The purpose of this manual is to guide you in representing clients in Superintendent’s suspension hearings. We recommend that you read this manual after you attend an SRP training session and review it as you prepare for a case. Do not, however, treat it as your sole reference. Contact SRP board members with any questions about your advocacy.

This manual is authorized for use by SRP-trained law student advocates in the course of their representation at Superintendent’s suspension hearings. Any other use is unauthorized.

This guide was adapted from the Unemployment Action Center (UAC) Advocacy Manual. This manual is a work in progress, and we welcome comments and suggestions.
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I. INTRODUCTION

a. NYC School Suspensions

In New York City, the number of Superintendent’s suspensions increased by more than 89 percent between 2000 and 2008, jumping from 8,567 to 16,214.¹ A report by the National Economic and Social Rights Initiative (NESRI) found that the NYC schools with the most punitive disciplinary policies are overwhelmingly under-resourced, overcrowded, and primarily attended by low-income students of color.² Youth who are suspended from school are more likely to fall behind in school, be retained a grade, and drop out.

Whenever a student faces a Superintendent’s suspension, a hearing is scheduled to determine whether the student engaged in the incident as charged and, if so, the appropriate disciplinary measures. Parents have the right to bring a representative to the hearing. However, currently, in NYC, there are very few professionals who represent students in suspension hearings. The vast majority of families are unrepresented at their students’ suspension hearings.

b. Suspension Representation Project (SRP)

The Suspension Representation Project (SRP) is an advocacy group that trains law students to represent public school students in Superintendent’s suspension hearings. Students at NYU School of Law began SRP in 2007 as part of NYU’s Education Law & Policy Society (Ed Law) to help address the tremendous need to increase access to quality representation for low-income students and parents facing suspension hearings. In the spring of 2009, SRP became a stand-alone student organization. Additional SRP chapters have been established at Benjamin Cardozo School of Law, Brooklyn Law School, Columbia Law School, The City University of New York School of Law, Fordham Law School, Pace Law School, and St. John’s University School of Law.

SRP pairs new law student advocates with experienced law student advocates in its attempt to provide excellent training for law students and excellent advocacy for clients. SRP enables law students to develop valuable legal skills including interviewing clients, conducting direct and cross examinations, and delivering closing arguments. SRP routinely helps to shorten the length of the suspension or eliminate the suspension, helping kids stay in school. SRP also participates in coalitions in NYC to try to improve the ways that schools respond to students’ behavior.

The mission of the Suspension Representation Project is “Safeguarding the right to public education by providing high quality advocacy to NYC public school students facing Superintendent’s suspensions.”

c. Superintendent’s Suspensions vs. Principal’s Suspensions

A suspension is the temporary removal of a student from the regular school program because his/her behavior negatively affects the health, safety, welfare and/or morals of others. NYC Chancellor’s Regulation A-443 § III.B. A school may impose a Superintendent’s suspension or a Principal’s suspension.

1. Superintendent’s suspensions: SRP represents students at Superintendent’s suspension hearings. A school must request a Superintendent’s suspension in order to suspend a student for more than 5 days. Unless otherwise noted, this manual refers to the hearing process and rights associated with a Superintendent’s suspension hearing.

2. Principal’s suspensions: In NYC public schools, principals are authorized to give suspensions of one to five days if “the student’s behavior presents a clear and present danger of physical injury to the student, other students or school personnel, or prevents the orderly operation of classes or other school activities.” NYC Chancellor’s Regulation A-443 § III.B.2(a). When a student receives a Principal’s suspension, the principal must hold a suspension conference at the school to assess the facts surrounding the incident and determine whether or not a suspension is justified. The student has the right to question persons involved in the incident leading to the decision to suspend, present witnesses and documentary evidence, be accompanied by up to two advisors who may be attorneys or advocates, be returned to his/her program at the end of the suspension period, and appeal the suspension decision.

d. Your Client

Under New York law and regulations, parents have the right to make decisions about their children’s education. Furthermore, NYC Chancellor’s Regulation A-443 gives parents the right to representation by counsel at Superintendent’s suspension hearings. Thus, the parent is your client and is the person who can make decisions such as whether or not to plead no contest. However, at the hearing, you are, of course, defending the student. Therefore, we have both the parent and the student sign our “Acknowledgement and Consent Form.” See Appendix. In the unusual circumstance that there is a significant disagreement between the parent’s desires and the student’s desires, you should speak with an SRP board member.

e. Chancellor’s Regulations and Discipline Code

These key documents, referenced throughout this manual, are in the Appendix and online.

1. NYC Chancellor’s Regulation A-443 (“Regulation A-443”): This regulation addresses student disciplinary procedures, including the rights of students/parents, the steps the school must take before suspending a student,
and the hearing process. While the SRP Guide describes many of these procedures and rights, you may want to read through the Chancellor’s Regulations as you prepare for your hearing and be prepared to cite any relevant sections during your hearing.

2. NYC Citywide Standards of Discipline and Intervention Measures (“Discipline Code”): The discipline code gives a range of possible disciplinary responses for each infraction. In other words, it gives the minimum and maximum suspension time that the Department of Education can impose for a specific charge. For many infractions, the discipline code suggests the possibility of lesser disciplinary responses than a suspension. Feel free to suggest, as appropriate, that these lesser responses are most appropriate during the disposition. The discipline code also includes possible guidance interventions that the Department of Education can use in addition to disciplinary responses. These include counseling, conflict resolution, and referral to a community-based organization.

f. Standards of Conduct
SRP strives to provide excellent advocacy. Remember that you are representing yourself, SRP, and, most importantly, your client, when you agree to take a case. If you agree to take a case, you are committing to take the initiative to follow the case through from beginning to end, to prepare sufficiently for the hearing, and to advocate zealously for your client. You are also committing to keep your client’s information confidential and to act with the highest standards of professional conduct. In preparing for the hearing, you should use this guide to ensure that you are not missing any important steps. Furthermore, you should feel free to consult with an SRP board member or have an SRP board member review your work at any point to ensure you are providing as effective representation as possible.

g. Using the SRP Website – http://www.suspensionrepresentation.org
The SRP website is intended to be used both as a public face for the organization, and as a resource for you as an advocate. The following are among the resources that are available to you:

• Updates about the organization including new events and case advice.

• Important Documents such as the Discipline Code, Chancellor’s Regulations, and this Guide.

• Advocate Forums that give you a chance to pose questions to fellow advocates, SRP Board Members, and SRP Alumni that remain active in the organization. Do not include any client information on the Advocate Forums.
• **An Event Calendar** which displays events being organized by SRP Board members across the city.

• **A Document Upload Function** for you to upload scanned copies of the signed Client Acknowledgment & Consent Form and Records Release Form.

**To access these resources, you must register and create a username and password.**

To do so, follow these simple steps:

2. Select “Advocates”
3. Select “Register”
4. Provide all of the requested information
5. You will be asked for an Invite Code. The Invite Code is srp2007.
6. You will then be sent an email, requesting that you follow a link to complete registration.
7. Click the link and you’re done!

**h. Using this Guide**

This guide is meant to assist you as you work through a case. It is meant to be helpful to you, and not to be intimidating. We are not expecting anyone to read and memorize this entire guide. Rather, we hope you will use it as you prepare for different steps in the process and as questions arise. We recommend that you start with the SRP Advocate’s Checklist, included as Section 2 of this guide. The checklist will direct you to other sections of the guide as appropriate.
II. SRP ADVOCATE’S CHECKLIST

PREPARING FOR A SUSPENSION HEARING

1. **Contact your partner advocate.** Create a list of possible after-school times to meet with the student and parent. The meeting may last for a few hours.

2. **Read intake form.** SRP will e-mail this to you in the initial case e-mail.

3. **Call parent/guardian.** The phone number is on the intake form.
   a. Let the parent know that you are a law student from the Suspension Representation Project and you will be representing the student at the suspension hearing.
   b. Confirm that the parent knows the (adjourned) date for the suspension hearing. The parent may or may not already know the date.
   c. Schedule a meeting with the student and the parent.
      i. You can meet in a room in Furman Hall or another law school building if it is possible for the parent/student or you can meet them in a public location that is convenient for them.
      ii. Furman Hall at NYU School of Law: 245 Sullivan Street, between West 3rd and Washington Square South. Plan to meet the parent and student in Furman Hall lobby.
   d. Ask the parent what s/he has heard from the school about getting the suspension packet if SRP does not yet have it.
      i. If the parent does not have the suspension packet, find out if the parent can pick it up from the student’s original school. The suspension packet includes witness statements and other evidence related to the suspension incident and all of the student’s records. The parent may want to call the school ahead of time so the school can copy the packet and may want to bring the suspension notice to show the school that it must provide the suspension packet prior to the hearing date. If the school will not give the parent the suspension packet, you should offer to call the school or have the hearing office call the school to inform the school of the parent’s right to receive the packet in advance.
      ii. If the parent does have the suspension packet but has not yet faxed it to SRP, ask the parent if it is possible to fax the suspension packet (at least the witness statements) and suspension notice (at least the page with the charges) to SRP at 646-219-6052.
      iii. If the parent cannot fax the suspension notice and complete suspension packet, tell the parent it is very important to bring the suspension notice and suspension packet to the meeting.
   e. Give the parent your contact information.
f. Record any additional information on the intake form. Fill in any gaps on the intake form.

4. Reserve room. If you are meeting with the student and parent in Furman Hall, try to reserve a room. To book a room, log in to the Space Booking System: http://its.law.nyu.edu/cse/sbs. Go to: New Requests. Under payment information, click on “yes” under pay by check. There is no charge during the school week. You can also ask the SRP board member who assigned you the case to help you book a room.

5. Review Suspension Notice and Suspension Packet. If the parent has faxed the suspension notice and suspension packet, read through them. Begin to think about your theory of the case. Note any inconsistencies that you will want to ask the student about. Note any possible witnesses. You may want to begin using the Hearing Prep Form in the SRP Guide Appendix. Important items to review:
   a. Suspension notice: Includes the official charge, which the school must prove.
   b. Discipline Code Infraction: You may or may not find the infraction code(s) (e.g., “B60”) in the suspension packet. It sometimes appears in the Occurrence Report or on the cover sheet. Whether or not you find the infraction code, you will want to compare the charge with the possible infractions in the Discipline Code. Also, be sure to ask the hearing officer at the start of the hearing to tell you the infraction code(s) associated with the charges; only the infraction code(s) reported by the hearing officer during the hearing are official.
   c. Witness statements: There may be statements from the student, the alleged victim, and any other witnesses. The Chancellor’s Regulations require the school to take written statements from all witnesses. The statements should be signed and dated.
   d. Behavior reports, Academic records: This information is used for the disposition only (deciding how long the suspension will be).
   e. IEP for Special Education Students: If the school has found that the student has special education needs, there should be an IEP (Individualized Education Program) and evaluations. If the student is in special education, please refer to the Special Education section of this guide. For extra guidance, talk to an SRP board member about strategy and additional procedural protections.

6. Prepare for meeting with student and parent. Speak with your partner advocate. Decide who is taking the lead for each part of the meeting. Use the “Client Meeting Form” in the Appendix. Also, prepare and print the “SRP Acknowledgement and Consent Form” and the “Release of Information Form,” in the Appendix, by filling in the bolded information. See “Client Interview” section of SRP Guide.

7. Meet with parent and student. Please bring the following attached documents:
   a. Completed Intake Sheet
   b. Client Meeting Form
   c. SRP Acknowledgement and Consent Form – Parent and student must sign.
   d. Release of Information Form – Parent must sign.
e. Suspension notice and suspension packet if you have it.
f. Papers, pens, water.

**8. Complete Hearing Prep Form.** This form, found in the Appendix, is an outline of the theory of your case, the school’s potential witnesses, and the witnesses whom you hope will testify for the student. See “Case Theory” section of SRP Guide. For each of the school’s potential witnesses, you will need to draft a cross examination. For each of your witnesses, you need to draft a direct examination.

**9. Speak with partner advocate and divide tasks.** You will want to speak with your partner advocate about strategy, your theory of the case, and how you are going to prove your theory. You may want to complete the “Hearing Prep Form” together and then review the remainder of the checklist and decide who will perform each task.

**10. Request records from school.** If you still don’t have the suspension packet or you have reason to believe that there is additional “evidence” that the school plans to use (like a video), fax the “Records Request Letter” and the “Release of Information Form,” signed by the parent, to the school’s principal or dean. You can find the school’s fax number at [http://schools.nyc.gov/FindASchool/default.htm](http://schools.nyc.gov/FindASchool/default.htm). Even if the parent already has the suspension packet, faxing this request will strengthen your argument that any evidence or records not given to you in advance should be excluded at the hearing. You may use the fax machine in VH 110 (the mailbox room) in the back, right side of the room or prepare a PDF version of the request and ask an SRP board member to fax it to the school for you. Maintain a record of your request (e.g., fax confirmation sheet).

**11. Draft closing argument.** See “Closing Argument” section of SRP Guide.

**12. Contact potential witnesses. Subpoena witnesses if necessary.** See “Direct Examination” section of SRP Guide for more information about what to discuss with witnesses and how to subpoena witnesses.

**13. Draft a direct examination for the student or any other witnesses.** Prepare open-ended questions to elicit the witness’s story. Brainstorm difficult cross examination questions that the school or hearing officer may ask your witnesses. See “Direct Examination” section of SRP Guide.

**14. Prepare witnesses.** Review direct examination and potential difficult cross examination questions with any witnesses who will testify. See “Direct Examination” section of SRP Guide.

**15. Draft cross examination for school’s potential witnesses.** Prepare leading questions (questions that suggest an answer). See “Cross Examination” section of SRP Guide.


**17. Review and prepare objections.** List objections to use to try to exclude the school’s
evidence and review objections you can use during the hearing when the school’s witnesses testify. See “Objections” section of SRP Guide.

18. Follow up with parent regarding any additional witness statements or character references. If the parent agreed to try to obtain any witness statements regarding the incident for the fact-finding phase, follow up with the parent and remind him/her that the statements must be written in the parent’s presence and must be handwritten, signed, and dated. If the parent agreed to try to obtain any character references for disposition, follow up with the parent and remind him/her that these statements can be typed and cannot refer to the alleged incident.

19. Perform legal research. If there is a legal issue involved (e.g., what constitutes self-defense for a suspension), you may want to do legal research. Searchable suspension appeal decisions are available at http://www.counsel.nysed.gov/Decisions/home.html. You may also want to search case law related to the state law regarding suspensions—NY Education Law § 3214. If you go to the annotated statute through Westlaw or Lexis, you will find a summary of many relevant cases.

20. Draft disposition argument. Use the student’s records included in the suspension packet and the information you received from the student and parent. See “Disposition” section of SRP guide.

21. Review and revise your partner advocate’s work. As you and your partner prepare for the hearing, you should review and edit each other’s work to ensure the best product and a unified theory of the case. Depending on your experience, you may want to have an SRP board member give feedback. SRP board members are always available to consult about any component of your case. You should also divide parts for the hearing. Usually, hearing officers allow two advocates to participate in the hearing. However, occasionally, hearing officers allow only one advocate to speak.

22. Call parent the day before the hearing. Remind the parent to arrive early and review what to expect. Give directions to the hearing office and ensure that the parent has a feasible transit plan. If the parent collected additional witness statements or disposition recommendation letters, ask the parent to fax them to you at (646) 219-6052 and bring original copies to the hearing. If it is not possible to fax, the parent should bring 4 copies to the hearing. In emergency situations, you can ask to make copies at the hearing office.

23. Prepare materials to bring to the hearing.
   1. Cross Examination, Direct Examination, Closing Argument, Opening Statement, Disposition Statement, Objections
   2. Four copies of any additional witness statements or disposition letters that you or the parent collected
   3. Phone numbers of the parent, any witnesses who will be testifying on the student’s behalf, your partner advocate, and SRP board members
   4. SRP business cards
5. Suspension Notice and Suspension Packet
6. SRP Guide with Chancellor’s Regulations and Discipline Code
7. Appeal of L.P., 50 Ed Dept Rep, Decision No. 16,252
8. Directions to the hearing office
9. Decision Request Form, found in the Appendix
10. Notice of Appearance if you have received it
11. A snack and work to do. You may have a long wait!

**24. Arrive early for the hearing and sign in.** You can check the sign-in sheet to see who is attending for the school’s side.

   a. **Request e-mailed decision:** At the conclusion of the hearing, please ask the hearing officer if it would be possible to e-mail the decision to suspension.representation@gmail.com. Some hearing officers are willing to do this; others are not. See the “Decision Request Form” in the Appendix. You can leave the form behind with SRP contact information on it.
   b. **Address schoolwork/homework:** If the student is not receiving his/her schoolwork and homework, you should address this topic at the conclusion of the hearing in the presence of the hearing officer. Ask the school and parent to arrange a plan for the student to receive the work. If you think it would be beneficial, you can encourage the parent, the student, or the school to address any other lingering concerns.
   c. **Debrief with parent and student:** If you have time, you should spend a few minutes speaking with the student and parent after the hearing to see how they are feeling. Ask the parent to call you as soon as s/he receives the decision in case SRP does not receive notification and tell the parent that you will call the parent if you hear anything first.

**26. Follow up with hearing office.** If the hearing office does not contact the parent or you within two days to tell you the outcome of the hearing, call the hearing office. See “Post-Hearing Responsibilities” section of SRP Guide.

**27. Scan and upload materials.** Please scan the “SRP Acknowledgement & Consent Form” and “Release of Information Form” signed by the parent and upload those documents to the “Document Upload” section of the SRP website.

For an Acknowledgment & Consent Form, please name the document as follows:
Client Name.AC.Hearing Date.pdf

For a Release of Information Form, please name the document as follows:
Client Name.RF.Hearing Date.pdf

**28. Complete post-hearing form.** A post-hearing form will be sent to you by email. Please return this within one week of receiving the decision. See “Post-Hearing
Consider additional steps to help student. See “Post-Hearing Responsibilities” section of SRP Guide for some ideas and additional steps to take after your hearing.
III. PROCESS FOR IMPOSING SUPERINTENDENT’S SUSPENSION

a. Mandatory Grounds for Suspension
   Chancellor’s Regulation A-443 states that a school must seek a regional Superintendent’s suspension when a student uses or possesses certain weapons, sells or distributes illegal drugs, or uses extreme force against or inflicts or attempts to inflict serious injury upon students, school personnel, or school safety agents. Regulation A-443 § III.B.3(a).

b. Voluntary Grounds for Suspension
   Chancellor’s Regulation A-443 states that a school should seek a regional Superintendent’s suspension when a student engages in behavior “which presents a clear and present danger to the student, other students or school personnel or which is so disruptive as to prevent the orderly operation of the school.” Regulation A-443 § III.B.3(b). The Discipline Code authorizes a Superintendent’s suspension for a variety of specific infractions ranging from “being insubordinate” or “leaving class or school premises without permission” to “starting a fire” or “causing a serious injury.”

c. Actions Subject to Suspension
   A student may receive a Superintendent’s suspension for prohibited actions in school or on school property before, during, or after school hours; while traveling on vehicles funded by the Department of Education; and for misbehavior that occurs off school premises when it negatively affects the educational process or endangers the health, safety, morals or welfare of the school community. Regulation A-443 Introduction.

d. Pre-Suspension Investigation
   An important issue in many hearings is the adequacy of the school’s pre-suspension investigation. Before suspending a student, the school must engage in a pre-suspension investigation. The school must:

1. Question the victim and any other witnesses to the incident and obtain their signed, written statements. Regulation A-443 § III.B.3(e)(1).

