



Defending Students in Superintendent's Suspension Hearings

This guide gives tips on how to defend a student who is facing a Superintendent Suspension. Superintendent suspensions are issued for more serious behavior when the principal asks the superintendent to suspend the student from school for 6 to 20 school days. In very limited situations, the principal may ask for approval to suspend the student for more than 20 school days. Written notice of the suspension must be given to the parent and a hearing must be held within 5 to 10 days of the suspension at a suspension hearing office. For more information on different types of suspensions please see AFC's [Guide to School Discipline](#).

I just learned that my child is being suspended. What do I do?

If your child is being suspended, the school is required to notify you by phone immediately and provide a written notice to you in your primary language within 24 hours of the suspension.

STEP 1: Read the written notice

The notice will say "Notice of Superintendent's Suspension" on the top. The written notice will include:

- the charge(s) against your child
- the date, time, and place of the incident.
- the date, time, and place of the hearing
- a potential list of witnesses who may testify on behalf of the school at the hearing
- the alternative education site (where your child must report while suspended),
- a list of legal services to call for support
- your rights as a parent or guardian.

STEP 2: Ask for the suspension packet

Parents are entitled to a copy of all documents and materials relevant to the suspension incident before the hearing. These materials are called the "suspension packet," which is different from the suspension notice you received from the school. You must *request* the packet from the principal, assistant principal, or dean if you want a copy before the hearing; upon request, the school is **required** to give it to you. The packet can be delivered by fax or email, or the parent can go pick it up, but it must be delivered to the parent within 24 hours. It should include the following:

- **Records cover sheet:** a document that includes basic demographic information about the student, a summary of their grades and attendance, past behavior incidents and interventions, and the principal's recommended length of suspension.

- **Occurrence or “OORS” reports** created for the incident: An OORS (Online Occurrence Reporting System) report is the primary record of any incident that occurs in a DOE school that involves the school community.
- **Discipline Code Infraction:** The letter and number (for example B36) that corresponds to the infraction(s) listed on pages 38 to 39 of the [NYCPS Discipline Code](#) that describes the behavior your child is accused of engaging in.
- **Witness statements:** written statements from eyewitnesses who were present during the action described in the charge.
- **Video (if available):** parents and guardians have the right to view any audio or video materials the school is using before the suspension hearing.
- **Social media posts:** any posts related to the charge.
- **Photographs:** pictures could be of any evidence recovered, if the charge alleges drug or weapon possession, or of any injuries that result from the incident.
- **Injury report:** a document detailing any injuries sustained during the incident.
- **Behavioral records:** records of any prior suspensions, or other incidents that have taken place during the school year.
- **Your child’s academic record,** including their grades, report card, transcript, attendance, and their Individualized Education Program (IEP), if they have one. If your child does have an IEP, please refer to AFC’s [Manifestation Determination Review Guide](#) for students with disabilities who face school discipline.

You have the right to review all this information before the hearing, but schools often do not give parents the suspension packet until the morning of the hearing. To make sure you have enough time to prepare for the hearing, **ask for the suspension packet from the school as soon as you get the suspension notice.**

When you get the packet, check to make sure everything is in there. If anything is missing, ask for it again.

NOTE:

If the school refuses to give you all or part of the packet, contact the Borough Suspension Office listed on your suspension notice to let them know. Ask them to tell the school to give you the entire packet to help you prepare for the hearing. At the hearing, the school is not allowed to use any evidence that they did not give to the parent before the hearing and so you can object if they try to submit anything you haven’t seen before the hearing.

STEP 3: Discuss the charges with your child

Read the charges against your child listed in the suspension notice. Talk to your child about what happened. Here are some questions you can ask:

- Did your child do what the school accuses your child of doing?
- What happened before the incident?
- What happened after the incident?
- Who witnessed the incident?

Next, review the written statements in the suspension packet. Note if there are any differences between the statements in the suspension notice and the statements in the suspension packet.

- Do the statements say that your child did what the charges say your child did?
- Did your child admit to the behavior in their own statement?
- Did school staff witness what happened, and do their statements match up with the charges?

STEP 4: Decide whether to go forward with the hearing

After talking with your child about the incident, think about whether a hearing would be appropriate. You have a few options:

Option 1: Adjourn the hearing

If you can't attend the hearing on the date scheduled or want to look for representation, you may want to adjourn (postpone) the hearing to another date. You can adjourn the hearing over the phone before the day of the scheduled hearing or in person at the Hearing Office. If you adjourn the hearing, your child will continue to be suspended until the new hearing date. If the school adjourns the hearing, your child can return to school until the new hearing date.

