



How to Advocate for Children and Youth in General Education School Discipline Proceedings

A Guide for Parents, Guardians, and Advocates

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This guide is provided for informational purposes only. Nothing in this guide should be construed as legal advice nor does the information provided constitute the formation of an attorney/client relationship. This guide does not replace an individual legal assessment of any particular case or situation.

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About This Guide

The purpose of this guide is to provide parents, guardians, and advocates with general information about how to defend students against allegations of disciplinary misconduct in K-12 schools in New Mexico. If you would like advice about specific circumstances, you may also wish to consult with an attorney.

This guide is limited to discussing disciplinary proceedings for children and youth in the general education setting. Please note that students with disabilities are afforded additional protections in disciplinary proceedings. If you would like information about discipline procedures for children and youth with disabilities, please contact Pegasus directly or see the resource list located at the end of this guide.

About Pegasus

Pegasus Legal Services for Children is a non-profit public interest law firm that provides free or sliding scale civil legal services to children, youth, and their caregivers throughout New Mexico, including direct representation, community legal education, and systemic advocacy. Our mission is to promote and defend the rights of children and youth to safe, stable homes, quality education and healthcare, and a voice in the decisions that affect their lives.

We offer a unique range of services to homeless and runaway youth, teen parents, children in foster care, grandparents and other adults taking care of children whose parents are unable or unwilling to provide them with proper care, and children who have been denied appropriate educational services. If you are interested in learning more, please visit our website at www.pegasuslaw.org or give us a call at (505) 244-1101.

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Introduction

Schools should be safe and effective places of learning, but student discipline must be balanced against each child's constitutional right to public education. State law creates procedures that protect children from arbitrary and excessive punishments in school. These procedures are based in constitutional guarantees that every child's right to public education can only be restricted if due process is provided. Schools must follow fair and consistent procedures when disciplining a student, and the child's rights throughout the process must be protected.

It can be overwhelming when a child is accused of misconduct at school. And the stakes are high. Research shows that suspension and expulsion in school has a number of harmful effects. Young people who are suspended or expelled are more likely to experience academic failure and face later incarceration than students who are not disciplined.¹

Suspensions and expulsions are disproportionately applied to children of color and children with disabilities, and research shows that high rates of school suspensions have been linked to lower academic achievement and higher dropout rates across schools.² Suspended students are more likely to be pushed into the juvenile justice system,³ and children with disabilities and children of color are arrested at higher rates than their peers. In 2017-2018, black children made up 15.1 percent of nationwide student enrollment, yet accounted for 28.7 percent of all student referrals to law enforcement and 31.6 percent of students arrested at school or school-related events.⁴ Children with disabilities who

¹ U.S. Department of Health and Human Services and U.S. Department of Education, *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings* (Dec. 2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>.

² U.S. Department of Education, *Guiding Principles: A Resource for Improving School Climate and Discipline* (Jan. 2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

³ *Id.*

⁴ U.S. Department of Education, Office for Civil Rights, *An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 School Year*, Civil Rights Data Collection (June 2021), <https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf>.

receive special education made up 12 percent of the nationwide student population in 2015-2016, yet comprised 28 percent of students arrested or referred to law enforcement.⁵

These statistics are disturbing. School disciplinary removals should be rare. Inappropriate student behavior should be addressed through positive supports and intervention strategies. If a general education student is struggling, they should receive support through the Student Assistance Team process and New Mexico's three-tier model of intervention. These interventions use academic and behavioral supports to assist students, not punish them.⁶

It is our hope that this guide will help prevent inappropriate school discipline and keep more children in school by providing accurate information about student and family rights in this process. The following pages contain introductory information about K-12 discipline processes in New Mexico, child and family rights in school discipline proceedings, and sample letters that may help when defending against a discipline action.

The guide is not a substitute for legal advice. You may wish to consult with an attorney for more information about your specific circumstances.

⁵ U.S. Department of Education, Office for Civil Rights, *School Climate and Safety: Data Highlights on School Climate and Safety in Our Nation's Public Schools*, 2015-2016 Civil Rights Data Collection (April 2018 – revised May 2019), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

⁶ More information on this subject can be found in the New Mexico Public Education Department's *Response to Intervention Frequently Asked Questions*, <https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/response-to-intervention-rti/frequently-asked-questions/>.

