

# Expulsion Procedures

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WISCONSIN DEPARTMENT OF  
PUBLIC INSTRUCTION

Carolyn Stanford Taylor, State Superintendent

# Learning Objectives



- Examine the laws related to expelling students, including students with disabilities
- Consider expulsion hearings and requirements
- Consider alternatives to expulsion
- Understand the impact of expulsions on the school community

# Free Public Education Guaranteed

All children ages 4 through 20 who have not graduated

([WI Constitution](#) article 10, sec. 3)

LEA must provide FAPE to children with disabilities 3 through 21 ([Wis. Stat. § 115.76\(3\)](#))





# What Do You Think?

**Chris tells you that Casey started a physical fight with them. Chris has bruising. You are a principal. Can you expel Casey?**

**Brainstorm questions you need answered.**

**Authority to expel: Wis. Stat. §§ 119.25; 120.13(1)(c)**

# Don't Forget Civil Rights!

- **Wisconsin Pupil Non-discrimination**
  - Ensure discrimination including harassment does not exist (is not allowed to continue) (Wis. Stat. § [118.13](#), [PI 9](#))
- **Title IX**
  - Requires investigation when school knows or reasonably should know about sex-based harassment ([Title IX](#) of the Education Amendments of 1972)





# If You Suspend Them

- Not more than 5 days
- If notice of expulsion has been sent then up to 15 consecutive days ([Wis. Stat. § 120.13\(1\)\(b\)\(2\)](#))
- Must
  - Tell pupil why
  - Give prompt notice and reason to parent/guardian ([Wis. Stat. § 120.13\(1\)\(b\)\(3\)](#))



# Rights of Suspended Student

- **Pupil/parent/guardian may have conference with district admin or designee within 5 days**
  - designee shall not be principal, teacher, or admin at pupil's school ([Wis. Stat. § 120.13\(1\)\(b\)\(4\)](#))
  - Shall make finding within 15 days
- **Suspended pupil**
  - Shall not be denied opportunity to take exams, complete coursework ([Wis. Stat. § 120.13\(1\)\(b\)\(5\)](#))

# Shortened Day - Students with IEPs

- Student sent home (or released) by the district due to behavior - could be de facto suspension
- Presenting the removal as an option to the parent is still problematic and likely to be considered a removal
- IEP teams should address underlying need resulting in removals



# Disciplinary Removals



- Up to 10 cumulative school days in a school year then SpEd “discipline requirements” apply
- After 10 days, ask would removal constitute a disciplinary change of placement?



# Expulsion - Pupil/Guardian Rights

- Right to fundamentally fair procedures to determine if misconduct occurred (*Remer v. Burlington Area School District*, 149 F. Supp. 2d 665 (2001).)
- Be sent a notice\* of the expulsion hearing at least 5 calendar days prior to the hearing
- May order the hearing to be closed
- May be represented by council, or without, to call or question witnesses and offer other evidence or arguments

([Wis. Stat. § 120.13\(1\)\(c\)\(3\)](#); [DPI Answers to Frequently Asked School Discipline Questions](#))



# Pupil/Guardian Rights Cont.

- Be sent a copy of the expulsion order once a decision has been made ([Wis. Stat. § 120.13\(1\)\(c\)\(3\)](#))
- May appeal expulsion to state superintendent ([Wis. Stat. § 120.13\(1\)\(c\)\(3\)](#))
- Within 15 days, appeal any early reinstatement conditions, or enrollment conditions, to the relevant school board ([Wis. Stat. § 120.13\(1\)\(h\)\(2\)](#), [\(1\)\(h\)\(2m\)](#))
- Within 5 days of early reinstatement revocation, or conditional enrollment revocation, request meeting with district admin ([Wis. Stat. § 120.13\(1\)\(h\)\(6\)](#), [\(1\)\(h\)\(6m\)](#))

# Expulsion - School District Responsibilities

- Create systems and policies based on equity, inclusion, and current research and evidence-based practices
- Send a notice\* of the expulsion hearing at least 5 calendar days prior to the hearing to pupil/guardian
- Keep written minutes of the hearing
- Send a copy of the expulsion order once a decision has been made  
([Wis. Stat. §§ 120.13\(1\)\(c\)\(3\), \(1\)\(c\)\(2m\), 1\(g\)](#))
- Develop procedures to welcome student back to school setting when suspended or expelled, include supports and point person, review BIP, FBA, IEP if needed



# School District Responsibilities Cont.

- Enforce board decision if appealed, during investigation
- Suspend if student possesses a firearm at school or under supervision of school authority
- Expel if student possesses a firearm at school or under supervision of school authority
  - ◆ May modify requirement on case by case basis
- Determine if pupil is known to have a disability and conduct a manifestation determination if needed

([Wis. Stat. §§ 120.13\(1\)\(c\)\(3\), \(1\)\(c\)\(2m\), 1\(g\)](#))