2. Question the accused student and inform him/her of the misconduct of which s/he is being accused. Regulation A-443 § III.B.3(e)(2).

3. Provide the accused student with an explanation of the evidence and an opportunity to present his/her side of the event, unless it is not feasible to do so. Regulation A-443 § III.B.3(e)(3).

4. Provide the accused student with an opportunity to prepare a signed, written statement. Regulation A-443 § III.B.3(e)(4).
e. **Authorization from Superintendent’s Designee**

Following the school’s investigation, the school must notify the Superintendent’s designee of the student’s behavior, any mitigating circumstances, and the school’s investigative steps, and request a Superintendent’s suspension. Regulation A-443 § III.B.3(f). The school should seek the suspension on the same day as the alleged misbehavior, whenever possible, or within a reasonable time thereafter. Regulation A-443 § III.B.3(g). The school cannot tell a student that s/he has been suspended until the Superintendent authorizes the suspension and the school receives notification, which includes the date, time, and place of the suspension hearing and the alternative instruction assignment. Regulation A-443 § III.B.3(i). The suspended student must remain in school, under supervision, until either the arrival of the student’s parent or until the close of the school day. Regulation A-443 § III.B.3(l).

f. **Notification to Parent**

Once the suspension is authorized, the school must give immediate notice to the parent by telephone. Regulation A-443 § III.B.3(n). The school must also ensure that, within 24 hours of the suspension, the parent receives written notice, which must provide a description of the incident and advise the parent of the alternative instruction site and that a hearing will be scheduled within five school days of the suspension date. Regulation A-443 § III.B.3(n). This notice may be dispensed with only if the parent receives the complete official suspension notice from the Superintendent’s designee (“suspension notice”) within 24 hours of the suspension.

g. **Suspension Notice**

The Superintendent’s designee must give the parent written notice of the suspension through the official “suspension notice.” The suspension notice must include the reasons for the suspension including the date, time, and place of the incident; the alternative education arrangements; the date, time, and place of the hearing; a non-binding list of witnesses who may testify on the school’s behalf; a list of legal services organizations to call for assistance; and several of the parent’s rights. Regulation A-443 § III.B.3(n).

h. **Suspension Packet**

The school must provide the parent or parent’s representative with a copy of the student’s records and all materials relating to the suspension incident prior to the hearing date upon request of the parent or representative in person at the school. Regulation A-443 § III.B.3(s)(15). These materials are known as the “suspension packet.” You can help the parent obtain the suspension packet if the school is refusing to give it to the parent.

In addition to the witness statements, school records, and other documents contained in the suspension packet, the parent has a right to obtain a copy of any surveillance video if (1) the school has shown the parent or the student the video recording before the hearing, or (2) the school intends to introduce the video recording at the hearing. Otherwise, the DOE will not provide the family with any video surveillance. If you encounter problems with video evidence, contact an SRP board member.
i. **Alternative Instruction**  
Students in grades K-8 who are awaiting a Superintendent’s suspension hearing have the right to participate in a full-time instructional program, and high school students awaiting a Superintendent’s suspension hearing have the right to participate in an instructional program for at least two hours per day. Regulation A-443 § III.B.1(e). The program may be at the student’s original school but is often at a different school or at an alternative leaning center. Following the hearing, all students who continue to be suspended have a right to participate in a full-time instructional program. Regulation A-443 § III.B.1(f). If necessary, appropriate transportation arrangements must be made for the student. Regulation A-443 § III.B.1(c). Students have a right to take citywide or state examinations administered during their suspensions and to make up school midterm or final examinations. Regulation A-443 § III.B.1(a). They have a right to receive class work, homework assignments, and instruction that will allow them to continue earning academic credit. Regulation A-443 § III.B.1(b). You can play a key role in ensuring that students receive an appropriate education during their suspension. If a student gets an alternative school placement that is unfeasible for him/her (e.g., too far away from home), the student’s parent or you can try to work with the hearing office to find another placement.

j. **Victim Impact Statements**  
Once a suspension is authorized, the principal must give the alleged victim an opportunity to express how the incident affected him/her by allowing him/her to prepare a victim impact statement, which can be used during the dispositional phase of the hearing. Regulation A-443 § III.B.3(m).
IV. HEARING BASICS

a. Hearing Offices
There are five Superintendent’s suspension hearing offices in New York City. See the Appendix in this manual for address and contact information.

b. Hearing Officers
The role of the hearing officer is to function as an impartial fact-finder. The hearing officer conducts the suspension hearing, makes findings of fact, and makes a recommendation to the Superintendent as to the appropriate measure of discipline. The hearing officers are attorneys but are not judges. You should call them “Mr.” or “Ms.”

c. Representatives

1. School’s Representative (“Staff Advisor”): In general, the school is not represented by an attorney. The school has the option of having a “staff advisor” present the school’s case. Regulation A-443 § III.B.3(s)(14). The staff advisor is often a school official (e.g., high school dean) who is in charge of doing pre-suspension investigations for the school and representing the school at suspension hearings. The staff advisor acts as the school’s advocate and can question witnesses, present opening and closing statements, etc.. The staff advisor may also testify as a witness. Even when the staff advisor is also a witness, s/he remains in the room throughout the hearing. Often, the school opts not to have a staff advisor, and the hearing officer asks questions to elicit the testimony of the school’s witnesses.

2. Parent’s Representative: The parent has the right to representation by an advisor or counselor at the hearing. Regulation A-443 § III.B.3(n)(12). If the parent intends to bring an advisor or attorney to the hearing, the parent must notify the hearing office at least 24 hours in advance of the hearing. Regulation A-443 § III.B.3(n)(13). SRP uses a notice of appearance, described in the “Getting Your Case” section.

d. Scheduling Hearing
A Superintendent’s suspension hearing must be held within 5 school days of the suspension date. If the student is not offered a hearing within 5 school days, the student must be reinstated to the original school on the 6th day, or, with the consent of the parent, transferred to an equivalent instructional program. Regulation A-443 § III.B.3(s)(12). Hearings are scheduled for a particular date and are not scheduled for a particular time on that date. The hearing office asks everyone to arrive at 8:30am or 9:00am, depending on the specific office, and does one hearing after the next until all the hearings are finished. Thus, while most hearings happen in the morning, the hearing can take place any time between 9:00am and 5:00pm. In nearly all cases,
advocates are back at school in time for 2:00 classes. However, there is no guarantee. Occasionally, a case will not be called until 4:00 or later. You and your client should be prepared to wait.

e. **Adjournment**

The parent or school may request an adjournment.

1. **Parent-requested adjournment:** Since a parent will often call SRP the day before the hearing, SRP will often request an adjournment on behalf of a parent so that we can find a date when two SRP advocates are available and can prepare adequately for the hearing. Adjournments shall be granted for good cause shown (e.g., illness or to obtain representation). Regulation A-443 § III.B.3(s)(13). We have found that the hearing office will usually grant at least one adjournment. The parent can request an adjournment as late as the morning of the scheduled hearing. If the parent requests an adjournment, a new hearing will be scheduled within 5 school days unless a longer period is requested. Regulation A-443 § III.B.3(s)(12). The student’s suspension continues during the parent-requested adjournment so if the student is facing only a brief suspension, the parent may not want to adjourn.

2. **School-requested adjournment:** If the school requests an adjournment, the student must be reinstated to the original school on the 6th day of the suspension, or, with the consent of the parent, transferred to an equivalent instructional program, pending the hearing decision. Regulation A-443 § III.B.3(s)(12).

f. **Interpreter**

If the parent’s preferred language is not English, the parent may bring a translator or interpreter to the hearing. Regulation A-443 § III.B.3(s)(21). If the parent requests an interpreter, the hearing office will provide one. If your client needs an interpreter, you should notify the hearing office at least two days in advance of the hearing.

Please ask an SRP board member for information about how to access services to speak with a parent who does not speak English.

g. **Recording Hearing**

A tape-recorded or verbatim stenographic record of the hearing must be kept. Regulation A-443 § III.B.3(s)(22). You can request a transcript of the hearing for appeal or other purposes. If the student is also facing criminal charges, whatever s/he says at the Superintendent’s suspension hearing can be used against him/her during the criminal case; for this reason, students facing criminal charges should not be permitted to testify at the suspension hearing.
V. HEARING STRUCTURE

a. Two-Phase Hearing: Fact-Finding and Disposition
The hearing has two phases. The first phase is the fact-finding phase. The second phase is the dispositional phase.

b. Fact-Finding
During the fact-finding phase, the question is whether or not there is sufficient evidence that the school’s charge(s) are true. The school and the parent/SRP may present witnesses and documentary evidence to help make the case. The hearing officer must make findings of fact regarding the student’s involvement in the charged behavior. For more information about the specific structure/order of the fact-finding phase, see “Hearing Order” in the “During the Hearing” section.

c. Standard for Proving Charge
The school is responsible for proving, by direct or circumstantial evidence, that the student was involved in the alleged incident, as charged. Regulation A-443 § III.B.3(s)(10). The school must prove the student’s participation in the incident charged by “competent and substantial evidence.” This is a low standard, weaker than a preponderance of the evidence.

1. Non-hearsay evidence required: Although hearsay evidence is allowed at the hearing, a finding that the student committed the acts charged may not be based exclusively on hearsay evidence. Regulation A-443 § III.B.3(s)(10). In other words, the school must have a witness, who personally witnessed the incident, testify. A finding cannot be based merely on written statements or testimony that someone told the person testifying that the incident occurred. In addition to direct testimony by a witness, there are a few types of evidence that are not considered hearsay and would be enough to sustain the charge:

i. Admission: A suspended student’s written or oral admission to the incident charged made prior to the hearing serves as non-hearsay evidence and may be used as the sole basis for sustaining his/her suspension. However, the admission must be authenticated and the hearing officer must determine that the admission was voluntary. School officials have no duty to warn students that they have the right to remain silent and that what they say can be used against them in a suspension hearing.

ii. Guilty plea in criminal or juvenile delinquency proceeding: If the

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suspended student pleads guilty in a criminal or juvenile delinquency proceeding to the same offense for which s/he was suspended, a certified copy of the plea minutes or certificate of conviction may be admitted into evidence as non-hearsay evidence. Regulation A-443 § III.B.3(s)(11). This is enough to sustain the suspension charge.

2. **Complaining witness required:** A hearing may not be conducted without a complaining witness, and the complaining witness need not be the alleged victim. Regulation A-443 § III.B.3(s)(1). The complaining witness may be anyone with direct or circumstantial evidence that the student committed the misconduct. Thus, the school dean who conducted the investigation may be considered a complaining witness.

3. **Oral testimony given greater weight:** While written statements and affidavits are admissible, oral testimony must be given greater weight unless the hearing officer determines that the oral testimony is not entitled to such weight. Regulation A-443 § III.B.3(s)(4). If there is a strong written witness statement, consider subpoenaing that witness to testify in person at the hearing.

4. **Each side can subpoena witnesses:** Hearing officers can issue subpoenas requiring witnesses to appear at the request of the school or the parent. Regulation A-443 § III.B.3(s)(2). The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing. Regulation A-443 § III.B.3(s)(5). Student witnesses can also be subpoenaed but must have parent permission to attend a hearing. Even if your client can contact a student witness and invite them to come, you may want to consider a formal subpoena.

5. **Evidence must be relevant:** In the fact-finding phase of the hearing, questioning of witnesses or any other evidence must be relevant to the incidents charged. Regulation A-443 § III.B.3(s)(6). Thus, the school may not introduce evidence about the student that is unrelated to the specific incident charged during the fact-finding phase. *Be prepared to object.*

d. **Disposition**

The dispositional phase happens immediately following the fact-finding phase. *During disposition, the primary question is how long the suspension should last in the event that the charges are sustained.* The dispositional phase is held even though the charges may eventually be dismissed. Requests for school transfers, the period for which the suspension will remain on the student’s records, and guidance interventions may also be addressed.

During this phase, evidence is not limited to the specific incident. The school will present information about past disciplinary problems, grades, teacher and staff anecdotal reports, and attendance to try to make a case against the student. The
available dispositional options are outlined later in this manual in the “Disposition” section.

Following the dispositional phase, the hearing officer will privately make a recommendation as to the appropriate length of suspension to the Superintendent’s designee, who makes the final decision. Regulation A-443 § III.B.3(s)(1). The Discipline Code outlines the minimum and maximum lengths of suspension for each infraction.

e. Pre-Hearing Options

1. Pre-Hearing Conference: On the hearing date, the proceedings will begin with a pre-hearing conference, without the school official present, during which the hearing officer will explain the hearing procedures to the parent and discuss the parent’s options and rights. The hearing officer will ensure that the parent has obtained a copy of the suspension packet. The hearing officer will give the parent the option of pleading “no contest,” proceeding with the hearing, or adjourning the hearing to secure an advocate or subpoena witnesses. SRP advocates usually waive the pre-hearing conference because we have already explained the procedures, options, and rights to the parent and student. Hearing offices sometimes refuse to let you waive the conference.

2. Option of Pleading “No Contest”: The parent of a suspended student may decide to waive the Superintendent’s suspension hearing and plead “no contest” to the charges. Regulation A-443 § III.B.3(q). If the parent pleads “no contest,” the charges will be sustained/upheld. A client pleads no contest when there is no reason to try to challenge the charge. “No contest” is not the same thing as admitting guilt: it simply means that the student and parent will not be contesting the charge. If the student has written a statement admitting that s/he engaged in the behavior charged, the parent would likely plead “no contest” since the admission is sufficient to sustain the charges. Or if the student possessed a certain type of weapon at school and is charged with possession, a parent would likely plead “no contest” if someone witnessed possession because it is a zero-tolerance infraction.

a) Reason to plead “no contest”: An advantage of pleading “no contest” is that the school official cannot enter any evidence (e.g., witness statements, testimony) into the record. Thus, the disposition (length of suspension) will be determined based on the charge and the student’s cumulative records and not on any testimony or statements regarding the alleged incident. Thus, if the witness statements make the student’s behavior sound worse than the charge, the parent may want to plead “no contest.” Conversely, if the facts indicate misconduct but not misconduct as serious as the charge reads, pleading “no contest” would give up the right to challenge the appropriateness of the specific charge.
b) **How to plead “no contest”**: The parent may plead “no contest” over the telephone or may plead “no contest” when s/he appears for the hearing. If the parent wants to enter evidence for the dispositional phase, the parent must appear for the hearing, plead “no contest,” and ask to move forward with the dispositional phase.

c) **Withdrawing “no contest” plea**: The parent has the right to withdraw a plea of no contest within three days from receipt of the letter with the decision regarding length of suspension or within seven days of the date of the letter, whichever is later. Regulation A-443 § III.B.3(q).

d) **School may not ask parent to enter “no contest” plea**: School officials often encourage parents and students to enter a plea of “no contest.” However, the Chancellor’s Regulations specifically state that school officials shall not discuss or recommend entering a plea of “no contest” with the student or his/her parents. Regulation A-443 § III.B.3(s)(17).

3. **Early Resolution Conference**: The parent may request an Early Resolution Conference (ERC) on the hearing date. The ERC is a guidance conference held with the Superintendent’s designee to discuss the educational options available to the student after the suspension as well as to assist in expediting the suspension process and the student’s assignment in school. If the suspension is resolved at an ERC, the charges are sustained. Regulation A-443 § III.B.3(r).

f. **Multiple Students Accused**

In cases where the school is seeking to suspend multiple students for the same incident, a separate hearing must be scheduled for each student. Regulation A-443 § III.B.3(s)(8). However, upon request of an alleged victim or school official, the hearing officer will determine whether or not the hearings will be consolidated based on factors including whether consolidation would be unduly prejudicial to the student or affect his/her ability to defend himself/herself, the complexity of the case, and the impact upon the alleged victim of having to testify on multiple occasions. Regulation A-443 § III.B.3(s)(8). Only the fact-finding phase of the hearing can be consolidated. The hearing office must hold a separate dispositional phase for each suspended student. Regulation A-443 § III.B.3(s)(9). The school often requests to consolidate hearings. If your case involves more than one suspended student, you may want to consider how a consolidated hearing will impact your client’s case and prepare both for the chance of consolidation and/or to argue against consolidation.
VI. SPECIAL EDUCATION

a. Primary Body of Law - Individuals with Disabilities Education Act (IDEA)
   The Individual with Disabilities Education Act (IDEA) is a federal law that entitles each student with a disability to a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) 20 U.S.C. § 1400; 8 N.Y.C.R.R. Parts 200, 201. Among other things, it entitles students with disabilities to additional procedural protections throughout the suspension process. These protections are incorporated into the Chancellor’s Regulations. Regulation A-443 § II. Students who qualify for special education classes and/or services have a plan called an Individualized Education Program (IEP). If the student you are representing has an IEP, read Chancellor’s Regulation A-443 § II and § III.B.3(v) and immediately consult with a member of the SRP board. You may also want to read the NY IDEA Regulations regarding suspensions, available at http://www.emsc.nysed.gov/specialed/lawsregs/part201.htm. In addition, in certain cases, students may be entitled to protections even if they do not have an IEP.

b. Questions to Ask in Every Case

   1. Does the student have an Individualized Education Program (IEP)? Have you reviewed the IEP and related school documents? (See VI.d)
      a) Is the IEP complete and current?
      b) Is the student receiving all of the services on the IEP?
      c) Does the IEP have a Behavior Intervention Plan (BIP)?
      d) How is the student’s IEP/BIP relevant for fact-finding and/or disposition?
      e) Has a Manifestation Determination Review (MDR) been scheduled?

   2. If the student does not have an IEP, might the student be in need of special education services?
      a) Does the student qualify for protections for students with disabilities even though the student does not yet have an IEP because the school had “knowledge” that the student needs such services? (See VI.c.2)
      b) Is the parent interested in referring the student for expedited evaluations to determine if the student is eligible for special education services?
c. Students Entitled to Additional Procedural Protections

1. Students Identified as Having a Disability
   Students that have already been identified as having a disability will have an Individualized Education Program (IEP), a plan that describes the student’s disability and explains what the school must do in order to provide the student with a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). Their suspension notice should read “Special Education Student” at the top.

2. Suspended Students Who May Need Special Education Services
   Students who do not yet have an IEP may be entitled to the same protections as students with IEPs if school officials had “knowledge” that the student had a disability before the behavior that precipitated the suspension occurred. Regulation A-443 § II.B. School officials are deemed to have “knowledge” if prior to the occurrence of the misbehavior:
   a) the parent of the student expressed concern in writing;
   b) the behavior or performance of the student demonstrates the need for special education services;
   c) the parent of the student made a written request for an evaluation; or
   d) the teacher of the student, or other school personnel, expressed concern about the behavior or performance of the student to appropriate school officials and initiated a special education referral.

   You would have to argue that the protections apply in the particular circumstances of the student. If the student you are representing is being evaluated for special education or has been suspended or removed from the classroom multiple times for poor behavior, read Chancellor’s Regulation A-443 § II.B and § III.B.3(v) and immediately consult with a member of the SRP board.