Tip Sheet: Advocating for a Child Facing Discipline

This guide provides detailed information about school discipline procedures in New Mexico. If you are pressed for time, here are some general tips for advocating for a child in discipline proceedings.

1. **Keep good notes.** Write detailed notes about each interaction with the school, including who you spoke with, what they said, the method of communication (email, phone call, etc.), the date of each conversation, and other important details.
2. **Ask for everything in writing, and keep a copy for your own records.** Make a note of the day of your request, who you sent the request to, and their response.
3. **Obtain all of the student's educational records from the school.** Parents, guardians, and an adult student have the right to review the child's school records. Information about how to obtain the records is provided on page 11 and a sample request letter can be found on page 21.
4. **Children should be cautious before speaking about a discipline incident.** A child's statements could be used against them in a criminal proceeding. You and the child should consider speaking with an attorney before the child speaks about the discipline incident.
5. **Memorialize your requests.** If you make a verbal request to the school, follow it up with an email or letter so that there is a written record of your request.
6. **Read the student handbook.** Educate yourself about the school's behavior rules and violations. If you do not have a copy of the handbook, look online at the school's website or ask the school for a copy.
7. **Remember that students with disabilities have additional protections in disciplinary proceedings.** If you would like more information, please contact Pegasus or consult the resources included at the end of this guide.
8. **Do not ignore appeal deadlines.** You may only have a short amount of time to appeal a discipline decision. If you are unsure of the timeline, look in the student handbook and/or consider consulting with an attorney.

School Discipline Proceedings in New Mexico: What Are The Rules?

This section describes the general rules that apply to school discipline proceedings in New Mexico. As you advocate for a young person facing school discipline, pay close attention to whether the rules are being followed. When a school system or hearing officer does not follow the rules, this can affect the fairness and integrity of the discipline proceedings. Once you know the rules, you will be better prepared to advocate for your position.

Immediate Removal

There are some limited instances when a child can be immediately removed from school because of a discipline incident. An “**immediate removal**” occurs when a student is removed from school “for one school day or less under emergency conditions and without a prior hearing.” 6.11.2.7(J) NMAC. A school can remove a student immediately **only** if the student’s presence “poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process.” 6.11.2.12(C) NMAC.

If the school is attempting to remove a student immediately, the school must hold a “rudimentary hearing” as soon as possible following the removal. 6.11.2.12(C)(1) NMAC. This means the student must be told of the charges against them and, if the student denies the charges, the school must tell the student what evidence supports the charge(s) and the student must be given the chance to explain their side of the story. 6.11.2.12(C)(1) NMAC; 6.11.2.12(D) NMAC.

When a child is immediately removed, the school must make “reasonable efforts” to inform the parents of the charges and the action taken **as soon as practicable**. 6.11.2.12(C)(3) NMAC. If the school has not spoken to the parent by “the end of the school day following the immediate removal,” the school must mail written notice to the parents. *Id.*

Importantly, the child **must** be allowed to return to school after no more than one school day unless the school imposes a temporary suspension in that time. 6.11.2.12(C)(2) NMAC.

Temporary Suspensions

This section describes the general rules that apply when a school system acts to temporarily suspend a student.

A “**temporary suspension**” is “the removal of a student from school for a specified period of **10 or fewer school days** after a rudimentary hearing.”⁷ 6.11.2.7(DD) NMAC.

In an important case called *Goss v. Lopez*, the United States Supreme Court decided that schools must follow certain procedures **before** suspending a student. *Goss v. Lopez*, 419 U.S. 565 (1975). New Mexico has adopted the rules identified in *Goss*. A student facing temporary suspension must be given a “rudimentary hearing.” 6.11.2.12(D)(2) NMAC. This means the student must be told of the charges against them and, if the student denies the charges, the school must tell the student what evidence supports the charge(s) and the student must be given the chance to explain their side of the story. 6.11.2.12(D)(2) NMAC. The hearing can be informal and can happen right after the student is told about the charges against them. 6.11.2.12(D)(2)(a) NMAC.

