

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

*Act 26 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. Many students have faced expulsion as a result of this law. Here's what **you** need to know.*

### **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 the law. The student does not have to use the weapon; 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 Pennsylvania school law 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 keychains, and other common household items. A narrower definition is used for special education cases (*see* next page).

### **Does a student have any rights in an expulsion case?**

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, may question the witnesses against him/her, and may present evidence on the student's behalf. Although the hearing may be held before a hearing officer or a panel of the Board of School Directors, the entire school board must vote on the expulsion. If a student wishes to challenge an expulsion decision, an appeal must be filed in court within 30 days of the decision.

### **Will the police be notified?**

Act 26 requires school officials to **notify the police** whenever they discover any weapon covered by the Act. A separate law makes the possession of any such weapon on school grounds or on a bus traveling to or from school a crime.

## **Are there any exceptions to the rule that a student must be expelled for at least one year under Act 26?**

The **superintendent** of each school district has the power to recommend discipline other than expulsion 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 and recommend to the school board that it impose less discipline than expulsion for one year.

## **Are students in special education affected by Act 26?**

Federal law requires that special procedures must be used before students in special education may be disciplined, even after the passage of Act 26, and they cannot be disciplined for conduct related to their disability. However, a student in special education who brings a dangerous weapon to school may be transferred to an alternative program for 45 days without parental consent while those special procedures are used. In order to make a 45-day transfer, the student must be in possession of a **dangerous weapon**, which does not include pocket knives with blades of less than 2-1/2 inches.

## **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 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 give the new school a sworn statement saying 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 statement then becomes part of the student's record. Persons giving incorrect information on purpose can be charged with a third-degree misdemeanor, punishable by a fine of \$2500 or one year in jail.

**Once the sworn statement is provided, 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 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 expulsion by the old district.

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