3. Students with 504 Plans
   Students with 504 Plans (under Section 504 of the Rehabilitation Act) for accommodations due to disabilities, but no IEPs, receive fewer procedural protections during the suspension process than students with IEPs. However, there are some important protections that apply. If you are representing a student with a Section 504 plan, consult with a member of the SRP board.

d. Individualized Education Program (IEP)
   1. An Individualized Education Program (IEP) is a plan that outlines the student’s educational needs and the type of class and services/supports they are entitled to receive in order to provide the student with a free appropriate public education under IDEA. A student has the right to anything included in the IEP. The IEP
must be updated once a year at an IEP meeting to which the parent must be invited.

2. Important Information to Look for in an IEP

a) **Classification**: There are thirteen possible classifications of disability under the law (e.g., learning disability, speech/language impairment, other health impairment, emotional disturbance). A student with an IEP will have one of these thirteen classifications.

b) **Class Setting**: The IEP indicates whether the student is in a general education, integrated, or self-contained ("special") class. For a special class, the IEP indicates the number of students, teachers, and paraprofessionals in the class (e.g., A 12:1:1 special class has 12 students, 1 teacher, and 1 paraprofessional) and whether the special class is part of a community school or specialized (District 75) school.

c) **Supplementary Aids and Related Services**: Includes services like an individual paraprofessional, occupational therapy, physical therapy, speech and language therapy, and counseling.

d) **Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP)**: An FBA is an assessment that helps determine why a student engages in behaviors that impede learning and how the student’s behavior relates to the environment. A BIP is a plan that is based on the results of the FBA and, at a minimum, includes a description of the problem behavior, hypotheses as to why the problem behavior occurs, and outlines intervention strategies to address the behavior. The BIP should be included as part of the IEP and should be developed for any student whose behavior significantly interferes with the student’s learning. If there is a BIP, be sure to examine it to see if it is adequate to address the student’s behavior. If the school did not develop a BIP, think about whether the school should have developed a BIP based on the student’s disability.

e. The Suspension Hearing

1. **Assertion of Protections**: If the student does not have an IEP, but you wish to assert IDEA protections for the student (see Section VI.c.2), make sure you state at the start of the hearing that you are asserting IDEA protections and state why. Read Chancellor’s Regulation A-443 § II.B. To establish that the protections apply, you can elicit the relevant information through cross-examination of the school official, through direct examination of the parent, or through documentary evidence. If the student has an IEP, there is no question that the IDEA protections apply. If the student has a Section 504 plan only, some protections apply.
2. **Fact-Finding Phase:** The Chancellor’s Regulations do not explicitly address whether the special education needs of a student may be discussed during the fact-finding phase. Some hearing officers may not permit any questions or evidence regarding a student’s special education status or services during the fact-finding phase, on the grounds that such evidence is not relevant to whether the student engaged in the behavior described in the charges. Other hearing officers, however, are more permissive. Of course, the relevance depends on the charge and the circumstances surrounding the incident. Potential arguments during the fact-finding phase include:

a) **Student isn’t receiving type of class/services in his/her IEP:** Draw a connection between the lack of services and the behavior.

   **Example:** The IEP mandates counseling but no counselor is available or the IEP mandates an individual behavior management paraprofessional but the para was on his/her lunch break when the incident occurred.

b) **Student’s IEP includes insufficient services/supports:** Point out the connection between the lack of services and the behavior.

   **Example:** The IEP indicates that the school knows of behavioral needs but the IEP does not include the behavioral supports that would be necessary to address these needs. This is particularly powerful if the student has been repeatedly suspended. Rather than examine the student’s IEP and determine what additional supports/services the student needs, the school continued to suspend the student.

c) **Student is awaiting change in IEP:** If the parent or school official has referred the child for a reevaluation or requested increased supports/services, but no IEP meeting has been scheduled, point to this request as notice to the school that the student might need additional help. Point to their failure to put an IEP in place as a failure to prevent the behavior that resulted in the suspension.

   **Example:** The parent requested new evaluations many months ago because parent was concerned about student’s behavior but no IEP meeting scheduled yet.

d) **Student does not have a Behavior Intervention Plan (BIP), has an inadequate BIP, or has a BIP that the school did not follow:** Point out that the school failed to develop/implement an appropriate BIP and, thus, did not take needed steps to address the student’s behavior. This is particularly powerful if the student has been repeatedly suspended. Rather than develop or change the student’s BIP, the school continued to suspend the student.
3. **Dispositional Phase:** A student’s special education status is explicitly relevant to the dispositional phase. Regulation A-443 § III.B.3(s)(16). Prior to determining the appropriate disciplinary and/or intervention measures, the decision maker must consider the student’s IEP and any other related instruments. Regulation A-443 § III.B.3(v). That means the student’s disability is relevant to determining an appropriate disposition regardless of whether the behavior was caused by the student’s disability. Issues to address during the disposition phase include:

a) **Request Reinstatement/Reduced Length of Suspension:** Argue for reinstatement or a shorter suspension based on the student’s special needs and/or based of any of the problems with the IEP listed under the fact-finding phase above. The hearing officer may say that these are issues to discuss at the Manifestation Determination Review (MDR), but you can point out that the Chancellor’s Regulations state that the student’s IEP and BIP must be considered during disposition, Regulation A-443 § III.B.3(v), and that you would like to speak about how these documents are relevant for the disposition in this case. **In addition to all of the arguments listed above under fact-finding,** you may want to advocate for reinstatement/reduced suspension based on:

(4) **Disruption of services:** If the disruption of services that is inevitable with a continued or extended suspension would be particularly detrimental to the student, bring this to the attention of the hearing officer.

(5) **Transportation:** If the student is entitled to specialized transportation to accommodate his/her disability, and it would be difficult to rearrange if the student is suspended, bring this to the attention of the hearing officer.

(6) **Duration that the student has received services:** If the student has only recently begun receiving special education services or the services were recently changed, argue that the IEP should be given time to help the student and that a continued suspension would unnecessarily disrupt the establishment of the student’s new program.

(7) **Outdated IEP or Evaluations:** An IEP must be updated annually. Additionally, the DOE must conduct new evaluations at least once every three years (or more frequently upon parent request). If the IEP or evaluations are outdated, the school failed to update the IEP in a way that may have addressed the student’s current behavior.

b) **Request Additional Special Education Services:** Request that the school provide the proper supports, services, or placement.

(1) **Request that student receive the type of class/services in his IEP.**
Example: The IEP mandates counseling but no counselor is available, so consider asking the hearing officer to order that the school provide counseling immediately.

(2) **Request that student receive additional services if IEP mandates insufficient services.**

**Example:** The IEP indicates that the school knows of behavioral needs but the IEP does not include the behavioral supports that would be necessary to address these needs, so consider asking for additional behavioral supports such as counseling, a behavior management paraprofessional, or a different type of class.

(3) **Request a new IEP meeting.**

**Example:** The parent or a school official has referred the child for an evaluation or reevaluation, but no IEP meeting has been scheduled, or the IEP is more than a year old, or the student needs additional services. Consider requesting that the school holds a new IEP meeting immediately.

(4) **Advocate for the development of a new Functional Behavioral Assessment (FBA)/Behavioral Intervention Plan (BIP).** Request that the school develop an FBA and BIP to address the student’s behavioral needs.

(5) **Request an Expedited Evaluation:** All parents have the right to request an expedited special education evaluation (within fifteen school days) when their students have been suspended, regardless of whether or not they are asserting IDEA protections for purposes of the hearing.

f. **The Manifestation Determination Review (MDR)**

1. **The Manifestation Determination Review (MDR)** is a meeting with the student’s parent and relevant members of the IEP team to determine the relationship, if any, between the student’s disability and the behavior leading to the suspension. Regulation A-443 § II.C.8. If the team members conclude that the student’s behavior was the manifestation of the student’s disability, the student cannot be suspended for more than ten days. If you are representing a student with a disability or presumed to have a disability (see section VI.c.2), you should ensure that the school has scheduled an MDR and that the parent plans to attend. *Advocates should make every effort to attend the Manifestation Determination Review.*
2. An MDR is required if:

a) as a result of the suspension, a student is excluded from his or her classroom for ten consecutive school days or longer. Regulation A-443 § III.E.1. OR

b) a student is subjected to a series of classroom removals or suspensions that result in the student being excluded from his or her classroom for more than ten school days in the school year. The exclusions must constitute a “pattern”. Regulation A-443 § II.C.5.

3. The MDR Process:

a) About the Meeting: The MDR does not take place the same day as the suspension hearing. It is an informal meeting held at the school.

b) Participants: The parent is a required participant, and must be notified in writing of the MDR in advance to ensure that s/he has an opportunity to attend. Regulations of the New York State Commissioner of Education Part 201.4(b), available at http://www.emsc.nysed.gov/specialed/lawsregs/part201.htm. You should strongly encourage the parent to be proactive in finding out when this meeting is scheduled and attend. There must also be a district representative who is knowledgeable about the student (often the school psychologist or a school administrator). Other common participants include the guidance counselor or psychologist, teachers, and school administrators.

c) Questions which must be answered by the team: The general purpose of the MDR is to determine whether the student’s behavior was a manifestation of the student’s disability.

According to the NY State Regulations, the MDR team must determine:

(1) whether the conduct in question was caused by or had a direct and substantial relationship to the student’s disability, AND

(2) whether the conduct was a direct result of the DOE’s failure to implement the student’s IEP. If the answer to either question is yes, then the conduct was a manifestation of the student’s disability.

According to the Chancellor’s Regulations, the team may only find that the behavior was not a manifestation if they determine that:

(1) in relationship to the behavior, the student’s IEP and placement were appropriate and that services and behavioral intervention strategies provided were consistent with the student’s IEP and placement;
(2) the student’s disability did not impair his or her ability to understand the impact and consequences of the behavior; and

(3) the student’s disability did not impair his or her ability to control the behavior. Regulation A-443 § II.E.3.

b) **Information that must be considered:** At the meeting, the following information should be gathered and considered: the IEP, the Functional Behavioral Assessment and/or Behavior Intervention Plan, evaluations, teacher observations, the occurrence report from the incident, and any information provided by the parent.

1. **Advocacy at the Manifestation Determination Review**

SRP advocates are strongly encouraged to attend the MDR on behalf of the parent and student. If you are considering assisting the parent at the MDR, consult with a member of the SRP Board. SRP advocates could contribute to an MDR in the following ways:

a) **Before the MDR:**

(1) Carefully review the student’s IEP. Focus especially on social/emotional functioning.

(2) Read through other relevant materials such as evaluations, Functional Behavioral Assessment, Behavior Intervention Plan.

(3) Talk with the parent. Is the school providing the services in student’s IEP? Are there different/additional services that need to be implemented?

(4) Speak with student’s private therapist or other service provider, if any. Is he or she willing to write a letter explaining why the conduct in question was a manifestation? Is he or she willing to participate in the meeting in person or over the phone?

(5) Consider having a conversation with the school psychologist.

b) **At the MDR:**

(1) Make sure all of the appropriate documentation is reviewed (including the most helpful portions of the IEP, Functional Behavior Assessment and/or Behavior Intervention Plan, any relevant evaluations, letters from the student’s therapist, and anything about the incident that the team might otherwise overlook), and that all voices are heard. If the student’s therapist is available to participate via phone, please make sure the school calls the therapist.
(2) Argue that the New York State Regulations’ and/or the Chancellor’s Regulations’ standards were not met. Whether or not the student knew that he or she was breaking the rules is irrelevant.

(3) Be ready to act as an informal mediator between the parent and the school.

(4) If the parent would like different or additional services for the student, advocate for these changes. If, during the MDR, school officials identify deficiencies in the student’s IEP or placement or in their implementation, they must take immediate steps to remedy those deficiencies. Regulation A-443 II.E.5.

(5) Be sure that the FBA/BIP is being created or reviewed. If the FBA and/or BIP is inadequate or doesn’t exist, advocate for the creation of new ones.

c) After the MDR: Counsel the parent regarding whether to find an attorney in order to contest the team’s unfavorable decision.

(1) The parent has the right to mediation or an expedited impartial hearing to challenge the result of the MDR.

(2) Consider referring the parent to Advocates for Children or another legal services organization. Consult an SRP Board Member about the best person to whom to refer the case.

(3) Consider referring the parent to mental health or other services. Consult an SRP Board Member about the best organization(s) to refer the client to.

2. Outcomes:

a) If the misconduct was not a manifestation of the student’s disabiling condition, the student may be disciplined. Regulation A-443 § II.E.6.

(1) Suspension Plan for continued or extended suspension: Students with disabilities who are suspended for more than 10 days must receive services that allow them to progress toward meeting the goals on their IEP. The Suspension Plan is not a replication of the student’s IEP; rather it provides the student and the staff at the suspension site with a description of the special education supports and services the student will receive during his or her suspension term. DOE Standard Operating Procedures Manual for Students with Disabilities, pages 153-54, available at http://schools.nyc.gov/NR/rdonlyres/5F3A5562-563C-4870-871F-BB9156EEE60B/0/03062009SOPM.pdf
b) If the result of the review is that the misconduct was a manifestation of the student’s disability, the student may not be further disciplined and must be reinstated.\(^4\) Regulation A-443 § II.E.7.

g. Services for Students with Disabilities While on Suspension

1. **During the first 10 schools days of exclusion** the student must be provided with continuing educational programming or alternative instruction to the same extent as non-disabled students.

2. **Beginning on the 11th day of exclusion**, the student must be provided educational services that enable him/her to appropriately progress in the general education curriculum and advance towards the goals set out in the IEP.

3. **While awaiting the MDR**: If a student has been excluded for more than 10 days in the school year before the MDR is completed, the student must be reinstated while the MDR is pending. Students who have not yet been excluded for 10 school days must be provided with alternative instruction. Regulation A-443 § II.E.8.

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\(^4\) In exceptional circumstances, for example if the Superintendent believes the student is substantially likely to injure herself or others, a student with a disability may be placed at an Interim Alternative Educational Setting even if the result of the MDR is that the misconduct was a manifestation of the student’s disability. Regulation A-443 § II.F. This is extremely rare.
VII. GETTING YOUR CASE

a. SRP’s First Steps

1. Referrals to SRP: When a student receives a Superintendent’s suspension, the parent receives a suspension notice informing the parent of the suspension, the charge, the hearing date, and the rights of the student and parent. Along with the suspension notice is a list of legal service providers and advocates that provide suspension hearing representation, including SRP. In addition, organizations such as the Legal Aid Society’s Juvenile Rights Practice and Advocates for Children are on the list. Unfortunately, they are unable to provide representation for many parents that call. These organizations tell parents about SRP. Parents call SRP and leave a voicemail message.

2. Intake: SRP board members manage and run intake. Board members assigned to intake check the SRP voicemail, return calls, and complete an “Intake Form” to find out basic information about the case. An assessment is done as to whether it is a case that SRP can take. If SRP is unable to take a case, information and brief advice are usually given over the phone.

3. Finding SRP Advocates: SRP board members e-mail SRP advocates to find two advocates, including at least one “Experienced” or “Senior” advocate, who can take a case. SRP uses doodle polls and other scheduling tools. If you tell SRP that you are available on a particular date in response to an inquiry about a specific case, you must hold that date and must be available all day. Unfortunately, suspension hearings are scheduled for a particular date, not a particular time on that date. While most hearings occur in the morning, you may have to wait in the hearing office until late in the afternoon for your hearing to be called.

4. Notice of Appearance and Adjournment: If SRP agrees to take a case, SRP board members file a “Notice of Appearance” informing the hearing office that SRP will be representing the client. The hearing office must receive the “Notice of Appearance” 24 hours in advance of the hearing. Regulation A-443 § III.B.3(n)(13). SRP often adjourns the case to allow advocates to prepare adequately to represent the client and to find a date that works for two SRP advocates, including at least one “Experienced” or “Senior” SRP advocate, as well as the parent. SRP must provide the hearing office with two dates when two SRP advocates and the parent are all available. Whoever assigns you to a case should provide you with a copy of the “Notice of Appearance” that was faxed to take with you to the hearing.

5. Case Assignment: SRP will e-mail you with the name of the student and parent, the hearing date, the name of your partner advocate, the “Intake Form,” a copy of the “Notice of Appearance” that the SRP Board has filed, forms that you
will need for the case, and any other information we have.

b. Your First Steps
When SRP e-mails you your case, you should get started right away by following the SRP Advocate’s Checklist, Section II of this guide.

c. If the Student Was Also Arrested
In addition to the Superintendent’s suspension, some students also face juvenile delinquency or criminal charges. If you learn from the Intake Form or from the client interview that the student was arrested, speak to an SRP board member. The most important thing to remember is that students who were arrested as a result of the same incident should not testify at the suspension hearing.

1. Students Represented by Attorneys: In any case where the student is already represented by a lawyer, you must try to contact the lawyer right away. It is SRP’s policy to encourage the attorney to represent the student at the suspension hearing; if the attorney agrees to do so, then SRP would withdraw. In most cases, though, the attorney handling the delinquency or criminal matter declines to take on the suspension hearing.

If you are unable to speak with the student’s lawyer directly, you should leave the following message: “My name is _____ with the Suspension Representation Project. Ms. _____ has asked us to represent her daughter, _____ at her upcoming school suspension hearing. I would like to speak with you concerning the representation since you are assisting her with the juvenile delinquency case. If for some reason I do not hear from you before the suspension hearing, which is on _____, I will call you after it takes place to let you know what happened. I will not allow _____ to testify at the hearing under any circumstances. I may be able to gather discovery materials that could help with your case. Please call me at _____ so we can talk further.”

2. Ensuring that the Student Is Not Harmed By the Suspension Hearing:
Advise the family right away not to allow the student to write a written statement, or to speak about the incident with anyone. (If the student has already made a written admission, the statement’s potential to affect the delinquency or criminal case will depend on whether the prosecutor thinks to ask the school for it.) Do not permit the student to testify at the suspension hearing.

3. No Contest Plea: The No Contest plea in the suspension context is entered by the parent, not the student. Therefore, it cannot be used against the student in the delinquency or criminal case.

4. Request a Transcript: At the end of the suspension hearing, be sure to request a copy of the transcript. The transcript will assist the student’s delinquency or criminal attorney with his/her defense.
VIII. CLIENT INTERVIEW

a. Goals
In most cases, you will only meet once with the student and parent before the hearing. Thus, there are several critical goals for the meeting:

1. You want the student and parent to feel comfortable with you.

2. You want the student and parent to have an opportunity to ask questions and to leave with an understanding of what will happen at the hearing and what they need to do, if anything, before the hearing date.

3. You want to leave the meeting with a very detailed understanding of the student’s version of the alleged incident, any violations by the school, potential witnesses, positive attributes of the student, and any other information you need to prepare the best defense possible.

b. Preparation

1. Print and review the blank “Client Meeting Form” in the Appendix. You should feel free to use this form to guide your interview. You should feel free to deviate from the form to best accomplish the goals listed above as long as you make sure you get the information you need and give the parent and student the information they need.

2. Speak with your partner advocate to divide parts. Decide who is taking the lead for each part of the meeting with the parent and student. For each section, you may want to have one advocate take the lead and have the other advocate take detailed notes.

3. Review the helpful hints below and speak with your partner advocate about how to attain an ideal atmosphere for the interview.

