Overview of the Discipline Process

- Joan Heishman Proper
- The Law Office of Joan H. Proper, PC
- 703-291-6660
- www.jproperlaw.com
- Email: jhp@jproperlaw.com

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Overview

Types of discipline (today focused primarily on out of school suspensions)

Appeal rights/Appeal process

When should you appeal

School Level Appeal

Appeal to Superintendent/Superintendent's Designee (Hearing Officer)

How to prepare for the hearing in front of a Hearing Officer

School Board Hearings: Hearings vs. Appeal on the written record

Manifestation Determination Reviews and causality hearings (IEP and 504) and interplay between Discipline and IEPs and 504s

What to do if Suspensions occur frequently

Where to find information

Types of Discipline

School level interventions (e.g. parent contact/conference, behavior contract, restrictions at school)

Suspensions
- In-school
- Out of school (short term)
- Out of school (short term with a referral for more discipline)

Referred or Reassigned to Alternative placement

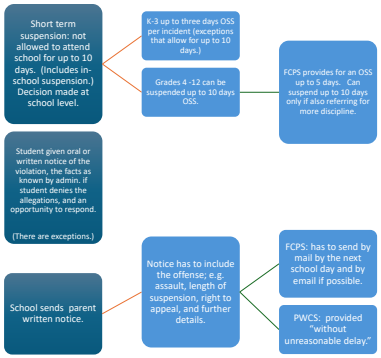
Long term suspension (11-45 days; or up to 364 days in some cases)

Expulsion (removal from all schools in district for 365 days)

Short Term Suspension

Example: Max is suspended for three days for intentionally hitting a peer.

Short term Suspension and Notice



Discipline Codes

VDOE has a list of discipline codes for reporting and the specific offenses. You will usually see the discipline code and the exact wording from the code on the suspension letter.

Example: BSO3 Refusal to comply with requests of staff in a way that interferes with the operation of school.

Example: BESO1 Assault: Intending to cause physical injury to another person.

Many districts now have the codes and descriptions listed in their regulations or on the district websites as well as the different intervention options depending on the offense.

Short term Suspension Appeal

- Initial appeal due quickly.
  - FCPS: appeal is due to the principal, in writing, within two school days of the initial decision.
  - PWCS: appeal is due to the principal within three school days of notice of the suspension.
- If you appeal right away, the student should be allowed to return to school pending the appeal decision. (some exceptions.)
- What if suspension will be over before you appeal. Should you still appeal?
- Yes, if the student denies the offense; admits to an offense but not the one for which he was suspended; or if you think the consequence is too much for the offense.
- Focus of appeal: What are you appealing? Why? What are you requesting? Per FCPS, you have to include the reasons the suspension should be reversed or modified. Check district's regulation when appealing for requirements.

Next Steps

- If principal reverses the decision (or modifies), there are likely no other steps.
- If principal denies the appeal- usually an option to appeal to the discipline office that is also due quickly.
- FCPS: **two school** days to appeal.
- Written appeal goes to the principal and Superintendent's designee: what you are appealing, reasons, what you are requesting, etc.
  - In FCPS, the Superintendent's designee/Hearing office can elect to hold a hearing or elect to make a decision based on the record. Decision is final.
- PWCS: **three business** days from the date the parent is notified of the decision. Appeal to the appropriate Level Associate Superintendent.
  - Short term suspension appeals are decided on the written record. Decision is final.
  - What should be included in the appeal is listed in the regulation. (Must include the student's account of the incident and reason the suspension is unjustified.)

Suspension with a Recommendation for Further Discipline

Example: Sofia is suspended for 10 days for threatening other students. Principal also recommended that Sofia be considered for further discipline.

- FCPS: You will be given written notice of the suspension and the recommendation for additional discipline and your right to request a hearing with the FCPS' Hearings' Office. You have **two school days** to ask for a hearing.
- PWCS: A hearing will be scheduled with the Student Management and Alternative Programs Department (SMAPD.)
  - Parents will be notified of the time, date, and location of the hearing.
- Hearing will be held to consider the recommendation of the school. If you have also appealed the short-term suspension itself, that will also be considered at the hearing.

Hearing on Recommendation for Further Discipline

- Hearings (administrative hearings) are scheduled quickly.
- Attendees: Hearing Officer (HO), one or two administrators from the school, student, parent(s)
- Recorded by school system.
- Hearings have a strict agenda.
- PWCS limits to 45 minutes.
- You have the right to bring an attorney or advisor for the child.
- With a recommendation for further discipline or when specific discipline is recommended, HO will usually consider all sanctions, return to school, long term suspension, reassignment to an alternative school, recommendation for expulsion.
- In many cases, the HO will extend the suspension until a decision is made.
  - In FCPS, the HO will consider letting the child return to school right away pending the decision.
- Decision can take 10 to 14 school days.
- Decision letters: Detailed and take into account the child's history; e.g. grades, discipline, attendance.

