



Education Law Center

Making sure that all of Pennsylvania's children
have access to quality public schools

WHEN CAN YOUR CHILD BE EXPELLED FOR BRINGING WEAPONS TO SCHOOL? (ACT 26)

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

*Act 26 (24 P.S. § 13-1317.2) is a Pennsylvania law which requires the **expulsion for at least one year** of any student who **possesses a weapon** on school property, at a school function, or going to and from school.*

Who is affected by Act 26?

Any student who **possesses** a weapon in school, or at a school activity, or going to and from school (including on public transit), must be **expelled for at least one year** under this law. The student does not have to use the weapon (or even intend to use it); it is enough to carry it, keep it in a locker or book bag, or hold it for a friend.

What is a weapon?

A **weapon** is defined by Act 26 as "any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle, and [anything else] capable of inflicting serious bodily injury." This definition may include box cutters, kitchen knives, pen knives on key chains, and other common household items. A narrower definition is used for cases involving special education students (*see next page*).

Will the police be notified?

Yes. Act 26 requires school officials to **notify the police** whenever they discover any weapon covered by the Act. This does not mean that the police must arrest the student.

Does a student have any rights in an expulsion case?

Yes. Before a student can be expelled, the student is entitled to a **formal hearing**. The student is entitled to advance notice of the hearing, and can request that the names of the witnesses against the student and copies of any statements made by those witnesses be provided to the student before the hearing.

At the hearing, the student has the right to bring an attorney, question the witnesses against him/her, and present evidence on the student's behalf. Although the hearing may be held before a Hearing Officer or a panel of the district's school board, the entire school board must vote on the expulsion. If a student wishes to challenge an expulsion decision, an appeal must be filed in the local county court within **30 calendar days** of the decision. For more information on expulsions generally, see our publication *Expulsions in Pennsylvania: Information for Parents and Guardians* at www.elc-pa.org.

Are there any exceptions to the rule that a student must be expelled for at least one year for possession of a weapon?

Yes. The **superintendent** of each school district can recommend that the child not be expelled on an individual basis. If a school district refuses to consider a student's **individual circumstances**, you may have grounds to appeal the expulsion in court. A **school district may not adopt a "zero tolerance policy"** that does not allow the superintendent to consider the individual circumstances of a student. The superintendent must be allowed to recommend to the school board that it impose less discipline than expulsion for one year.

Are students who receive special education affected by Act 26?

Not directly. Instead, a federal law called the Individuals with Disabilities Education Act (IDEA) requires that schools must use special procedures before students who receive special education may be expelled. However, if a student who receives special education brings a dangerous weapon to school, that student may be transferred to an alternative program for 45 days without parental consent while those special procedures take place. In order to make a 45-day transfer, the student must be in possession of a "dangerous weapon," which does not include a pocket knife with a blade of less than 2-1/2 inches. For more information about the discipline rights of students with disabilities, see our fact sheet entitled *School Discipline and Students with Disabilities* at www.elc-pa.org.

What happens to a student who has been expelled?

When a student is expelled, if the student is **under 17** and cannot find another school to attend within 30 days of the expulsion, the student's family must notify the school district in writing of the need for a program. It is then the school district's duty to provide the student with an educational program, although the law is not clear about what that program must look like.

A student in special education has the right to continue receiving special education services up until graduation or age 21, even if expelled. Those services would just have to be delivered outside of the regular school setting.

Does a student's family have to tell a new school district about an expulsion or disciplinary problems at another school?

Yes. Act 26 also requires that whenever a student registers in a new school district, the student's "parent, guardian, or other person having control or charge of a student" must fill out a form stating whether the student has ever been suspended or expelled from any public or private school in any state for offenses involving weapons, drugs, alcohol, willful injury to another person, or violence on school grounds. This form is called a "Parental Registration Statement."

Once the Parental Registration Statement is completed, the student must be admitted and provided with an education on the same terms as other students in that district. The only exception to this requirement is that a student expelled from one public school district for an Act 26 weapons offense may be excluded from the new district and placed in an alternative assignment for the duration of the old district's expulsion.

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