The school is not required to tell the student the identity of witnesses against the student, but if the school withholds this information, they must have good cause to do so. 6.11.2.12(D)(2)(c) NMAC. When imposing a temporary suspension, the school system must provide the “substance of all evidence” upon which they justify their decision about the student’s suspension. *Id.*

In addition, the school must make reasonable efforts to inform the student’s parents about the charges against the student and the consequences. 6.11.2.12(D)(2)(e) NMAC. This may occur after the school has spoken with the student outside of the parent’s presence. If the school has not spoken to the parent by the end of the day of the first full suspension day, the school must mail written notice to the parents. *Id.*

For a temporary suspension, a **school is allowed, but is not required**, to permit the student to get an attorney, confront or question witnesses against them, and call witnesses to support the student’s perspective. 6.11.2.12(D)(2)(d) NMAC.

Because the rudimentary hearing for a temporary suspension can occur within minutes of the incident, it is often not possible for a parent or guardian to advocate for the student during the often-informal conversation before their temporary suspension. One way to address this is to educate your child or the students you work with about their rights *before* they are ever suspended. They should know they can ask the administrative authority to listen to particular witnesses who can verify the student’s version of the incident. If the administrative authority does not allow this or any of the student’s requests during the informal hearing, you or the student should write down what the

⁷ A school system may consider a temporary suspension to be fewer than 10 days. 6.11.2.12(D)(1) NMAC. To check your local school system’s definition, please review the school’s student handbook, which you can usually find on the school or school district website.

administrative authority said, the reasons they gave for denying the student’s request, and any other details from the conversation.

Long-Term Suspensions and Expulsions

If a child is facing a long-term suspension or expulsion, there are several specific procedures that the school system must follow. Before describing the required procedures, here are the relevant definitions for these disciplinary actions:

A “**long-term suspension**” occurs when a student is removed from school for a “specified time” that is **more than 10 school days**.⁸ 6.11.2.7(O) NMAC.

An “**expulsion**” occurs when a student is removed from a school either **permanently** or for an **indefinite period of more than 10 school days**.⁹ 6.11.2.7(H) NMAC.

How the Process Begins: Notice to the Family and Requesting Educational Records

I. Notice of Hearing

When a school system decides to pursue long-term suspension or expulsion, it must send the student, through their parents, **written notice** before the discipline hearing. 6.11.2.12(G)(4)(e)-(f) NMAC. The hearing must be scheduled “no sooner than five nor later than 10 school days from the date of receipt of the written notice by the parents.” 6.11.2.12(G)(4)(g) NMAC. The **written notice *must include all of the following information***:

- (i) the school rule(s) alleged to have been violated, a short statement of the alleged act(s) on which the charge(s) are based, and a statement of the possible penalty;
- (ii) the date, time, and place of the hearing, and a statement that both the student and parent(s) are entitled and urged to be present;
- (iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the family agrees to waive the hearing and

⁸ A school system is allowed to define a long-term suspension as a shorter period. 6.11.2.7(O) NMAC. To check your local school system’s definition, please review the student’s school handbook, which you can usually find on the school or school district website.

⁹ A school system may define expulsion as a shorter period. 6.11.2.7(H) NMAC. To check your local school system’s definition, please review the student’s school handbook, which you can usually find on the school or school district website.

comply voluntarily with punishment, and a clear and conspicuous warning that a failure to appear will *not* delay the hearing and may lead to the imposition of the proposed penalty even without the family being present;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed **at least 72 hours** before the hearing;

(v) a description of the procedures for the hearing;

(vi) the name, address, and telephone number of a contact person through whom the student, parent(s), or designated representative may request a delay or request further information, including access to any evidence or exhibits which the school proposes to use at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

6.11.2.12(G)(4)(h) NMAC.

A note about language access: If the child’s parents are not proficient in English, the school should provide this notice in a language the parents can understand. It is likely a significant problem if the school does not provide this notice, or other discipline documents, in the appropriate language for parents. **If the notice is provided in a language the parents do not understand, they should immediately notify the school in writing** and, if the case proceeds to a hearing, they should describe how the notice was only provided in English. More detailed information about language access rights is provided on page 12.

