EDUCATION LAW CENTER | FACT SHEET

EXPULSIONS IN PENNSYLVANIA

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In Pennsylvania, public schools have wide latitude to create rules, but they must follow their own rules. School rules cannot be arbitrary and cannot discriminate against a student based on a student's race, gender, disability, religion, or sexual orientation. A school can expel a student for a violation of a school rule only if the school has officially adopted the rule, distributed the rule in writing, and the rule states that its violation can lead to an expulsion. School rules should be listed in a published code of student conduct that is available to all students, parents, and guardians.[1]

WHAT IS AN EXPULSION?

An expulsion is any punishment that keeps your child out of school for more than 10 days in a row.[2]

HOW DOES EXPULSION DISPROPORTIONATELY HARM BLACK AND BROWN STUDENTS?

Due to racial bias and systemic and structural racism, Black and Brown students are disproportionately harmed by expulsion, both nationally and in Pennsylvania. Studies confirm that Black and Brown students are more likely to experience school expulsion than their white peers, despite not exhibiting higher rates of student misbehavior.[3]

In response to this troubling data, the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights found that adult decision-maker bias contributes to the disproportionate expulsion of Black and Brown students and that racial disparities persist even after controlling for other variables, such as poverty.[4] The advisory committee also found that culturally biased school codes, curricula, and school practices in Pennsylvania's schools contribute to the disproportionate exclusion of Black and Brown students.[5]

A study published in December 2022 also highlighted that racial bias contributes to racial disparities in school discipline in two interconnected ways: individual biases cause teachers to perceive the behavior of Black and Brown students to be more blameworthy when compared with that of white peers; and districts with a majority of students of color are more likely to institute a culture of control and utilize punitive approaches to discipline compared with predominantly white schools.

In addition, gross inequities in educational opportunity, including vast school funding inequities, disproportionately harm Black and Brown students in Pennsylvania, further fueling disproportionate expulsion rates. Underfunded schools often lack the resources necessary to support students with vital mental health services, engaging and culturally affirming curricula, and trauma-informed and restorative interventions.[6]

Expulsion has high costs: it removes students from learning environments, denies access to teachers and instruction, and leads to negative short-term and long-term outcomes for individuals and communities. Whenever a school expels a student, it exponentially increases the likelihood that the student will not return to school and that they will face a greater risk of justice involvement.[7]

HOW IS EXPULSION DIFFERENT FROM OUT-OF-SCHOOL SUSPENSION?

A school can "suspend" your child anywhere from one to 10 days. For suspensions that are one to three consecutive days, schools must provide notice to parents immediately and provide an opportunity for students to respond prior to imposing punishment. For suspensions of more than three days, schools must hold proper informal suspension hearings. See ELC's fact sheet, Suspensions in Pennsylvania. An exclusion from school for longer than 10 days in a row becomes an "expulsion" and comes within the rights and protections described in this fact sheet.

CAN A SCHOOL KEEP A STUDENT OUT FOR MORE THAN 10 DAYS WITHOUT AN EXPULSION HEARING?

No. Any exclusion for more than 10 days is considered an expulsion and requires a formal expulsion hearing, which may be appealed.[8] School officials cannot tell a family to keep their child home until a specific condition is met, such as getting the child a psychiatric evaluation, without holding an expulsion hearing; this is unlawful. There is no such thing as a "long-term suspension," and schools cannot keep students out of school for more than 10 days without an expulsion hearing.

WHAT IF THE SCHOOL KEEPS MY CHILD OUT OF SCHOOL FOR MORE THAN 10 DAYS, BUT REQUIRES THEM TO PARTICIPATE IN SCHOOL ON A VIRTUAL PLATFORM?

Recently, more schools have begun to exclude children from school by forcing them to participate in school virtually, rather than in person. For example, a school may seek to discipline a child by telling their parent that the child cannot come to school and advising them that the child must continue their schooling online. Under Pennsylvania law, if a child is excluded from school for more than 10 days, this is in fact an expulsion,[9] and all the protections laid out in this fact sheet apply. If this happens to your child, show the school this fact sheet and ask that they provide you with the reason for the placement into virtual schooling in writing. **You should request that the school grant you a formal expulsion hearing if the exclusion occurs for more than 10 days.**

MY CHILD WAS SUSPENDED FOR 10 DAYS, AND AN EXPULSION IS 'PENDING.' CAN MY CHILD GO BACK TO SCHOOL ON THE 11TH DAY?

Yes. Your child has the right to go back to school while waiting for a formal expulsion hearing or an expulsion decision. A child cannot be excluded from school except in limited circumstances where the school determines by informal hearing that the student is a threat to school safety, and it is not possible to hold a formal hearing — in which case the student may be kept out of school for more than 10 days in a row before the hearing is held.[10] However, the school must provide the student with alternative education (which can include home study) while the student waits for the hearing to occur. In any case, a school may not keep a student out of school for longer than 15 school days, even in an "emergency," unless a formal hearing is held, or both the parents and the school district agree.[11]

I WAS EMAILED WITH THE DATE OF MY CHILD'S EXPULSION HEARING THE NIGHT BEFORE THE HEARING. IS THAT LEGAL?