# Manifestation Determination

A student with a disability may not be expelled for misconduct that is a manifestation of the student's disability

- Applies to students with IEPs & 504 plans
- Students suspected of having a disability must be evaluated – failure to do so risks having expulsion overturned on appeal



# Expulsion - DPI Responsibilities

- Provide training, TA, and resources to increase policy and practice that lead to school success for all students
- Within 60 days of receiving an appeal, review the appeal and approve, reverse, or modify the decision

([Wis. Stat. § 120.13\(1\)\(c\)\(3\)](#))



# In Lieu Of



- **Still investigate and gather facts and statements**
- **Wis. Stat. §§ 120.13, 119.25 need to be followed**
- **Make conditions relevant to offense, limited and possible**

# Consider...

1. Must student or parent attend the expulsion hearing for the expulsion to move forward?
2. Does the requirement to expel for firearms include BB guns? Knives? Explosives?
3. May a district expel a student for truancy?
4. May a resident school district deny enrollment to a student expelled from a private school? From a public school in another state?

# Independent Hearing Panel/Officer



- Boards may adopt a resolution authorizing an independent hearing panel or officer to determine pupil expulsion
- Resolution only effective during year it is adopted
- Within 30 days the board reviews the order and approves, reverses, or modifies [Wis. Stat. § 119.125; 120.13\(1\)\(e\)1](#)

# Early Reinstatement (our student, our district)

- **Conditions may be**

- required to be met before early reinstatement
- required to be met after early reinstatement but before the end of the term of the expulsion

- **Conditions must be**

- related to the reason for expulsion
- specified in expulsion order

- **Someone other than the principal, teacher, or admin at the pupil's school must determine if conditions are met**

[120.13\(1\)\(h\)\(2\)](#)

[Wis. Stat. §](#)



# Early Reinstatement - Revoked

- **District Admin, principal or designated teacher may revoke**
- **District must**
  - tell student which condition was not met
  - give student chance to explain
  - determine revocation is appropriate
  - give prompt written notice of and reason for
  - allow for meeting if requested within 5 days of revocation with district admin (NOT principal, teacher, or building admin) [Wis. Stat. § 120.13\(1\)\(h\)\(4\)](#)

# Early Reinstatement - Implications



- Pupil is expelled through end date on expulsion order even if reinstated early
- Expelled until age 21 means
  - Cannot play sports with WIAA even if enrolled in new district
  - Other school district does not need to enroll even if student had been reinstated

# **Conditional Enrollment** (new student to our district)

- May be instead of, or in addition to, the early reinstatement conditions the original district set
- Must relate to the reasons for the expulsion
- May not extend the term of expulsion
- If granted, school district mails 2 copies of order to pupil/parent
- If met, district admin or designee determines conditions have been met, or revoked

[Wis. Stat. § 120.13\(1\)\(h\)\(2m\)](#)

# 5 or 15?!



5

## Up to 5 Days

- Suspension
- Meeting with Dist. Admin. to challenge suspension
- Meeting with Dist. Admin. to challenge early reinstatement revocation, or conditional enrollment revocation
- Notice of expulsion hearing sent at least 5 days prior



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## Up to 15 Days

- Suspension when expulsion hearing notice sent
- Dist. Admin. presents finding on challenged suspension
- Appeal any early reinstatement conditions, or enrollment conditions, to the relevant school board

# What is Wrong Here?!

Casey is suspended for 15 days. The next day you send out a notice of the expulsion hearing. Casey's grandmother demands copies of the behavioral record concerning the expulsion. You show grandma the records and encourage her to have Casey's parents attend the hearing. The next day Casey's parents ask for a meeting to challenge the suspension. The principal meets with them 6 days later and tells them it will not be expunged. At the hearing neither Casey nor a parent attends. Your board reviews evidence and expels Casey. The board dictates enrollment conditions, including requiring an AODA assessment. 7 days later Casey's grandma appeals the conditions. DPI reviews the conditions.

# Disciplinary Change of Placement?

- If YES ----
  - Conduct a Manifestation Determination
- If NO -----
  - Proceed with proposed discipline and provide services.





# Disciplinary Change of Placement

- If there is a decision to change placement because of a violation of a code of student conduct:
  - Parents must be notified of the decision and provided with notice of procedural safeguards
  - Services and setting are determined by the child's IEP team
  - A **manifestation determination** is required within 10 school days of the decision to change placement



# Manifestation Determinations (Continued)

- The conduct must be determined to be a manifestation of the student's disability if it is determined that:
  - The conduct was caused by, or had a direct and substantial relationship to, the student's disability; or
  - The conduct was the direct result of the school's failure to implement the IEP



# If Behavior IS a Manifestation...

- Return student to previous placement unless an exception applies
- Conduct a functional behavioral assessment (FBA), unless one has previously been conducted, and implement a behavioral intervention plan
- If a BIP has already been developed, review the BIP and modify as necessary to address the behavior.



