

## WEAPONS AT SCHOOL: STUDENT RIGHTS AND DISCIPLINARY CONSEQUENCES (ACT 26)

August 2023

Under Act 26 (24 P.S. § 13-1317.2), a student who brings a weapon to school can face severe punishment. A student with a weapon at school, at a school event, or traveling to or from school can be expelled for one year or more, with certain exceptions. The student does not have to use the weapon. It is enough to carry the weapon, keep it in a locker or book bag, or hold it for a friend.

### Special Considerations

#### What if a teacher sees a weapon in a student’s home during remote learning?

A school district cannot expel a student under Act 26 for possessing a weapon at home under these circumstances.

#### Where does Act 26 apply?

Act 26 applies to students at school, at a school-sponsored activity, or on school transportation (such as a school bus).<sup>1</sup>

#### Everyday objects are NOT weapons

This law defines a weapon as “any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily harm.” Courts have decided this law only applies when a student possesses an actual weapon. Under Act 26, schools cannot expel students for bringing or using everyday objects – such as cell phones, pencils, or book bags – to harm other students. This is true even if the object is used during a fight. ***Schools can still issue other forms of discipline even if Act 26 does not apply.***

### *Advocacy Checklist*

Objects That ARE Weapons Under Act 26	Objects That Are NOT Weapons Under Act 26
✓ Listed in Act 26’s definition of a weapon: knife, cutting instrument/tool, nunchaku, firearm, shotgun, rifle	X Objects that are not inherently dangerous, including objects regularly found in school (book, backpack, cafeteria tray, ruler, etc.)
✓ Similar to a knife, firearm, or other object listed in Act 26	X Items used as part of an approved school program (e.g., saw used during woodshop)
✓ Causes serious injury when used normally (fireworks, BB gun, item with blade, mace, etc.)	X Replica of a weapon (toy gun, model rocket, etc.)

## Replicas are NOT weapons

A replica of a weapon, such as a toy gun, is *not* a weapon for purposes of Act 26. Under Act 26, an object is considered a weapon based on its “inherent operational capabilities” whereby the object is capable of causing serious bodily injury in a “practical and functional” sense.<sup>2</sup> Toy guns and other replicas are not objects that are inherently capable of causing serious bodily injury. Therefore, a school district may not expel a student under Act 26 for possessing a replica or toy weapon.

**If your child is being expelled or has been expelled under Act 26, and you do not think the item they possessed is a weapon, inform the school district immediately in writing. Attached to this fact sheet is a sample letter for requesting that the expulsion under Act 26 be reversed.**

## The superintendent safety valve

Act 26 is a “zero tolerance” law. This means that the law requires harsh punishment for students who violate it. However, on a case-by-case basis, the school district superintendent can recommend less severe punishment. For example, the superintendent can suggest that a student be expelled for less than a year, not be expelled at all, or face some other form of school discipline that is less serious than an expulsion. It is a good idea to reach out to your child’s superintendent directly: You can ask them to use this discretion and suggest other forms of punishment, such as community service or a shorter length of exclusion from school.

## The right to an expulsion hearing

Students have the right to a formal hearing before they can be expelled. The hearing can be held before a hearing officer or a panel of the Board of School Directors, but after the hearing, the entire school board must vote on the expulsion. Students have important rights during this process. For more information on your rights when facing expulsion, see ELC’s fact sheets [Expulsions in Pennsylvania](#) and [Suspension and Expulsion Toolkit](#).

School staff may ask you to sign a “waiver” agreeing to an expulsion for a limited term, or to agree to a specific arrangement for your child’s education during a proposed period of expulsion. By signing the waiver, you are agreeing to its terms, including waiving your right to challenge the expulsion from school. If you do not want to agree to the school’s proposed terms, you should not sign the waiver. You can assert your right to proceed to a formal expulsion hearing, and the hearing must proceed.

You can also request that the period of expulsion be shortened to a month or the remainder of the semester instead of an entire school year or a permanent expulsion.

The following chart shows some key rights that students have when facing a possible expulsion.