4. Prepare the “SRP Acknowledgement and Consent Form” by completing the information and then print it.

5. Prepare the “Release of Information Form” by completing the information and then print it.

6. Review the suspension notice and suspension packet if you have it, as described in the SRP Advocacy Checklist. Note any inconsistencies that you will want to ask the student about. Note any possible witnesses.

c. Items to Bring

1. Completed Intake Form
2. Client Meeting Form
3. SRP Acknowledgement and Consent Form – Parent and student must sign  
4. Release of Information Form – Parent must sign  
5. Suspension notice and suspension packet if you have it  
6. SRP business cards  
7. Paper and pens  
8. You may want to bring water for yourself and the parent and student  

d. Tips  

1. **Develop a relationship:** It is difficult to develop a relationship during a brief meeting, but you should try to put the parent and student at ease so that they will trust you. Think about where each person will sit to best put the parent and student at ease. Decide who will take notes. Perhaps when one advocate asks questions, the other advocate can take notes, so that the advocate asking the question can look at the person answering. Think about how you will explain your role and confidentiality.⁵  

2. **Learn the student’s strengths:** Regardless of what the school is accusing the student of doing, it is vital to remember that the student is much more than that one incident. The “Client Meeting Form” includes questions about the student’s favorite subject, sports or hobbies, something the student is proud of, and the student’s future plans. There are three key reasons you will want to learn the student’s strengths. First, it often makes the students feel good to talk about their strengths. Second, it often helps put the students at ease, shows that you’re not at the meeting to judge them, and encourages them to trust you, which leads to the most information. Third, during the disposition phase of the hearing, you will need to make the best argument possible that your student does not deserve a long suspension based on a whole picture look at the student.  

3. **Listen, Listen, Listen!** Let the student and parent speak, listen closely, and don’t interrupt! Concentrate on how your client organizes his/her story and pay attention to any changes. Gaps in the story or changes in how it is told (less detail, different point of view) may signal areas where s/he is defensive or embarrassed. Repetition may signify uncertainty or efforts to persuade himself/herself. Also pay attention to patterns and changes in tone of voice or body language, which could indicate feelings or ideas s/he may not be fully expressing. Try not to interrupt your client or speak too much yourself. Emphasize your interest by maintaining eye contact, and avoid signs of impatience.  

4. **Welcome the sound of silence:** Do not rush to fill pauses in the  

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⁵ Remember, you are not a lawyer (yet!). This means that there is no true attorney-client privilege. SRP maintains confidentiality for our clients in the sense that the discussions you have with your clients are not to go outside SRP. You should not reveal confidential information that your clients tells you. However, technically, our conversations with our clients are not protected by the attorney-client privilege.
conversation. Moments of silence may seem awkward, but they are a crucial part of any interview. Silence encourages clients to offer more information. It also gives your client time to think or remember. One of the best ways to get more information after your client stops talking is to non-verbally indicate that you’re still listening, and then wait for him/her to say more. Silence is a powerful questioning technique because people feel compelled to “fill the void” and often blurt out the first thing that comes to mind. Try nodding instead of responding verbally to your client or, if you must say something, try an open-ended question: “is there anything else?” or “and then what happened?” It will likely elicit more information from your client than a specific follow-up question would.

5. Start by asking open-ended questions: When the student describes the incident, we would suggest allowing the student to speak uninterrupted even if you are confused or have questions. Throughout the interview, try to use open-ended questions as much as possible. An open-ended question lets the client choose what and how to answer.

6. Ask consecutive questions: After the student finishes giving an uninterrupted account of the incident, you can go back and ask the student questions about the incident step by step and fill in gaps. Consecutive questions continue along the line of logic: “What happened next?” Consecutive questions provide more complete information, since they elicit the client’s story step by step without disrupting his/her train of thought. Even with consecutive questioning, clients often leave big gaps in their stories. This happens usually because they don’t understand that you need to know the entire story. They have already made judgments on what is and is not important. As a result of those judgments, they try to rush to the parts of the stories that they consider important. As you need to nail down specifics, you can increasingly close your questions to focus on those areas. Do not be afraid to get very specific and even exaggerate to let the client know what you are trying to do. You should explain the reasoning behind your questioning.

7. Use various tools to help the student illustrate the story: After the student tells the complete story and you want to review the details, you may want to ask the student to use drawing and acting to demonstrate what happened. For example, you may want to ask the student to draw the room and label where each student witness was sitting at the time, to act out part of the story, to show you how far away s/he was from the teacher by pretending you’re the teacher. A drawing not only helps illustrate what happened, but is also a document you can take with you to help you remember the details as you prepare for the hearing. Acting-out may help you see some implausible claims in a victim’s or witness’s story.

8. Parent must, must, must leave the room: As you’ll see on the “Client
Meeting Form,” we ask the parent to leave the room for a substantial part of the meeting. No matter how good of a relationship the parent and student have or how forthcoming it seems like the student is being, you must ask the parent to leave the room. We often get very different stories from the student when the parent leaves the room. If the parent refuses to leave the room, you should explain that speaking with the student alone is a crucial part of SRP protocol to preserve confidentiality with the student and provide the most effective representation. If the parent continues to refuse to leave the room, it is your decision whether or not you can provide effective representation. There may be cases where speaking with the student alone is not as important, such as cases where the student is extremely young. If this situation arises, please contact an SRP board member.

9. Ensure you use developmentally appropriate language: SRP encounters students of all different ages and educational levels. Remember that you would explain confidentiality differently to an 8-year-old and to a 15-year-old.

10. Explain why you need to ask “tough” questions: Don’t be afraid to ask about difficult subjects such as inconsistent parts of the student’s story or why a seemingly unbiased witness says s/he saw the student participate in the incident. However, explain why you need to know. Remind him/her that you need to understand the entire story and you need to be able to predict what the school or witnesses will say at the hearing so you can be prepared to respond. Remind the client that you’re on his/her side and need to know all the information so you can do your best to represent him/her.

11. Ask your client to view the situation from the school’s or alleged victim’s perspective: To discover information that your client may be hesitant to admit, ask your client to describe things from another person’s perspective:
   • Why do you think Mr. Williams decided to suspend you? What would he say about why he decided to suspend you?
   • Why do you think John says you pushed him? What do you think he will say at the hearing?
   • Why do you think your teacher says you pushed John?
   • Is there anything else Mr. Williams may say at the hearing? Such questions are better at eliciting harmful or embarrassing information because they let your client “save face.” Your client can acknowledge opposing facts or arguments without crediting their truth.

12. Consider asking direct and indirect questions: Direct questions specifically ask for information and request a response: “When Tracy called you those names and came after you, did you do anything to defend yourself?” Indirect statements invite a response, but do not require one: “You must have been angry at Tracy.” Indirect questions or statements let
you probe potentially difficult subjects without a direct confrontation. Pay close attention not just to what you ask, but also to how you ask it, because the form of questions affects your client’s answers.

13. **Question the student’s version:** You need to know the whole story to prepare for the hearing, but many students will not trust you enough to tell you the whole story the first time they are meeting you. Your challenge is to probe for more information while building your client’s confidence. If the student’s story does not make sense or is inconsistent with the evidence, you need to ask the student for an explanation. Remind the student that what s/he says is confidential and that no matter what happened, your job is to defend the student.

14. **Repeat the student’s version:** Repeat what the student has told you happened to make sure that you understand and that neither of you missed anything important. If you are uncertain about any part of the story, check it by asking the same question in a different form.
IX. CASE THEORY

a. Developing Theory of the Case
Your theory of the case (theory) consists of the facts you want the hearing officer to find to be true in order to dismiss the charges or uphold less severe charges. Select what you believe will be the most persuasive theory and focus your advocacy efforts on proving it. Your theory can show that the alleged charges did not happen at all or that your client was not the one involved in the incident or that the alleged incident happened but does not rise to the level of a Superintendent’s suspension (or at least calls for a reduced suspension) or that the alleged incident happened but there was a justification such as self-defense or lack of knowledge (e.g., student didn’t know that contraband was in his/her backpack). Make sure your theory of the case:

1. Focuses on the charge: Anything that happened before or after the incident charged is not relevant during the fact-finding phase unless you connect it to what happened during the incident. Of course, the student’s behavior in general is relevant during the dispositional phase.

2. Is simple: A theory which is easy to understand is more likely to be believed. You should be able to summarize in one or two sentences why the charges should be dismissed (or reduced to a lower level).

3. Balances both rational and emotional appeal: You should ask if your theory builds sympathy for your client.

b. Anticipating School’s Theory
Try to predict what theory the school will advance at the hearing and what facts it will have to present to prove it. This helps you anticipate issues at the hearing so you can plan to win these disputes. The review of witness statements will help you.

c. Hearing Prep Form
Completing the “Hearing Prep Form,” found in the Appendix, will help you identify the witnesses, evidence, and facts that are on your side and the witnesses, evidence, and facts that support the school’s side.

d. Revising Your Theory of the Case
Depending on the evidence presented, you may need to revise your theory of the case in the middle of the hearing. This is particularly true if the school does not present an eyewitness. In such a case, you would want to adjust your theory to argue for dismissal because the school did not meet its burden of proof.
X. CLOSING ARGUMENT

a. Drafting Closing Argument

1. Draft a preliminary closing argument before writing your direct/cross examinations: After you have met with your client, reviewed the suspension packet, and developed your theory of the case, you should draft your closing argument. By drafting your closing argument now, you organize your thoughts, identify the arguments you want to be able to make, and identify the facts that you must prove in order to make that argument. Your closing argument will guide your direct examinations and your cross examinations.

2. Your closing argument should be based on your theory of the case: A closing argument is your theory of the case with an expanded “facts section” - your overall version of what happened, with specific facts plugged in to prove it step-by-step. It should anticipate and respond to the school’s theory.

3. Your closing argument must be based on the evidence presented at the hearing and Chancellor’s Regulations/case law/law: Thus, you’ll want to think about what you would like to say in your closing argument and how you will prove each fact during the hearing. For example, your closing argument may state, “As Scott testified…” or “As the teacher’s witness statement demonstrates…” Each fact that you state must have been presented during the hearing through testimony or included in documents submitted as evidence at the hearing. The only other information you can use is law (e.g., Chancellor’s Regulations, case law, state law, Discipline Code).

4. Keep in mind the school’s burden: Remember that it is the school’s burden to prove by direct or circumstantial evidence the student’s involvement in the incident charged. Regulation A-443 § III.B.3(s)(10). The closing argument should address any element of the charge that the school has failed to prove. For example, if the charge is as follows: “Matt Rollin used a knife against John Smith, causing an injury,” the elements of the charge would include proof that Matt had an object, that the object was a knife, that Matt used the knife, that Matt used the knife against John, and that John was injured as a result of Matt’s use of the knife. If any elements are missing, SRP should request the dismissal of the charge.6

5. Your closing argument should include procedural violations: For example, you may want to state, “Dean Smith testified that 30 students observed the alleged fight. However, in violation of Chancellor’s Regulation A-443 §

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6 However, if what the evidence establishes differs slightly from the charge so, that the original charge provided the student with sufficient notice of the misconduct found, the charge will be sustained on the suspendable conduct found.
III.B.3(e)(1), Dean Smith obtained only 2 witness statements. These two statements contradict each other…. Had Dean Smith obtained statements from additional students, we may have had more evidence that Sara attacked Bob and Bob merely pushed Sara away to separate himself from her.”

b. **Revising Closing Argument**

You will likely need to revise your closing argument during the hearing depending on the evidence presented at the hearing. Again, this is because the closing argument must be based on the evidence presented at the hearing and should respond to the school’s arguments and evidence. While one SRP advocate is doing a direct examination or cross examination, the other SRP advocate should be actively listening and revising the closing argument. You should also ask for a brief recess before you give the closing argument at the hearing to make further changes.
XI. DIRECT EXAMINATION

a. Should Student Testify?
One of the major decisions that you and your client will have to make is whether or not the student should testify.

1. Pros of having the student testify: If the student can tell his/her side of the story in a credible, articulate manner, it is often persuasive to have the student present his/her story during the hearing to the hearing officer. This is particularly true if a witness will be testifying for the school’s side at the hearing. The hearing officer is required to give more weight to oral testimony than to witness statements. Regulation A-443 § III.B.3(s)(4). Thus, if a witness testifies for the other side, it is helpful to have the student refute the witness’s testimony with his/her own testimony. Furthermore, if there are questions arising from the written statement that the student gave to the school, it may be helpful to have the student testify to clarify.

2. Cons of having the student testify:
   i. Cross examination: If the student testifies, the school official and the hearing officer will have an opportunity to cross-examine the student. The cross examination may include some difficult, perhaps even unexpected, questions.

   ii. Criminal case: The student’s testimony will be recorded and a transcript will be available. If the school suspension incident also resulted in a juvenile delinquency or criminal case, the student should not be permitted to testify at the suspension hearing. Anything the student says at the suspension hearing can be used against him/her in his/her court case.

   iii. Perjury: The student must testify truthfully. If you know that the student will lie during his/her testimony, you should advise him/her not to testify. For example, if the student confidentially admits to you that s/he did, in fact, hit another student and the student wants to testify that s/he did not hit another student, you should advise him/her not to testify at all. You should talk to him/her about this alone, without his/her parent present, if s/he has confided this information to you and not to his/her parent, as is often the case. If the student or parent insists that the student testify untruthfully, you should speak to an SRP board member and/or withdraw from the representation.

   iv. Nervousness: Often, even the most articulate, calm student will get quite nervous when it comes to testifying. This often leads to testimony that is quite different from what you anticipated and can hurt your case.
b. Should Another Witness Testify?

1. Parent: The parent cannot testify about the incident itself unless s/he observed it. But the parent may testify about other aspects of the case. There are three primary reasons you may want the parent to testify.

   i. School violations: If the parent has personal knowledge that the school violated the Chancellor’s Regulations, you may want to have the parent testify about these violations. For example, if the principal told the parent that the student should stay home while the school decides whether or not to suspend the student, the parent may want to testify about this violation.

   ii. Weakness or inconsistency in the school’s story: For example, the parent may want to testify if the investigating dean told the parent that, based on his/her investigation, s/he did not think that the student hit the other student but that the principal told him/her to suspend the student anyway.

   iii. Additional witness statements that the parent collected: If the parent collected additional witness statements, the parent will need to testify in order for you to enter the statements into evidence. The hearing officer may need the parent to testify as to how the parent collected the statements. The hearing officer may (or may not) ask the parent to read the statements into the record. Note that if the parent is collecting statements, the parent must watch the witness write the statement and the witness must handwrite, sign, and date the statement.

2. Witnesses: It is very helpful to have a neutral observer testify about what happened during the alleged incident.

   i. Other students: The challenge is that the witnesses are usually other students. *Students can testify only with parental permission.* Regulation A-443 § III.B.3(s)(20). Since testifying means missing a day of school, getting involved in a conflict, and speaking out against the school, parents are often reluctant to have their children testify. A parent can give his/her permission by bringing the student to the hearing or by writing a note giving permission or, as a last resort, being available via phone in case the hearing officer wants to call the parent to confirm permission. Even if you subpoena a student, the student can testify only with a parent’s permission. Regulation A-443 § III.B.3(s)(20). Given that oral testimony has higher credibility than a written statement, you still may want to try to consider bringing a student witness who is critical to your case despite the challenges.
ii. Teachers or other school officials: A teacher or another school official makes a powerful witness, but it is difficult to find a teacher or school official who observed the incident and is on the student’s side.

iii. Other observers: In the past, we have had an after-school teacher who observed the incident willing to testify on the student’s behalf. We have also had a school safety agent testify on the student’s behalf.

c. Subpoenas and Asking Witnesses to Testify

1. Interview the witness: Always speak with your witnesses before you ask them to come to the hearing. Find out exactly what they know and their perspective on the alleged incident. You may want to use the “Client Meeting Form” as a guide. As you are speaking with the witness, you may also want to assess how persuasive, articulate, and credible this witness will be and whether or not you actually want this witness to testify.

2. Subpoena: If a witness is reluctant to testify, you may subpoena the witness. Regulation A-443 § III.B.3(s)(2). Even if a witness is willing to testify, you can offer to subpoena the witness so that the witness has an excuse for being absent from school or work. For example, if there is a teacher whose version of the story is similar to the student’s but is reluctant to testify, you can subpoena the teacher. A subpoena can help a student or school official to show the school that s/he is not choosing to speak out against the school but has no choice but to testify. The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing. Regulation A-443 § III.B.3(s)(5). However, you should keep in mind the possibility that a school employee on the student’s side may substantially change his/her story before the hearing date.

3. Subpoena procedure: In order to subpoena a witness, you should call the hearing office at least 48 hours in advance of the hearing and request the subpoena. Regulation A-443 § III.B.3(t). However, the hearing office will often grant a subpoena with less than 48 hours’ notice.

i. Subpoenas for Department of Education staff or students: If the witness is a student or an employee of the Department of Education, the hearing office is responsible for forwarding the subpoena to the school, which has the duty of serving the subpoena on these witnesses. Regulation A-443 § III.B.3(t). If the witness does not comply with the subpoena, the hearing may be adjourned to allow compliance. Regulation A-443 § III.B.3(s)(18).

ii. Subpoenas for students: As noted above, you may subpoena students, but they still cannot testify without a parent’s permission. Regulation A-443 § III.B.3(s)(20). School officials must make every effort to
obtain parental cooperation and consent. Regulation A-443 § III.B.3(t)(2)(c). If you are subpoenaing a student, you should look at Regulation § A-443 § III.B.3(t)(2) to ensure that the school is following all of the mandated procedures. If the school fails to do so, you should elicit testimony on this topic during the hearing to point out the school’s failures.

iii. Subpoenas for non-Department of Education staff or students: The parent is responsible for serving subpoenas on non-Department of Education staff or students. Regulation A-443 § III.B.3(t). If a witness who is not a Department of Education staff member is willing to testify, you do not need to subpoena that witness unless that witness wants you to request a subpoena (e.g., so that the witness can show it to his/her boss to explain why s/he is missing work). If you find good witnesses who cannot come to the hearing (e.g., a student who does not have parental permission to testify), ask them to write, sign and date a statement about what happened in the presence of someone who will attend the hearing (e.g., the client’s parent).

4. Notice: The Chancellor’s Regulations do not require you to give the school or hearing office notice of your witnesses. Of course, a subpoena gives the school and hearing office notice.

d. Drafting Direct Examinations

1. Write your closing argument first and identify the facts you need to prove through each witness: You should begin by consulting your theory of the case and drafting your ideal closing argument. Your closing argument will have all the facts that you want to prove during the hearing. Think about all the facts you want a particular witness to state. For example, your closing argument may say: “As fellow student John Smith stated, it was [alleged victim] who initiated the fight, pushing [student you’re representing]. [Student you’re representing] merely moved away from [alleged victim] before [alleged victim] could further harm him. As John noted, he was standing next to [student you’re representing] at the time and had an unobstructed view.”

2. Write open-ended questions in simple sentences: Write out a list of questions that will elicit the key facts. They should be short, simple, interrogatory sentences: Who…? What…? When…?

3. Avoid leading questions: During your direct examination, avoid leading questions—those that suggest the answer you desire. The hearing officer likely will not allow you to ask leading questions. For example, if you want the witness to say that he saw Shawn push John, you can’t ask: “Didn’t you see Shawn push John?”
4. Avoid overly general questions: While you will want to ask open-ended questions, avoid asking questions that are so general that the witness is not sure what you want him/her to talk about. The questions should focus the witness on a specific topic without restricting what s/he can say about it. You can sometimes do this by prefacing a series of questions with a topic sentence. “I’d now like to ask you about…” or “Let me direct your attention to….”

