



AFC'S GUIDE TO

# The Rights of Children with Behavioral Needs

September 2015



Advocates for Children of New York  
Protecting every child's right to learn

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*If your child is experiencing behavior problems at school, he or she is entitled to supportive services in order to get an appropriate education. This guide is meant to inform parents, caregivers, and advocates of their rights when their child exhibits behavior problems in school.*

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## SIGNS YOUR CHILD MAY BE HAVING A BEHAVIOR PROBLEM IN SCHOOL

- Your child is repeatedly disciplined in school—he/she gets detentions, suspensions (in school or out of school), or time outs.
- Your child is not allowed to participate in field trips or after-school activities.
- The school regularly calls you to complain or have you pick your child up early from school.

This guide does not constitute legal advice. It attempts to summarize existing policies or laws without stating the opinion of AFC. If you have a legal problem, please contact an attorney or advocate.

# WHAT SCHOOLS SHOULD DO

Chancellor's Regulations are issued by the Department of Education and govern all New York City public schools. According to **Chancellor's Regulation A-420**, disruptive behavior "usually reflects underlying problems that require guidance intervention. School personnel should take steps to identify the problem(s) and, working closely with the parents, help the student receive maximum benefit from the educational program offered at the school." This means that the school should provide interventions to help students who are struggling with their behavior, rather than just disciplining the student. To see the Chancellor's Regulations in 9 different languages, visit <http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations>.

## ***Depending on the cause of the problem, schools should:***

- **Provide the student with remedial services like reading help or math tutoring.** Sometimes students act out in the classroom because the work is difficult for them, and they need extra support. Schools have funding to provide services to the students who need them most. Talk to the principal about what programs are available in your child's school. Academic intervention services are available to all struggling students, not just students receiving special education services.
- **Provide students with counseling,** either individually or in a group, to help them work on their behavior and other socialization issues. Children can receive at-risk counseling without being eligible for special education services.
- **Change the student's method of instruction.** Students may act out because they are not being taught in a way they can learn.
- **Conduct a *functional behavioral assessment* to determine why a student has trouble with behavior.** This involves looking at the circumstances in which the student acts out to determine when and why the student misbehaves. After an assessment is conducted, the school should develop a ***behavior intervention plan***, which has strategies for how to deal with and modify the student's problematic behaviors.
- **Students may be entitled to a one-to-one crisis management paraprofessional** under Section 504 or the Individuals with Disabilities Education Act (see page 6). The paraprofessional would be assigned to the student all day to help redirect the student's behavior and maintain his or her focus.

# WHAT SCHOOLS SHOULD NOT DO

## ***The school should NOT ask you to keep your child at home.***

Every student between the ages of 5 and 21 who has not earned a high school diploma has the right to attend school. Students can only be kept away from school if they have been officially suspended. Schools are required to provide your child with the necessary supports to benefit from his/her education, and schools must find a way to deal with your child's behavior. The school cannot exclude him/her from school. The school also cannot tell you that you must sit in the classroom in order for your child to attend school, or that your child must take medication in order to attend school.

## ***The school should NOT hold over your child.***

A child **can** only be held over because he or she does not have the academic skills to do the work at the next grade level. A child **cannot** be held over because of a behavior problem.



Many schools are implementing ***Positive Behavior Intervention and Supports (PBIS)***. This is a school-wide system where staff reinforce positive behaviors by teaching expectations, modeling positive behaviors, recognizing and rewarding positive behaviors, and giving meaningful consequences for negative behaviors. The idea is that children will routinely display positive behaviors if such behaviors are systematically reinforced. Similarly, consequences will help change undesired behavior over time.

***The school should NOT repeatedly complain to you.***

The school should not call you repeatedly to complain about your child. They should not call you every day to pick your child up, tell you to find a new school for your child, or call or threaten to call Children's Services on you, and they should never send your child to the emergency room unless he/she is truly a danger to him/herself or others. Instead, the school should work with you to address the problems that your child is having.

***The school should NOT repeatedly suspend your child.***

The school should try different interventions to help your child before resorting to a suspension.

There are 3 different ways in which your child can be removed from the classroom if a disciplinary suspension does occur:

- **Teacher Removal:** A teacher may remove a student from a particular class for up to 4 days.
- **Principal's Suspension:** The principal may suspend a student for up to 5 days. The student may receive an "in-house suspension" or attend an alternate site.
- **Superintendent's Suspension:** This is the highest level of suspension and can result in suspension for 6 days to up to one year, or expulsion in some cases for students over the age of 17. Before your child can receive a superintendent's suspension, you have the right to a hearing to dispute the charges against your child.

Schools must notify parents when a teacher removes their child from the classroom. Parents are entitled to written notice within 24 hours of any principal's or superintendent's level suspension.

***If your child is repeatedly being suspended or removed from class because of his behavior, speak to the school so they can find a way to appropriately address your child's behavior.***

To learn more, see AFC's *Guide to School Suspensions*, available at [www.advocatesforchildren.org](http://www.advocatesforchildren.org).

# THE LAWS FOR STUDENTS WITH DISABILITIES

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act are federal laws that grant rights to students with disabilities.

The **Individuals with Disabilities Education Act (IDEA)** requires school districts to provide students with disabilities with a free and appropriate public education (“FAPE”). Appropriate services must be tailored to the child’s individual needs and designed to provide educational benefit to the child. Services are considered appropriate when students are educated in the least restrictive environment (“LRE”), meaning that students with disabilities should be educated alongside students without disabilities to the greatest extent possible.

**Section 504** applies to students with disabilities who may not qualify for special education services. It grants students the right to reasonable accommodations and prohibits discrimination against students with disabilities.

## ***Students with special education needs have additional rights.***

Federal law requires that the school hold a meeting called a **manifestation determination review (MDR)** whenever a student with a disability is suspended for more than 10 days. At the MDR, a team of school personnel and the parent decide if the behavior that led to the suspension is a result of, or substantially related to, the child’s disability. If the child’s behavior was a result of his/her disability, then the student cannot be suspended and must be reinstated in school immediately.

To learn more about special education in New York City, see AFC’s *Guide to Special Education*, available at [www.advocatesforchildren.org](http://www.advocatesforchildren.org).

## WHAT YOU SHOULD DO

- **Know your child's rights.**
- **Work with the school** on what they are doing with your child including the creation of a behavior plan. If the school has a behavior plan, ask them to discuss it with you so you can use similar strategies at home and be consistent with the school about reinforcing your child's positive behaviors.
- **Communicate with the school.** Try to meet with the principal, teacher or other important school staff to discuss what is happening with your child and how to work effectively with your child. Remember to put things in writing and keep a copy of written records in order to document your attempts to support your child.
- If you cannot resolve an issue at the school level, you can **contact your Family Support Coordinator**, who works out of your community school district office. Contact information is available on the Department of Education's website at <http://schools.nyc.gov/AboutUs/schools/superintendents/default.htm>.
- **Consider outside support for your child**, such as mentoring, counseling, tutoring, or other after-school activities. Many of these services are offered for free or at low-cost in the community.
- **Talk to your child's doctors** to see if they can suggest other services or referrals.
- In some cases you may want to **refer your child for special education** services, or a re-evaluation if your child already receives services. There is a whole range of services offered through special education, from extra support in a general education classroom to specialized schools and classrooms.





## **Our Mission**

AFC promotes access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. We use uniquely integrated strategies to advance systemic reform, empower families and communities, and advocate for the educational rights of individual students.

## **Still have more questions?**

### **Please Call**

### **The Jill Chaifetz Education Helpline**

Monday through Thursday

10 AM to 4 PM

866-427-6033 (toll free)

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