No. The school must send you the date, time, and location of the expulsion hearing **at least** three days before the hearing.[12] The school must send you that information by certified mail.[13] You can ask for the hearing to be rescheduled if you have a good reason for why you cannot make the hearing, such as needing more time to find a lawyer or an advocate. This notice must be in a language you understand.

DOES MY STUDENT HAVE ANY RIGHTS IN THE EXPULSION PROCESS?

YES!

Before the hearing: You always have the right to ask for a less serious punishment. Before the hearing, you have the right to the names of any witnesses that may be called against your child and the right to review copies of statements or affidavits of those witnesses.[14] You have the right to ask that witnesses be present at the hearing.[15]

During the hearing: You have the right to bring a lawyer to the hearing.[16] You can also bring a nonlegal advocate or support person with you. You have the right to bring your own witnesses to the hearing.[17] The hearing must be held in front of the school board, a committee appointed by the board, or a hearing officer. The expulsion hearing must be recorded.[18] You have the right to question any witnesses who testify against your child.[19] You also have the right to present your own evidence. You can have witnesses testify to your child's good reputation in the school and/or the community where you live — or provide a letter if they cannot be there in person. You can tell your child's side of the story and why you believe the school should not expel your child. The hearing must be held in private unless the student or parent requests a public hearing.[20]

After the hearing: You can request a copy of the written record of the hearing, but you may have to pay for it (this will be needed if you decide to appeal the decision to state court). A free transcript of the hearing must be provided to an indigent student.[21] If a committee or hearing officer heard the evidence at your child's expulsion hearing, after the hearing they will make a recommendation to the school board. After that, the full board must vote on the recommendation. You have the right to request to speak before the school board. The vote of the full school board is what ultimately determines if your child is expelled or not.[22]

DO YOU HAVE ANY ADVICE I CAN USE DURING THE HEARING?

Expulsion hearings usually have two parts. First, the school must prove that your child violated a written school rule. Second, the school must prove that expulsion is the correct punishment for your child's misbehavior. At the hearing, you should focus on explaining your child's conduct and any circumstances that may have contributed to the conduct. For example, if a fight in school happened because your child was being bullied for reasons related to your child's disability, the failure of the school to follow your child's IEP, or the failure to evaluate your child, you should mention that at the hearing. You should also focus on reasons that your child should not be expelled, such as that your child has never been in serious trouble at school before, or that requests to meet with the school to discuss issues with your child have been ignored, or that your child has suffered a recent trauma.

WHAT HAPPENS IF MY CHILD IS EXPELLED?

If the full school board votes to expel your child, you can appeal the expulsion to the local county Court of Common Pleas.[23] Importantly, If the hearing was held before a committee of the school board, the decision is not final until it has been approved by the full board.[24] Try to talk to a lawyer about this — and do so quickly. **Any appeal must be filed within 30 calendar days of the expulsion decision.** Your lawyer may also be able to get a court order returning the child to school while the appeal goes forward.[25]

Note: The expulsion can be appealed only if the decision is the result of a formal hearing and vote by the school board. If you waive the hearing and the child is expelled, that decision **cannot** be appealed unless waiver of the hearing was coerced or otherwise not based on informed consent.[26]

WHERE CAN MY CHILD GO TO SCHOOL AFTER THEY HAVE BEEN EXPELLED?

Expelled students under 18 years old must continue to get an education. The child's parents must arrange for this in the first instance. You can find another school (like a private school, charter school, or cyber charter school).[27] You can also arrange for homeschooling.[28] However, if you are unable to do so, promptly notify the school district or charter school in writing. If you provide written evidence to the district within 30 days that you are unable to provide for your child's education, the district must make provision for the student's education within 10 days.[29]

WHAT HAPPENS IF I MOVE TO ANOTHER SCHOOL DISTRICT AFTER THE EXPULSION? CAN MY CHILD ATTEND SCHOOL THERE?

Yes. School districts cannot "honor" another district's expulsion but rather are obligated to educate your child.[30] However, if your child was expelled for possession of a weapon at school, the new school district can force your child to attend an alternative education program for the duration of their expulsion.[31] See ELC's fact sheet on Weapons at School: Student Rights and Disciplinary Consequences if your child is facing expulsion for weapons in school. Additionally, if your child was expelled for a conviction or adjudication of delinquency for sexual assault, the school to which your student transfers may assign the student to an alternate education program.[32]

STUDENTS WITH DISABILITIES

The procedures described above apply to students with and without disabilities. However, there are additional protections for students with disabilities.

Expulsion: Students with disabilities who receive special education services can be expelled from school. But a team of people knowledgeable about the child — including the parent — must decide whether the misbehavior was a "manifestation" of the disability *before* the discipline can be imposed. This meeting – called a "manifestation determination review" – must take place within 10 days of the decision to expel the child.[33] If it was a manifestation of the child's disability, the child cannot be expelled, except in a few serious circumstances. The IEP team must also conduct a functional behavioral assessment or revise the child's positive behavior support plan.[34] If the team decides it was not a manifestation of the disability and the parent disagrees with the team's decision, the parent has the right to request a special education hearing to challenge the child's exclusion from school.