REMEMBER:

No one from the hearing office or your child's school is allowed to pressure you to choose any of these options. This decision is entirely up to you.

Option 2: Plead no contest

If you do not want to fight the charges against your child, you can "plead no contest." You may want to plead no contest if you agree that your child did what the charges say and do not want to challenge the charges. This means you accept the school's charges and give up your right to challenge them. You will not have a hearing. The Hearing Office will decide how long your child will be suspended. This will be decided based on the charges and any documents not related to the incident that you and/or the school give the Hearing Office, like academic records, information about other incidents from the school, or letters in support of your child that you give to the Hearing Office. You can plead no contest by:

- Calling or going to the Hearing Office at least one (1) day before the hearing
- Going in person to the Hearing Office on the day of the hearing

If you plead no contest in person, you will meet with an Early Resolution Counselor (ERC) at the Hearing Office. You may still ask to discuss the length of the suspension in front of a Hearing Officer so what you say is recorded. Please read the section called "The Dispositional Phase" on page 7 of this guide for more details.

You can change your mind about your no contest plea. After you plead no contest, you will get a letter from the DOE confirming your plea of no contest and informing you of the length of the suspension. You can change your mind about the plea within seven (7) days of the date on the letter or within

three (3) days of receiving the letter – whichever is later. If you change your mind and want to dispute the charges, a new hearing date will be scheduled.

Option 3: Go to the hearing

If you have a strong reason to believe that the charges against your child could be dismissed, you may want to go to hearing. Going to hearing may be a good idea if you have information that indicates that your child’s behavior was less serious than the charges allege or if the charges are not supported by the evidence.

What if my child was arrested or issued a summons for this incident?

If the NYPD was called and your child was arrested or the police are involved, please consult with one of the organizations listed on the notice to determine if you should move forward with the hearing.

I decided to go to hearing. Now what?



STEP 1: Familiarize yourself with the hearing process and know your rights

There are two phases of the suspension hearing: the **fact-finding phase** and the **dispositional phase**. In the fact-finding phase, the Hearing Officer will decide whether the charges against your child are supported by evidence. In the dispositional phase, you and the hearing officer will discuss circumstances surrounding the incident, and any references on behalf of your child. The hearing officer will include this information in considering their recommendation of how long the suspension should last.

KNOW YOUR RIGHTS:

The Hearing Office must provide you with an interpreter for the hearing if you **speak a language other than English**. If you need an interpreter, call the Hearing Office as soon as you get the suspension notice to ask for an interpreter. If the interpreter is not at the hearing, you can ask the Hearing Office to call the "Language Line" to get an interpreter on the phone. You can also bring your own interpreter, if you prefer, but you are **not required to do so**.

What should I expect when I arrive at the hearing office?

At the Downtown Brooklyn and Queens hearing offices, you will have to check in with building security as these buildings house many other organizations and offices. For the other hearing offices, you should arrive directly at the hearing office when you enter the building address. When you arrive at the hearing office, you will need to show your ID and will have to go through a metal detector. Once you have passed the metal detector you will be directed to an administrative assistant within the hearing office, who will sign you and your child in and provide you with the materials the school has brought to the hearing. You will be directed to sit in a waiting room, and you will have to wait for a hearing officer to call your child’s name to begin the prehearing conference.

Who will be at the hearing?

1. **Hearing Officer:** Leads the hearing and acts as the impartial moderator and factfinder. Makes discipline recommendations to the Superintendent. Refer to them as “Mr.” or “Ms.”
2. **School’s representative:** the school is represented by someone who presents the school’s case. Typically, the representative will be a Dean or Assistant Principal who is responsible for school discipline and is familiar with the incident.
3. **Witnesses:** the school has the right to have witnesses testify at the hearing. Although possible witnesses will be listed in the witness list included in the suspension notice, not everyone on the list must testify, and a witness may testify who is not on the list.
4. **Interpreter:** an interpreter will be present if appropriate.

The Pre-Hearing Conference

Before the hearing begins, you will have a Pre-Hearing Conference with the Hearing Officer. They will tell you your rights and explain your options: (1) adjourn the hearing, (2) plead no contest, or (3) go forward with the hearing.



STEP 2: Begin the Hearing

Opening Statements

If you decide to move forward with the hearing, you and the school will have the chance to make opening statements to sum up what you think the evidence given at the hearing will show.

School’s case:

After opening statements, the school will present their case, as they are the ones that have to prove that what is written in the charges actually happened.

Questioning Witnesses: Cross Examination

After the school questions their witnesses, you have the right to question the witnesses. You can ask questions relating to their perception, interpretation, or memory of the incident. Formulate leading questions. Often, simple yes-or-no questions are best.

