



# **Answers to Frequently Asked School Discipline Questions**



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Wisconsin Department of Public Instruction  
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The Department of Public Instruction frequently receives questions about various issues pertaining to educating students. It is the purpose of this bulletin to answer questions frequently asked. The answers given are not intended to serve as legal advice and cannot substitute for legal guidance in specific cases. The citations are to the Wisconsin Statutes that are available at any public library.



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# Introduction

This document outlines the rights and responsibilities related to school discipline in Wisconsin public schools. It outlines the provisions under which students' rights to attend public schools may be denied.

This document organizes the above information in a question and answer (Q and A) format. The answers provided are formulated through reviews of case law, Attorneys General's opinions, and DPI policies and procedures. The statutory citations found in School Board Powers related to suspension and expulsion of students from public schools are located in ss. 120.13 and 119.25, Wis. Stats., and those related to the removal of pupils from class are located in s. 118.164, Wis. Stats. Finally, the reference to free public education is located in article X, section 3, of the Wisconsin Constitution, and s. 121.77, Wis. Stats.

We hope that this document can provide answers to the questions the reader has related to student discipline. It is not uncommon for the interpretation of statutes and the application of those same laws to be viewed quite differently by interested parties. When that occurs, it is necessary to attempt to achieve resolution of those disputes at the local level. Both constitutional and statutory powers of the state superintendent and the department are extremely limited in serving as an avenue of appeal for student discipline cases. This is due in large part to our state's strong reliance on a system of "local control." While department staff can attempt to clarify options available, ultimately parties will need to attempt negotiation of disputes through local channels.

The Department of Public Instruction frequently receives questions about various issues pertaining to educating students. It is the purpose of this bulletin to answer questions frequently asked. The answers given are not intended to serve as legal advice and cannot substitute for legal guidance in specific cases. The citations are to the Wisconsin Statutes that are available at any public library.

Additional resources, including websites of interest, are referenced in the appendices.



# Constitutional and Statutory Basis for Free Public Education for Students in Wisconsin

The Wisconsin Constitution guarantees a free public education for children ages 4 through 20\* who have not graduated\*\* from high school. The requirement of the local school district to provide free public elementary and secondary education to resident children is stated in s. 121.77 (1), Wis. Stats., as follows: “Every elementary school and high school shall be free to all pupils who reside in the district.” For school attendance purposes, a child is a resident of the district where he or she lives regardless of where his or her parent lives, unless he is there “for the sole purpose of having the privileges of the public school of the district to which he may be transferred.” *State Ex Rel. School-District Board V. Thayer, State Superintendent*, 74 Wis. 48, 41 N.W. 1014, 1017 (1889). This rule has been consistently followed by the courts; see *State Ex Rel. Smith V. Board Of Education of City Of Eau Claire*, 96 Wis. 95, 71 N.W. 123 (1897) and *Kidd V. Joint School Dist. No. 2, City Of Richland Center And Town Of Richland*, 194 Wis. 353, 216 N.W. 499 (1927). Contrary to some beliefs, no case or state statute has imposed a requirement that the pupil intends to remain in the district for any particular time.

A school district may deny education services only if a student is not a resident of the district or if a student is currently expelled from another Wisconsin public school district, ss. 119.25 and 120.13 (1) (f), Wis. Stats.

\*A local education agency (LEA) must make available a free appropriate public education (FAPE) to children with disabilities who are at least 3 years old but not yet 21 years old and who have not graduated from high school and, for the duration of a school term, any person who becomes 21 years old during that school term and who has not graduated from high school, s. 115.76 (3), Wis. Stats.

In other words, the right to FAPE for a child with a disability who has not yet graduated from high school continues until the end of the school term in which he or she turns 21. “School term” is defined as the time beginning with the first school day and ending with the last school day that the LEA’s schools are in operation for the attendance of pupils during the school year, other than for the operation of summer classes.

