

STUDENT DISCIPLINE AND COMMISSIONER'S DECISIONS

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Student Discipline: Brief Overview and Refresher

- Types of Discipline
 - Warning, verbal or written
 - Notify parents
 - Probation
 - Detention
 - Suspension from transportation, athletic events, social events, extracurricular activities
 - In-school suspension
 - **Short-term suspension**
 - **Long-term suspension**

Student Discipline: Brief Overview and Refresher

- **Short-Term Suspensions**
 - 5 days or less
 - Does not require a Superintendent's Hearing
 - Only a Principal, acting Principal, Superintendent or BOE may impose
 - Assistant Principal, Dean of Students, or similar position has no authority to suspend a student

Common Errors and Pitfalls: Short-Term Suspensions

- Failing to give proper notice
 - BEFORE THE SUSPENSION – Notice to the Student
 - BEFORE THE SUSPENSION – Notice to the Parent
- Immediate Suspensions
 - What types of conduct warrant immediate suspensions
 - Required language to be used: *The Student's presence poses a continuing danger to persons or property; or an ongoing threat of disruption to the academic process.*
 - Notice and informal conference can take place AFTER the suspension begins.
- Confirmation/notice AFTER the Informal Conference

Common Errors and Pitfalls: Short-Term Suspensions

- Delivery of Notices
 - Hand delivery
 - Overnight
 - **Either of the above plus email (best practice)**
 - Regular or certified mail is **insufficient**
- In addition, telephone call if you have telephone number
- Must use parent's dominant language or mode of communication

Common Errors and Pitfalls: Informal Conferences

- Who must attend the informal conference?
- Who is a “complaining witness”?
 - *“We don’t allow students to be questioned by other parents”*
 - *“We didn’t notify the witness’ parents”*
 - *“The Assistant Principal interviewed students and collected statements, can he be the complaining witness”?*
- What if a parent is disrespectful or disruptive during an informal conference?
- Can a parent record an informal conference?

Student Discipline: Brief Overview and Refresher

- **Long Term Suspensions**
 - More than 5 days
 - Requires a Superintendent's Hearing
 - May only be imposed by a Superintendent or BOE following a Hearing

Common Errors and Pitfalls: Long-Term Suspensions

- Drafting Charges
 - Who is drafting the charges?
 - What information should be included in the charges?
- What if there is inconsistency between the Principal's Notice and the Superintendent's Notice of Hearing?
- Reasonable Notice
- Adjournments

Common Errors and Pitfalls: Long-Term Suspensions

- Waiver Agreements

- The opportunity for a hearing may be voluntarily, knowingly, and intelligently waived by a student and parent.
- The “voluntary, knowing and intelligent” standard requires that the person waiving the right must be informed of the right as well as the consequences of waiving the right, and that he or she must freely and purposefully waive the right
- Must provide a written document clearly and concisely stating all of the rights to be waived, as well as the consequences of waiving such rights, to effectuate a waiver.
- Waiver may only include penalties legally permissible under Section 3214.

Common Errors and Pitfalls: Long-Term Suspensions

- During the Hearing
 - What should the Principal/Assistant Principal bring to the Hearing?
 - Who should testify?
 - What if the student pleads guilty?
 - What constitutes “competent and substantial” evidence?

Common Errors and Pitfalls: Long-Term Suspensions

- Penalties
 - The discipline imposed on a student “must be proportionate to the severity of the offense.”
 - When the Commissioner reviews a penalty, the inquiry is “whether it is so shocking to the conscience as to warrant substitution of the Commissioner’s judgment for that of the board of education.”
 - Analysis considers a) the nature of a student’s offense, b) their age and developmental level, c) prior disciplinary history (if any), d) the extent to which suspension is necessary to ensure the safety of the school community, e) the extent to which the district has attempted to help the student learn to assume and accept responsibility for their behavior, and f) other equitable factors.”

