

Category: **STUDENTS**

Issued: 12/2/10

Number: **A-450**

Subject: INVOLUNTARY TRANSFER PROCEDURES

Page: 1 of 1

## **SUMMARY OF CHANGES**

This regulation supersedes Chancellor's Regulation A-450 dated June 22, 2009.

### Changes:

- References to the Director of Student Suspensions at the Integrated Service Center/Director of Safety and Suspensions at the Children First Network have been changed to the Borough Director of Student Suspensions at the Office of School and Youth Development. (p. 1, Section II(B); p. 2, Section III; p. 3, Section III(6); p. 3, Sections IV(A) and IV(B); p. 4, Sections IV(C) and IV(D))

## ABSTRACT

This regulation governs the involuntary transfer of students in general education, grades K-12. It supersedes Chancellor's Regulation A-450, *Involuntary Transfer Procedures*, issued ~~March 2, 2005~~ June 22, 2009.

### I. INTRODUCTION

This regulation describes the procedures for effectuating the involuntary transfer of students in general education (those without IEPs) pursuant to Section 3214(5) of the New York State Education Law.<sup>1</sup> When possible, alternative interventions should be utilized before initiating involuntary transfer proceedings. When a student's behavior and/or academic record demonstrate that adjustment in school is unsatisfactory and if the principal believes that the student would benefit from a transfer or receive an appropriate education elsewhere, the principal may pursue an involuntary transfer in accordance with this regulation. Every effort should be made to minimize any disruption to the student's education.

[Note: If a student engages in misconduct that warrants suspension, as described in the Discipline Code and the relevant Chancellor's Regulation, suspension should be sought.]

### II. PREVENTIVE PROCEDURES

#### A. In-School Measures

School personnel are responsible for developing and utilizing techniques and measures that promote optimal learning and address behaviors which negatively impact upon the education process. When a student's behavioral and/or academic record indicates that adjustment in school is unsatisfactory, school personnel should develop plans and explore techniques for addressing a student's behavioral problems and discuss these alternatives with the student and his/her parent.<sup>2</sup> These plans might include the use of alternative instructional materials and/or approaches, alternative classroom management techniques, remedial services, alternative class placement, guidance support, and services to address personal and family circumstances. All preventive efforts should be described in the student's records. If, at any time, school officials suspect that a student's difficulties may be a manifestation of a disability which may require special education services, the school should immediately send a referral for a special education evaluation to the Committee on Special Education Office.

#### B. Voluntary Transfer

If efforts to bring about the student's satisfactory adjustment to school fail, and the principal believes that the student will benefit from a transfer or will receive an appropriate education in another school, then the principal may explore a transfer with the parent. If the parent consents to the transfer, and the Office of School and Youth Development (OSYD) Borough Director of Student Suspensions at the Integrated Service Center/Director of Safety and Suspensions at Children First Network (hereinafter referred to as Director of Suspensions) as the designee of the Chief Executive Officer (CEO) for the OSYD Office of School and Youth Development (OSYD) is in agreement, a voluntary transfer may be effectuated. The Borough Director of Student Suspensions, in consultation with the Executive Director of Borough Enrollment/designee of the Office of Student Enrollment (Student Enrollment), shall determine an appropriate school placement. If the parent is not in agreement with the transfer and the principal wishes to transfer the student, then the involuntary transfer procedures set out in this regulation must be initiated.

<sup>1</sup> A student with a disability cannot be involuntarily transferred to a different school to receive the same program as he/she is receiving in his/her home school. If it is believed that a student with a disability is in need of a different special education program/supports because the student's behavior and/or academic record demonstrate that adjustment to school is unsatisfactory, then the school should convene an IEP meeting.

<sup>2</sup> The term "parent," whenever used in this regulation, shall mean the student's parent(s) or guardian(s), or any person(s) or agency in a parental or custodial relationship to the student, or the student, if he/she is an emancipated minor or has reached 18 years of age.

During the pendency of involuntary transfer proceedings, a student must remain in his/her current school unless he/she is suspended pursuant to the relevant Chancellor's Regulation and directed to attend elsewhere, or unless the parent consents to a transfer.