EXAMPLES:

“You weren’t in the cafeteria during the incident, correct?”

OR

“Did you personally view the incident?”

You don’t need to ask too many questions. Focus on the points that will have the greatest chance of helping your argument. **Don’t ask questions for which you don’t know the answer.** The answer may harm your case.

ADVOCACY TIP:

Ask **specific questions** of the witness about the topic being discussed and be sure to take notes as they are testifying. Use your notes to **highlight any conflicting portions of the testimony** for the hearing officer in your closing statement.

Your Case:

After the school presents their case, you will have the opportunity to present any evidence (documents, videos, or witnesses) that shows your child did not do what the school is saying they did. This includes whether you would like your child to testify at the hearing. Your child has a right to testify but does not have to and we often do not have students testify since they will then have to answer questions from the hearing officer and school.

You can also bring in other witnesses. If you want a witness to come to the hearing, you have the right to ask the Hearing Office for a subpoena. A subpoena is a legal letter from the Hearing Office saying that the witness must come to the hearing and testify. You must ask for subpoenas at least two (2) days before the hearing by calling the Hearing Office with your request. You can ask to subpoena school staff, a student, or another witness. Then, the witness must appear at the hearing and testify. However, if you are asking for another student to testify, the student's parent must give permission, even if there is a subpoena.

REMEMBER:

The **school has the responsibility** of proving the charges against your child. You are not required to present evidence of your own.

It is enough to argue that the school's evidence is insufficient.

Closing Argument

After both sides are done presenting their evidence, then each side has a turn to make a closing statement. You can prepare a closing argument that sums up the main points and highlights why the school hasn't proven the charges. Your closing should be based on the testimony heard at the hearing. Therefore, you may update it to include witness testimony given at the hearing.

EXAMPLE:

"As Scott testified, he was not in the cafeteria during the incident and could not have witnessed what occurred."

The school *must* have a person who witnessed the incident testify at the hearing. Written statements are considered "hearsay," meaning they cannot be used as eyewitness testimony and cannot be used to sustain charges, unless the witness is present at the hearing. If the school did not have any eye witnesses at the hearing, then make sure you highlight this in your closing.



STEP 3: Know when to object

At the hearing, your goal is to cast doubt on the school's case. Objecting throughout the trial is a great way to do that. These are common instances when you may want to object:

Relevance: The information covered at the hearing can only be related to the charges at hand. For example, you can object "relevance" if the school mentions your child's past or says something like "Jack always acted up in school," or "Jack is a troublemaker."

Documentary Evidence: The school may enter documentary evidence such as witness statements, photographs, etc.

- All documentary evidence must be collected **before** your child is formally suspended and must be given to you before the hearing. Object if the school enters evidence that you have never seen before.
- The school must lay the foundation for entering documents into evidence. In other words, the document must be exactly what the school says it is. For example, if the school is introducing a witness statement, the school should be able to say exactly when and where it was written, and the school should be able to testify that the document has not been altered since it was written, and that it was written in the presence of a school staff member investigating the incident.
- For video and photo evidence to be entered, the school must be able to “authenticate the evidence” meaning have the owner of the record authenticate it by providing the correct time and place. If the owner cannot do so, object. For example, if a school representative says “a student sent me a picture of this post,” ask if the school representative personally saw the post being written. It is important to note that the school can use witnesses to authenticate evidence. For example, a school cannot authenticate a video that was recorded on a student’s cell phone off school grounds, but a student witness could authenticate the video by identifying themselves in the video and confirming that the video depicts an accurate and unaltered depiction of the events that took place.

 **STEP 4: Prepare for the dispositional phase of the hearing**

After all the witnesses have finished testifying and each side has had the chance to make a closing statement, the Hearing Officer will start the “dispositional phase” of the hearing. Evidence will be given to the Hearing Office to decide how long your child will be suspended if they decide the charges against your child are true. During this part of the hearing, the school will recommend the length of the suspension. **You should say that you think the charges should be dismissed and your child should be allowed to go back to school (or be “reinstated”) immediately.**

The [Discipline Code](#) lists the lowest and highest length of suspension for each charge or “infraction” for students in different grades. Depending on the charge and your child’s grade, the school may recommend any of the following:

Immediate Reinstatement	Suspension for 6-10 school days	Suspension for 11-15 school days	Suspension for 16-20 school days	Suspension for 21-39 school days	Suspension for 40-180 school days	One-year suspension	Expulsion
← On approval by the DOE main office, for very serious behavior only →							
					Automatic review for early reinstatement at 30 school days, review every 15 school days after that	Automatic review for early reinstatement at 60 school days, review every 30 school days after that	This is extremely rare. Only students 17+ who do not have an IEP can be expelled for dangerous behavior

At the disposition phase of the hearing, the school will give records about your child to the Hearing Officer. The school may give grades, progress reports, and information about your child's disciplinary history, like any prior suspensions. During this part of the hearing, the school is **not** allowed to give records or discuss anything about the incident that led to your child's current suspension.