5. Write out the answers you want: As you draft your questions, you should also draft the answers you expect to get from the witness based on your interview. That way, in case the witness misses a major point that you were expecting the witness to say, you will remember to ask a follow up question to elicit that point. Remember that your follow up question should be open-ended, not leading.

6. Plan to “draw the sting” if needed: It is often useful to “draw the sting” of cross examination by asking your witness on direct to explain weak parts of his/her story. This is especially true if you need your student to explain something s/he wrote in the written statement s/he gave the school. This gives the witness a chance to fully explain himself/herself to a friendly questioner and defuses the impact of difficult points that become “old news” by the time the school brings them up. Make sure, however, that the witness is well prepared for these questions, and do not draw attention to anything that would not otherwise receive it. For example, you do not want to ask the student about anything that happened outside of the alleged incident even if you think the school will raise it. If the school tries to ask about anything outside of the alleged incident, you can object because it is irrelevant (but the objection will likely be overruled if you or your witness opened the door to the topic by bringing it up). Furthermore, after the cross examination, you will have an opportunity to re-direct, which you can use to ask the witness to explain anything that the school brought out in its cross examination.

7. Write out potential difficult cross examination questions that the school official may ask: Anticipate difficult cross examination questions so that the witness can practice answering.

e. Preparing Witnesses to Testify

1. Practice, practice, practice: The single most important thing you can do to prepare for direct is to rehearse. Meeting in person is ideal, but if you cannot get together with the witness, you can rehearse over the phone. Since the hearing may happen at any point during the day of the hearing, you may have many hours to rehearse with your witness in the hearing office waiting room. However, you cannot count on this since your hearing could be called
right away. Prepare your questions and ask them as if you were in the hearing in front of the hearing officer. Be as formal as possible so the witness can get used to the process and tone of the hearing.

2. Revise your direct: As you practice with your witness, you should revise your direct examination accordingly. For example, if you are asking a general question that is not eliciting the point you wanted from the client, you may want to ask a narrower question that will more easily elicit the point. If a question elicits a response with information that you do not want the hearing officer to hear, revise or eliminate the question.

3. Help your witness prepare: You cannot tell the witness what to say. However, you can and should remind the witness of information s/he told you during the initial interview. You can also help the witness understand the most important points you want to elicit and what points will be most persuasive to the hearing officer. This process requires some finesse and will change with each witness.

4. Practice difficult cross examination questions: Pretend that you are the hearing officer or school official and ask the witness tough cross examination questions. Remind the witness of information s/he revealed during the interview that may help him/her best answer these tough questions.

5. Advise witnesses:

i. The hearing will be recorded.

ii. The witness will be testifying under oath and must tell the truth.

iii. In most cases, you will question the witness first. Then the hearing officer or school official will question the witness. Then you, the hearing officer, and school official will have another opportunity to question the witness.

iv. All witnesses (except the student, parent, and school staff advisor) remain outside the hearing room until called to testify. Each witness is called in individually. If the witness is a child, a parent may accompany the child. Sometimes the hearing officer calls all witnesses into the hearing office at the beginning of the hearing for a few minutes and then sends the witnesses to the waiting room until it is time for them to testify.

v. After initially testifying, a witness may be recalled and asked additional questions.
vi. The witness should avoid using pronouns and instead identify individuals by name.

vii. Because the hearing officer is recording the testimony, the witness must use words, and avoid using body language only (e.g., shaking his/her head to indicate “yes” or “no”).

viii. The witness should be polite and should never argue with the hearing officer or the school official.

ix. During cross examination, the witness should pause for a second after a question is asked to give you a chance to object if possible. If anyone objects to a question, the witness should be silent until the hearing officer makes a decision on whether to allow the question.

x. The witness may need to wait for many hours. Thus, s/he may want to bring something to read and something to eat.

xi. The hearing office is a small office. Everyone sits around a table with the hearing officer at the head of the table.

xii. The witness is not allowed to look at documents unless you show them a specific document in evidence. The witness is supposed to be testifying from his/her personal knowledge and memory of the incident.

f. Conducting Direct Examinations

1. Prepare: After you edit and rehearse your direct with the witness, spend some time studying your final version. You do not need to memorize the questions, but be familiar enough with them that during the direct, your eyes are not glued to the questions. You want to make eye contact with your witness and the hearing officer.

2. Listen, listen, listen: The single most important thing to do when conducting direct is to listen carefully to your witness’s answers.

3. Follow up on omissions: Make sure you are getting the facts you need to prove your theory of the case. If your witness omits anything important, ask a follow-up question to elicit the missing information.

4. Follow up on contradictions or confusing statements: Sometimes, a nervous witness will mispeak during his/her testimony, giving an answer that you know is both incorrect and harmful to the case. Other times, a nervous witness will make a statement that will likely confuse the hearing officer. In either case, you must act to correct this. If you think the witness simply misunderstood the question, apologize for not making the question
clear and ask it again in a simpler way. You can also change topics and then return to the problem area later from another angle, which you think is more likely to remind him/her of the correct response. If s/he contradicts what s/he said earlier, point out the conflict and elicit his/her agreement that s/he was mistaken before. You can also introduce a document and have him/her take a moment to review it in order to “refresh his/her recollection” of details which s/he had misstated.

5. Ask for a recess: If the witness, particularly the student, becomes especially confused or nervous during the testimony, you may ask for a recess to speak with the witness outside.

6. Revise the closing argument: While one advocate is conducting the direct examination, the other advocate should be actively listening and reviewing and revising the closing argument. If the witness says something that would make the closing argument stronger, the advocate should add the statement to the closing. If the witness said something different from what is in the closing argument, the advocate should revise the closing accordingly. If the advocate notices that the witness did not state a point that you need to make in the closing, the advocate should alert the other advocate.
XII. CROSS EXAMINATION

a. Identifying School’s Witnesses
You should draft a cross examination for each person who may testify on behalf of the school. If there’s any chance someone might be there, you should be prepared to question him/her.

1. School official: A school official, usually the investigating dean or principal, will testify about his/her investigation. Procedural violations are likely best directed at this person.

2. Witnesses: The suspension notice includes a non-binding list of witnesses who will testify on the school’s behalf. The school does not need to tell you in advance who will testify. Not everyone on the list must testify, and someone may testify who is not on the list. In order to prove the charge, the school must have someone testify who actually observed the alleged incident. Often, this is the alleged victim, a teacher, or school safety agent. Usually, the testimony of the school’s witnesses will be similar. Thus, you can often draft very similar cross examination questions for each witness.

b. Goals
Cross examination is the single most difficult advocacy task; thus, you must plan it carefully. True, you cannot finalize your cross until you hear each witness testify on direct. However, if you read the witness statements and anticipate the school’s likely theory of the case, you can anticipate much of each witness’s direct testimony. The student and parent can also assist you in anticipating what the school official and witnesses are likely to say. For example, the principal or investigating dean may have explained to the parent why s/he decided to suspend the student.

1. Can I get anything helpful from this witness? (accrediting cross):
Always consider this possibility, for there is no more credible way to prove a fact than through your adversary’s witness. You must, however, judge the witness’s candor and motivation—if s/he seems committed to getting the student suspended, be more indirect in your questioning, or limit yourself to points that are so obvious that s/he cannot credibly deny them. If you decide to seek helpful testimony from a witness, ask these questions in a friendly manner. This will lower the witness’s suspicion of you and increase his/her

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7 To learn more about cross examination, see Amsterdam, Cross Examination (1990); P. Brown, The Art of Questioning (1987); T. Mauet, Fundamentals of Trial Techniques, 215-72 (5th ed. 2000); F. Wellman, The Art of Cross examination, 7-11, 19-23, 142-45, 193-96, 204-06 (4th ed., revised and enlarged, 1986); I. Younger, Ten Commandments of Cross examination (videotape available from the National Institute for Trial Advocacy (NITA) that is helpful and amusing).

8 On cross, you don’t want the witness to see the point you are driving at. For ideas about how to conceal your goals, see Amsterdam, Cross Examination, 34-40.
willingness to cooperate. Always ask helpful questions before you ask any confrontational questions. You can always get tough after starting out friendly, but it is much more difficult to seem friendly after starting out tough.

2. Can I limit the reach of the witness’s testimony? (limiting cross):
Often, your adversary will argue that a witness’s testimony proves more than what the witness actually said. The hearing officer may draw such inferences against your client unless you limit the reach of the testimony by sharply distinguishing between what it does and does not prove. By highlighting the limits of the witness’s testimony, you show that it isn’t enough to prove the charge.

i. Example: Say, for example, you represent Kevin who was suspended for allegedly throwing books out the classroom window. Your theory is that the school does not have sufficient evidence to single out Kevin as the person who threw the books out the window. He was merely at the windowsill to get a tissue. There is no eyewitness who observed Kevin throw books out the window. The teacher testifies that books from his room were found on the sidewalk and that he had seen Kevin near the windowsill around that time. You might limit the teacher’s testimony by clarifying that he did not see Kevin throw the books out the window, but only if you are 100% certain that that is true.

3. Can I discredit the witness or his/her harmful testimony? (discrediting cross):
If the witness’s direct examination significantly undermines your theory of the case, try to discredit the damaging testimony or the witness himself/herself.

i. There are numerous ways to discredit. For example:
   (1) Show that the testimony may be based on a mistake in perception, interpretation, or memory.
   (2) Show that the witness omitted certain facts in a way that made his/her testimony unfair or misleading.
   (3) Make the witness unattractive by raising questionable behavior or goading him/her to act badly while testifying.
   (4) Show that the witness may be lying. Unlike in the movies, this is very difficult. You should only attempt it when you can show a motive to lie or solid evidence of untruthfulness, such as a prior inconsistent witness statement.

ii. There are several ways you can prove such discrediting facts:
   a. You can attempt to get the witness to agree to the propositions you hope will discredit him/her. This is difficult to do unless you can

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9 For more detailed discussion of each of these methods, see Amsterdam, Cross Examination, at 2-9.
conceal your objective from him/her. Any self-respecting witness will resist your efforts to openly discredit him/her.

b. You can turn this resistance against him/her with a more successful tactic: if you cannot get the witness to agree to what you want, get him/her to disagree in such an absolute or incredible way that the hearing officer won’t believe him/her. You can use a false lead. You frame the questions so that the witness thinks you are trying to get him/her to say one thing (e.g., to admit that what happened made him/her angry and s/he is testifying as retaliation). S/he responds by repeating his/her story more and more absolutely (e.g., that what happened absolutely did not make her at all angry), making it less and less credible—which is what you really want. During the closing argument, you argue that his/her claims contradict human nature and common sense. If you can get the hearing officer to doubt the witness on one point, s/he may view his/her other testimony with skepticism as well.

c. Drafting Cross Examinations

[For additional guidance on cross examinations, see the Appendix]

1. Anticipate what each potential witness will say during direct examination: The witness statements, along with oral statements that the witness made to the student or parent, can help you anticipate each witness’s testimony.

2. Write your closing argument first and identify the facts you need to prove through each adverse witness: You should begin by consulting your theory of the case and drafting your ideal closing argument. Your closing argument will have all the facts that you want to prove during the hearing. Think about all the facts you want a particular adverse witness to state. Consider the school’s violations as well as facts about the incident itself. For example, your closing argument may say: “As Mr. Segal, the investigating dean, stated, there were 30 students in the classroom who witnessed the alleged fight. However, in violation of the Chancellor’s regulations, the investigating dean took statements from only [alleged victim] and [your client].”

3. Control the witness through leading questions: An adverse witness will hurt you if you give him/her the chance. Thus, on cross, you always want to control his/her testimony and prevent him/her from volunteering statements that could harm your case. You can achieve this control by using leading questions—questions that suggest the answer you desire. You simply make a statement and ask the witness to agree to it. Focus the topic of each question on one narrow fact, so you can get the witness to answer only “yes” or “no.” In the movies, these questions often start with: “Isn’t it true
that…?” However, this phrase is confrontational and it is easier to get the witness to agree with the question if you leave off the “Isn’t it true” part, and merely make a declarative sentence with a slight questioning inflection in your voice or a “correct?” at the end of the sentence.

4. Focus on only a few specific points, and don’t repeat the direct examination: Always have specific purposes in mind when you cross examine, and try not to do too much. Some of the best cross examinations are the shortest ones. Consider again the various possibilities to accredit, limit, or discredit the witness before you begin your cross, and pursue only the three or four specific points which are most important to your theory and have the greatest potential for success. Attempting any more than this lessens the impact of your cross, and gives the witness more chances to hurt you. Avoid asking general questions that a witness can answer with a speech or lecture. General questions not only allow your witness to explain away any inconsistencies, but also give the witness the opportunity to bring in testimony that would otherwise be inadmissible. A common error made by inexperienced cross-examiners is to repeat the direct – they probe and challenge each point the witness made on direct, hoping to find something they can attack. This, however, only lets the witness repeat his/her harmful testimony and bores the hearing officer. Avoid this mistake by never undertaking cross without specific and limited purposes. You don’t have to cross-examine every witness, and if you can see no specific purpose for doing so, simply tell the hearing officer: “No questions at this time.”

5. Avoid making petty or trivial points: Refrain from asking the witness petty or trivial questions – this tactic will only make you look unfocused. New advocates (and parents) often feel that any and all inconsistencies should be raised during cross examination but this is almost never the case. Witnesses often make inaccurate statements during their testimony. Only point these out when they help your client’s case or when you are attempting to show that the witness’s memory of events is generally faulty.

6. Plan to make your strongest points at the beginning and the end: Your cross will be most impressive to the hearing officer if you begin and end with strength. Therefore, plan to pursue what you believe will be your best two points at the beginning and the end of your cross.

7. Avoid asking questions for which you do not know the likely answer: A famous maxim of cross examination is that you should “never ask a question to which you do not already know the answer.” This overstates the case slightly. It is always risky and usually unwise to “go fishing” for new facts from an adverse witness. However, you may occasionally want to ask such a question if the potential benefit seems strong. This is especially true when the answer to a question will help your case regardless of what the answer is (i.e., where a “yes” or “no” answer makes the school look bad for
different reasons). Take care, however, to limit your risk. Do not ask a question that can scuttle your entire theory if you get an unexpected answer. Never ask a critical question if you are not prepared to deal effectively with whatever answers you receive.

8. Never ask an ultimate question: An ultimate question summarizes the point you are trying to make with a particular line of questioning. You will always be tempted to ask the ultimate question to “drive home” your point, but don't do it! You have nothing to gain and much to lose. The witness is likely to disagree with such a question, so asking it only gives him/her a chance to contradict you. Stop your line of questioning just short of the ultimate question, and save the point for your closing argument, where you can make it without risk of contradiction by the witness. Just get facts from the witness; wait until your closing to argue what conclusions should be drawn from those facts.

i. **Example:** if you are trying to show that the teacher was focused on a fight happening in the classroom at the time that the student you are representing allegedly threw a book, you might ask the teacher questions related to her attention to the fight. However, you should not then ask, “Isn’t it true then that you really have no way of knowing which student threw the book?” Rather than give the teacher an opportunity to explain how she does know who threw the book, you should wait until closing to make your point.

9. Never challenge a witness to explain weaknesses or inconsistencies in his/her testimony: This is closely related to the preceding point. Never underestimate any witness’s ability to explain away what seems to you to be the most hopeless of inconsistencies. If you give them the chance to get out of your trap, they will, so don’t give them the chance. Again, just elicit the facts you need to show the weakness or contradiction, and wait until your closing argument to make the point. This is a great example of why cross examination is best limited to direct “yes” or “no” questions.

10. Ask your client for ideas: Ask the student what to ask the school official and witnesses. Since the students know more details about their case, they often have great ideas for cross.

**d. Conducting Cross Examinations**

1. **Listen closely to the witness during the direct examination and revise your cross examination accordingly:** This may sound obvious, but during the hearing, it’s easy to get so wrapped up in your questions that you pay insufficient attention to what is more important - the witness’s answers. During your adversary’s direct, focus your attention on the witness and jot down brief notes to keep track of his/her exact answers and potential
subjects for cross that you hadn’t anticipated. It is a good idea to write these
down on a clean sheet of paper so as to keep your thoughts organized. If you
are well prepared when it comes time for you to ask questions, you will be
able to catch important facts and highlight them. A great technique for
unanticipated questions is to begin your question by saying, “Ms….you just
testified that….well, isn’t it true that…” Furthermore, if the witness makes
points on direct that you wanted to elicit during cross, you can eliminate
those questions since the witness has already made the point.

2. Ask your client to listen closely to the witness during direct and to jot
down any inconsistencies: Because the student knows best what happened,
s/he may be in the best position to recognize any inconsistencies. S/he may
want to write down any notes and pass them along to you. Students often
welcome the chance to play an active role in the hearing. Of course, remind
the student not to become visibly agitated even if the witness is lying.

3. Consider asking for a brief recess: Even if you hear nothing unexpected
on direct, it is usually a good idea to ask the hearing officer if you may have
“just a moment,” and take 30 seconds to a minute to quickly revise your
planned cross. Do not be afraid to create a moment of silence. Furthermore,
if you are surprised by the testimony of an adverse witness, you may want to
take a few minutes to discuss the matter with the student you are
representing and your partner advocate and formulate an appropriate cross.

4. Pay close attention to the witness’s answers during cross: Also, pay
close attention to how s/he answers your questions–you may get a better
answer than you expected, but you won’t be able to capitalize on it if you’re
already focusing on the next question.

5. Be courteous to the witness at all times and do not argue with him/her:
British barrister Clifford Mortimer aptly stated, “The secret of cross
examination is not to examine crossly.” When you seek to discredit a
witness, do not show it in your attitude. Always treat him/her with courtesy,
even if you think s/he is lying through his/her teeth. Doing otherwise only
puts him/her on guard, making it harder to effectively cross-examine
him/her. By contrast, being polite to the witness may relax him/her and
consequently make him/her more likely to say something s/he had not
planned to say in advance. You also want to avoid the perception that you
are “picking on” a witness; it builds sympathy for him/her and makes you
look bad. This is especially true if the witness is a student who is an alleged
victim. Remember that it is your job to vigorously advocate for your client
while trying to remain courteous and trying to avoid seeming like you are
harassing the school’s witness. You will find that with certain individuals it
is easier to get them “excited.” For witnesses that seem cool and collected
no matter what you ask them, it is very important that you too remain calm.
Showing your own frustration with answers that you may believe to be
dishonest only makes you look bad. It is difficult to get what you want out of cross examination, but staying composed is often times even harder.

6. **Repeat your question if the witness evades your question:** Being courteous does not mean retreating from your theory of the case or relaxing your control. If a witness evades your question, point it out by saying “Perhaps I did not make my question clear. Let me ask it this way...” and repeat the question. If s/he evades again, say it again. The hearing officer will realize who is causing the problem. Politely but firmly limit the witness to the questions you ask. If s/he tries to elaborate, immediately ask the next question.

7. **Control the witness:** If you feel that the witness will not directly answer simply “yes” or “no,” it can be very helpful to start your question by saying something to the effect of “now, this question will require only an answer of yes or no.” An example—“Did you ever report the incident to the police—yes or no will be just fine, sir.” This is especially helpful with witnesses that seem to go on forever and try to talk their way out of the definitiveness of their answers.