Student Discipline: Brief Overview and Refresher

- **Appeals to the Board of Education**
 - Appeal of Principal decision (less than 5-day suspension)
 - Check your District's policy
 - Appeal of Superintendent's decision
- **Timing, Receipt and Communication**

Common Errors and Pitfalls: Appeals to the Board of Education

- Who should be present when the Board considers the appeal?
 - During executive session
 - Can/must/should the student/parents/attorney attend the Board meeting/executive session?
- What information should the Board review?
 - In advance of the meeting?
 - During the meeting?
- What happens after the Board reviews?
 - Board action
 - Communication to the parent

Appeals to the Commissioner of Education

Common Errors and Pitfalls: Commissioner's Decisions

- Timing
- Service of the Notice/Petition
- Including appropriate language in the Notice
- Responding to requests for a stay/interim relief
 - Three (3) business days
- Recent revisions to the Regulations – deadlines, page limits, etc.
- Grounds for Commissioner to reject appeals

Recent Commissioner's Decisions

Appeal of E.R., Dec. No. 18,309 (July 31, 2023)

- A high school student was confronted by non-students who had entered his school without authorization.
- Student claimed non-students threatened him with weapons if he reported them, and that they showed him a cellphone video of them assaulting someone else.
- Non-students requested student accompany them to the gym and locker room.
- Non-students were eventually discovered, and were searched and found to be in possession of a taser, pepper spray, and a butterfly knife.
- Student suspended for 5 days and a hearing was held, resulting in approx. 6-month suspension.

Appeal of E.R., Dec. No. 18,309 (July 31, 2023)

- Commissioner held that the district produced competent and substantial evidence (video, principal's testimony, and student's admission), but the penalty was excessive in light of mitigating factors.
- Hearing officer did not accord appropriate weight to the student's testimony.
- Student did not have a legal duty to report the non-students' presence.
- Although it would have been ideal for student to report their presence to an adult, student cannot be punished for not meeting this ideal, especially when the record contains a legitimate explanation for not reporting (i.e., the threat).
- The Commissioner held that the penalty was shocking to the conscience and ordered the short and long-term suspensions expunged.

Appeal of P.M., & Appeal of K.K., Dec. No. 18,378 (February 13, 2024)

- Two 11th-grade students were pushing each other in the hallway when a teacher told them to stop. The teacher was then pushed by the students, causing her to take a few steps back.
- Students were suspended, and a hearing was held at which the students pleaded guilty.
- The students testified that they were friends, they “enjoyed a good relationship with the teacher,” no one was hurt in the incident, and they had since apologized to the teacher. They also acknowledged that it is never acceptable to touch a teacher.
- Both students were suspended for approximately 6 months.

Appeal of P.M., & Appeal of K.K., Dec. No. 18,378 (February 13, 2024)

- Based on the evidence in the record, the Commissioner described the student's conduct as "innocuous."
- Specifically, the Commissioner relied on the student's testimony that they were friends, enjoyed a good relationship with the teacher, that no one was harmed because of their actions, and that they had since apologized to the teacher. They also conceded that it is never appropriate to touch a teacher, even in a joking manner.
- The Commissioner noted that the district presented no witnesses or other evidence to rebut the students' testimony, including the teacher's testimony.
- Commissioner concluded that the long-term suspension imposed by the district was shocking to the conscience because the student "engaged in innocent, if ill-advised jocularity that did not warrant a long-term suspension."

Appeal of D.B., Dec. No. 18,383 (February 26, 2024)

- An 11th grade student (A) fought with another student (B) at the second student's house. At some point after the fight, Student A posted a video of Student B naked on social media. While Student A deleted the post, another student recorded the video before it was deleted.
- At the long-term suspension hearing, Student A pled "not guilty." Nevertheless, he was found guilty of all charges and suspended for a year.
- Student A's parent appealed, alleging that the penalty was excessive and disproportionate to the charged conduct.