Next, you may give any materials to the Hearing Officer that you think would be helpful to show your child in a good way. You may want to give:

- Letters from teachers, coaches, or anyone else who knows your child and can speak positively about their character
- Anything that shows your child helped their community, such as certificates or awards from school, after-school programs, or summer programs.
- Letters from your child's therapist, counselor, or doctor that can help explain your child's behavior.
- A written "disposition statement," describing how your child positively impacts their community.

NOTE:

You can submit dispositional evidence even if you plead no contest. You could argue for immediate reinstatement or a shorter suspension than the school is recommending and use the materials you submit in disposition to explain why.

Ask for the suspension to be expunged (removed) from your child's school record at the end of the school year, if not right away. Finally, you also may want to ask the Hearing Officer to recommend supports and interventions for your child, such as counseling or peer-mediation. You can find a list of these "Support and Interventions" in the [Discipline Code](#) on pages 13-15.

Consider a Transfer Request: During the disposition phase you will also have an opportunity to ask the hearing officer for a school transfer. The suspension hearing office will put in the transfer request and you will receive notice of a potential school option after the hearing.



STEP 5: After the Hearing

The Hearing Office will contact you (by phone or email) **within two school days of the hearing** informing you of whether the charges were sustained (found to be true) or dismissed. You will also be told when your child can go back to their school and when the suspension will be removed from their school record, if the charges were sustained.

If you do not get a decision within two school days, call the supervising attorney at the suspension office right away.

Within five school days of the hearing, the Hearing Office must mail a letter to you with a full decision explaining why the charges were dismissed or sustained.

Appealing a Superintendent’s Suspension:

To appeal a Superintendent’s Suspension decision, you’ll first need to ask for the transcript of the hearing from the Hearing Office. You can ask for the transcript at the end of the hearing, or any time after by calling the Hearing Office.

Use the transcript to write your appeal in the form of a letter to the Chancellor. In the appeal, you can discuss only the evidence that was given at the hearing. You should explain why the decision is wrong based on the evidence presented at the hearing, or why the suspension is too long. You should also mention if the school did not follow the right procedure.

The appeal must be sent within twenty (20) school days after you get the full decision letter from the Hearing Office, or ten (10) school days after you get a copy of the transcript—whichever is later. You should mail your appeal to:

DOE Chancellor
c/o The Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007

You should get a response to your appeal within fifteen (15) school days after the appeal is filed. If you do not get a response within 15 school days, continue to follow up with the DOE Office of Legal Services.

Organizations to Contact for Suspension Hearing Representation

Name	Contact Information
Advocates for Children of New York	(866) 427-6033
Brooklyn Defender Services Community Office *	(646) 971-2722
Bronx Defender Services Community Intake *	(718) 838-7878
Lawyers for Children	(212) 966-6420
Legal Aid Society *	(718) 250-4510 or (212) 577-3300
Legal Services NYC	Citywide Hotline: (917) 661-4500 Bronx Legal Services: (718) 928-3700 Brooklyn Legal Services: (718) 237-5500 Queens Legal Services: (347) 592-2200 Manhattan Legal Services: (646) 442-3100 Staten Island Legal Services: (718) 233-6480
Mobilization for Justice	(212) 417-3786
Neighborhood Defender Services of Harlem *	(212) 876-5500
Suspension Representation Project †	(212) 998-6753
New York Legal Assistance Group	(212) 613-5000
New York Law School Legal Services †	(212) 431-2892 ext. 5

* For suspension cases with juvenile reports, criminal cases, or police involvement

† Law Student Representation:

For students with corresponding family court/criminal court case in need of attorney assistance, contact [Legal Aid's Juvenile Representation Project](#) or call their local offices directly:

- Bronx: (718) 579-7900
- Brooklyn: (718) 237-3100
- Manhattan: (212) 312-2260
- Queens: (718) 298-8900
- Staten Island: (347) 422-5333

Still have more questions?

Please call the Jill Chaifetz Education Helpline
Monday through Thursday, 10 am to 4 pm
1-866-427-6033 (toll free)

Advocates for Children of New York, Inc.

151 West 30th Street, 5th Floor, New York, NY 10001

Phone: (212) 947-9779, Fax: (212) 947-9790

www.advocatesforchildren.org

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