Advocacy Tips

- 1. Pay attention to the notice.** If you have *not* received the long-term suspension/expulsion notice or if the notice is missing any of the required components, you should consider describing these problems at the discipline hearing. Specific suggestions for how to do so are described in the “Discipline Hearing” section below.
- 2. Carefully consider the consequences of giving up the right to a hearing.** In many cases, it is probably *not* in a child’s interests to waive the hearing. If you waive the hearing, the child may lose important rights, including the right to appeal the suspension or expulsion. Before agreeing to waive the hearing, please consider the various negative consequences that occur when a child is suspended or expelled. The child will likely not have access to educational services while they are suspended or expelled, and if expelled, it may be difficult to enroll the

child in another school. These consequences are discussed more fully on page 19.

II. Request Educational Records

As soon as you learn about the hearing, submit a written request for all of the child’s educational records, including all records related to the discipline incident. A sample request letter is included at the end of this guide on page 21. You may want to use some of the records as evidence at the hearing to support the child’s case and refute the school’s case.

The **Family Educational Rights and Privacy Act (FERPA)**, and its corresponding regulations, govern parents’ rights to their child’s educational records. *See generally*, 20 U.S.C. § 1232g. An educational record means a record that is directly related to a student and is maintained by the educational agency or a party acting for the agency. 34 CFR § 99.3. It includes “any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.” *Id.*

Parents have the right to inspect and review their child’s educational records. Schools generally do not have to provide copies of the records, but they may have to in certain circumstances where it is impossible for parents to review the records in person, such as if the family lives a great distance from the school. Additional information about educational records and FERPA can be found at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

Schools often have **photo or video evidence** related to school discipline, such as surveillance video footage from school campus. As soon as you learn of a discipline accusation against a student, it is generally a good idea to submit a written request to the school directing the school to preserve all evidence related to the student. In other words, the school should not delete or destroy evidence related to the incident the student is accused of. At the end of this guide, you will find a sample request for educational records, which includes a demand that the school system preserve evidence.

The school may try to refuse to provide you with photo or video evidence on grounds that they do not want to violate the privacy rights of other students depicted in the photo or video. However, the U.S. Department of Education has explained that if a school system uses the photo/video for disciplinary action involving the student or contains depiction of an activity that resulted in the school system taking disciplinary action, it should probably be considered “directly related” to the student and thus, should be disclosed to the parents as an educational record.

Additional guidance about photo/video records and when they should be disclosed to parents is available at <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>. Another helpful resource is the U.S. Department of Education’s *Letter to Wachter*, which states, “when an education record contains information on more than one student, the parent may inspect and review or ‘be informed of’ only the specific information about his or her own child, unless the information about the other student or students cannot be segregated and redacted without destroying its meaning.” This letter is available at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Letter%20to%20Wachter%20%28Surveillance%20Video%20of%20Multiple%20Students%29_0.pdf.

Language Access: What if the Family Needs Language Assistance?

School systems must communicate information about student discipline to parents in a language the parents can understand. Under federal law, when a school system provides information about any “program, service, or activity” that is brought to the attention of English-proficient parents, the school system must also communicate this information to limited English proficient parents, including those who communicate in American Sign Language. This means that the school system must provide interpretation and translation services for limited English proficient parents throughout disciplinary proceedings, including in the discipline hearing.

The school system must provide translation or interpretation from trained, competent professionals. Schools cannot rely on untrained staff, the student, or other family members to interpret or translate for parents/guardians.

Language Access Tips

- 1. When a limited English proficient parent or guardian needs language assistance, they should immediately notify the school system, and request an interpreter, preferably in writing.**
2. If the school system does not provide translation or interpretation by a trained professional, the family should object and notify the school system that the proceedings should not continue until language assistance is provided. The family should consider speaking with an attorney about their options if the school system continues to impede the parent’s rights to language services.

For more information about language access rights, see <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

The Discipline Hearing

A discipline hearing often feels like a mini-trial, with each side presenting their perspective and evidence, and an individual or group presiding over the hearing. This section describes various aspects of the hearing.

Should the Family and Child Go to the Hearing?

In most cases, the child and advocate(s) should probably attend the hearing. **If no one goes to the hearing on the child's behalf**, but it is clear that the student and family received notice of the hearing, the **hearing will probably take place without the child and family**. No one will present the child's side of the story. The child could be found at fault of the charges against them, even in their absence. 6.11.2.12(G)(4)(l)(iv) NMAC. On the other hand, if the child is facing criminal charges for the conduct underlying the discipline referral and attends the discipline hearing, please know that **anything the child says at the discipline hearing could be used against the child in a criminal proceeding**.