HO Authority

- Return the child to his or her school
- Move the child to another equivalent school
- Move the child to an alternative school program (in-person or virtual)
- Long term suspend the student – frequently combined with an alternative school placement (in-person or virtual)
- Recommend expulsion and refer the matter to the School Board. (Only the School Board can expel.)
- Expulsion means no school at all for 365 days.
  - However, a school district can technically "expel" a student and still also offer an alternative assignment; e.g. virtual assignment.
- It is rare for a school district, at least in No. VA to expel and offer no education at all.

How to Prepare for a Discipline Hearing

- A packet is prepared by the school district. Both FCPS and PWCS should indicate in the letter how to obtain the packet or how it will be sent to you.
- Review the packet. Student should review, unless young.
- Packet contents:
  - School discipline letter
  - Incident report, if any
  - Child's statement, if any
  - Student and staff witness statements, if any (other students' names will be redacted)
  - High school transcript, if applicable, and/or most recent grades
  - *Cumulative discipline record
  - Attendance (if there are mistakes for the current year, see if you can correct with the school and/or address at the hearing)
  - IEP, if any (sometimes)
  - Other items

How to Prepare for a Discipline Hearing

Items you may want to submit at the hearing:

- Character letters
- Letter from child's therapist or provider, if applicable.
- Other items that you think should be considered by the hearing officer.
  - Eg. Negative drug screen if applicable.
  - If you have taken steps to address the behavior or the incident you will want to share what you have done or are doing.
  - If the child has had an assessment, even if brief, from a mental health provider due to the incident, you may want a letter or short report addressing the issue and the plan for the child going forward.
- If you think your child needs or has needed an IEP or 504 Plan, you should raise this at the Hearing if not earlier with the school. If the IEP and/or 504 eligibility is not complete or accurate, you can also raise.
- **Caveat: If your child is facing delinquency and/or criminal charges, particularly serious ones and for all felonies, consult with a criminal attorney before having your child talk about the incident at a hearing. Depending on the situation, you also may need to be cautious about what you provide if the information could have implications from a criminal standpoint.

Hearing Decision and Appeal Rights

Hearing decision should include appeal rights including where the appeal should be sent, the deadline, and how the appeal is considered.

FCPS example:

- HO's decision: Place the student in an alternative school. The decision can be appealed to the School Board, within **4 "working** days" of notification of the decision.
- School Board will make a decision based on the written record (the record from the hearing and anything you submit with the appeal.) Parent needs to be clear about what you are requesting be reversed or modified and include any supporting documents.
- HO recommends expulsion: A hearing in front of a committee of the School Board (3 members) has to be requested within **4 "working days"** of the HO forwarding the recommendation (FCPS).
  - If the decision of the committee is unanimous, there is no further appeal.

Hearing Decision and Appeal Rights

PWCS Example:

- HO: The student will be suspended for more than ten days or be placed in an alternative school program. Parent has **four business days** of the date of the decision letter to appeal.
  - The appeal will be decided on the written record.
- HO: Recommends expulsion to the School Board. Student will have a right to appeal and ask for a hearing in front of a committee of the School Board.
  - *The details are what are to be included with the appeal are in the school system regulation for appeals for long term suspension and appeals.
- If no appeal is made, the School Board will make a decision on the expulsion on the written record.

Additional Issues You May See

- Principals can refer students to alternative placements for a variety of reasons – usually ongoing behavior issues but can also be due to absences and other reasons. The appeal process should be included in the principal letter and frequently matches the appeal process for a short-term suspension.
- There are a list of **charges** that the Juvenile Court is required to report to the Superintendent of the student's school district – regardless of where the alleged crime occurred. The school district can then exclude the student based on the charges. The school district will offer a meeting/hearing to discuss the proposed reassignment.
  - Most of the time the school district will require the student to attend an alternative school either in-person or virtually.
- There are separate and detailed Title IX policies and regulations in each school that are followed if there is a Title IX complaint. The process applies to both the alleged offender and the victim.
  - In many cases, the school system's hearings office cannot discipline a student until the Title IX investigation is complete.

Special Education/MDR

- Child with an IEP: Can be suspended for 10 days per school year without services. However, entitled to services if students without IEPs are given services during suspensions.
- If a student with an IEP is going to be suspended for more than 10 consecutive school days, then a Manifestation Determination Review (MDR) is required.
- An MDR is also required if the student's suspensions for the current school year exceed 10 days, and the suspensions are based on a pattern of behavior (similar behaviors).

Special Education/MDR

MDR:

- IEP team meets to review relevant information from the student's file and discuss two questions.

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**

(2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.