### Key Student Rights During the Expulsion Process

Rights Before the Hearing:	Rights at the Hearing:
To know the basis of the expulsion	To bring an attorney and a parent/guardian
To know when and where the hearing will be	To question the witnesses against you and bring your own witnesses
To ask for the names of any witnesses against you and copies of witness statements	To present facts supporting your case and testify

#### The right to appeal an expulsion decision

If the school board approves an expulsion decision, you can appeal the decision to your local Court of Common Pleas. Consult a lawyer about this – and do so quickly since ***the appeal must be filed within 30 calendar days of the school board’s decision***. In many cases, parents fail to receive an expulsion decision for days or weeks after the decision is entered, providing few days for parents to file a timely appeal. Your lawyer may be able to get a court order allowing the student to return to their regular school during the appeal process. Your lawyer can also argue that the district or charter school failed to provide timely notice of the school board’s decision. You should call your district or the hearing officer assigned to your case to learn when the school board will consider the hearing officer’s recommendation concerning your child.

#### Rights during expulsion

During an expulsion, a student under the age of 18 must continue to receive an education. If the student is not eligible for special education services, this burden initially falls on the parent. If you cannot arrange for it, either by finding another school or arranging for homeschooling, promptly notify your child’s school district or charter school in writing within 30 days. Then the district or charter school must provide for your child’s education within 10 days. If your child has been expelled and is not receiving an adequate education – for instance, if your child is receiving only a few hours of instruction a week – contact the Education Law Center.

While serving an expulsion, typically, if a child moves to a new school district, the new school district cannot refuse to enroll the child because they were previously expelled. Unfortunately, **expulsions for weapons are one of the exceptions to this rule**. If your child moves to another school district in Pennsylvania while still serving a weapons expulsion, a new school district can choose to place your child in an alternative education for disruptive youth program for the duration of the expulsion.

#### Rights after expulsion

After the student has served their expulsion, the student must be allowed to return to the district. The district cannot put conditions on the child’s return – such as requiring the student to get a psychological evaluation or requiring a parent to participate in a conference or to drop the child off in person.

After returning to school, the child must also be given an education on the same terms as other students in that district. The child cannot be placed in certain classes or programs solely on the basis of their previous expulsion.

### **Additional protections for students with disabilities**

Students with disabilities have all the rights listed here plus additional protections. For example, prior to an expulsion hearing, the student’s IEP team must hold a “manifestation determination” to consider all relevant information and determine whether the possession of a weapon at school was related to or caused by the child’s disability. If it was, then the child cannot be subject to the same discipline as nondisabled students.

However, a student can be transferred to an “interim alternative educational setting” for 45 days without regard to whether the behavior was a manifestation of the student’s disability if the student carries or possesses a weapon at school, on school premises, or at a school function.<sup>3</sup> The 45-school-day interim alternative educational setting must be determined by the IEP team and the educational setting selected must enable the student to continue to participate in the general curriculum, receive services and modifications in the current IEP, and receive services and modifications designed to address the behavior.<sup>4</sup>

Also, during an expulsion, students with disabilities have the right to continue receiving special education services and are still entitled to a free appropriate public education (FAPE) until graduation or age 21. Depending on the child’s needs and educational program, these services may need to be provided within a regular school setting. See ELC’s handbook, [The Right to Special Education in Pennsylvania](#), for more information.

### **Additional protections for multilingual families**

Students and parents whose native language is not English also have the right to interpretation and translation services if they have limited English proficiency. You should notify your school prior to the hearing if you need these services.

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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, community engagement, 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](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> 24 P.S. s. 1317.2(a).

<sup>2</sup> *S.A. by H.O. v. Pittsburgh Pub. Sch. Dist.*, 160 A.3d 940, 945 (Pa. Cmwlth. 2017) (pencil could not qualify as a weapon under Act 26 regardless of the manner in which the object was used or extent of injury caused).