Consider attending the hearing, but use caution when deciding whether the child should speak. If you are unsure or apprehensive, you may consider consulting with an attorney, in addition to reviewing this guide, before the hearing takes place.

Who Oversees the Discipline Hearing?

The person overseeing the hearing is usually a hearing officer.¹⁰ This person will hear the facts and decide the punishment, if any, in most cases. The hearing officer is supposed to be **impartial**, meaning they should not be biased for or against anyone who participates in the hearing. The hearing officer should not have been involved in or witnessed the incident involving the child. 6.11.2.12(G)(4)(c).

Advocacy Tips

1. If you have any concerns that the assigned hearing officer is not impartial or has a conflict of interest, **raise your concerns in writing prior to the hearing**, if possible. Consider requesting that a new hearing officer be assigned. You can submit your letter of concern to the hearing officer and to the person the district has identified as the contact person for the hearing. If the issue is not resolved by the time of the hearing, bring a copy of your previously submitted letter to the hearing and describe your concern again.
2. When describe your concerns about impartiality at the hearing, it is generally

¹⁰ It is possible that a group of people, instead of an individual, will be designated to oversee the hearing. 6.11.2.7(I) NMAC. This guide assumes a hearing officer will preside over the hearing because that is the more common practice, but please know that it can vary by school system.

best to do so calmly, but clearly. If you learn that the hearing officer was a witness to the alleged incident, explain that state law calls for a **neutral** hearing authority and ask for a hearing officer who does not have any connection to the incident.

- 3. Even if you do not get a different hearing officer assigned, it is still important to describe your concerns and make sure they are memorialized somehow, such as in a letter. Always ask that your letter be made part of the official record of the proceedings.** These steps will be important later if you need to appeal the outcome of the discipline hearing.

What Are the Family's Rights in the Hearing?

The student and family have the following specific rights in a discipline hearing:¹¹

- **Representation by an attorney or another representative.** It is the family's responsibility to find an attorney or representative; the school has no obligation to provide a representative.
- **Present evidence.** The family has the right to present evidence of the student's side of the case. However, the hearing officer has discretion to exclude evidence if it is irrelevant, redundant, or cannot be verified. This means that the hearing officer may prevent the family from presenting certain evidence.
- **Confront and cross-examine opposing witnesses.** The student and family can request the identity of the witnesses against the student and request to ask the witnesses questions. The hearing officer may limit these rights, so long as the limitation is reasonable.
- **Have the decision about the child be based *only* on evidence presented at the hearing and on the relevant rules of student conduct.** The hearing officer is *not* permitted to base their decision on whether to suspend or expel the child on gossip or information they heard outside of the hearing. Additionally, the decision must be based on the rules applicable to the child's case, including the school system's specific conduct rules. A school system's conduct rules are often found in the **student handbook**, which is usually available on the school's website. Request a copy from the school if needed. Many school systems use a **discipline matrix**, which is a chart that describes categories of behavior violations and consequences. The decision about an individual child must comply with these specific school rules.

¹¹ 6.11.2.12(G)(4)(I)(ii) NMAC.

Advocacy Tips

1. The family should exercise their rights at the hearing. **If any of the family's rights are violated at the hearing, they should object.**
2. If the school system attempts to present the child's past grade reports, attendance records, or records that otherwise have nothing to do with the incident at hand, the family should object that the records are irrelevant to the allegations of misconduct at issue and insist that they not be considered.
3. If the hearing officer attempts to prevent a family's advocate from speaking, remind the hearing officer that the family has the right to be represented and the representative is **not** required to be an attorney.

What Happens at the Hearing?

Though the exact format of a child's hearing may depend on your location and school system, there are some general things to expect.

First, the hearing must be **recorded** in some way. 6.11.2.12(G)(4)(l)(vi) NMAC. Although a written transcript or recording is not necessarily required, there must be some recordkeeping that "fairly reflect[s]" the evidence presented at the hearing. *Id.* The administrative authority may choose to keep minutes of the hearing. **It is the administrative authority's responsibility to make arrangements for the recording.** *Id.*

During the hearing, the **school has the burden of proof.** 6.11.2.12(G)(4)(l)(i) NMAC. This means that it is up to the school to prove that the child violated the rules they are accused of breaking. It is *not* up to the family or student to prove the misconduct did not occur.