Appeal of D.B., Dec. No. 18,383 (February 26, 2024)

- The Commissioner noted that in this case, the student's conduct (distributing a nude image of a classmate on social media) is extremely serious. The student depicted in the image (Student B) lost days of educational instruction, was subjected to ridicule and hostility by other students, and has sought counseling. In addition, the student's conduct resulted in a degree of disruption to the school community - verbal threats and physical altercations both on and off school property.
- With respect to the student's age and developmental level, the student was 15 years of age at the time of the incident and appeared capable of understanding the nature of his conduct. Moreover, the Commissioner noted that the district "was justified, if not obligated, to prevent contact between the student and student A for some period of time after the incident."
- While the Commissioner considered additional factors, she noted that the student described his conduct as "an honest mistake" and indicated that he would have acted differently if he had known the consequences of his actions. The student described the consequences as those that affected him (not being able to play football, being suspended from school, and not being able to participate in different activities). According to the Commissioner, the student requires assistance in understanding the impact of his actions on Student B and how he can grow from this experience.
- After considering the above factors, as well as others, the Commissioner concluded that the student has not demonstrated that the penalty is so shocking to the conscience that it must be expunged.

Appeal of N.T., 64 Ed Dept Rep, Decision No 18,575 (June 30, 2025)

- Student suspended for sending the following message on Snapchat:
“Newfane and lockport schools better watch out! We gunna shoot dat bitch,” followed by a laughing emoji.
- The student was charged with violating the portion of respondent’s code of conduct prohibiting the following:
Terrorist threats of actions, including discussion of, reference to, or comments about committing school violence (school shooting, bombing, etc.) or violence toward a specific member or group within our school community.
- At the hearing, the student admitted to creating and sending the message, but explained that she had reproduced a threat that was circulating online.
- Student found guilty and suspended for one calendar year.

Appeal of N.T., 64 Ed Dept Rep, Decision No 18,575 (June 30, 2025)

- Parent appealed, alleging that he was denied the opportunity to submit evidence concerning the circumstances under which the message was sent, and the respondent failed to consider the student's past trauma and mental health issues.
- Commissioner found that "The hearing afforded the student was flawed and led to a factual record that raises more questions than it answers."
- No dispute that the student sent the message, but "While the hearing officer permissibly afforded probative weight to the student's admission, he failed to examine the context in which it was made."
- Student testified that she was conversing with a classmate on social media on the evening of September 16, 2024. During that conversation, the student referenced threatening messages she had seen circulating online within the community. The classmate replied that she did not believe her. According to the petitioner, the student "panicked and made a copy of one of the posts ... and sent it privately to only [the classmate] so that [the classmate] would not bully her for lying." Petitioner asserted that the classmate distributed the Snapchat message thereafter.

Appeal of N.T., 64 Ed Dept Rep, Decision No 18,575 (June 30, 2025)

- During the hearing, the petitioner repeatedly offered a video recording of a conversation between the petitioner, the student, and a police officer, as well as evidence from the student's phone corroborating the student's version of events.
- The Commissioner held that the hearing officer erred in failing to consider the proffered evidence.
- The issue of whether the student was simply passing on a threat she had seen was crucial to assessing her culpability in this matter. If the student, in fact, reproduced a message and sent it directly to a classmate with whom she had a prior relationship, there is no evidence in the record to suggest that the subsequent distribution of this message was foreseeable

Appeal of N.T., 64 Ed Dept Rep, Decision No 18,575 (June 30, 2025)

- The Commissioner further held that the nature of the offense, considered alongside the other factors in the analysis, supports a finding that the discipline imposed was inappropriately punitive.
- It is unreasonable to expect a 12-year-old to predict or understand that a message she sent to a classmate, which she believed would be interpreted within the context of a larger discussion, would become widely distributed.
- The student's anecdotal discipline record revealed a handful of incidents over the past two years that were relatively minor in nature, such as cutting class, cursing, and excessive lateness.
- Other than offering placement in an alternative educational setting during her suspension, there is no evidence that the district attempted to help the student learn to assume and accept responsibility for her behavior.

Appeal of N.T., 64 Ed Dept Rep, Decision No 18,575 (June 30, 2025)

- Under these circumstances, the Commissioner found the year-long suspension shocking to the conscience.
- The Commissioner also commented on the criminal charges that were filed against the student, opining that the criminal charge of “making a threat of mass harm” was “wildly disproportionate to the record herein.”