<sup>3</sup> See 34 C.F.R. § 300.530(g)(1) (permitting an LEA to change the placement of a student eligible for special education to an interim alternative educational setting for not more than 45 school days if the student brings a weapon to school or at a school function.) For purposes of this provision, weapon has the meaning given the term "dangerous weapon" and is defined as "a weapon, device, instrument, material, or substance, animate or inanimate that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length." 18 U.S.C. § 930(g)(2).

<sup>4</sup> See 22 Pa. Code Section 14.35 and Basic Education Circular, Disciplinary Exclusions of Students Who Are Eligible for Special Education, available at <https://www.education.pa.gov/Policy-Funding/BECS/PACode/Pages/DisciplinaryExclusionsSpecEd.aspx#:~:text=IDEA%202004%20and%2034%20C.F.R.,or%20at%20a%20school%20function>.

## SAMPLE LETTER REQUESTING THAT THE DISTRICT WITHDRAW EXPULSION CHARGES

Date: \_\_\_\_\_

**Re: Student Name:** \_\_\_\_\_ **Date of Birth** \_\_\_\_\_

Dear \_\_\_\_\_ (Principal, Solicitor, and/or Superintendent),

I am a parent/guardian of \_\_\_\_\_ (hereinafter “the student”) who attends \_\_\_\_\_ School in \_\_\_\_\_ School District (hereinafter “the District”). The District is currently in the process of seeking to expel this student for possession of a weapon, pursuant to § 13-1317.2 (“Act 26”) of the Pennsylvania School Code. The student is being expelled for possessing a \_\_\_\_\_.

Under Act 26, “a school district . . . shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a weapon on any school property. . .” 24 P.S. § 13-1317.2. Section 13-1317.2(g) states, “As used in this section, the term ‘weapon’ shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and *any other tool, instrument or implement capable of inflicting serious bodily injury.*” *Id.* (emphasis added). Since the item possessed by the student in this case is not listed in Act 26, I must assume that the District is taking the position that this item is an “*other tool, instrument or implement capable of inflicting serious bodily injury.*”

The Commonwealth Court of Pennsylvania limited what school districts can consider an “other tool, instrument or implement capable of inflicting serious bodily injury.” In S.A. by H.O. v. Pittsburgh Public School District, 160 A.3d 940 (Pa. Cmwlth. 2017) the court unanimously ruled that, under §13-1317.2, a weapon is defined by “its inherent operational capabilities; that is, what the object is intended to do in the practical and functional sense.” 160 A.3d 944-45. The court clarified that an ordinary object – for instance, a pencil, cafeteria tray, or backpack – cannot become a weapon based on “the manner in which the object was used by the student or the severity of the actual injury inflicted on the victim.” *Id.* Instead, the court held that for an item to be an “other tool, instrument or implement capable of inflicting serious bodily injury,” it must be similar to a knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle, etc. Further, the court noted that for items to fit within the catchall language of § 13-1317.2(g) it would typically “contain a metal blade, discharge projectiles, or otherwise [be] traditional weapons that serve no innocuous purpose when brought onto school grounds.” *Id.* at 947.

My child is being expelled for possession of a \_\_\_\_\_. This is not a weapon because it is (*check all that apply*):

- not** a knife, cutting instrument, cutting tool, explosive, mace, nunchaku, firearm, shotgun, or rifle;
- not** an object that is regularly used or meant to be used to cause serious bodily harm to others;
- not** an object that contains a metal blade, discharges projectiles, or is otherwise a traditional weapon.

The Commonwealth Court of Pennsylvania made clear that a district cannot expel a student for “possession of a weapon” unless the item is inherently capable of and intended to cause injury. Since the student did not possess such an item, the District is barred from expelling the student for possessing a weapon under § 13-1317.2 of the School Code.

***As the student’s parent/guardian, I request that the District withdraw the pending disciplinary charges against them. I further request that all references to these disciplinary proceedings be removed from the student’s record.***

Thank you very much for your prompt attention to this matter. Please acknowledge receipt of this letter in writing. Should you have any questions about this request, please contact me by phone or email.

Sincerely,

\_\_\_\_\_

Parent/Guardian of: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_