In many cases, the hearing officer will provide introductory statements. In addition to the family and child, at least one representative from the school will be present. The school will generally present their case first. They may call witnesses, such as teachers, and present evidence, such as surveillance video.

Advocacy Tip

The school may choose to rely on the principal or other administrator to summarize the allegations against the child, instead of calling the witnesses who personally observed the child's alleged misconduct. You should consider asking questions of this witness that show why their account may not be accurate. If the child is accused of using profanity but the school does not present any witnesses who actually *heard* the child, how can the witness know what the child said?

After the school has presented its case, the family will likely have the chance to present the student's case. The family should consider bringing any witnesses who can help support the child's side of the story.

The hearing officer may ask the child to make a statement. **Strongly consider the consequences if the child speaks.** If the child makes a statement at the hearing, this statement could be used against the child in a criminal proceeding.

In some circumstances, it can be a good idea to suggest alternative consequences for the child's behavior, instead of suspension or expulsion. Would it make sense for the child to do community service at the school instead of being removed? Does the child need behavioral services and supports to help them at school? Even if the hearing officer does not agree with your ideas, it is important to suggest them anyway because you may want to appeal the hearing decision, and it is better for the appeal if you discuss your suggestions in front of the hearing officer.

Will There Be a Decision About the Child at the Hearing?

The hearing officer must determine whether the school has proven that the child committed the acts they are accused. The question is whether the school proved this by a **preponderance of the evidence**. 6.11.2.12(G)(4)(l)(iii) NMAC. In other words, does the evidence show that it is **more likely than not** that the child committed the alleged acts?

Advocacy Tips

It is **not** appropriate for the hearing officer to expect the family to prove that the child did not commit the acts. The **burden of proof is on the school**. If the hearing officer ignores or changes this standard, consider stating your concern about this on the record.

Even if the hearing officer disagrees with you, it is important to make a record of your concerns because you may want to appeal the hearing officer's decision.

The hearing officer can announce their decision about guilt at the end of the hearing, but they are not required to do so. However, the hearing officer **must** mail or deliver their final written decision to the family **within five business days after the hearing**. The decision must include a summary of the evidence they relied on to make their decision about your child's actions. 6.11.2.12(G)(4)(l)(vii) NMAC.

If the report or oral decision lacks any of the required components, this could be a good reason to appeal the result of the hearing. Information about appeals is included below.

Who Decides the Child's Punishment?

If the child is found to have committed the misconduct they are accused of, they will probably receive punishment. In many cases, the same person(s) who presides over the hearing will also decide the punishment for the child. The hearing officer will impose an "appropriate sanction" if they have found that the allegations of misconduct have been proved by a preponderance of the evidence. 6.11.2.12(G)(4)(l)(v) NMAC.

The hearing officer can announce the punishment at the end of the hearing, but regardless of whether they do, they must include a statement of the penalty to be imposed in the **written report** that they mail or deliver to the family. 6.11.2.12(G)(4)(l)(viii) NMAC. They must also **state the reasons** they chose the penalty. *Id.*

In some school systems, another person or group will decide the punishment. If the hearing officer is not the disciplinarian (the one imposing the punishment), then they will report their findings from the hearing, along with a recommended sanction, to the person(s) who is the disciplinarian(s). 6.11.2.12(G)(4)(l)(v) NMAC. They must make this report "promptly" after the hearing. *Id.* The disciplinarian will then prepare a written decision. This decision must be **mailed or delivered** to the family **within five business days** after receiving the hearing officer's report. The decision must **state the reasons** for choosing the penalty, if one is imposed. 6.11.2.12(G)(4)(l)(viii) NMAC.

It is possible that the hearing officer and the disciplinarian will both attend the hearing and announce their decisions during the hearing. 6.11.2.12(G)(4)(l)(ix) NMAC.

Regardless of the exact format of the hearing, the family is entitled to a written decision after the hearing. It must include the specific evidence upon which the decision about the child is based, and a statement of the penalty and the reasons for the chosen penalty, if one is imposed. 6.11.2.12(G)(4)(l)(viii) NMAC.

What if the Discipline Decision is Discriminatory?

Schools should not punish a child with a disability for conduct that the child cannot control, nor should a child with a disability be punished more severely than a child without a disability. Children of color should not be disproportionately disciplined in school.

