



# SUSPENSION AND EXPULSION

There's a fight in school and you're in the middle of it. There was graffiti found on the side of the school this morning and teachers found spray paint in your bag. Now you're facing detention in the principal's office, an intimidating police officer, suspension or even expulsion. What do you do? What are your rights now?

First things first: Remember that at all times, you have the right to remain silent. You have the right to an attorney or an advocate who can help you. You can always say "I do not wish to talk to you without an attorney or my parents present."

Read your school's manual! It's like the Constitution for your school.

Find an advocate before trouble happens! Do some research to find an advocate in your community who has experience in guiding youth and parents through the discipline system. If you get busted for fighting or get into conflicts over student protests, it's good to know in advance where to get help so that you aren't scrambling at the last minute. You can find local referrals to get help through your school or through the Department of Public Instruction. They can provide a list of lawyers who have offered to help (most often for a fee) or for non-attorney advocates who can help if money is an issue.

What about my right to an education? My right to due process? While there isn't an explicit right to an education in the U.S. Constitution, in 1975 the Supreme Court decided in *Goss v. Lopez* that students are entitled to a public education and that students have due process protections under the 14<sup>th</sup> Amendment. If you experience any attempt to deny these rights as a form of punishment (like getting suspended or expelled), you do have the right to due process, or reasonable, fair, clear and consistent steps in a school's discipline system. These due process rights include: 1.) oral or written notice of the charges (written is always better), 2.) an explanation of the evidence, and 3.) an opportunity to be heard in the case of expulsion.

Do I have the right to see my records? Yes. Wisconsin state law says that you or your parent can view your grades or behavior record upon demand.

Is it legal for a teacher to use physical force with a student? Any intentional infliction of pain as a form of discipline is forbidden. But there are some cases (splitting up a fight, preventing a student from getting injured or harming themselves,

intercepting a weapon, removing a disruptive student, or in a teacher's self-defense) when teachers can use reasonable physical force. Only law enforcement is allowed to use things like batons, tasers, etc.

Why can a student be suspended? Under what circumstances can a teacher remove a student from school? Students get suspended for violating conduct codes (disrespect, lateness and so on – conduct codes differ from school to school), for being involved in plots to damage the school (bomb threat) and doing something that threatens the safety of others (possessing a weapon is an automatic suspension). This can also apply to those not actually at school but still under supervision of school authority if actions cause a threat to school property, other students, staff or board members.

What should I know if I am going to be suspended? There are two levels of suspension – if a student receives notice of a suspension hearing from an administrator, this is for a suspension that can be up to 15 days. If a notice was not sent, the suspension can only be for up to five days. You and your parents have the right to be notified about why you've been suspended. Ideally parents would always be involved, but often suspensions are done without consulting with parents. You can challenge the suspension by having a conference with someone from the school district within five days of the start of the suspension. That administrator has 15 days to make a decision on whether or not the suspension was valid, or not. The school district administrator should not be a principal, administrator or a teacher from the school that suspended you. If the suspension was unfair, it can be wiped off of your record or at least noted in your records that it was a mistake.

Why can a student be expelled? Under what circumstances can a teacher remove a student for the rest of the school year? The school board (or a hearing officer in many larger school districts) can expel a student if there is a repeated violation of rules. Unless the rule violations have something to do with physical threats and violence, weapons, threats of destroying school property or harassment, the rules are pretty vague. Vague expulsions are often justified in the same way that police use "disorderly conduct" citations. The definition is so broad that sometimes even speech can be considered a violation of rules leading to expulsion.



What should I know if I am going to be expelled? When considering the due process rights of a student, each student has the right to a hearing (it's a lot like criminal court hearings) where the school board or committee is the jury, a lawyer (or hearing officer) representing the school district is the judge, and the principal or a superintendent (or sometimes another lawyer who has an incentive to be "tough on crime") is the prosecutor. You will have to defend yourself, hopefully with the help of your parent or an advocate, or a lawyer if you can afford one.

Students shouldn't speak to the attorney who represents the school before a trial. The attorney is like a prosecuting attorney and shouldn't try to talk to the family before a hearing. You have the right to refuse to speak to them, no matter how helpful they may seem.

Both sides can call witnesses. You have the right to be notified no less than five days ahead of time that a hearing is going to happen and where. Five days isn't long to pull witnesses together, so you should be prepared to have people who can help you tell your side of the story or to describe what kind of person you are and what your life is like. These



witnesses can be students who saw what happened (fact witnesses) or community members or supportive teachers who can talk about what kind of person you are (character witnesses). Your

parents can also testify on how the expulsion will impact you. Don't be too worried if someone can't show up – they can always write a letter on your behalf to submit at the hearing.

You also have the right to a closed hearing if you don't want it to be public. The school board is responsible for keeping a written transcript of what happened in the hearing. Having the student who is being threatened with expulsion testify is a bad idea if the students isn't prepared for cross-examination. Remember that any evidence used in this hearing can also be used in a criminal trial if a crime occurred (like bringing a gun to school). Be sure to ask to see all of your records before the hearing. You can even bring in an expert to explain anything in your records that could relate to complicated issues such as health, mental illness or special education placements. If you have a disability such as ADD/ADHD, etc. that has something to do with the code violation, the expert can help explain this.

## YOU HAVE THE RIGHT TO REMAIN SILENT

1. Don't say anything without your attorney or parent present.
2. Don't put your business all over school. You do have the right to remain silent– use it.
3. Your initial reaction might be to "tell your side of the story" but just wait until the hearing. NEVER speak to school administrators about a suspension, expulsion or the accusations, even if law enforcement is present, without an advocate. Your story could be a part of a criminal charge. Wait for your parent or an advocate. Remember that even school administrators can be called as a witness against you in a criminal court or even in an expulsion hearing.

Other things to remember: Be sure to stay current with your school work while this is going on. If you are cleared on the expulsion threat, you don't want to be behind while you've been suspended. Don't be afraid to ask for alternative resolutions to expulsion like counseling, community service, a restorative justice conference and possibly an early reinstatement so you don't have to sit out a whole year.

What happens if I am expelled? What are my options for school? If the school board decides to expel you after your hearing, you should be notified in writing. Your expulsion can be appealed to the school Superintendent if you think the decision was wrong. If you appeal it, the department has 60 days to review the decision, but you'll still be expelled from school during that time. If the department's review says you're still expelled, you can take it to court within 30 days. You can look at enrolling in another school district, but they have the right to refuse your enrollment if you are currently expelled. While under expulsion, you can't even physically go into another school within your district (so don't try to go to another school's prom!). The law also says that just because you're expelled, it doesn't mean that you should miss out on your education entirely. You (or specifically your parents) are responsible for finding some kind of educational services while you are out of school.

If you feel you were denied your due process rights as described on this sheet, please contact your advocate. Remember, if you feel you are being suspended or expelled for illegitimate reasons such as your political or religious activities, please contact the ACLU of Wisconsin.

### FOR FURTHER INFO,

or if you are interested in becoming an advocate in your community :

contact the ACLU of Wisconsin at [www.aclu-wi.org](http://www.aclu-wi.org) or call 414.272.4032

Additional info:  
HURLEY, BURISH & STANTON, S.C. website  
[http://www.hbslawfirm.com/articles\\_display.php?id=49](http://www.hbslawfirm.com/articles_display.php?id=49)  
DPI <http://dpi.wi.gov/sspw/pdf/expulbro.pdf>