### III. **PRINCIPAL'S CONFERENCE**

In order to initiate the involuntary transfer procedures, the principal shall first consult with the [Borough](#) Director of [Student](#) Suspensions. If the [Borough](#) Director of [Student](#) Suspensions agrees to consider a transfer recommendation, the principal shall take the following steps:

#### A. Notice

1. The principal/designee shall send written notification to the student and parent stating that a recommendation to transfer the student is under consideration. The letter must indicate the date, time and place of an informal conference with the principal and must inform the parent and the student of their right to be accompanied by counsel or an individual of their choice (see Attachment No. 1).
2. The letter also shall state that the parent has the right to request and obtain a copy of the student's records before the conference.
3. The letter also shall state that if, after the principal's conference, the principal believes that the transfer is warranted and the parent disagrees, the parent will have an opportunity to request a hearing before a transfer can take effect.

#### B. Principal's Informal Conference

1. The principal's conference provides a forum in which parents, teachers, and other school officials can assess the facts surrounding the principal's decision to consider the student's transfer. It presents an opportunity to discuss the academic and behavioral needs of the student and any prior measures or strategies that were utilized to address those needs.
2. The principal must conduct the conference. In the event that a parent requests an adjournment, the principal shall promptly reschedule the conference. No second request for rescheduling of the conference shall be permitted, absent special circumstances. If, after appropriate notice, the student and parent are absent, the principal shall proceed with the conference and include in his/her decision efforts made by school officials to ensure their presence. The parent shall be informed in writing that the conference was conducted on the scheduled date and of any decisions reached.
3. The student and his/her parent may bring an attorney or other individual to assist them at the conference. The principal may ask school officials knowledgeable about the student and his/her adjustment difficulties to attend the conference as needed. The conference is not a formal, contested proceeding but a guidance procedure and should not become adversarial. The attorney or advocate may participate in accordance with the informal nature of the conference.

If the parent's preferred language is not English, the parent may request that DOE provide an interpreter by contacting the principal prior to the conference date or may bring a translator to assist him/her at the conference.

4. Upon the parent's request, the principal shall provide him/her with a copy of the student's records.
5. After the conference, if the principal believes that a transfer is not warranted, he/she shall advise the student and parent in writing within five days and include recommendations for strategies to meet the student's needs.

6. If the principal concludes that the student would benefit from a transfer or receive an adequate and appropriate education in another school, the principal must issue a written transfer recommendation to the [Borough](#) Director of [Student](#) Suspensions within five days. The principal's written recommendation must include a description of the behavioral and/or academic problems which indicate the need for transfer and a description of alternatives explored and prior actions taken to resolve the student's problems. A copy of the principal's recommendation letter shall be provided to the student and parent (see Attachment No. 2).

#### IV. OFFICE OF SCHOOL AND YOUTH DEVELOPMENT (OSYD) HEARING

##### A. Preliminary Responsibility

After receiving a recommendation for a transfer from a principal, the [Borough](#) Director of [Student](#) Suspensions may:

1. Determine that an involuntary transfer is not appropriate and notify the principal and parent in writing that additional school-based efforts should be made on behalf of the student; or
2. Accept the principal's recommendation for consideration and notify the student and parent in writing that a transfer has been proposed and of their right to request a hearing, as set forth below.

##### B. Notice

The [Borough](#) Director of [Student](#) Suspensions shall notify the student and parent of the right to request a hearing. This letter shall include the following information (see Attachment No. 3):

1. The specific reasons for considering such a transfer.
2. A statement that the student and parent have ten (10) days in which to request a hearing.
3. Notice that if a hearing is requested, the date, time, and place for the hearing will be arranged and the proposed transfer shall not take effect until a written post-hearing decision has been issued unless the parent consents in writing to an immediate transfer pending the hearing. However, even if the parent consents to an immediate transfer, this shall not constitute a waiver of his/her right to a hearing.
4. Notice that if a parent does not request a hearing within ten (10) days, the proposed transfer shall take effect after the ten (10) days has elapsed, unless the parent provides written consent to the transfer on an earlier date.
5. Notice of the right to obtain copies of the student's records before the hearing. The notice also shall include a list of community agencies that offer free or low cost legal assistance and provide a copy of the appeal procedures.
6. Notice of the right to bring counsel to assist them at the hearing; that the student and parent have the right to question witnesses and to present witnesses and evidence on the student's behalf and that requests for witness subpoenas may be directed to the Hearing Office.
7. Notice of the right to bring or request that the DOE provide a translator at the hearing if the parent's preferred language is not English.

If the parent does not request a hearing and the ten (10) days has elapsed or the parent provides written consent to the transfer earlier, the [Borough](#) Director of [Student](#) Suspensions, in consultation with the Executive Director for Borough Enrollment/designee, shall determine an appropriate school placement. The [Borough](#) Director of [Student](#) Suspensions shall send the principals of both the receiving school and sending school and parent a letter informing them of the school to which the student will be transferred and the effective date of the transfer. The school must be one where the student will receive an appropriate education.