If a student has been discriminated against, please consider describing this in an appeal and contacting an attorney for information about options. The family may also want to consider filing a civil rights complaint with the U.S. Department of Education's Office for Civil Rights. Please note that this complaint generally must be filed within 180

days of the last act of discrimination. More information about this complaint process can be found at: <https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>.

After the Hearing: Effect of Decision and Appeal

What Else Happens After the Hearing?

If the hearing officer imposes a sanction on the child, that decision takes effect as soon as the parents are notified. 6.11.2.12(G)(4)(m) NMAC. In the event that the family decides to appeal the hearing officer's decision, the decision will continue in effect during the time of the appeal. *Id.*

Can the Family Appeal?

If the child was given a long-term suspension, expulsion, or another punishment lasting longer than one semester, the family may be able to appeal the decision.¹² 6.11.2.12(G)(4)(n) NMAC. The right to appeal is also called "right of review." **The family's request for review must be submitted within 10 school days after the student was informed of the hearing officer's decision.** *Id.* The request must be submitted to the "review authority," which refers to either an individual or group designated by the local school board to review hearing officers' discipline decisions. If the written suspension/expulsion decision does not state who the review authority is, send copies of your request to the school principal and superintendent.

Advocacy Tips

DO NOT IGNORE THE 10-DAY DEADLINE. If you want to appeal, you **must** submit your request in time.

In many situations, it is better for you to submit an imperfect written request for appeal rather than none at all. If you do not have time to speak with an attorney before submitting your request for appeal and/or you are nervous about how to phrase the request, strongly consider submitting the request anyway and then contacting an attorney for extra assistance.

A sample appeal letter can be found at the end of this guide on page 22.

In many cases, the review authority cannot modify the **factual findings** made at the discipline hearing. 6.11.2.12(G)(4)(o) NMAC. The review authority may change the

¹² A local school system *may* allow review for cases involving lesser penalties, but it is not required. 6.11.2.12(G)(4)(n) NMAC. Please also note that if the local school board was the disciplinarian, its "decision is final" and cannot be appealed administratively. *Id.*

hearing officer's factual findings if the student convinces the reviewer that a particular factual finding was "arbitrary, capricious, or unsupported by substantial evidence," or that new evidence has "come to light" that was not available at the time of the hearing and this new evidence "manifestly changes" a particular factual finding. 6.11.2.12(G)(4)(o) NMAC. **If you want to present additional evidence during the appeal, explain how the evidence has come to light since the hearing and why it was not available previously.**

If the reviewer decides to change the hearing officer's factual determinations, the reviewer then has discretion to receive new evidence, reconsider evidence from the hearing, or re-do the hearing. *Id.* But if there is no finding that consideration of new evidence is appropriate, then the review "shall be limited to an inquiry into the appropriateness of the penalty imposed." *Id.*

Please note: generally the reviewing authority can modify or overrule the disciplinarian's final decision, which includes imposing a less severe sanction, but they **cannot** impose harsher consequences. 6.11.2.12(G)(4)(b), (o) NMAC.

Once the family submits a request for review, the review authority usually will only review the written records from the discipline hearing, the family's written submission, and the school's written submission. 6.11.2.12(G)(4)(p) NMAC. The review authority may have a hearing for the family and school to present their views in person. *Id.*

Unless there are extraordinary circumstances, "a review shall be concluded no later than **15 working days** after a student's written request for review is received by the appropriate administrative authority." 6.11.2.12(G)(4)(q) NMAC.

The reviewing authority must prepare a written decision explaining the reasons for their ruling. 6.11.2.12(G)(4)(r) NMAC. This decision must be mailed or delivered to the student and parents **within 10 working days** after the review is concluded. *Id.*

If the family is not satisfied with this first level of review, they may be able to file a case in court and ask for judicial review. If you are interested in learning more about this appeal option, consider contacting an attorney for more information.

Consequences of Long-Term Suspension or Expulsion

If a child is validly long-term suspended or expelled, there are a number of potential negative consequences that you should be aware of.

First and foremost, with the exception of children with disabilities, a child is not entitled to receive any educational services if they are *validly* long-term suspended or

expelled, though the school system *may* choose to allow arrangements for services. 6.11.2.12(G)(2) NMAC. Please note this applies only if a child was *validly* excluded, meaning that the school system followed all of the required rules and procedures. And again, please keep in mind that the rules are different if the child has a disability.

