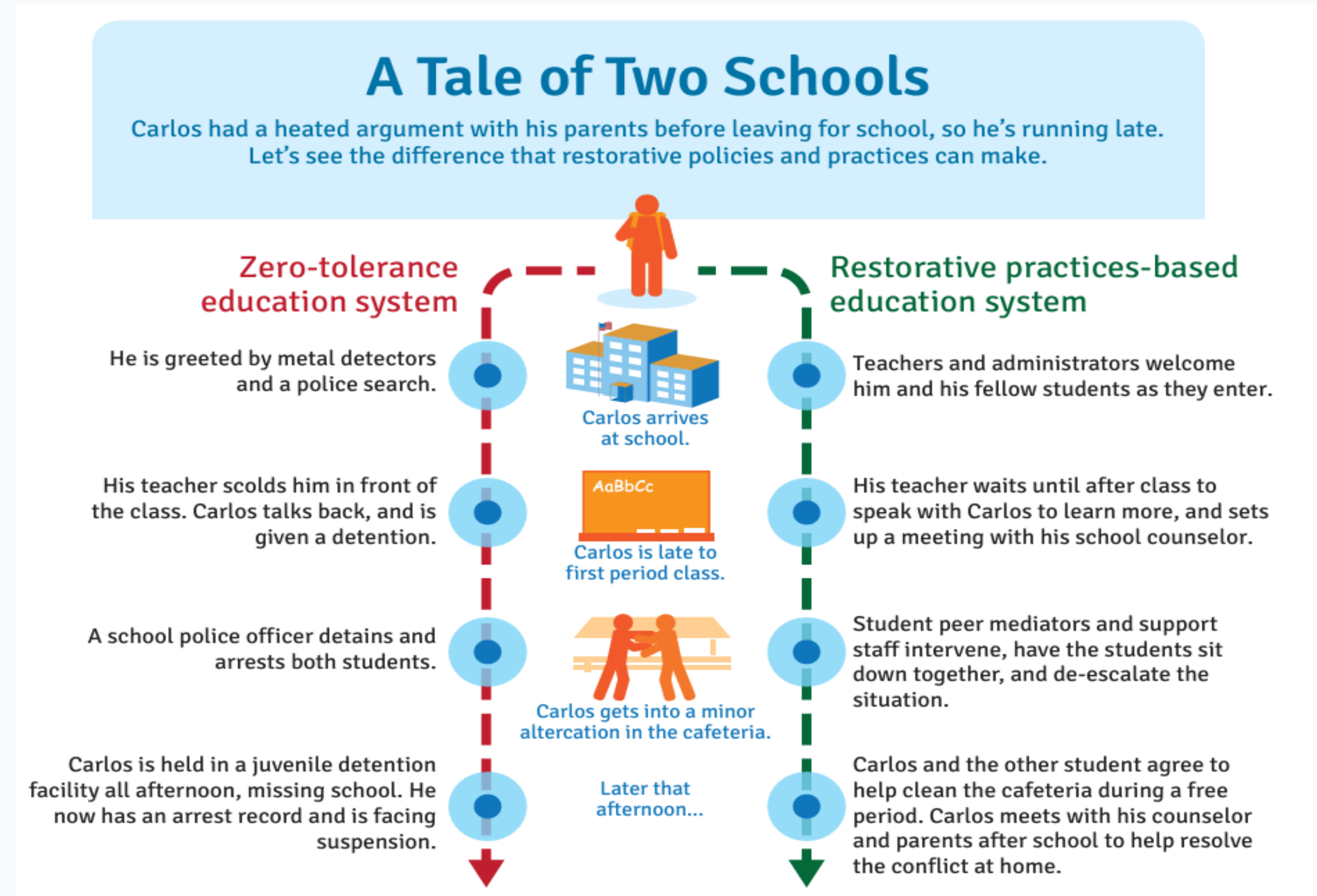
Scenarios Where Restorative Justice May Be Appropriate

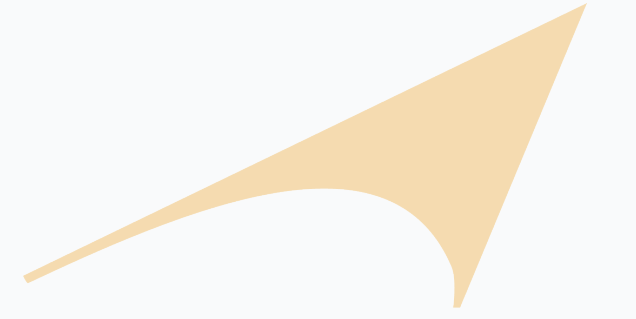


- When you meet with Jeff you say: "I've noticed that you are putting a lot of the students down and also getting into quite a few heated arguments. In order for me to better understand where you are coming from and what you are thinking, I have a few questions:"
 - When you put other students down in our class and get into heated verbal altercations, what is going on for you in that moment? What are you thinking about while it's happening?
 - After you say something hurtful to someone else, what do you think and feel about it afterward?
 - Who do you think is affected by you calling out putdowns in the class? How are the other students affected by it? How are you affected by it? How do you think I am affected by it?
 - What feels like the hardest thing about stopping to put others in our class down?
 - What do you think needs to happen to make things as right as possible moving forward in our class?
 - Is there something you can commit to doing to cut out the putdowns in the class?

A Tale of Two Schools – Infographic

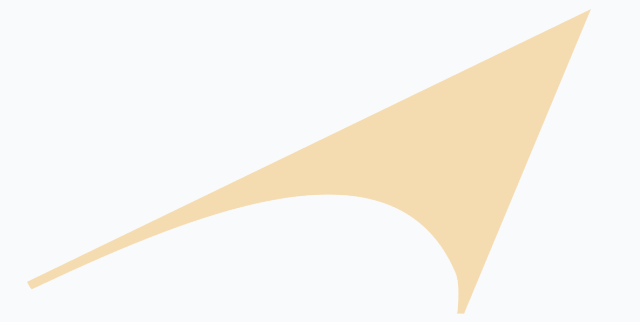
- Infographic adopted from the National Education Association 2014 Restorative Practices Guide





Reminders – Student Discipline Generally

Common Mistakes



- Lack of Notice to Student;
- Lack of Notice to Parents;
- Failure to include the proper content in the notice;
- Failure to properly serve the notice;
- Failure to offer an informal conference; and
- Failure to differentiate between proposed suspension and immediate suspension

Notice to Student



- The “suspending authority” must provide the student with oral notice of charged misconduct, and if denied, must provide explanation of basis for suspension.

NOTICE

Notice to Parents



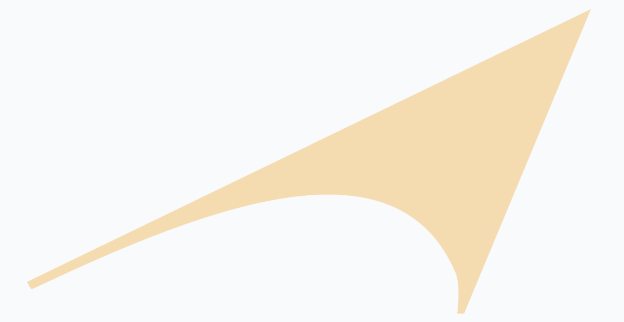
- School district officials must “immediately” notify the parents in writing that the student may be suspended from school.
- An immediate suspension may only be imposed when the pupil’s presence in school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process.
 - If relevant, this language must be included in the suspension letter.

How Must Notice be Provided?



- Personal delivery, by express mail or an equivalent means reasonably calculated to ensure receipt within 24 hours of the decision to propose the suspension;
and
- By telephone, where the school has been provided with a telephone number.
- Written notice of the suspension and right to informal conference sent by regular mail will not satisfy regulatory requirements and will result in expungement of short-term suspension. See Appeal of a Student with a Disability, Decision No. 15124 (2004); Appeal of R.J. and D.J., Decision No. 15145 (2004).
- Oral communication to the parents regarding an out of school suspension does not satisfy the legal notification requirements. See Appeal of Student Suspected of Having a Disability, Decision No. 14722 (2002); Appeal of V.G., Decision No. 15171 (2005).

Contents of Notice



- Do:
 - On or about January 12, 2018, Jane Doe got into a physical altercation with another student in school.

- Don't:
 - Jane Doe violated the Code of Conduct by engaging in violent behavior.

**KNOW
YOUR
RIGHTS**

Description of the Misconduct



- Describe the incident;
- Provide the length of the suspension;
- Inform the parent of the right to request an informal conference with the Principal; and
- Inform the parent of the right of the pupil and parent to question complaining witnesses at the informal conference.



Informal Conference



- The Principal must be present at the informal conference.
- The pupil and parent have the right to question “complaining witnesses” to the incident at the conference in the presence of the Principal.
 - What if the complaining witness and/or parents decline questioning?
- The Principal has the authority to terminate or reduce the suspension.
- Where the district fails to provide the opportunity for an informal conference prior to the start of the suspension, the suspension will be expunged from the student’s record. See Appeal of Student with a Disability, Decision No. 15124 (2004).

Timing of Informal Conference



- Notice and opportunity for informal conference shall take place before the proposed suspension...

UNLESS

- Continuing danger to persons or property.
- Ongoing threat of disruption to the academic process.
- Commencing a suspension prior to the opportunity for informal conference deprives the student of having the principal review the matter with him/her and decide whether to impose any suspension. *See Appeal of T.H., Decision No. 17,049 (2017).*

The Hearing



- Presided over by a Hearing Officer.
- Attendees:
 - For the District:
 - Individual to “present the case” (i.e., school attorney, building principal or assistant principal)
 - Witnesses (staff and/or students, to be called individually)
 - For the Student:
 - Student
 - Parents
 - Counsel or Advocate
 - Witnesses

Reasonable Notice



- Must provide the student with enough information to prepare an effective defense.
 - Three days has been deemed sufficient. Appeal of A.L., Jr., Dec. No 14,883 (2003).
 - Two days notice was found adequate where the parent was verbally informed by the principal that a superintendent's hearing would be scheduled and parent did not object to the notice at the hearing. Appeal of J.D., Dec. No. 14,322 (2000); Appeal of K.M., Dec. No. 16, 178 (2010).
 - One day notice is inadequate. Appeal of Eisenhauer, Dec. No. 13,162 (1994).

The Hearing



- A record must be made of the proceeding. A functional recording device must be available at the hearing location.
- The District has the Burden of Proof.
- Introduction and identification of those present.
- Reading of the Charge.
- Plea by the Accused Student (Guilty or Not Guilty).
- Presentation of the District's evidence.
- Opportunity for cross-examination.
- Student's presentation of evidence.
- Opportunity for cross-examination of the student's witnesses.

The District's Burden



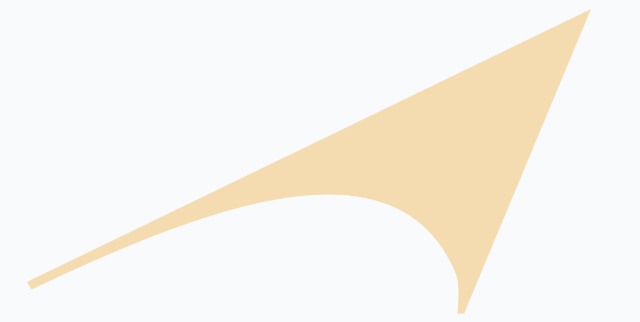
- To prove its case and impose a long-term suspension upon a student, the District needs competent and substantial evidence that the student engaged in the charged misconduct. This evidence consists of:
 - Witness testimony as to what was OBSERVED.
 - Physical evidence (knife, drugs, copies of e-mailed student threat, etc.).
 - Investigative results.
- The District can't use written statements from students who are not present and can't rely solely on hearsay testimony.
- Copies of all evidence used must be provided to the family.

What to Bring



- The parental notice of the initial short-term suspension.
- Any statements written by the accused student(s) or witnesses.
- Any notes of interviews with involved students or other details recorded by administration.
- Weapons or contraband substances, if applicable.
- Police statements, if applicable and available.
- Pertinent sections of the school handbook or code of conduct.
- Student records of previous disciplinary history (anecdotal record) for submission during penalty phase.
 - Discipline referral record
 - IEPs, Behavioral Intervention Plans, etc., for children with special needs.

Witnesses



- The best witnesses are those who personally observed the misconduct. Those witnesses should be prepared to testify by the person presenting the case.
- If these witnesses are students, the District should inform their parents, and offer them the opportunity to be present.
- Witnesses should be made aware that they are subject to cross-examination by the accused.
- Student witnesses/parents may be concerned about retaliation. Talk to them about what to do if accused acts or attempts to retaliate.

Disciplinary Penalty - Standard



- A disciplinary penalty is appropriate as long as it is proportionate to the severity of the offense involved.
- Consider whether the proposed penalty is so excessive as to warrant substitution of the Commissioner of Education's judgment for that of the school board.
- A district may not impose a harsher penalty on a student merely because the student does not cooperate with their investigation of an incident and does not admit guilt.
 - BUT districts may impose a harsher penalty for certain types of misconduct than others, such as a greater penalty for drugs than for tobacco or alcohol misconduct.

Conditional Return



- Education Law § 3214(3)(e) now permits the district to condition a student's early return from suspension on the student's voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable.
- The District also has the option to enter into an "Early Admission Agreement" in which student agrees to certain conditions in exchange for early return to school.

Waiving Due Process Rights



- Right to Petition for early return
- Go through the first phase of the superintendent's hearing.
- Must be voluntary, knowing, and intelligent.
- Agree to a recommended penalty with the right to petition for early return if the student completes a number of activities which can include:
 - Community service;
 - Threat assessment;
 - Counseling; and
 - Appropriate behavior while suspended and participation in alternative instruction.

Questions?



ALBANY + BUFFALO + GREENSBORO + HACKENSACK + NEW YORK + PALM BEACH + ROCHESTER + SARATOGA SPRINGS + TORONTO

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