8. **When you get a bad answer:** When you get a bad answer from a witness, exercise self control. Try not to hesitate or pause; instead, nonchalantly turn to another subject with a new line of questions as if the witness had said nothing important. The damage may already be done but by moving on quickly its importance can be downplayed.

9. **Know when to stop:** This is extremely important. An otherwise-effective cross examination can still backfire if you don’t know when to stop. Stop cross-examining about a particular subject when:

   i. You have the facts you need for a good closing argument (i.e., you’re on the verge of an ultimate question);

   ii. You get a particularly good answer (to prevent him/her from changing or qualifying it);

   iii. The witness sees where you are going, and seems ready to put up a fight; or

   iv. Information harmful to your theory starts to come out.

If you get an extremely good answer, end your entire cross right then. This dramatically underscores the importance of the answer, and anything else you are likely to get would only be anticlimactic.
10. **Be mindful of the hearing officer:** Never underestimate the effect a hearing officer’s questioning may have on your cross examination and your entire theory of the case. Often during hearings, hearing officers may intervene with their own questions for a variety of reasons. Listen closely to the hearing officer’s questions since they can often clue you in on points that the hearing officer finds important or unimportant or confusing, points which you may want to reiterate or pursue during cross examination.

11. **Revise the closing argument:** While one advocate is conducting the cross examination, the other advocate should be actively listening and reviewing and revising the closing argument. If the witness says something that would make the closing argument stronger, the advocate should add the statement to the closing. If the witness says something different from what is in the closing argument, the advocate should revise the closing accordingly. If the witness says something different from what s/he wrote in his/her witness statement, the advocate may want to add that inconsistency to the closing argument. If the advocate notices that the witness did not state a point that you need to make in the closing, the advocate should alert the other advocate.
XIII. OBJECTIONS

You should prepare objections in advance of the hearing. You should also prepare for the possibility that the hearing officer will overrule your objections.

a. Objections to Documents and Physical Evidence

1. Documentary evidence: The school may enter witness statements or other types of documentary evidence (e.g., photographs, voucher for a weapon) into evidence.

2. Examine documents at the hearing: Even if you have already received the document that the school official is offering into evidence, you will want to examine the copy that is going into evidence to make sure that it is identical to the copy you have and has not been changed.

3. Deciding whether or not to object: Some witness statements or other types of documentary evidence may help your client’s case. Thus, of course, you need to decide that a particular document is harmful before using the objections below. You may choose not to object even though there may be grounds for a valid objection.

4. Preparing to object: You should have copies of the documentary evidence in advance of the hearing. In that case, you can make a list of objections to each piece of evidence that you will present during the hearing. *For any document that you do not receive in advance, you should object on the grounds that you did not receive it in advance.* If that fails, you should ask for a few minutes to review the document to see if you have any additional objections.

5. Objecting to documentary evidence: All documentary evidence must be collected before the student is officially suspended, must be relevant to determining the validity of the charges, and must be given to the parent or to you before the hearing date. In addition, the school official entering the document into evidence must have a foundation for knowing that the document is what s/he says it is.

   i. Written by someone who will be called as a witness: You should object to any witness statement written by someone who will not testify at the hearing. In Appeal of L.P., the New York City Commissioner of Education concluded that: "[I]t is improper for the hearing officer to consider a witness's written statement unless the witness is available for cross-examination." 50 Ed Dept Rep, Decision No. 16,252, at *8. (However, the Commissioner held it to be harmless error in this case.)

ii. **Relevant to charge**: The purpose of any evidence is to determine whether or not the school’s charge is true. Statements that say, “John is always getting into trouble” or discuss “John’s attitude after the incident” (if in the latter case there is no related charge) are irrelevant, and you should object.

iii. **Written or produced on or before the date of the suspension notice as part of school’s investigation**: You should object to any documentary evidence written or produced after the school suspended the student. Chancellor’s Regulation A-443 § III.B.3(e) makes clear that the principal or his/her designee must collect witness statements as part of the school’s pre-suspension procedures. The school is supposed to collect these statements and other evidence as part of its investigation to determine whether or not to suspend the student, not to make the school’s case stronger for the hearing after it has already suspended the student. If the school failed to follow the regulation, it should not be allowed to submit the evidence. You should object to any evidence produced after the suspension date.

iv. **Given to parent or SRP in advance**: You should object to any witness statements or other documents that you did not receive in advance of the hearing date. Chancellor’s Regulation A-443 § III.B.3(s)(15).

v. **School official’s ability to lay foundation**: The school official entering the document into evidence must be able to testify that the document is what the school official says it is. For example, the school official entering a witness statement must have seen the witnesses write their statements. During your client meeting, you will have asked the client if s/he knows if the statements were written in the presence of the school official. If you know that a statement was written outside the presence of the school official or if you do not know, you can challenge the official’s ability to lay a foundation by asking questions such as “Where was Kate when she wrote this statement? Who, if anyone, was

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10 “A copy of the student’s records…as well as all other written material relating to the incident for which the student was charged (including witness statements) shall be made available to the parent or representative prior to the date of the hearing upon request of the parent or his/her representative in person at the school. At the beginning of the hearing, the parent or representative shall be provided with a complete set of the student’s records for review and comparison with records previously obtained from the school, if any, and advised that records not made available may not be offered into evidence by the school on that date. If the school requests an adjournment and the student is reinstated and the records are provided to the parent prior to the adjourned date, the records may be offered into evidence on the adjourned date.”
vi. **Questions of authenticity:** You should object to any documentary evidence that appears to have corrections or changes. For example, if a witness statement has words crossed out or uses white out over a few sentences, you should object. Of course, the strength of your argument will depend on the substance of the changes. (E.g., If “Dave” is crossed out and replaced with “John” in the sentence “I saw John hit Melissa,” that’s a big problem!)

6. **Witness statements:** In addition to the requirements listed above, the Chancellor’s Regulations include a couple of rules specifically for witness statements. The principal or his/her designee must “[q]uestion the victim and any other witnesses to the incident and obtain their signed written statements,” Regulation A-443 § III.B.3(e)(1), and “[p]rovide the accused student with an opportunity to prepare a signed, written statement” as part of the school’s pre-suspension procedures. Regulation A-443 § III.B.3(e)(4).

   i. **Signed:** You should object to any statement that is not signed.

   ii. **Handwritten:** You should object to any statement that is not handwritten. Particularly if a statement is typewritten and not signed, you should argue that anyone could have written the statement and it should not be admitted.

7. **Weapons and drugs:** You should object to a photocopy of a weapon or illegal substance. If an arrest is made for possession of a weapon, controlled substance, or illegal drugs, the police will voucher the item. The school must obtain a copy of the police department voucher. Regulation A-443 § III.B.3(c). If the police do not take custody of the item of contraband, the principal or his/her designee must voucher the item using a Department of Education voucher form. Regulation A-443 § III.B.3(c).

   i. **Weapons:** In the case of a weapon, the school official should enter the weapon itself or the voucher for the weapon into evidence. *To admit the weapon into evidence requires establishing a foundation.*

   Foundation should include testimony by the witness that: 1) the witness saw the weapon and can describe it, 2) the witness recognizes the proposed exhibit, 3) the witness knew what the exhibit looked like at the time seized, 4) the witness obtained a voucher of the weapon or made a photocopy of it (if your objection to a photocopy is overruled), 5) the witness can identify the voucher or photocopy of the weapon, 6) the witness can establish where s/he got the voucher or photocopy.

   ii. **Drugs:** When a controlled substance is involved, a lab analysis should be presented to prove that a substance is what it appears to be. In the case of marijuana, proof of identification may be established by
testimony from the school official, who can testify that, in the performance of his/her duties, s/he has seen or smelled marijuana before and recognizes that the substance taken from the student is in fact marijuana. **Foundation must also be laid for admission of marijuana or controlled substances.** Foundation should include testimony by the witness that describes the chain of custody of the drugs (i.e., each step in the drugs’ journey from the student to the school official at the hearing).

8. **Objections overruled:** Despite the requirements in the Chancellor’s Regulations, hearing officers will often admit evidence if they believe that the violations are minor. As you prepare for the hearing, you should know that you may not succeed in excluding evidence. **Even if the hearing officer overrules your objections to documentary evidence, it is important to object for at least two reasons.** First, explaining your objections in a clear manner may weaken the weight that the hearing officer gives to the documentary evidence. Second, objecting to documentary evidence may be helpful if the parent decides to appeal.

b. **Objecting to Questions and Oral Testimony**

1. **Object during the hearing:** Suspension hearings are not bound by formal rules of evidence. Objections, however, are still important. The hearing officer may exclude some evidence if you object.

2. **Purposes of objections:** Don’t object to unimportant or introductory matters—remember each side’s theory of the case, and focus your objections on questionable attempts to prove key facts. Remember that, except for leading questions, which hearing officers can always ask, every objection noted below applies to hearing officers as well as staff advisors (the school official representing the school). Of course, the hearing officer is more likely to sustain an objection to the school advisor’s question than to his/her own question though!

i. **Exclude evidence:** The primary purpose of objections is to try to exclude evidence.

ii. **Less weight:** Even if the hearing officer does not exclude the evidence, a well-spoken objection may persuade the hearing officer to give it less weight.

iii. **Interruption:** Well-timed objections can also interrupt a witness’s train of thought or make a school advisor or witness more careful in how they word their questions or testimony.

iv. **Protect your client:** You should use objections to protect your client or
witnesses from hostile examination. If the hearing officer or staff advisor is bearing down hard, make any objection you can to disrupt the questioning and ease the pressure. You can also object to a question as “unclear” in order to signal to your client that the question is tricky or object to a question to which your client would have no reason to know the answer.

3. Identify Possible Objections Before the Hearing: While you cannot fully predict the objections you will be able to make during the hearing, you can take several steps to prepare.

   i. Review the possible objections listed below: Familiarizing yourself with some possible objections will help you recognize objectionable statements and give you confidence to object faster and explain your objection.

   ii. Brainstorm objectionable material likely to arise: Imagine what questions the staff advisor is likely to ask on direct and cross to prove the school’s theory of the case. Also consider the answers the school’s witnesses are likely to offer. Identify objections you could make to these questions and answers. For example, you may be aware that the school will try to ask your client about an incident that occurred prior to the incident in the official charge. If so, you can plan to object as “irrelevant.” Of course, you should also prepare your witness to respond in case the objection is overruled.

4. Sample Objections: Most hearing officers recognize the following objections to varying degrees:

   i. “Irrelevant”: The sole question during the fact-finding phase of the hearing is whether or not there is sufficient evidence that the charged incident occurred. Thus, the student’s general behavior in school or anything that happened before or after the incident is irrelevant.

   ii. “Leading” (on direct and redirect only): A leading question puts words in the witness’s mouth by suggesting the answer desired or assuming a “fact” which the witness has not yet stated (“Didn’t you see John…?”). The question is really a statement which the witness can only affirm or deny. Such questions tend to control the witness. Thus, such questions are allowed only during cross examination. Generally, such questions are not allowed during the direct and redirect examination and you should object if the staff advisor is asking a leading question during direct.

   iii. “Witness lacks personal knowledge” or “Calls for a conclusion”: A witness may testify about things s/he knows from personal knowledge.
Since hearsay is permissible in suspension hearings, a witness may also testify about things someone else told him/her. However, a witness may not testify about things s/he has no way to know. For example, a teacher cannot testify about what the student thought or felt. Someone may think s/he knew what the student felt, but such conclusions are subjective inferences, not first-hand perception. Thus, a teacher cannot testify, “I asked Mike a question, and he did not respond.” However, the teacher cannot testify, “Mike was angry” or “I knew Mike was angry because he would not respond to me.” The hearing officer is supposed to draw such conclusions, not the witness.

iv. “Misstates the prior testimony”: Particularly during cross, the questioner may misrepresent what a witness said earlier. Pay attention whenever a questioner refers to previous testimony, and object if the questioner distorts it.

v. “Asked and answered”: It is common for the staff advisor to try to ask your witness a question more than once in order to elicit a different response. If your witness has already answered the question, object to it being asked again even if it’s phrased in a slightly different way.

vi. “Arguing with the witness” or “Harassing”: This applies when the staff advisor or hearing officer debates the facts with the witness or otherwise abuses him/her.

vii. “Document speaks for itself” or “Witness is reading document”: This applies when the witness attempts to read from a document. Reading aloud from a document in evidence is redundant and witnesses should speak in their own words from their own memories. Commonly, while the investigating dean is answering the hearing officer’s questions about his/her investigation, s/he will answer by looking at the witness statements. For example, the investigating dean will say that s/he next talked to a student, Ann, about the incident. The hearing officer will ask the dean what Ann told him/her. The dean will then start reading through Ann’s statement. While the hearing officer may give the school dean permission to look at the statements to “refresh his/her recollection,” s/he is supposed to refresh his/her recollection and then answer the question based on his/her recollection. Merely reading Ann’s statement does not answer the question of what Ann told him/her.

viii. “Staff advisor is testifying”: Sometimes the school official serving as staff advisor does not know how to ask a direct or cross examination question and may start making a long statement. If the staff advisor begins making a long statement, object and ask the hearing officer to direct the staff advisor to please ask his/her question and not to testify.
ix. **General “Objection”:** If anything strikes you as unfair or unclear, but you cannot cite a specific rule of objection, object anyway, and try to explain your reason if asked. Even if you can’t put your finger on the exact rule being violated, your job is to get an objection on the record. Sometimes just saying “objection” is enough. The hearing officer may sustain the objection without asking for a reason; other times, the hearing officer will ask you for a reason. In many situations, there is no exact rule: the hearing officer simply does what seems fair. For example, if the school’s witness is using lots of pronouns, you may want to object and ask the witness to state people’s names so that you know to whom the witness is referring.

5. **Object immediately when you “sense” something wrong with a question or answer:** You need to react quickly to make effective objections. In most cases, you will vaguely “sense” that a question or answer is somehow wrong a moment before you can articulate just what about it is wrong. You will improve your speed with objections if you let that first vague “sense” be your trigger to say “Objection!” Then, begin explaining why you object. It may take a second, but verbalizing it “on your feet” will usually remind you of the rule you are looking for. If you draw a blank, make a general “unreliable” or “unfair” objection or wait and see if the hearing officer asks. Your speed and skill with objections will improve with experience and understanding of the rules.
XIV. OPENING STATEMENT

At the beginning of the hearing, the school official and SRP advocates have an opportunity to make an opening statement. The opening statement presents an overview of each side’s theory of the case and the evidence that will be presented. If the school official begins to testify, you should object. Often, SRP waives the opening statement. If you choose to write an opening statement, you should keep it brief. Since the school put on its case first, you do not want to give too much away to the school before it presents its case. However, you may want to set the stage for the hearing officer. After a sentence summarizing what the case is about, you will want the other sentences to begin, “You will hear…” since you are merely supposed to be presenting a brief overview of what the hearing officer will hear over the course of the hearing or simply, “We plan to show that the school cannot meet its burden to sustain the charge(s) that it has alleged.”
XV. DISPOSITION

Following the hearing regarding the school’s charge, you’ll move immediately into the dispositional phase. During disposition, the school and you will make recommendations for how long the suspension should last if the charge is upheld. The school’s recommendation should be based on the range found in the Discipline Code. You will usually ask for immediate reinstatement. You may also ask for a school transfer, argue for the suspension records to be expunged sooner, and request services such as counseling. While the hearing officer will make a recommendation regarding disposition, the Superintendent’s designee makes the final decision. The Superintendent’s designee must decide whether to overturn or sustain the suspension, the appropriate assignment of the student, and the appropriate disposition relating to the student’s records. Regulation A-443 § III.B.3(u)(1).

a. Drafting Disposition Statement

You should prepare a statement to read to the hearing officer to argue why the student should receive immediate reinstatement. Depending on what the parent and student want, you may also address a school transfer request, records disposition, a request for other services, and a request for transportation reimbursement. In writing this statement, you may want to consider:

1. Special Education issues
2. Student’s attendance record
3. Student’s grades
4. Mitigating circumstances and reasons why the student did what s/he did
5. Whether the student has accepted responsibility, if applicable
6. Student’s involvement in school, the community, extracurricular activities, church, sports, volunteer work
7. Extenuating circumstances (e.g., the student recently had a death in the family and has sought counseling to help the student cope)
8. Minimum and maximum dispositions in Discipline Code
9. School’s procedural violations

b. Collecting Supporting Documents

You can enter anything about the student into the record for disposition purposes only.
Thus, you may want to ask the parent to gather letters of recommendation from anyone who has worked with the student at a school or in an extracurricular capacity (e.g., church, after-school program, sports team, volunteer work). You are trying to use these letters to give a more complete picture of the student and to show that, while the student may have made a mistake, the student deserves to go back to school as soon as possible. There are no formal requirements for these letters, e.g., they need not be handwritten. However, they should not mention anything about the incident charged. The parent should fax you these letters in advance if possible so that you can make copies and can incorporate them into your dispositional statement. If the parent cannot fax you the letters in advance, the parent should bring the original and 3 copies of each letter to the hearing if possible.

c. Potential Disposition Outcomes if Hearing Officer Sustains Charge

1. Expulsion from NYC public school system: The Superintendent may use this option only for students in general education who turned 17 prior to the beginning of the school year (July 1st) and who are not entitled to IDEA protections. Regulation A-443 § III.B.3(v)(1). If your student is facing expulsion, speak with an SRP board member and consult Chancellor’s Regulation A-443 § III.B.3(v)(1) for more specifics.

2. Extended suspension for one year and assignment to a Second Opportunity School (SOS) or alternative instruction site: Students in grades 6-12 who receive a one year suspension must be placed at an SOS. Students in grades K-5 must be placed at an alternative instruction site for the year. Regulation A-443 § III.B.3(v)(2).

3. Extended suspension for one year with the opportunity to petition for early reinstatement: Students must be placed at an alternative instructional site with the opportunity to petition for early reinstatement after 90 school days. Regulation A-443 § III.B.3(v)(3).

4. Continued suspension for a fixed period of 6-10 school days or extended suspension for a fixed period of 30-90 school days: Whenever possible, the student should be reinstated at the beginning of a new marking period or term. Regulation A-443 § III.B.3(v)(4). Students must be placed at an alternative instruction site. There may also be a date when the student can petition for early reinstatement.

5. Reinstatement: Even if the charges are sustained, students may be reinstated immediately to the school from which they were suspended. Regulation A-443 § III.B.3(v)(5).

d. Factors Superintendent Must Consider
In addition to abiding by the parameters set forth in the Discipline Code, the Superintendent’s designee must consider the student’s age, maturity, and previous
disciplinary record, including the nature of the prior misconduct, the number of prior instances of misconduct, and the discipline imposed for each; the circumstances surrounding the incident leading to the discipline; and the child’s disability or special needs. Regulation A-443 § III.B.3(v). Mitigating circumstances, if they exist, must be considered in making a dispositional decision. Regulation A-443 § III.B.3(u).

e. School Transfer

1. Voluntary transfers: The Superintendent may transfer the student to another school if the parent consents. Regulation A-443 § III.B.3(v)(6). During the disposition, you may request a school transfer if the parent and student want one. The hearing office does not often grant transfers, but there is no harm in asking. If the parent wants a transfer to a particular school, you can make the request, but there is no guarantee, even if you receive a transfer offer, that it will be for the desired school. If the office grants a transfer, the placement office will then tell the hearing office which school or schools have openings. The parent can then accept or refuse the transfer. It is usually helpful to request a specific school and have reasons for why this transfer would be a good move.