Second, if a child is expelled, any school system or private school may use this as a reason to refuse to allow the child to enroll during the twelve months following the expulsion. N.M. Stat. Ann. § 22-1-4(E)(5)(a).

Beyond these specific consequences, disciplinary removals do not address the underlying reasons for misconduct nor do they teach students positive strategies for dealing with conflict. The research is also clear that there are a number of school and community-wide negative consequences when a school uses long-term suspension and expulsion.

If a school tells you about another specific consequence not listed here, please consider reaching out to a parents' advocacy group or attorney for information and advice.

Conclusion

Suspension and expulsion harms students, schools, and entire communities in a variety of ways, from funneling students into the juvenile justice system to teaching students they are not worthy of attending school with their peers.

At Pegasus, it our hope that schools will replace inappropriate exclusionary discipline with positive behavioral supports to teach students them how to conform their conduct. Until that occurs, please use this guide to help you advocate for children facing discipline.

If you would like more information about Pegasus or our services, please visit our website at www.pegasuslaw.org or call our office at (505) 244-1101.

Sample Letters

Letter Requesting Educational Records and Requesting Preservation of Evidence

[Please customize to your child's particular circumstances]

[Parent/guardian's name(s)]

[Parent/guardian's address and contact information]

[Date]

Re: [Student's name and date of birth]

[Name of principal and/or individual parent is communicating with about discipline]

[Address]

Dear [principal and/or discipline contact person],

The first purpose of this letter is to request you take immediate action to preserve all information that may contain evidence related to pending disciplinary action involving my child, including all electronically stored information such as surveillance video footage.

The second purpose of this letter is to request a complete set of [student's] educational records created and maintained during the entire period of [his/her/their] enrollment at [School]. Educational records are defined by federal law to mean records that are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution." 34 CFR § 99.3. My request includes, but is not limited to, the following:

1. Evaluation reports;
2. Grade and progress reports;
3. Any and all documents related to Student Assistance Team meetings;
4. Student handbook;
5. Student discipline matrix;
6. Attendance records;
7. Legal notices;
8. Meeting notices;
9. Disciplinary records; and
10. Correspondence, including emails, that are personally identifiable to [student].

I look forward to receiving the documents promptly.

Thank you,

[Parent/guardian]

Letter to Appeal Long-Term Suspension or Expulsion

[Please customize to your child's particular circumstances]

[Parent/guardian's name(s)]

[Parent/guardian's address and contact information]

[Date]

Re: [Student's name and date of birth]

[Name of review authority¹³]

[Review authority's address]

Dear [review authority],

I am writing to formally appeal the [expulsion/suspension] of [student] under 6.11.2.12(G)(4)(n) NMAC. [Student] attends [name of school]. [Student] was [expelled/suspended on [date]]. I am timely submitting this request within 10 school days after the student was informed of the disciplinarian's decision.

I am contesting the hearing authority's factual determinations and the appropriateness of the penalty imposed on [student]. The hearing authority's decisions were incorrect because: [state all of the reasons why the hearing authority's decisions were incorrect].

Thank you,

[Parent/guardian name]

¹³ If the written suspension/expulsion decision does not state who the review authority is, send copies of your request to the school principal and superintendent.

Resource List

Pegasus Legal Services for Children

www.pegasuslaw.org

Center for Parent Information & Resources

www.parentcenterhub.org

Families ASAP

<https://familiesasap.org>

Family Educational Rights and Privacy Act (FERPA)

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

United States Office for Children and Families

Resources Related to Reducing Suspension and Expulsion Practices in Early Childhood Settings

<https://www.acf.hhs.gov/ecd/child-health-development/reducing-suspension-and-expulsion-practices/resources#ec-programs>

New Mexico Legal Aid LGBTQ+ Legal Access Project

<https://www.newmexicolegalaid.org/safe2bu>

New Mexico Public Education Department

<https://webnew.ped.state.nm.us/>

Parents Reaching Out

<https://parentsreachingout.org>

United States Department of Education, Office for Civil Rights

Discrimination Complaint Process

<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

Wrights Law

www.wrightslaw.com