



Suspension and Expulsion in Wisconsin

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Article X, Section 3 of the Wisconsin Constitution and [s. 121.77\(1\)\(a\), Stats.](#) guarantee a free public education to all children between the ages of four and 20 years old. However, some student conduct may justify the short- or long-term removal of a student from school, such as violation of statutory provisions, the code of conduct, or rules made by an administrator, principal, or teacher. School boards have broad authority to develop such rules and adopt a code of conduct to govern student behavior. [\[s. 120.13\(1\)\(a\), Stats.\]](#) This issue brief outlines Wisconsin's suspension and expulsion laws including when a public school may suspend or expel a student, the procedures for each, and educational options for a suspended or expelled student.²

SUSPENSION

Suspension refers to the **removal of a student from public school for a short period** of time and the procedure typically involves school-level personnel without involvement of the school board. A student may be suspended by a district administrator or designated principal or teacher for: (1) not complying with a rule³; (2) knowingly sharing a threat or false information of an attempt to destroy school property with explosives ("bomb threat"); (3) endangering the property, health, or safety of others while under the supervision of a school authority⁴; or (4) endangering an employee or board member of the district in which the student is enrolled while not at school or under the supervision of a school authority. Additionally, a student must be suspended if the student possesses a firearm while at school or under school supervision.⁵ [\[s. 120.13\(1\)\(b\) 2. and \(bm\), Stats.\]](#)

The suspension procedure begins when the school notifies a student of the proposed suspension. A school may suspend a student if: (1) the student did not comply with a rule or was found guilty of the conduct charged; and (2) the suspension is reasonably justified. The suspension may last up to five school days, unless the student is suspended pending an expulsion hearing, which warrants a suspension of up to 15 days. A student, parent, or guardian may appeal a suspension by requesting a conference with the school district administrator, or his or her designee. If the administrator or designee determines the suspension was unfair, unjust, or caused undue consequences, the school must remove reference to the suspension from the student's record. [\[s. 120.13\(1\)\(b\) 3., Stats.\]](#)

EXPULSION

Expulsion refers to the **long-term removal** of a student from school and, unlike suspension, requires action by the school board. Generally, the board, or a hearing panel or officer appointed by the board, may expel a student for the same reasons for which a student may be suspended. However, the ground of noncompliance with rules, which may justify suspension, increases to **repeated** refusal or neglect to obey the rules in order to justify expulsion. Additionally, a student who is 16 years or older may be expelled for repeatedly engaging in conduct that disrupts the ability of school authorities to maintain order or an educational atmosphere. Finally, a school board must expel a student for at least one year if the student possessed a firearm at school or while under the supervision of a school authority; however, the law permits modification of this requirement on a case-by-case basis. Any expulsion, except for firearm possession, requires the school board to be satisfied that "the interest of the school demands the student's expulsion." [\[s. 120.13\(1\)\(c\) 1. and \(c\) 2., Stats.\]](#) This involves consideration of factors such as the severity of the misconduct, the effect of the misconduct on the school environment, and available educational alternatives.⁶ [\[ss. 119.25 and 120.13\(1\)\(c\), \(e\), and \(g\), Stats.\]](#)

Before expelling a student, the school board, or hearing panel or officer appointed by the board, must hold a hearing five days or more after providing written notice of the expulsion hearing. Generally, there

are few formal hearing requirements. Hearing requirements include the right to counsel for the student, recording of the hearing, and that the student may request a closed hearing. Following the hearing, if grounds for expulsion exist, the board, or hearing panel or officer,⁷ issues an expulsion order. The student may appeal the order to the State Superintendent of Public Instruction who reviews the record to ensure that procedural requirements have been satisfied. The superintendent does not review whether the board should have expelled the student, the length of the expulsion, or whether the evidence supported the board's decision, as long as some evidence supports the decision.⁸ Finally, the student may appeal the superintendent's decision to the circuit court of the county in which the school is located. The most recent expulsion decision remains in effect while an appeal is pending. [s. [120.13\(1\)\(c\)3.](#) and [\(e\)3.](#), Stats.]