2. Involuntary transfers: If the school wants the student to transfer schools and the parent does not consent, the school may initiate involuntary transfer proceedings in accordance with Chancellor’s Regulation A-450. Regulation A-443 § III.B.3(v)(6)(b). The parent would be entitled to a hearing on the matter. This is a separate process and should not happen at the suspension hearing.

f. Records Disposition

If the charges are dismissed, all records relating to the suspension must be expunged immediately. If the charges are sustained, the Superintendent’s decision also must contain a disposition with respect to the student’s records. You can argue for expungement at an earlier date. The options are:

1. Notation of the suspension on the student’s permanent record. Regulation A-443 § III.B.3(w)(1).

2. Notation of the suspension on the student’s record and expungement of suspension upon graduation, permanent departure from the NYC public school system, or at some event in the future (e.g., the end of the current school year) with the provision that the record be sealed and kept separate from the student’s school record and be used solely for dispositional purposes if the student subsequently receives a Superintendent’s suspension and the charges are sustained. Regulation A-443 § III.B.3(w)(2).

3. Notation of the student’s record and expungement of the record of the suspension from the student’s record upon the student’s graduation, permanent departure from the NYC public school system or at some event in...
the future (e.g., the end of the current school year) provided there are no further disciplinary problems resulting in a Superintendent’s or Principal’s suspension that is sustained. Regulation A-443 § III.B.3(w)(3).


*A note about Records:* Parents are often very concerned about their child having a suspension on his/her “record.” This is not nearly as harmful as it sounds; it is very different from a criminal or permanent record. It does not appear on the student’s report card or transcript. It is not considered in the high school admissions process or the school transfer process. It generally does not have to be reported to colleges or jobs. The only situations in which a previous suspension has an effect are if the student is suspended again (since previous suspensions are considered when determining an appropriate disposition) or if the student is arrested (similar). The record is always expunged, at the latest, when the student graduates from high school or otherwise leaves the school system.

g. Counseling and Other Services
   The Discipline Code also includes a range of possible guidance interventions to be used in addition to disciplinary responses, as appropriate. These interventions include counseling, peer mediation, conflict resolution, and mentoring programs. If the parent and student agree, you can request these interventions during disposition. The Superintendent’s designee may make a recommendation that the school offer the student services. However, the Chancellor’s Regulations do not authorize the Superintendent’s designee to require the school to offer these services.

h. Transportation Reimbursement
   While it is not mentioned in the Chancellor’s Regulations, SRP has successfully argued that the Department of Education should reimburse the parent for transportation to and from the hearing office. SRP also has limited funds to provide metro cards to clients for their transportation if the hearing office does not grant reimbursement.

i. Objecting to Documents in Student’s Records
   The school will turn in a set of the student’s records for the Superintendent’s designee to use during disposition. Pursuant to Chancellor’s Regulation A-820, the parent has the right to challenge an entry in the student’s records that is inaccurate, misleading, or otherwise in violation of the student’s privacy rights. Regulation A-443 § III.B.3(n)(9). This includes any records of past classroom removals or Principal’s suspensions of which the parent was previously unaware, since the school was required to notify the parent of these incidents. If a parent seeks to challenge a record, the Superintendent’s designee will make a preliminary decision with respect to the contested entry as part of the suspension decision, and the parent may also challenge the record separately through the procedures outlined in Regulation A-820.
Regulation A-443 § III.B.3(n)(9). In order to challenge any record through the suspension process, you should attach a note to the relevant record explaining the parent’s objection. You will probably want to write out the objection before the hearing and then staple or paperclip the objection to the document that the school is turning in during disposition.

j. Special Education
If the student is in special education or may be eligible for special education, there are additional protections. See Special Education in section VI and speak with an SRP board member.
XVI. HEARING DAY

a. Before the Hearing

1. Arrive Early for the Hearing and Sign in: You can check the sign-in sheet multiple times to see who is attending for the school’s side.

2. Waive the Pre-Hearing Conference: When you sign in, you can tell the hearing office staff that you are waiving the pre-hearing conference. At the pre-hearing conference, the hearing officer informs the parent of his/her rights and of the hearing procedure.

3. Wait in the Waiting Room for Respondent/Students: There is one waiting room for the school officials and their witnesses and a separate waiting room for the accused students and their parents, advocates, and witnesses.

4. Use your Time in the Waiting Room to Prepare: If you have witnesses who will be testifying, use the time to review the direct examination with them. Review dispositional materials.

5. Prepare the Student and Parent: Remind the student and parent to be respectful and polite even if a school witness lies. You can ask the student to pass you notes during the hearing if a school witness says something incorrect or inconsistent or if s/he has ideas for questions that you should ask the witness.

b. If Client, School, or Witness Fails to Appear

1. If your Client Fails to Appear: Call the parent! If you spoke with the parent recently and believe that the parent is on his/her way, you can respectfully request some additional time. Tell the hearing office that you spoke with the parent recently and know that s/he planned to be here and ask that the hearing office wait for your client to arrive. If your client fails to show, you can request an adjournment. The suspension will continue until the hearing takes place. The hearing officer can decide to hold the hearing without the parent. Regulation A-443 § III.B.3(s)(12), footnote 14. However, you should request an adjournment and call an SRP board member if the hearing officer is talking about holding the hearing without the parent.

2. If the School Official Fails to Appear: The school can adjourn the hearing and the student must be reinstated on the 6th day of suspension to his/her regular school program pending the rescheduled hearing or, with the consent of the parent, transferred to an equivalent instructional program. Regulation A-443 § III.B.3(s)(12).
3. **If the School Fails to Bring a Witness who Observed the Incident:** The school can adjourn the hearing. However, if the school does not adjourn the hearing and the hearing begins without a witness who observed the incident, the charges should be dismissed unless there is an admission from the student or a certified copy of a guilty plea from a criminal or juvenile delinquency proceeding regarding the same offense. Regulation A-443 § III.B.3(s)(10), (11). You should proceed with the hearing, but do not have the student or any of your witnesses who observed the incident testify. In your closing argument, state that Chancellor’s Regulation A-443 § III.B.3(s)(10) makes clear that a finding that the student committed the acts charged may not be based exclusively on hearsay evidence. See “Hearing Structure” section.

4. **If a DOE Witness whom you Subpoenaed Fails to Show:** If you subpoenaed a Department of Education employee and that employee fails to appear, the hearing officer shall determine whether the employee can appear after a short recess. Regulation A-443 § III.B.3(s)(18). If s/he cannot, the parent can request an adjournment, which shall not exceed two days unless the student is reinstated. Regulation A-443 § III.B.3(s)(18). The hearing officer determines whether or not to reinstate the student based on the nature of the charges and the reason for the unavailability of the witness. Regulation A-443 § III.B.3(s)(18). The hearing can proceed only if the hearing officer finds on the record that the missing witness’s testimony would be immaterial or irrelevant. Regulation A-443 § III.B.3(s)(18). See also Regulation A-443 § III.B.3(s)(19).
XVII. DURING THE HEARING

a. Start the Hearing Right
When you first walk into the hearing room, project an air of friendly confidence. It is quite normal to be nervous before a hearing, but try not to show it. The hearing officer is more likely to respect you if you appear to be confident, and your client will be more confident if you are. Additionally, be aware of how the hearing officer may perceive your client. For example, if your client is chewing gum, instruct them to remove it as a hearing officer may find this to be disrespectful.

b. Introductions
The hearing officer will usually begin by asking each person to state his/her name for the record. You should state your name, followed by “Suspension Representation Project, representing the parent of [student’s name].” At this time, hand the hearing officer an SRP business card with your name written on it. Make sure that the hearing officer dismisses the witnesses (everyone other than you, the student, parent, and the school official serving as staff advisor) before beginning the hearing with opening statements. You should object if any other witnesses remain in the room. You should note whether or not the school has brought someone who witnessed the alleged incident. Remember that the hearing officer cannot sustain the charges based solely on hearsay evidence. See “Hearing Structure,” section V(c)(1).

c. Hearing Order

1. Exchange of student’s records: The school should provide a complete set of the student’s records for review and comparison with records previously obtained from the school, if any, and advised that records not made available may not be offered into evidence by the school on that date. Regulation A-443 § III.B.3(s)(15).

2. Review of charges: Following introductions, the hearing officer will read the charges against the student and ensure that the school is proceeding with those charges. At this point, you should ask the hearing officer to tell you the infraction code(s) associated with the charges. Even if infraction codes were indicated on the Occurrence Report or elsewhere in the suspension packet, only the infraction code(s) reported by the hearing officer during the hearing are official. The school may request modification of the charges. For example, the date or time indicated may be incorrect. If the modification requested by the school is so radical that the original charge would not apprise the student of the new charge, the parent/advocate has the option of adjourning the hearing and having the student reinstated, unless the parent
agrees otherwise.\textsuperscript{11} If the modification is not radical, the officer will indicate that the original charge sufficiently apprised the student of the new charge.

3. Opening statements: The staff advisor and SRP will have the opportunity to make an opening statement.

4. School’s case: The school will present its case first.

i. Documentary evidence (e.g., witness statement): The staff advisor will enter documentary evidence. You should make objections as appropriate. See the “Objections” section.

ii. Testimony: The school official will usually testify first. The hearing officer will elicit direct testimony from the school official. You can then do a cross examination. You may ask for a very brief recess before doing your cross. The school official may then present additional witnesses, whom you can cross. Each witness must be questioned separately and with no other witness present. Regulation A-443 § III.B.3(s)(5).

5. Your case: After the school rests, you can present witnesses or enter any additional evidence. The staff advisor can cross examine your witnesses.

6. Closing arguments: After you rest, each side will have the opportunity to present a closing argument. You should feel free to ask the hearing officer for a brief recess to revise your closing argument. You should also be revising the closing throughout the hearing.

7. Dispositional phase: After each side makes a closing argument, you will move directly into the dispositional phase. Each side can enter evidence and can make a dispositional statement with a recommendation. The evidence must not relate to the incident charged. Again, you should examine the school’s records, ensure they are the same records that the school provided the parent, and object to any documents the school did not give to the parent prior to the hearing date. Regulation A-443 § III.B.3(s)(15). You may also attach notes to any records that the parent wishes to challenge. Regulation A-443 § III.B.3(n)(9). For more information, see “Disposition” section.

8. Additional considerations: At the conclusion of the hearing, you should request an e-mailed copy of the decision, address schoolwork/homework if the student is not receiving it, and debrief with the parent and student. See “SRP Advocate’s Checklist” section for more information.

\textsuperscript{11}“While it is not necessary that charges in a student disciplinary proceeding be as specific as a criminal proceeding, it must be at least sufficient to apprise the student and counsel of the conduct against which they have to defend.” Appeal of Herzog, 35 Ed. Dept. Rep. 173 (1995).
XVIII. POST-HEARING RESPONSIBILITIES

a. Obtaining Hearing Decision

The Superintendent’s designee must inform the parent of the hearing decision within two school days of the hearing, including whether or not the charges are sustained, where the student is to be assigned, and how the student’s records will reflect the suspension. Regulation A-443 § III.B.3(u)(3). In addition, a full report of the findings and disposition must be mailed to the parent within five school days of the hearing. Regulation A-443 § III.B.3(u)(3). See also Regulation A-443 § III.B.3(x). If the parent does not hear about the decision, you should call the hearing office. If the hearing office does not e-mail or mail the decision letter to you/SRP, you may want to ask the parent or hearing office to fax it to you. You can learn a lot from reading what the hearing officer thought of each witness and how s/he arrived at his/her findings of fact.

b. Filing Materials

Please scan the signed “SRP Acknowledgment & Consent Form” and “Release of Information Form” and create a PDF. Then, login to the SRP Website (http://www.suspensionrepresentation.org), select “Advocates”, select “Document Upload” and upload these documents. If you have questions about how to do this, please ask a member of the SRP Board.

For an Acknowledgment & Consent Form, please name the document as follows: Client Name.AC.Hearing Date.pdf

For a Release of Information Form, please name the document as follows: Client Name.RF.Hearing Date.pdf

c. Post-Hearing Exit Form

It is vital that you complete the post-hearing exit form. SRP uses this form to monitor trends regarding students facing suspension, to gather information about specific hearing officers so that future advocates will be better prepared to appear before them, and to try to improve the SRP process for future advocates. The form will be sent to you electronically. Please complete this within one week of receiving the decision.

d. Requesting Transcript (optional)

The parent is entitled to a copy of the hearing transcript. You should have the parent request the transcript immediately if there is a juvenile delinquency or criminal case associated with the same incident or if the parent is thinking about appealing the suspension decision or if you would like to have the transcript so that you can review your work and learn from it or if the parent would like to review the transcript for any other reason. To request a transcript, fax a letter to the hearing office requesting the transcript. Some hearing offices request that the parent sign the letter or leave a voicemail message requesting it. You can have the transcript sent to SRP or sent to
the parent. Transcripts take a long time to arrive so if you need it expedited, you will need to follow up with the hearing office and push the office to expedite the process.

e. Filing Appeal (when appropriate)
After you get the decision, if you think that the decision is unfair and the suspension is unjustified based on the evidence presented at the hearing, you must speak with an SRP board member about the possibility of appealing. Appeals are done in writing. Regulation A-443 § IV. An appeal must be filed within 20 school days of the date of the decision or 10 school days from receipt of the tape recording or hearing transcript, whichever is later. Regulation A-443 § IV.B.2. It often takes a long time to get the hearing transcript. You may request additional time to write the appeal if necessary. Appeals should be addressed to the Chancellor and mailed to the Department of Education’s Office of Legal Services, 52 Chambers Street, Room 308, New York, NY 10007. If you think that there is a reason to appeal, contact an SRP board member immediately.

f. Alternative Education During Suspension
Following the hearing, all students who continue to be suspended have a right to participate in a full-time instructional program. Regulation A-443 § III.B.1(f). If necessary, appropriate transportation arrangements must be made for the student. Regulation A-443 § III.B.1(c). Students have a right to take citywide or state examinations administered during their suspensions and to make up school midterm or final examinations. Regulation A-443 § III.B.1(a). They have a right to receive class work, homework assignments, and instruction that will allow them to continue earning academic credit. Regulation A-443 § III.B.1(b). You can play a key role in ensuring that students receive an appropriate education during their suspension.

g. Petitioning for Early Reinstatement
If the disposition is a one-year suspension with the opportunity to petition for reinstatement, the letter must specify the date after which the student may petition for reinstatement (after at least 90 days). Regulation A-443 § III.B.3(x)(3). Chancellor’s Regulation A-443 § III.B.3(y) outlines the process for petitioning for early reinstatement. You may opt to help the parent prepare the petition when the time comes. At a minimum, you should ensure that the parent knows how to petition for early reinstatement. The Chancellor’s Regulation only addresses procedures for early reinstatement during a one-year suspension. However, the Superintendent’s designee will sometimes offer early reinstatement to a student with a shorter suspension.

h. Documenting Egregious School Behavior
If your case involved a school official who exhibited egregious behavior such as flagrantly violating suspension procedures, resulting in the student losing educational opportunities or placing the student in danger, you may want to bring this to the attention of an SRP board member. You may want to work with the SRP board to write a letter outlining the violations and asking that the school official be educated about the Chancellor’s Regulations.
i. Other Services for Student

While it is not a requirement that you assist the student once the hearing is over, you may opt to see if there are additional resources or services that may help the student. You can play a key role in helping the student get educational services and get back on track following the hearing.
APPENDIX A: Hearing Offices

Bronx
501 Courtlandt Avenue, 2nd Floor
Bronx, NY 10451
Tel: 718-742-6501
Fax: 718-292-2759

Brooklyn (Downtown), serving Brooklyn and District 75
335 Adams Street
Brooklyn, NY 11201
Tel: 718-923-5120
Fax: 718-923-5130

Brooklyn (Canarsie), serving Brooklyn and Staten Island
1106 E. 95th Street (at Conklin Ave.), 2nd Floor
Brooklyn, NY 11234
Tel: 718-566-6035
Fax: 718-566-6150

Manhattan
209 W. 125th Street, 3rd Floor
New York, NY 10027
Tel: 212-932-1058
Fax: 212-932-1067

Queens
28-11 Queens Plaza North, 2nd Floor
Long Island City, NY 11101
Tel: 718-391-6055
Fax: 718-391-6022
ACKNOWLEDGEMENT AND CONSENT

Re: ______________________

We have been advised and understand that:

(1) The abovementioned student will be represented by law students working as volunteer advocates with the Suspension Representation Project (hereafter “SRP”), a student-run group.

(2) These students are not lawyers and will provide representation as lay advocates.

(3) SRP is not accountable to Benjamin N. Cardozo School of Law, Brooklyn Law School, Columbia Law School, The City University of New York School of Law, Fordham Law School, New York University School of Law, Pace Law School or St. John’s University School of Law (hereafter “the Law Schools”).

(4) Although the law students who represent the abovementioned student may be enrolled in one of the Law Schools, they are providing representation in their individual capacities and are not accountable to the Law Schools.

(5) Neither the Law Schools nor any employees, faculty members, or agents of the school supervise the law students who represent the abovementioned student or participate in any way in any decisions about the hearing. Students do not get credit from the school for this work.

(6) The Law Schools are in no way responsible for the representation provided by SRP or by the students.

(7) All services are provided free of charge.

(8) SRP may discuss my case with other advocates inside or outside of SRP, but will not reveal my name to advocates outside of SRP.

(9) Any decision to assist in an appeal of a suspension hearing decision will be in the sole discretion of SRP.

(10) SRP’s request that we request a copy of the hearing transcript does not obligate SRP to write or submit an appeal.

(11) SRP reserves the right to discontinue representation if it is determined that we have misrepresented any material facts, requested SRP to engage in conduct or take positions with which SRP disagrees, failed to cooperate with SRP in the preparation of the case, or engaged in any conduct which SRP believes is harmful to its interests.

(12) In the event that the hearing is adjourned to a later date, whether SRP will represent the abovementioned student is solely at its discretion.

Having been advised and understanding these facts, I consent to have an advocate or advocates with SRP represent the abovementioned student.

Student: ___________________________ Date: ________________

Student’s printed name

Student’s signature

Parent: ___________________________ Date: ________________

Parent’s printed name

Parent’s signature
SCHOOL RECORDS RELEASE

The Suspension Representation Project is representing my child, ____________________________. I authorize you to release to the Suspension Representation Project and its advocates any and all school records, including, but not limited to, the suspension packet, the cumulative record folder and all its contents, all academic records, guidance reports, anecdotal records, incident reports, attendance records, immunization and health records, special education records (if any), any records kept by the guidance counselor, and any other records maintained by the school. I have discussed the request with an advocate from the Suspension Representation Project.

The right of confidentiality means that you cannot share information without my consent. I fully understand that I am requesting that you share confidential information with the Suspension Representation Project. I feel that the Suspension Representation Project will be able to use the material you have to help my child. Therefore, please honor my request as quickly as possible.