- If either question is yes, then the behavior is considered a manifestation of the child's disability.
- Student is returned to his or her current placement (unless the IEP team including the parent agree otherwise and parent signs in consent). (There are specific exceptions where a child can be moved for 45 days – possession of a weapon, certain issues with illegal drugs and controlled substances, and inflicting serious bodily injury. These terms are specifically defined in 8VAC20-81-10.)
- Further there are requirements related to FBAs and BIPs.
- Some districts will still hold a hearing with the HO to discuss the incident even if the HO cannot impose more discipline.

Special Education/MDR

- If the behavior is **not** considered a manifestation of the child's disability, then the child can be disciplined like any other student.
  - *But the child is still entitled to educational services starting on the 11th day of suspension.
  - The HO can render a decision excluding placements but cannot expressly state where the child is required to receive services.
  - Once the HO decision is made, the IEP team meets to determine what the child needs for FAPE.

Special Education/MDR

What about a child who is facing discipline but does not have an IEP?

A child who is not yet eligible may be entitled to an MDR and also services after more than 10 days of suspension if:

1. The child has engaged in behavior that violates a code of student conduct ….. and if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;

(b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or

(c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.

8VAC20-81-160. Discipline procedures

Special Education/MDR

3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or

(b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.

4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

8VAC20-81-160. Discipline procedures

504 and MDRs

- A student with a 504 Plan is also entitled to an MDR when the school district is considering a change in placement (if there is suspension of more than 10 days consecutively or in a pattern of removals).

The question is slightly different:

- The team determines if the behavior was caused by, or directly related to, the disability.
- If the behavior was caused by or directly related to the disability the student should be returned to his or her current placement.

What to do if Suspensions Occur Regularly

This is an opportunity to work on identifying needs. Behavior issues can be the primary indicator that something has not been identified or interventions are not working.

- Is there an unidentified need or disability?
- Eg. Can the student truly read or is there another academic need? Is the student struggling with executive functioning needs? Social skills? Sensory needs? Impulsivity and attention?
- Is the student being picked on or being treated inappropriately?
- Some kids may need to be referred for evaluations for special education and/or a 504 plan.
- A parent can request interventions at school even if the student does not need an IEP or 504.
- Even if a student has an IEP or 504 Plan, is the plan addressing all needs or does it need revisions? Are all eligibility categories addressed? Does the student need a Functional Behavioral Assessment and Behavior intervention Plan?
- Some kids need services outside of school; e.g. therapy, medical assessment and treatment.
- It is also possible the school is not the right fit for the student. There are ways to request a transfer to another school.

Where to Find Information

- Review all letters. *Look for appeal rights and deadlines.
- As needed, review school districts' policies and regulations. The different policies and regulations may be located on more than one place on a district site and more than one policy or regulation may also apply.
  - The FCPS School Board page has Board docs that are easier to navigate than other parts of the site.
    - (FCPS site: go to School Board, then agendas, and then you can get to a better link for the policies.) https://go.boarddocs.com/vsba/fairfax/Board.nsf/vpublic?open#
  - Some districts only have policies; some have policies and regulations, and others have policies and implementation procedures.
  - The district likely has a separate Title IX web page with additional information that may be helpful if Title IX applies.
- The Hearings Office webpage for school district can be helpful.
- Internet search and AI: You can search by school district and the issue you are trying to find as that may help guide you as to where to look. However, you cannot rely on the results alone as outdated polices and regulations come up regularly.
- There are also other sites that provide general information that may be helpful particularly for students with IEPs: PEATC and The disAbility Law Center of Virginia are two examples.

Examples of FCPS' Current Policies and Regulations

- Regulation 2111 Procedures for Conducting a Risk Assessment
- Regulation 2602.40P: Acts for Which Students May Be Disciplined, Disciplinary Procedures, and Interventions (65 pages)
- Policy 2601 and Regulation 2601: Student Rights Responsibilities Handbook
- Policy 2611.11: Hearing and appeals to the School Board
- Regulation 2616 Questioning of Students by Police
- There are additional policies and regulations that may apply.

Examples of PWCS' Current Policies and Regulations

Regulations: (There are corresponding policies for each.)

701-1 Code of Behavior

731-1 Appeal of Student Matters

743-1 Student Discipline

744-1 Short-term suspension of students

747-1 SMAPD: process and procedures followed for student discipline hearings.

745-1 Long-Term Suspension or Expulsion of Students

745-4 School Board Disciplinary Committee Procedures for Student Expulsion Appeal Hearings

745-6 Long-Term Suspension and Expulsion Appeals to the School Board

681-1 Nontraditional Education Programs

Cases of sexual assault and/or sexual harassment (that meet definitions in Title IX): the processes in Regulation 738-1 apply. (As of 4/6/26, new regulation will be 738-2).

There are other policies regulations that may be relevant in a certain situation. Eg. searches and seizures, bullying, exclusions, and other topics.