\*\* A High School Equivalency Diploma (HSED) is not considered high school graduation for these purposes.

## Suspension

### 1. What is the school district’s authority to suspend a pupil?

The authority of a school district to suspend a pupil is found under s. 120.13 (1) (b), Wis. Stats. The law permits a school district administrator, any principal, or teacher designated by the school district administrator to suspend a pupil:

- a. For disobeying school rules.
- b. For conveying any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by explosives.

- c. For conduct while at school, or under the supervision of a school authority, which endangers the property, health or safety of others.
- d. For conduct while not at school, or while not under the supervision of school authority, which endangers the property, health or safety of others at school or under the supervision of a school authority or endangers the property, health or safety of any employee or school board member in the pupil's district. Conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.
- e. The law *requires* suspension if the student possessed a firearm while at school or under the supervision of the school authority, s. 120.13 (1) (bm), Wis. Stats.

**2. What notifications must a school district make as part of suspending a student?**

Prior to suspending a student, the student must be told the reason for the proposed suspension. The parent or guardian of a suspended minor student must be given prompt notice of the suspension and the reason for the suspension, s. 120.13 (1) (b) 3, Wis. Stats.

**3. For how long may a student be suspended from school?**

A student may be suspended for up to five school days. However, if a notice of an expulsion hearing has been sent, the pupil may be suspended for up to 15 consecutive school days, s. 120.13 (1) (b), Wis. Stats.

Note: Special provisions apply when the student is a child with a disability. For review of these provisions, see the federal special education regulations, 34 CFR 300.530 - 300.537 and the Information Update Bulletin 06.02 available on the special education website <http://dpi.wi.gov/sped/bul06-02.html>.

**4. May a suspension be appealed?**

A parent or pupil may, within five school days following the commencement of a suspension, have a conference with the school district administrator or his/her designee. The designee may not be the principal, an administrator, or a teacher in the child's school. If the school district administrator or his/her designee finds that the child was suspended unfairly or unjustly, or the suspension was inappropriate given the nature of the offense, or the child suffered undue consequences or penalties as a result of the suspension, reference to the suspension must be removed from the child's records. The finding must be made within 15 days of the conference, s. 120.13 (1) (b), Wis. Stats.

The State Superintendent of Public Instruction does not have authority to review suspensions; see *Madison Metropolitan School District (Lenny G.) v. Wis. DPI.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

**5. May students who are suspended make up work missed during the suspension?**

Yes. No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The school's attendance policy shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension, ss. 118.16 (4) (b) and 120.13 (1) (b), Wis. Stats.

## Removal from Classroom

### **6. May a student be removed from a particular class without being expelled or suspended from school?**

Yes, a teacher may remove a pupil from the teacher's class if the pupil violates the code of classroom conduct adopted by the school board under s. 120.13 (1) (a), Wis. Stats. The teacher may also remove the pupil from his or her classroom if the pupil is dangerous, unruly or disruptive, or exhibits behavior that interferes with the ability of the teacher to teach effectively, as specified in the code of classroom conduct, s. 118.164 (2), Wis. Stats.

Note: Special provisions apply when the student is a child with a disability. For review of these provisions, see the federal special education regulations, 34 CFR 300.530 - 300.537 and the Information Update Bulletin 06.02 available on the special education website <http://dpi.wi.gov/sped/bul06-02.html>.

### **7. What is the classroom code of conduct?**

School boards are required to adopt a code of classroom conduct, s. 120.13 (1) (a), Wis. Stats. The code of conduct is to be developed in consultation with a committee of school district residents that consists of parents, pupils, members of the school board, school administrators, teachers, pupil service professionals, and other residents of the district appointed by the school district.

The code of conduct may provide different standards of conduct for different schools and must include:

- A specification of what constitutes dangerous, disruptive and unruly behavior or behavior that interferes with the ability of the teacher to teach effectively.
- Any additional grounds for removal of a pupil from class.
- The procedure for determining the appropriate educational placement of a pupil who has been removed from class.
- A procedure for notifying the parent and guardian that their child has been removed from class.