_____________________________  ______________________________
Name of Child                  Signature of Parent or Guardian

_____________________________  ______________________________
Birthdate                     Name of Parent or Guardian

_____________________________
Address
REQUEST FOR INCIDENT INFORMATION

Dear ____________________:

I will be representing ______________ at _____ Superintendent’s suspension hearing on ______________________. I am hereby requesting any and all documents relating to the incident for which ______________ was suspended, in accordance with Chancellor’s Regulation A-443 III.B.3.n(6). Please be sure to fax me all documents concerning the incident and all documents that you plan to use at the hearing. My fax number is (646) 219-6052.

If the incident for which ______________ was suspended was caught in whole or in part by a security camera, I am hereby requesting that video. Please contact me at ______________ or 212-998-6753 or suspension.representation@gmail.com so we can arrange for me to get a copy.

I have attached a release of information form signed by ______________’s parent, ________________________.

Please be sure that ______________ is receiving all of _______ class work and homework while _______ is in the alternative educational site.

Thank you for your help in this matter.

Sincerely yours,

_____________________

Student Advocate
Client Meeting Form

This form is intended to assist you in interviewing the student and parent but is not meant to be an exhaustive list of questions. Remember that this meeting has two important purposes: to help you prepare the best defense possible for the hearing and to help the student and parent feel comfortable with you and understand what will happen at the hearing. Be sure to conclude the interview by asking the student and parent if they have any questions and explaining to them what steps you plan to take.

Initial Information

1. Describe our role and that we are on client’s side and are going to defend client. Remind client that we are law students, not lawyers.
2. Explain confidentiality.¹
3. Have student and parent complete Consent Form and Release of Information Form.
4. Explain process. We’re going to start by asking some basic questions and talk a little about school. Then we’ll ask parent to step outside while we talk to student about the incident and then we’ll invite the parent back in and continue talking. We also want to make sure to answer your questions and see what we can do to help you. We may take some notes to help us prepare for the hearing.

Basic Information

Name: __________________________________________________________

Nickname/preferred name: _______________________________________

Please get any information missing from the Call Intake Form.

School Information

Grade Level: _____________________________

Favorite Subject(s): _______________________________________________

Why?: __________________________________________________________

¹ Remember, you are not a lawyer (yet!). This means that there is no true attorney-client privilege. SRP maintains confidentiality for our clients in the sense that the discussions you have with your clients are not to go outside SRP. You should not reveal confidential information that your clients tells you. However, technically, our conversations with our clients are not protected by the attorney-client privilege.
School and after-school activities, hobbies, sports:

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

Favorite teachers/counselors/coaches at school:

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

Career Plans:
What do you want to do after high school?/ What do you want to be when you grow up?

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

What is something that you’ve done that you’re proud of?

_____________________________________________________________________

Alternative School Site: __________________________

How many hours a day?: ___________________________

Are you getting regular classroom work and homework?: __________________________
Does parent have suspension packet yet? If so, leave packet with us.

Is the student receiving special education services (does the student have an Individualized Education Program aka IEP)?

Has the parent requested that the child be evaluated?

Would the parent like for the student to begin receiving special education services?

Do you have any initial questions for us?

ASK THE PARENT TO LEAVE THE ROOM SO WE CAN SPEAK WITH THE STUDENT ALONE IN ORDER TO PRESERVE CONFIDENTIALITY.

REMIND STUDENT ABOUT CONFIDENTIALITY.

ASK THE STUDENT TO DESCRIBE INFORMATION REGARDING THE ALLEGED INCIDENT, AND WHAT FOLLOWED:

Information Regarding the Alleged Incident
Ask the student to describe what happened:

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
Be sure that you get the following information during the interview:

Where: ________________________________________________________________

When: ________________________________________________________________

Who was around when the incident occurred?
Names: ________________________________________________________________
______________________________________________________________
______________________________________________________________

Who was involved in the incident?
Names: ________________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________

How many people observed the incident?__________________________________

Was anyone employed by the school involved such as a teacher/School Safety Agent/or other person in authority?  
YES  NO

Did you know or know of the complaining witness before this incident?  
YES  NO

Was this your first encounter with the complaining witness?
If no, describe the nature of prior encounters.

______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

You may want to repeat the client’s description of the alleged incident to make sure you have the details correct. You may want to ask the student to draw a picture or act out what happened to clarify.

**School Actions Following the Alleged Incident**

What did the school do next?_________________________________________

Did any school official ask you to make an oral/spoken statement about what happened?  

YES

NO

Did any school official ask you to make a written statement about what happened?  

YES

NO

If yes, who asked you to make the statement? Did they tell you that you had make a statement?

______________________________________________________________________
______________________________________________________________________

Who was in the room when you made the statement?

______________________________________________________________________
______________________________________________________________________

What did you say?______________________________________________________

______________________________________________________________________
______________________________________________________________________

Do you know if the school asked anyone else for a statement?
If yes, whom did the school ask and under what circumstances?
__________________________________________________

Did the school officials take anything from you? YES NO

If yes, what? Description.
__________________________________________________

Did you sustain any injuries? YES NO

If yes, what were the injuries?
__________________________________________________

If yes, did you tell a school official that you were hurt? YES NO

What if anything, did the school official say or do in response to this information?
__________________________________________________

Did you have to seek medical treatment? YES NO

Did anyone else involved in the incident sustain injuries? YES NO

Name(s) and Injuries:
__________________________________________________

Did anyone else involved in the incident seek medical treatment?
Name(s): ________________________________________________________________

Was any part of the incident caught on a surveillance camera? YES NO

Anything else we should know to best defend you?

**REVIEW SUSPENSION PACKET.** Ask student about any inconsistencies between student’s story and the witness statements. Tell student what the charge is.

**INVITE THE PARENT BACK INTO THE ROOM:**

**Parent Questions**

How did you find out that the student was suspended?

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

Who (if anyone) called to explain that the student was suspended?

Name(s)/Position: __________________________________________________________

__________________________________________________________________________

Was there a meeting following notification of the student’s suspension? YES NO

If yes, who was at the meeting and what was said?

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

Did the school ever explain the incident to you/tell you what they believe happened?
What, if anything, did the school say regarding the incident?

________________________________________________

________________________________________________

________________________________________________

________________________________________________

________________________________________________

Court Involvement/Prior Suspensions

Did this suspension result in a criminal case? YES NO

If so, do you already have an attorney? YES NO

Were any other students involved in this alleged incident suspended? YES NO

If yes:

- Do you know if these other individuals have had suspension hearings yet? YES NO
- Did you testify at another student’s hearing? YES NO
- Do you know the outcome of the other hearings? _______________________

Do you know if the other students suspended have representation? If so, we may want to contact the other student’s advocate with the permission of our client’s parent and the other advocate’s client. YES NO

Were any other students involved arrested? YES NO

Have you been involved in prior incidents at this school?
YES  
NO

Have you ever been suspended before?

YES  
NO

If yes, when?

____________________________________________________________________

EXPLAIN THE PROCEDURES OF THE HEARING

Discuss:

1) Review School’s Charge: This is what school would have to prove during a hearing.

2) Hearing Office: Make sure parent knows how to find hearing office and has your cell #. Explain that student and parent will arrive, sign in, and then sit in waiting room. Emphasize they should arrive early so that you have more time to prepare with them and because the hearing may be called earlier if all parties arrive early. Explain that they may have to stay all day and should bring food and something to do.

3) No Contest Option: Explain that we can have a hearing or can plead no contest. Describe the case-specific pros and cons (e.g., Did student write a statement stating he did exactly what the charge says? If so, student may want to plead no contest.) You can feel free to postpone the final decision if the parent and student want more time to consider this.

4) Pre-Hearing Conference: Explain that the purpose of the pre-hearing conference is to describe the different options that we have already described (e.g., no contest).

Is parent willing to waive the pre-hearing conference?  
YES  
NO

5) Hearing: Explain what happens during the hearing. We usually waive our opening statement or make a brief statement because we don’t want the school to know our argument. First, the school presents witnesses who will testify and the school offers evidence (e.g., witness statements). We can question the school’s witnesses. Then we can present witnesses and the school questions them.
6) **Evidence for Hearing:** Is there anyone we should try to have testify at the hearing? A student witness can only testify with consent from his/her parent. Is there any additional evidence that parent can collect before the hearing? What evidence? If a written statement from an additional witness, parent should observe person handwrite the statement and sign and date the statement. Parent should fax the statement to us if possible and bring original to hearing. If parent can’t fax, parent should bring original and 4 copies to hearing if possible. Any additional evidence SRP can collect before the hearing?

7) **Will Student Testify?** No need to make a final decision during the interview, but make sure the student knows you’re going to need to practice with him/her over the phone and before the hearing if student is going to testify. In making the decision, you should consult the SRP Guide Direct Examination Section.

*Pros:*

a. Student can tell his/her version of what happened. (Consideration: Are there other ways of telling this story? Did student make a statement that is different from what he is now saying happened?)

*Cons:*

a. School can cross-examine student.

b. It is difficult to testify. Everyone gets nervous in front of the hearing officer.

c. If student has a criminal case, testimony can be used against him/her there.

d. May not be necessary since school has burden of proving the charges and there may be other ways for us to challenge the charges.

8) **Will Parent Testify?** We may want the parent to testify about procedures the school failed to use in informing parent about suspension. Or we may want parent to testify to introduce additional evidence that parent collects (e.g., If parent gets a written statement from another student witness, parent will need to testify as to how the parent got the statement in order to introduce the statement into evidence.).

9) **Disposition:** Explain what happens during disposition phase. During this phase, we want to ask for a shorter suspension if the hearing officer upholds the suspension. We want to give the hearing officer a full picture of student, and show that student is more than what happened during this one day. We will not get a decision on the suspension during the hearing, so we have to do the disposition phase without knowing whether or not the hearing officer will uphold the suspension. During this phase, we can also request services such as counseling or a school transfer if the parent wants, though school transfers are rarely granted.

10) **Letters for Disposition:** Are there any members of the community who know the student and would be willing to write a recommendation for the student? Remind the parent and student that this recommendation letter should not have ANY information regarding the incident. Ask about the teachers/coaches whom the student mentioned at the beginning of the interview.
It is ideal for the parent to take responsibility for requesting and collecting any letters. The parent can fax the letters to us and bring the originals or bring 4 copies and the originals to the hearing.

11) **School Records:** *If parent did not bring suspension packet (with school records), ask about the student’s grades and attendance.*

12) **Affect:** *Emphasize that student and parent should look their best, should sit up during hearing, should be respectful of hearing officer, if there’s something they want to tell us to write it down or whisper to us.*

13) **Answer questions.**

14) **Review next steps and to-do list including any evidence/letters the parents will collect.**

15) **Copy suspension packet if you do not already have it!**
HEARING PREP FORM

Client Name: ______________________ Hearing date: ____________

I. Theory of the case:

II. Facts that support our case/theory:

A. Witnesses to try to have appear (For each witness list the facts to which the witness could testify. Consider whether or not your client wants to testify):

B. Evidence to introduce:

III. Potential facts that hurt our case/theory:

A. Opponent’s anticipated theory:

B. Opponent’s potential witnesses (Describe possible witnesses, testimony, topics for cross examination, how you can impeach and/or object to testimony):

C. Potential evidence (List arguments for keeping evidence out):
IV. Disposition

A. Our requested disposition:

B. Facts that support our requested disposition:

C. Facts that weigh against our requested disposition:

Next steps:
Cross Examination Tips and Examples

This document is meant only as a supplement to the SRP Advocacy Guide. Please refer to the text of the guide in order to be fully prepared. Specifically for cross examination, see section XII. Also, ask an SRP board member for feedback on your draft cross!

Ask LEADING questions, which:
- suggest the answer you want the testifier to give;
- often will elicit “yes” or “no” answers, but not always;
- close off options for the testifier – e.g., “How dim was the lighting in the room?” and
- help control the witness/don’t allow the witness to run – i.e., don’t give the witness the opportunity to explain away inconsistencies or give long narratives, the details of which you don’t know. See examples below.

Cross Tips:
- **FOCUS ON WHAT YOU NEED** to get from the particular witness to advance your theory of the case. Don’t dwell on small or trivial points. It is so, so important to reframe the incident in a consistent way. Alternative theories (while very “law school”) are often distracting. Always check how your Qs advance your theory of the case.
- **Don’t repeat everything that was on direct.** If info you needed/wanted to establish was testified to on direct, skip ahead in your planned questions. You can reference the prior testimony… “Earlier, you testified that you were handing out schedules at lunch, correct?”
- **Write out your cross Qs with chapter/subject headings.** This will help you eliminate unnecessary lines of Qs after direct and make sure you don’t accidentally miss a subject area.
- **Ask ONE FACT PER Q.** Don’t pose tricky compound Qs – e.g., DON’T ASK “Isn’t it true that when you were standing in front of your class at exactly 1 p.m., you saw the STUDENT NAME walk down the hall wearing a blue shirt?” The witness can answer “no” to any of the facts questioned, so you might miss getting what you need.
- **Avoid asking a question you don’t know the answer to,** UNLESS any answer will help you – e.g., you know a teacher said something offensive and you have an impeachment witness or witness statement ready. Her admission or denial helps you either way. So might someone’s admission or denial that they were angry (their denial is incredible and their admission colors their memory and recall of the event).
- **Never ask an ultimate question. Never directly challenge a witness about inconsistent testimony.** E.g., WHAT NOT TO ASK: “Isn’t it true that you had no way of knowing who had the weapon on the bus?” or “But first you testified that S was across the room from you and now you’re saying she was up in your face, correct?” **Don’t use the witness to drive home your point…** that’s what your closing is for.
- **Be polite.** Avoid being aggressive with a witness. Your witness is likely either a school official or an alleged student victim. Either way, it’s more likely that you will look bad than that they will if you are too aggressive.
- If the witness is non-responsive, **repeat the question until you get your answer.** Also, despite the need to be polite, it’s okay to cut off a witness who isn’t answering your question.
- **Listen, revise. Listen, revise.** Listen closely during direct examination, and revise your cross accordingly. Listen closely to answers you get on cross, and revise your closing
accordingly. Ask your co-advocate and client for help on this! Your client will likely pick up on significant inconsistencies. Have him/her write you notes during direct and cross. Remember, you can ask for a recess to revise.

- **Always look for opportunities to impeach.** Don’t impeach on completely trivial matters (these are different case to case), but know the witness statements/prior testimony and confront a witness with previous statements if it helps your theory!
- **Plan for bad answers. React well.** We all get them from time to time. A witness delivers an answer, before you can say “yes or no?” that damages your theory of the case. Try to plan for bad answers when writing your cross. Avoid reacting surprised, and move on quickly to your next Q or line of Qs.
- **Know when to STOP.** This is the hardest thing about cross. STOP if you get an extremely good answer (prevent further explanation or qualification) or you get all the facts you need to make your closing. If you’ve got what you need, there’s nothing better out there and only risk. PROBABLY stop if your witness sees where you are going is starting to argue and explain away your Qs (unless they are doing damage to their own version of the incident – e.g., incredibly denying their anger) or information that’s harmful to your theory of the case starts to come out.

What is your Theory and how can your Cross advance it?

- Who is likely to testify for the school? Remember, the proposed witness list is usually not complete.
- What is each witness likely to say? Remember, the school has to present some direct evidence.
- What can you ask those witnesses that will advance your theory of the case? Consider:
  - **Suggesting the possibility of error:** the witness couldn’t actually see or hear the alleged incident and is therefore mistaken or incredible.
    - *Example*: Your theory is that the school has no direct evidence that your client threw books from the classroom window and that circumstantial evidence is insufficient because any other student could have done it. You ask the teacher:
      Q1: You were teaching a math lesson between 10 and 11am on DATE, correct?
      Q2: You were writing on the board in front of the classroom as part of the lesson?
      Q3: So at times your back was necessarily turned to the class?
      Q4: You testified that around 11am you received the call that books had been thrown from your classroom window, correct?
      Q5: And that’s when you noticed (STUDENT NAME) by the window?
      Q6: The AP who called didn’t say he saw the books fall, right?
      Q7: He didn’t tell you when that morning they had been thrown?
      Q8: You didn’t actually see (STUDENT NAME) throw books, correct? (NOTE: be very careful… AVOID asking ultimate Qs, e.g., “you have no way of knowing who threw the books, do you?”)
  - **The witness is lying.** NOTE: this is a very hard theory to advance, as you’re likely questioning a student (so you seem unlikeable for attacking a student victim) or a school official who is effectively presumed to be acting in all students’ best interests. Be very

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1 This and all following examples are incomplete snapshots into a full cross. See the general tips that follow about things like not asking ultimate questions and closing out alternatives, as well as knowing when to stop!
careful and sure before advancing a theory that the witness is lying.

Example: Your theory is that, while, yes, there is direct evidence of a fight, your client was the victim and not the aggressor. Having good impeachment material, you ask the alleged victim:

Q1: You testified that you suffered serious injuries in this fight, correct?
Q2: But the night of the incident you sent a text message to STUDENT NAME saying you didn’t even have a scratch?
Q3: You didn’t write “I aint got no scratch and I made yr ass bleed all over the floor of [sic] HS’’?
(Introduce AIM messages, authenticated by client’s mother, who can testify that this moniker is what the alleged victim has previously used to communicate with her son.)

○ There’s more to the story: the witness left out important facts. This can show that the testimony on direct was unfair/misleading and help confine its reach/credibility. This cross strategy can also bring out facts that you need to reframe the incident.

Example: Your theory is that your client’s statement is being taken out of context and was not a threat of violence. At most, you think the charge should be classroom disruption. The teacher testified only that your client said “I’ll bust you up” after a verbal altercation, so you ask:

Q1: Isn’t it true that parent teacher conferences were scheduled for the afternoon on the same day as the incident?
Q2: You testified that you have STUDENT NAME in third period, correct?
Q3: As class was starting that day, you denied STUDENT NAME permission to leave to go to the bathroom, right?
Q4: But, she disobeyed you and left anyway, didn’t she?
Q5: When she returned, you reprimanded her, correct?
Q6: You said you would have to report this to her mother that night at the conferences?
Q7: And STUDENT NAME replied, “Don’t act all nice in front of my mother or I’ll bust you out,” correct?

○ The witness is unattractive/irresponsible. Was the witness the instigator? Did the witness fail to follow school policy? While it’s usually not enough to win a case on procedural grounds or mutuality of bad acts, it can help minimize the length of the suspension and undermine witness credibility.

Example: Your theory is that there was an improper investigation, and the true facts are unaccounted for (maybe it’s one student’s word against your client’s word).

Q1: How many kids ride that bus to school in the morning?
Q2: But you only collected a witness statement from one student, correct? (Be careful, sometimes the school official will make up an excuse like students declined to write statements.)
Q3: Are you aware the Chancellor’s Regulations require you to speak to every witness of an incident?
REQUEST FOR NOTICE OF DECISION

To Whom it May Concern:

The Suspension Representation Project is representing student ___________________________
at a suspension hearing on ____________ . __________________ was suspended from
school _________________, located in borough: _________________.

Please forward a copy of the notice of decision in this matter by one of the following means:

   Email: Suspension.Representation@gmail.com
   Fax: (646) 219-6052
   Mail: Suspension Representation Project
         40 Washington Square South
         Room 110
         New York, NY 10012

If you have any questions, feel free to contact us by phone or by email.

Thank you,

_______________________
Student Advocate