### C. Hearing

If the parent requests a hearing, the [Borough](#) Director of [Student](#) Suspensions shall schedule a hearing with the Hearing Office as soon thereafter as is practicable.

1. A hearing shall not be conducted unless the principal of the school or his/her designee is present.
2. In the event of a request for adjournment, the Hearing Office shall reschedule the hearing promptly. No second adjournment of the hearing shall be permitted absent special circumstances.
3. A hearing should be held with the student and parent. In the event that they do not appear at a rescheduled hearing, the hearing may be held *in absentia* unless an adjournment for good cause is warranted. If a hearing *in absentia* is held, the hearing officer shall describe efforts of school officials to ensure the presence of the parent and student, and proceed with the hearing. The student and parent shall be informed in writing that the hearing was conducted on the scheduled date and of any decisions reached.
4. School officials are responsible for demonstrating that the student would benefit from a transfer or receive an appropriate education in another school.
5. School officials and the parent may present and question witnesses and submit evidence.
6. The hearing officer is authorized to administer oaths and issue subpoenas for any witnesses who are reluctant to appear and has discretion to require a showing of relevancy before issuing a subpoena. Either school officials or the parent of the student whose transfer is under consideration may contact the Hearing Office and request that witness subpoenas be issued. Subpoenas for Department of Education employees or students will be served by school officials. Student witnesses may not appear without their parents' consent whether they are subpoenaed or agree to appear and testify.
7. A tape-recorded or verbatim stenographic record of the hearing shall be maintained. The parent shall be provided with a copy of the tape or transcript upon request.

### D. Decision

1. Within ten school days of the hearing, the [Borough](#) Director of [Student](#) Suspensions must send the principal and parent a letter informing them of his/her decision and the reasons for it.
2. If the [Borough](#) Director of [Student](#) Suspensions rejects the transfer recommendation, his/her written decision shall indicate the appropriate educational and guidance services, if any, to be provided at the school in which the student is currently enrolled.
3. If the [Borough](#) Director of [Student](#) Suspensions approves the transfer recommendation, the [Borough](#) Director of [Student](#) Suspensions, in consultation with the Executive Director of Borough Enrollment/designee, shall determine an appropriate school placement. The [Borough](#) Director of [Student](#) Suspensions shall also specify in the letter the school to which the student will be transferred and the effective date of the transfer. The school must be one where the student will receive an appropriate education. The principal of the receiving school must also receive notice of the transfer.
4. In order to avoid the educational difficulties involved in transfers that occur in mid-semester or mid-cycle, consideration should be given to transferring the student at the end of the particular semester or cycle. In the meantime, the student will continue attending the current school.
5. Involuntary transfers to non-diploma granting (e.g., full-time GED programs) or part-time programs shall not be recommended or effectuated for any students, regardless of their age.

6. The letter from the [Borough](#) Director of [Student](#) Suspensions ~~at the ISC~~ also shall inform the student and parent of the right to appeal the decision.

## V. APPEALS

Appeals shall be in writing and taken to the Chancellor<sup>32</sup>.

An appeal of a decision must be filed within ten school days from the date that the decision was rendered or ten school days from receipt of the tape recording or hearing transcript, whichever is later. While an appeal is pending, the student is to attend the school to which he/she was transferred. The student or parent may request a temporary decision from the Chancellor concerning the student's involuntary transfer only after a decision has been issued and while the appeal is pending. Such request must be filed in writing.

## VI. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

	<i>Office of School and Youth Development</i>	
<u>Telephone:</u>	N.Y.C. Department of Education 52 Chambers Street – Room 218 New York, NY 10007	<u>Fax:</u>
212-374-6784		212-374-5751
	<i>Office of Legal Services</i>	
<u>Telephone:</u>	N.Y.C. Department of Education 52 Chambers Street – Room 308 New York, NY 10007	<u>Fax:</u>
212-374-6888		212-374-5596

<sup>2</sup> ~~Appeals to the Chancellor should be filed simultaneously with the Office of Legal Services, Room 308, 52 Chambers Street, New York, NY 10007.~~

<sup>3</sup> Appeals to the Chancellor should be filed simultaneously with the Office of Legal Services, Room 308, 52 Chambers Street, New York, NY 10007.