# If behavior is NOT a manifestation

- The school district may proceed with the change in placement
- FAPE must still be provided, which is determined by the IEP team.
- The services must enable the student to continue to participate and make progress in the general education curriculum and to make progress toward IEP goals.

# Exception/Interim Alternative Educational Setting



- Up to 45 school days
- The IEP team determines IAES
- Only for:
  - Weapons
  - Illegal drugs or controlled substances
  - Serious bodily injury



# Protections for Children Not Yet Eligible for Special Education

- District considered deemed to know if *prior to the behavior that led to the disciplinary action*:
  - ✓ Parent expressed concern in writing to administration or a teacher that the student is in need of special education and related services,
  - ✓ Parent requested an evaluation, or
  - ✓ Teacher or other LEA staff expressed specific concerns about a pattern of behavior directly to the director of special education or other supervisory personnel.



# When the Deemed to Know Provisions Don't Apply

The district does not have knowledge if:

- The student's parent did not consent to an evaluation
- Refused initial provision of special education services,
- Revoked consent for special education services, or
- The student was evaluated and determined not to be a student with a disability.

# Protections for Children Not Yet Eligible for Special Education



- A district must evaluate a student referred for special education during a period of disciplinary removal
- The evaluation must be conducted in an expedited manner

# Adverse Impact of Suspension



**Suspended students are less likely to graduate on time & more likely to be suspended again, repeat a grade, drop out of school, & become involved in the juvenile justice system**

US Department of Education (2014). *Guiding Principles: A Resource Guide to Improving School Climate & Discipline*. Washington, D.C. [www.ed.gov/school-discipline](http://www.ed.gov/school-discipline).



# Suspensions depress test scores

The higher the number of suspensions during a semester, the lower the *non-suspended* students' scores on end-of-semester reading & math evaluations

Perry, B.L. and Morris, E.W. (Dec 2014), "Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools." *American Sociological Review*.  
<http://edsources.org/2015/study-suspensions-harm-well-behaved-kids/72501#.VLPbdyvF-5W> accessed 13 January 2015.



# Zero tolerance policies don't work

Advancement Project and Civil Rights Project, 2000; American Psychological Association Zero Tolerance Task Force (2008)

- **Removal from school is too often a response to minor rule-breaking**
- **Excessive disciplinary exclusion harms some groups of children more than others**
- **Schools that reduce their suspension rates can simultaneously improve academic outcomes**
- **More effective practices can be found in thousands of schools across the country & many schools in WI**

<http://www.nea.org/home/alt-zero-tolerance-policies.html>

# What Can You Do?

1. Review your data
2. Review your discipline policy & procedures
3. Start a conversation with your school board about the rationale behind your policy & procedures
4. Consider changes for reducing the use of exclusionary discipline



# Trauma Sensitive Discipline

- **Clear limits and boundaries are set and enforced**
- **Discipline within the context of continued relationship**
- **Restore the harm, return to the community**
- **Ask what can be learned from the situation**
- **Provide rational detachment - it's not about YOU**
- **Consider institutional bias (how behaviors are viewed, how behaviors are punished)**
- **Involve natural supports (caregivers, allies)**



# Restorative Practices - Goals

- Understand harm and develop empathy
- Listen and respond to needs
- Encourage accountability and responsibility
- Reintegrate the harmer into the community
- Create caring school climate
- Change the system

Resources and Training at Wisconsin Safe and Healthy School Center (WISH Center) <https://www.wishschools.org/resources/restorativepractices.cfm>

# Resources - Check These Out!

## [DPI Answers to Frequently Asked School Discipline Questions](#)

US DOE Discipline Webpages:

<https://www2.ed.gov/policy/gen/guid/school-discipline/support.html>

**PBS Newshour: Schools Resolve Conflicts by Getting Kids to Talk Things Out** <https://www.pbs.org/newshour/show/schools-resolve-conflicts-by-getting-kids-to-talk-things-out>

**Book: Osher, D., Moroney, D., Williamson, S. *Creating Safe, Equitable, Engaging Schools: A Comprehensive Evidence-based Approach to Supporting Students*, Harvard Education Press, Cambridge, Massachusetts 2018**

**Online Tool: Addressing Root Causes of Discipline Disparities in School - An Educator's Action Planning Guide, American Institutes for Research,** <https://safesupportivelearning.ed.gov/sites/default/files/15-1547%20NCSSLE%20Root%20Causes%20Guide%20FINAL02%20mb.pdf>

Rethink School Discipline: School District Leader Summit  
on Improving School Climate and Discipline

# Resource Guide for Superintendent Action

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U.S. Department of Education

<http://tinyurl.com/ng4qy5u>

# **Thank you!**

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