### **8. If a teacher removes a student from class, what procedures must the teacher follow?**

The teacher shall send the pupil to the school principal or his/her designee and notify the school principal or his/her designee immediately of the reasons for the removal. The teacher shall provide the principal or his/her designee, within 24 hours of the pupil's removal, a written explanation of the reasons for the removal, s. 118.164 (2), Wis. Stats.

### **9. If a student is removed from class by a teacher, does the student have a right to educational services?**

Yes, the principal has four placement options under s. 118.164 (3) (a), Wis. Stats., for the student who has been removed from class:

- a. The student may be placed in an alternative education program under s. 115.28 (7) (e) 1, Wis. Stats.
- b. The student may be placed in another class in the school or another appropriate place in the school, as determined by the principal or his/her designee.
- c. The pupil may be placed in another instructional setting.

- d. The pupil may be placed back in the classroom from which he/she was removed if, after weighing the interests of the removed pupil, the other pupils in the class and the teacher, the school principal or his/her designee determines that re-admission to the class is the best or only alternative.

Note: A teacher, school board, school district administrator or their designee is not prohibited from further disciplining a pupil who has been removed from class using this procedure, s. 118.164 (3) (b), Wis. Stats.

## Expulsion

### 10. What is the school district's authority to expel a child?

The authority of a school district to expel a pupil is found under ss. 120.13 (1) (c) and 119.25, Wis. Stats. A pupil may be expelled from school:

- If the school board finds the pupil guilty of repeated refusal or neglect to obey school rules.
- For threatening to destroy school property by explosives.
- For engaging in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others.
- For conduct while not at school or while not under the supervision of school authority which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member in the pupil's district.
- For conduct that endangers a person or property, including making a threat to the health or safety of a person or making a threat to damage property.

In addition, the school board may expel from school a pupil who is at least 16 years of age or older if the school board finds that the pupil repeatedly engaged in conduct while at school, or while under the supervision of school authorities, that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority.

Finally, a school board *shall* commence proceedings and expel a pupil for at least one year for possession of firearms on school property. The board may, however, modify this requirement on a case-by-case basis, ss. 119.25 (2) (a) 2 and 120.13 (1) (g), Wis. Stats.

Note: Special provisions apply when the student is a child with a disability. For review of these provisions, see the federal special education regulations, 34 CFR 300.530 - 300.537 and the Information Update Bulletin 06.02 available on the special education website <http://dpi.wi.gov/sped/bul06-02.html>.

### 11. What standards are to be met in order for a school board to expel a student?

There must be evidence presented to the board to establish that the facts alleged in the notice of expulsion hearing are true; that since the grounds for expulsion listed in the notice of hearing are met and that the board is "satisfied that the interest of the school demands the pupil's expulsion," s. 120.13 (1) (c) 1, Wis. Stats.

In determining whether the interest of the school demands expulsion, the board may want to consider the following:

- Are consequences other than expulsion available (through the school or the community)?
- Other educational alternatives available that will maintain a safe, learning environment.
- The severity of the misconduct.
- Availability of community resources to address the misconduct.
- The effect the misconduct had on the school environment.
- Whether expulsion is necessary to counter this effect.

## **12. When is an expulsion required by state statute or federal law?**

State law requires expulsion for only one type of violation, whenever a student possesses a firearm at school or while under the supervision of a school authority, s. 120.13 (1) (c) 2m, Wis. Stats. Note that this requirement does not apply while legally hunting in a school forest if allowed under s. 120.13 (38), Wis. Stats. While the law requires a one year expulsion for firearms that meet the federal definition, school boards may modify the order on a case-by-case basis, s. 120.13 (1) (g), Wis. Stats. The federal requirement calls for states to adopt the legislative language referenced above in order to remain eligible to receive federal funds under the Elementary and Secondary Education Act (ESEA). This law requires state legislatures to use the U.S. Code definition of “firearm” when implementing its Gun Free Schools Act provisions in state statutes. The definition is included in Appendix A. Under the U.S. Code definition of “firearm,” handguns, rifles, and shotguns are included, but other types of “weapons,” including knives, and BB guns are not included, and, therefore, do not require school boards to expel students that are in possession of them. While local policy may dictate that students with other such “weapons” be subject to expulsion, the law does not require it.

Many school districts have adopted so-called “zero tolerance” policies which require expulsion for a range of behaviors and violations. Please note that this approach is a philosophy and not a required approach to student discipline, with the exception of firearm possession. Zero tolerance could be used to say that these behaviors will not be tolerated and will be immediately dealt with using a range of options designed to stop the behaviors, prevent future violations and protect the safety of the school environment.

## **13. Must a district provide notice of an expulsion hearing?**

Yes. The school district must send a written notice to the parent and to the pupil at least five calendar days prior to an expulsion hearing. The notice must specify the particulars of the pupil’s alleged conduct warranting expulsion, must state the time and place of the hearing, and must state that the hearing may result in the pupil’s expulsion. The notice must also include other specific rights, including the places in the state statutes where the pupil expulsion laws are found, ss. 119.25 and 120.13 (1) (c), Wis. Stats.

## **14. Is an expulsion hearing closed to the public?**

Upon the request of the pupil and, if the pupil is a minor, the pupil’s parent or guardian, the hearing shall be closed. In addition, in the absence of pupil or parent request to close the hearing to the public, a school board may determine to conduct a closed hearing based on rules governing the conduct of a school board meeting. There is no right to an open hearing.

**15. How may a student or parent challenge a proposed expulsion?**

The pupil and, if the pupil is a minor, the pupil's parents or guardian may be represented at the hearing by counsel. With or without an attorney, the pupil and parent have a right to question witnesses, to call witnesses and to offer other evidence or arguments of their own.

**16. If a student withdraws from the district before the expulsion proceedings are completed by the school board, may the expulsion proceedings continue?**

Yes, a school board may complete the expulsion proceedings even if the pupil withdraws from the school. If the school board does not complete the expulsion, s. 120.13 (1) (f), Wis. Stats., does not apply.

**17. May a school board expel a student for a period of time and then let the student return early if certain conditions are met?**

Sections 119.25 (2) (d) and 120.13 (1) (h), Wis. Stats., authorize a school board to make expulsion decisions and to impose one or more early reinstatement conditions under which a pupil who is expelled from school may be reinstated to school before the end of the term of his/her expulsion. An early reinstatement condition may be: 1) a condition that a pupil is required to meet before he/she may be granted early reinstatement; or 2) a condition that a pupil is required to meet after his/her early reinstatement, but before the end of the term of the expulsion specified in the pupil's expulsion order. The early reinstatement conditions must be related to the reasons for the pupil's expulsion and must be specified in the expulsion order.

The determination by an independent hearing panel, or independent hearing officer, regarding whether a reinstatement condition is related to the reasons for the pupil's expulsion may be appealed to the school board. The school board's decision regarding that determination is final.

If the school district administrator or his/her designee, who must be someone other than a principal, administrator, or teacher in the pupil's school, determines that a pupil has met the early reinstatement conditions that he/she must meet before being granted early reinstatement, the school district administrator or designee may grant the pupil early reinstatement. The determination of the school district administrator or designee is final.

If a pupil violates an early reinstatement condition that applies after his/her early reinstatement but before the end of the term of expulsion, the school district administrator, or a principal or teacher designated by the school district administrator, may revoke the pupil's early reinstatement. Administrative review of a possible revocation follows a process similar to that for appeal of a suspension. If the pupil's early reinstatement is revoked, the pupil's expulsion continues to the end of the expulsion term specified in the expulsion order, unless the pupil, or, if the pupil is a minor, the pupil's parent or guardian and the school board, independent hearing panel or independent hearing officer agree, in writing, to modify the expulsion order. The decision to revoke early reinstatement may not be appealed to the state superintendent.

A student electing not to complete the conditions for early return would be permitted to return at the end of the expulsion period without conditions.

**18. May the expulsion be appealed to the state superintendent?**

Yes. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent, who must review the board's decision within 60 days after receiving the appeal. To begin such an appeal, a parent or pupil must send a letter to the state superintendent at:

Department of Public Instruction  
P.O. Box 7841  
Madison, WI 53707-7841

The letter should include the name of the pupil who was expelled, the name of the school district, the date of the expulsion order, and the reasons for the appeal.

**19. On appeal, while the state superintendent reviews the expulsion, is the expelling school district required to re-enroll the expelled student?**

No. By state law, the school board's expulsion decision continues in effect during the state superintendent's review of an expulsion from a Wisconsin public school district, s. 120.13 (1) (e) 4.L, Wis. Stats.

**20. What aspects of the expulsion decision are reviewed by the state superintendent?**

In general, the state superintendent reviews the record of the expulsion proceeding to ensure that all procedural requirements have been followed.

**21. What aspects of the expulsion decision are NOT reviewed by the state superintendent?**

In general, the state superintendent will not review whether the board should have expelled for the specified conduct in a particular case or whether the length of the expulsion is unduly harsh. Also, the state superintendent will not review whether the evidence supporting the expulsion outweighed evidence on the pupil's behalf, as long as the record contains some evidence supporting the board's decision.

**22. Is the state superintendent's decision always final?**

No. The state superintendent's decision may be appealed within 30 days to the circuit court in the county in which the school is located.

**23. If a pupil is expelled from one district, may he/she relocate and attend school in another district?**

An expelled student may be home-schooled, and/or apply for enrollment in a private or another public school, but admission to other schools is at the option of the private or other public schools.

A school district is not required to enroll a student during the term of his/her expulsion from another Wisconsin school district. Upon request, the school district that expelled the pupil shall send the requesting district a copy of the expulsion findings and order, a written explanation of the reasons why the pupil was expelled and the length of the term of the expulsion, s. 120.13 (1) (f), Wis. Stats. A school district has the authority to choose to enroll a student expelled by another Wisconsin school district.

If the currently expelled student is a child with a disability, the resident district continues to have FAPE responsibility. Under federal and state law, LEAs must locate, identify, evaluate, and provide a free appropriate public education to all children with disabilities, including children who have been expelled from school. A school district cannot refuse an IEP team evaluation because a child has been expelled from another school district. A school district cannot refuse to provide a free appropriate public education to a child with a disability expelled from another school district. However, the school board may provide the services to the child in a setting other than one of the district's schools, as determined by the IEP team. Please review the federal special education regulations, 34 CFR 300.530 - 300.537 and the Information Update Bulletin 06.02 available on the special education website <http://dpi.wi.gov/sped/bul06-02.html> for further information.

**24. If a student is expelled from a private school, may he or she enroll in his or her resident public school district?**

Yes. A public school may not refuse to enroll a pupil residing in the district based upon the pupil's expulsion from a private school.

**25. Can Wisconsin school districts deny enrollment of a resident student because the student was or is currently being expelled by a school in another state?**

No, a district may not rely on an expulsion from an out-of-state school to deny admission. The Wisconsin Attorney General issued a written opinion determining that a school district may not refuse to enroll a pupil merely because he or she has been expelled from a private school or public school in another state (OAG 5-08).

**26. If a student is expelled from a district and enrolls in a private school, does he/she have a right to transportation to the private school?**

The school district would be required to transport the pupil under the requirements governing the transportation of other private school pupils in the district. In general, a district must transport a pupil to a private school if the private school is two or more miles from the pupil's residence and is located within the district or not more than five miles beyond the boundaries of the district.

**27. Does a pupil have a right to educational services from the school district during a period of expulsion?**

In general, expulsion from a Wisconsin public school district removes a pupil's right to receive a free public education from any Wisconsin public school district. Many districts choose to offer some type of educational services during periods of expulsion.

If the currently expelled student is a child with a disability, the resident district continues to have FAPE responsibility. Under federal and state law, LEAs must locate, identify, evaluate, and provide a free appropriate public education to all children with disabilities, including children who have been expelled from school. A school district cannot refuse an IEP team evaluation because a child has been expelled from another school district. A school district cannot refuse to provide a free appropriate public education to a child with a disability expelled from another school district. However, the school board may provide the services to the child in a setting other than one of the district's schools, as determined by the IEP team. Please review the federal special education regulations, 34 CFR 300.530 - 300.537 and the

Information Update Bulletin 06.02 available on the special education website <http://dpi.wi.gov/sped/bul06-02.html> for further information.

**28. If a school district elects to provide post-expulsion services to non-disabled expelled students, can the district claim state aids for the student?**

Yes. Adding membership on the third Friday in the September Pupil Count Report generates additional dollars which the district can use for educational programming. However, the district must have the pupils in a program on or before the count date. Therefore, students served through a regular or alternate setting within the district, enrolled in another district through a tuition agreement, a Youth Options program, or through a contract under s. 118.15, Wis. Stats., may all be included in the Pupil Count Report, and generate aid for the district. Mandating services through one or more of these options ensures both the continued generation of revenue, as well as the provision of educational services for the expelled student.

**29. Are there resources available to assist schools in exploring alternatives to suspension and expulsion?**

Yes. For example, the Wisconsin Association of School Boards provides consultation and examples of school discipline policies, including those that provide alternatives to suspension and expulsion. The DPI Student Services/Prevention and Wellness Team and Special Education Team provide consultation on alternative practices and referrals to national resources such as the National Association of School Psychologists and federal office of Special Education Programs' technical assistance center on positive behavior supports.

**30. Must an adult who has a school-age child under his/her control still comply with the compulsory education law even if the child has been expelled?**

A child who has been expelled is still required to attend school under s. 118.15 (1) (a), Wis. Stats. Alternative options include enrollment in a private school, correspondence school, technical college, or home-based private educational program.

# Appendix A

## U.S. Code Definition of a Firearm:

Firearms include handguns, rifles, or shotguns. Firearms other than handguns, rifles, or shotguns are defined in 18 USC 921 as follows. According to Section 921, the following are included within the definition: (Note: This definition does not apply to items such as toy guns, cap guns, BB guns, and pellet guns).

- Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of any explosive;
- The frame or receiver of any weapon described above;
- Any firearm muffler or firearm silencer;
- Any destructive device, which includes:
  - A. Any explosive, incendiary, or poison gas
    - 1) Bomb;
    - 2) Grenade;
    - 3) Rocket having a propellant charge of more than four ounces;
    - 4) Missile having an explosive or incendiary charge of more than one-quarter ounce;
    - 5) Mine; or
    - 6) Similar device
  - B. Any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter.
  - C. Any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

# Appendix B

## Links to Additional Information

Student Services/Health and Safety Resources: <http://dpi.wi.gov/sspw/tadocs.html>

Wisconsin Statutes: <http://www.legis.wisconsin.gov/rsb/stats.html>

Wisconsin's GED/HSED program: [http://dpi.wi.gov/ged\\_hsed/gedhsed.html](http://dpi.wi.gov/ged_hsed/gedhsed.html)

Education of incarcerated students:  
[http://dpi.wi.gov/alternativeed/doc/jail\\_dententioneducation.doc](http://dpi.wi.gov/alternativeed/doc/jail_dententioneducation.doc)