EDUCATION OPTIONS FOR SUSPENDED AND EXPELLED STUDENTS

Suspensions and expulsions have different effects on the requirement that school districts provide free public education to students. A suspended student remains enrolled and the school may not deny the student the opportunity to take exams, complete missed course work, or receive credit for a class solely because of the suspension. [ss. [118.16\(4\)](#) and [120.13\(1\)\(b\)5.](#), Stats.] Regarding expulsion, however, the Wisconsin Supreme Court has held that the obligation to provide a free public education does not extend to an expelled student. In *Madison Metro Sch. Dist. v. Circuit Court*, the Wisconsin Supreme Court deferred to the Department of Public Instruction's (DPI) interpretation that an expulsion means "the school district bears no responsibility for providing an education to expelled students" when it held a court could not obligate a school to provide education options to a student expelled for delinquent conduct. [2011 WI 72, ¶¶ 40 and 43; emphasis added.]

While the Court has interpreted Wisconsin law to limit the right to a free public education for an expelled student, Wisconsin's compulsory education law still requires parents and guardians to ensure a student regularly attends school even during expulsion. [s. [118.15\(1\)\(a\)](#), Stats.] Since a school district is generally not required to enroll a student expelled from another district, from a charter school, or from a public school in another state during the expulsion period, parents must find alternative options. [s. [120.13\(1\)\(f\)](#), Stats.] Education options for expelled students include homeschooling, enrolling in a virtual or private school, or open enrolling into another school district willing to accept the student. Alternatively, the expelling school district may continue offering services outside the school building or may set conditions for early reinstatement under which the student may re-enroll before the end of the expulsion period.⁹

Ultimately, school boards have broad authority to establish rules and determine when suspension and expulsion are appropriate, and parents and guardians remain responsible for ensuring students attend school regularly, even during a suspension or expulsion.¹⁰

¹ The broad authority of school boards of common and union high school districts under [s. 120.13\(1\)\(a\)](#), Stats., extends to each first class city school district (Milwaukee) and unified school district. [ss. [119.18\(1r\)](#) and [120.44\(2\)](#), Stats.]

² This brief does not discuss the rules and procedures for suspension and expulsion related to students with disabilities. For more information, see Federal special education regulations [[34 CFR ss. 300.530 – 300.537](#)] and [Information Bulletin 06.02](#).

³ For suspensions, a "rule" includes any rule in the code of conduct, as well as any rule made by a school district administrator, principal, or teacher designated by the school district administrator. [s. [120.13\(1\)\(b\)1.](#), Stats.]

⁴ Endangering the health or safety of others includes making a threat to the health or safety of a person or a threat to damage property. [ss. [120.13\(1\)\(b\)2m.](#) and [120.13\(1\)\(c\)1.](#), Stats.]

⁵ This does not apply to a student who possesses a firearm while legally hunting in a school forest.

⁶ For more information on the factors considered when evaluating whether the interest of the school demands expulsion, see DPI's [Answers to Frequently Asked School Discipline Questions](#), Question #11 (Jan. 2012).

⁷ Any hearing held by a panel or officer must be reviewed by the board, which may review, reverse, or modify the order. [s. [120.13\(1\)\(c\)3.](#), Stats.]

⁸ *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 665-666 (1982) and *Madison Metro. Sch. Dist. v. Dep't of Public Instruction*, 199 Wis. 2d 1, 15-16 (1995).

⁹ For more information regarding enrollment options, early reinstatement, and conditional enrollment, see DPI's [Answers to Frequently Asked School Discipline Questions](#) and ss. [120.13\(1\)\(f\)](#) and [\(h\)](#), Stats.

¹⁰ DPI provides additional resources regarding suspension, expulsion, alternatives, information for parents, and sample expulsion documents on the Discipline, Suspensions, and Expulsions [webpage](#).