Even if a student with disabilities is expelled, the school district or charter school must still arrange for the student to receive a free, appropriate public education in compliance with the child's IEP for the entire time the child is out of school.[35]

A child with intellectual disabilities cannot be expelled without the parent's agreement, the agreement of the state Department of Education, or an order from a hearing officer or judge.[36]

While the strict obligations relating to manifestation determinations do not apply to students who have 504 plans, schools must conduct an evaluation of whether the student's misconduct was caused by the child's disabilities prior to expelling the student.[37] These students are also entitled to due process protections, including notice and an opportunity to be heard in an impartial hearing.

Importantly, a child who has not yet been identified as eligible for special education services may also assert these protections if (1) the parent has previously expressed concern in writing to school officials that the child needs special education; (2) the parent has requested a special education evaluation; or (3) the teacher or other school staff has expressed concern about the behavior of the child to special education officials.[38]

There is a special exception to these rules that permits a school official to transfer the student to an alternative setting for up to 45 days even without a parent's consent if the student (1) carries or possesses a weapon, (2) knowingly possesses, uses, or sells illegal drugs or a controlled substance, or (3) inflicts serious bodily injury.[39] In those cases, this transfer may be challenged through a due process hearing on an expedited basis.

For more information, see ELC's handbook, The Right to Special Education in Pennsylvania.

FAMILIES WHOSE NATIVE LANGUAGE IS NOT ENGLISH

Parents/guardians and students who do not speak English have the right to information concerning disciplinary matters in their native language. This includes the code of student conduct and notices concerning disciplinary hearings and decisions. Families have the right to use translation and/or interpretation services throughout the discipline process, including all meetings and hearings. They can bring a translator/interpreter or request that the district provide one.[40]

For more information, see ELC's fact sheet on the Rights of Multilingual and Culturally Diverse Students and Families.

See this fact sheet translated in Spanish.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) — or contact another attorney of your choice.

[1] 22 Pa. Code § 12.3(c) and § 12.6 (board must "define and publish the types of offenses that would lead to exclusion from school").
[2] 22 Pa. Code § 12.6(b)(2).
[3] Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, The *Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URBAN REVIEW, 317-324 (2002).
[4] Pa. Advisory Comm'n to the U.S. Comm'n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* 20-21 (2021), https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf..
[5] *Id.* at 18-19.
[6] *Id.* at 6.
[7] *See, e.g.*, American Civil Liberties Union of Pennsylvania, *Beyond Zero Tolerance: Discipline and Policies in Pennsylvania Public Schools*, at 7 (Feb. 2015).
[8] 22 Pa. Code § 12.6(b)(2).
[9] 22 Pa. Code § 12.6(b)(2).
[10] 22 Pa. Code §§ 12.6(c), (d).
[11] *Id.*
[12] 22 Pa. Code §§ 12.8(b)(1), (2).
[13] *Id.*
[14] 22 Pa. Code §§ 12.8(b)(5), (6).
[15] *Id.*
[16] 22 Pa. Code § 12.8(b)(4).
[17] 22 Pa. Code § 12.8(b)(7).
[18] 22 Pa. Code § 12.8(b)(8).
[19] 22 Pa. Code § 12.8(b)(6).
[20] 22 Pa. Code § 12.8(b)(3).
[21] 22 Pa. Code § 12.8(b)(8).
[22] 22 Pa. Code § 12.8(b).
[23] 42 Pa.C.S.A. § 933(a)(2) (providing for review of local agency action).
[24] 22 Pa. Code § 12.8(b).
[25] *See, e.g., Yatron v. Hamburg Area School District*, 631 A.2d 758, 761 (Pa. Commw. Ct. 1993).
[26] Because the jurisdiction of courts of common pleas is limited, under § 933(a)(2), to review of local agency action "under Subchapter B of Chapter 7 of Title 2 [Pa.C.S.A.]," and because that subchapter pertains to "adjudications" of local agencies, only disciplinary decisions that qualify as "adjudications" are reviewable on direct appeal.
[27] 24 P.S. §§ 13-1326, 13-1327; 22 Pa. Code § 12.6(e).
[28] 24 P.S. § 13-1327.1.
[29] 22 Pa. Code §§ 12.6(e)(2), (e)(3).
[30] *Hoke v. Elizabethtown Area School District*, 833 A.2d 304 (Pa. Commw. Ct. 2003) (district lacked statutory authority to discipline student for behavior that occurred before he enrolled in the district).
[31] 24 P.S. § 13-1317.2(e.1).
[32] 24 P.S. § 13-1318.1(f).
[33] 34 C.F.R. § 300.530(e).
[34] 34 C.F.R § 300.530(f).
[35] 20 U.S.C. § 1412(a)(1).
[36] 22 Pa. Code § 14.143(b).
[37] *See Washington (CA) Unified Sch. Dist.*, 29 IDELR 486 (OCR 1998).
[38] 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534(b).
[39] 34 C.F.R. § 300.530(f)(2),(g).
[40] *See, e.g.,* U.S. Dep't. of Educ. & U.S. Dep't. of Just., *Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them* (2015), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf.