

# Suspension & Expulsion Policy Q & A



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This document provides information about the procedures needed for the use of suspension and expulsion as disciplinary consequences for students in school.

## List of Questions - Click any Question to Jump Straight to the Answer

- [What is suspension?](#)
- [What is expulsion and how is it different from suspension?](#)
- [What kind of student conduct is serious enough that a school board or school district can suspend or expel the student?](#)
- [What are the minimum due process procedures for suspension?](#)
- [What is a “property interest”?](#)
- [What is a “liberty interest” in the student’s reputation?](#)
- [What are the minimum due process requirements for long-term suspension or expulsion?](#)
- [How is the right to education different for students with disabilities?](#)
- [What are the differences in due process requirements for students with disabilities regarding suspension?](#)
- [What are the differences in due process requirements for students with disabilities regarding expulsion?](#)
- [What is a manifestation hearing?](#)
- [Who can make a change of placement for a student with a disability, and under what circumstances can this be done?](#)
- [What are the maximum amounts of time a student can be expelled?](#)
- [Can discipline decisions be appealed after a hearing if the student has been expelled or given a long-term suspension?](#)
- [Does the school district have a requirement for continuing to provide education for expelled student during the time that they are expelled?](#)

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## What is suspension?

Suspension from school means that a student is not permitted to attend school for a period of time. Suspensions are considered a short-term removal from school - ranging from the remainder of the day up to several days.

In Nebraska, long-term suspension for nondisabled students might range from five to twenty school days, but no more than twenty days (Neb. Rev. Stat. §79-256(1), 2008). Note

that for students with disabilities, federal policy limits suspension to no more than ten cumulative days per school year.

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### **What is expulsion and how is it different from suspension?**

Expulsion is long-term removal of a student from attending school. Historically, an expulsion would last until the end of the current semester (up to a half of a school year), but now may last for up to two semesters. These typically end at the end of the semester. However, the Gun Fee Schools act mandates expulsion of one calendar year for bringing weapons or drugs to school, ending one calendar year from the start date.

Expulsion is excluding a student from attending any school in the school system, and mandatory reassignment is the involuntary transfer of a student to another school because of a discipline issue (Neb. Rev. Stat. §79-256(2)–(4), 2008). However, if a school expels a student, state law prohibits another school district or private school from enrolling that student until the period of expulsion is completed.

Neb. Rev. Stat. §79-265 are the procedural requirements for suspending a student short term, which are discussed below. Neb. Rev. Stat. §79-267 is the grounds constituting long-term suspension, expulsion and mandatory reassignment sanctions.

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### **What kind of student conduct is serious enough that a school board or school district can suspend or expel the student?**

Expulsion can only be used if the conduct of the student has the potential to “seriously affect the health, safety, or welfare of the student, other students, staff or persons” or the conduct seriously interferes with the educational process (Neb. Rev. Stat. §79-262(1), 2008).

If the following types of conduct occur at school, on school grounds, or in vehicles owned by the school then they are grounds for suspension or expulsion.

Neb. Rev. Stat. §79-267(1), (2008) states

- (1) “Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;”
- (2) “Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;”
- (3) “Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or

other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;”

(4) “Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student:”

(5) “Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;”

(6) “Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103.02 or being under the influence of a controlled substance or alcoholic liquor;”

(7) “Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age, but less than nineteen years of age;”

(8) “Engaging in bullying as defined in section 79-2,137;”

(9) “Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity or event. . .”

(10) “Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or”

(11) “A repeated violation of any rules and standards validly established pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.” (Neb. Rev. Stat. §79-267, 2008).

“It is the intent of the legislature that suspension or expulsion not be used against a student who is truant, tardy or absent from required school activities” (Neb. Rev. Stat. §79-267, 2008).

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### **What are the minimum due process procedures for suspension?**

The U.S. Supreme Court ruling in *Goss v. Lopez* (*Goss v. Lopez*. 419 U.S. 565. (1975) <http://supreme.justia.com/cases/federal/us/419/565/>) established minimum due process standards for short term suspensions from school. The Court determined that there were two interests at stake in the short-term suspensions of the students: the “property interest”

in educational benefits and a “liberty interest” in the student’s reputation. It was determined that these were significant enough that due process procedures were required to protect them. As noted below, however, there are special considerations regarding suspension or expulsion for students with disabilities.

The Supreme Court determined that a short-term suspension (denying education for only a few days), did not require a formal hearing. The minimum standards for due process are: a student must be given oral or written notice of the charged offences defined in the code of conduct (Neb. Rev. Stat. §79-265(3), 2008); if the student denies committing the act then the evidence against the student must be presented to the student; and the student must have an opportunity to tell his or her side of the incident. (Goss, 1975).

The conduct resulting in the suspension must be a violation of rules or standards of behavior adopted under the Nebraska School Discipline Act (Neb. Rev. Stat. §79-265(1)(a)-(b), 2008). The principal must make an investigation of the alleged conduct and determine that the suspension will help the student, “further [a] school purpose”, or “prevent an interference with school purposes.” (Neb. Rev. Stat. §79-265(2), 2008).

Within twenty-four hours (or a reasonable period of time) the principal must send written notice to the student and parent describing the conduct and reasons for the actions taken regarding that conduct. The principal must also make a reasonable effort to have a conference with the parent before or when the student returns to school (Neb. Rev. Stat. §79-265(4), 2008).

In the case where the student poses an ongoing threat to persons or property, or an ongoing threat of disrupting the academic process, he or she may immediately be removed, but notice and a hearing must follow as soon as possible (Goss, 1975). Nebraska’s Student Discipline Act contains all these requirements for Nebraska (Neb. Rev. Stat. §79-254 to 79-294, 2008).

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### **What is a “property interest”?**

Goss v. Lopez established education as a “property interest” for its citizens. The Fourteenth Amendment forbids a state to deprive an individual of life, liberty, or property without due process of law. When a state chooses to offer a benefit to its citizens, such as education for its children, that benefit must be provided fairly and not denied arbitrarily.

Under the Ohio law reviewed in the Goss v. Lopez case, schools are required to provide a free education to children, and a compulsory attendance law require attendance of at least 32 weeks in a school year. The Supreme Court ruled that these state laws created a legitimate claim to a “property interest” for each citizen in the benefits of education. Because Ohio extended education to all citizens, it could not then take away arbitrarily. While the state can deny education for student misbehavior, they must also provide “fundamentally fair procedures to determine whether the misconduct has occurred.” (Goss, 1975, p. 419). Similarly, the Supreme Court ruled in this case that Boards of Education must establish clear expectations for behavior, and fair procedures to determine misconduct and

protect due process rights (Goss, 1975). As a result, school codes of conduct have been established to identify expectations, disciplinary consequences, and related due process procedures, as well as some other district policies.

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### **What is a “liberty interest” in the student’s reputation?**

Goss v. Lopez established that if a person or student is accused of misbehavior there should be some mechanism for her or him to respond to the charges and clear his or her name, thus allowing the student to protect her or his reputation. As a result, a student must be permitted to respond to the accusations against the student, assert their innocence, or provide an explanation for their behavior.

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### **What are the minimum due process requirements for long-term suspensions or expulsion?**

Goss v. Lopez addressed only short-term suspensions, which were determined by the Supreme Court to be ten days or less. Based on the reasoning of the Goss decision, subsequent cases have held that a school must provide a different level of due process procedures to a student who is suspended long term or expelled. These include:

- Formally notify the parents of the proposed long term suspension or expulsion
- Offer the student and parents the opportunity to present the student’s side of the situation in a formal hearing (Mid-Continent Comprehensive Center, 2013).
- Being able to be represented by an attorney
- Being able to present their side of the situation, and have their own witnesses and testimony

A student may be suspended (according to the due process procedures described earlier) until the hearing occurs assuming that it can be held in a reasonably timely manner. These requirements have now been codified in the law or policies of most states. The exact details of these requirements may vary to some degree based on state policies. See the section below for differences for students with disabilities.

If the student or the parent does not request a hearing within five days after notice is received, then the punishment goes into effect (Neb. Rev. Stat. §79-271, 2008). If the hearing is requested after the five days, but before thirty days, then the hearing is to be granted, but the punishment stays in effect until the determination at the hearing is made (Neb. Rev. Stat. §79-272, 2008).

Goss v. Lopez. 419 U.S. 565. (1975). <http://supreme.justia.com/cases/federal/us/419/565/>

Mid-Continent Comprehensive Center, University of Oklahoma,  
<http://www.mc3edsupport.org>

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## **How is the right to education different for students with disabilities?**

Students with disabilities have a statutory right to a free and appropriate public education (FAPE) established in the Individuals with Disabilities Education Act (IDEA). This supersedes the issue of whether there is a property interest in education. Moreover this applies across all states, and as a result, disciplinary due process for students with disabilities is relatively uniform across states. The Individuals with Disabilities Education Act (IDEA, most recently reauthorized in 2004) codifies discipline requirements for students with disabilities, which has evolved in case law.

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## **What are the differences in due process requirements for students with disabilities regarding suspension?**

There is no difference in requirements for students with disabilities regarding suspension, so long as the cumulative days of suspension do not exceed 10 days during the school year. The procedures for suspension of students with disabilities are the same as described above for other students. However, if a student with a disability has been suspended for nearly 10 days, the regulations indicate that the student's Individualized Education Program (IEP) team should meet to insure that a functional behavioral assessment for the student has been conducted, and to create, or reevaluate and revise any behavior plans.

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## **What are the differences in due process requirements for students with disabilities regarding expulsion?**

Students with disabilities have a statutory right to an education based on federal law. The statute does not make exceptions to permit denial of education for students with disabilities for disciplinary action. Therefore the courts and federal regulations do not permit expulsion of a student with a disability when expulsion would mean a cessation of the services being provided to the disabled student.

However, other actions may be required. The student's IEP team may a manifestation hearing, may conduct or update a functional behavioral assessment, create or modify an individual behavior plan, and provide behavior supports or other strategies to remedy the behavior of concern. (IDEA, 20 U.S.C. § 1414(d)(3)(B)(i), 2004).

However, the student's placement can be changed temporarily in some circumstances by an administrator, or longer term by the IEP team, so long as the basic services identified in the student's IEP continue to be delivered to the student.

During all of these proceedings, the normal due process procedures for special education remain in place. If the parents disagree with the IEP team decisions parents may seek mediation, or a special education hearing. If the disagreement continues they can appeal to federal district court.

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## **What is a manifestation hearing?**

When considered for disciplinary action, a student's IEP team is asked to determine whether the problem behavior was a "manifestation" or "symptom" of the student's disability. If the team determines that the behavior was a manifestation of the student's disability, the student should not be "punished" for that behavior, which would otherwise amount to a punishment for having the disability. Instead a variety of other behavioral interventions and supports can be provided in order to prevent the behavior in the future, and, if deemed necessary, the student's placement can be changed to a more "restrictive" setting by the IEP team. If the behavior is not a manifestation of the behavior, the normal disciplinary consequences may apply except that the student must continue to be afforded the services identified in his or her IEP.

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## **Who can make a change of placement for a student with a disability, and under what circumstances can this be done?**

Normally the student's IEP team is the body, which decides on the educational placement of students with disabilities. However when a student is believed to be a danger to himself or others, an administrator or a hearing officer can make a temporary change of placement of a disabled student to an "interim alternative setting" for no more than 45 days. The change of placement can only occur if the hearing officer determines leaving the child in their current setting is likely to result in injury to the student or others (IDEA, 20 U.S.C. §1414-1415, 2004). During the time of the alternative placement, the student's IEP team would meet to hold a manifestation determination, and determine if a functional assessment and individual behavior plan are in place. The IEP team might also consider additional behavioral interventions or alternate placement options.

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## **What are the maximum amounts of time a student can be expelled?**

If a student who does not have a disability is expelled for bringing a firearm to school, he can be expelled for one year (Neb. Rev. Stat. §79-283(4), 2008). If the student causes or attempts to cause personal injury to a school employee or student (except as provided in Neb. Rev. Stat. §79-267(3)) or brings a dangerous (non-firearm) weapon to school the expulsion can remain in effect of the rest of the semester in which the misconduct was committed and the next semester (Neb. Rev. Stat. §79-283(3), 2008). For all other misconduct, the student can be expelled for the remainder of the semester. If the misconduct occurred within 10 days of the end of the semester, then the student can be expelled for the rest of that semester and the next one (Neb. Rev. Stat. §79-283(2), 2008). If an expulsion is to remain in effect the next school year, then the hearing examiner must review the case. The specific requirements for this type of review pertain to the hearing examiner's obligations and can be found in Neb. Rev. Stat. §79-283(5). The school board or superintendent may readmit the student to school if the hearing officer recommends this (Neb. Rev. Stat. §79-283(5), 2008).

As described earlier, students with disabilities may not be expelled if that would mean a cessation of the services, which are in their IEP. Often students with disabilities who would otherwise have been expelled are provided services at a different location or in an alternative setting.

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**Can discipline decisions be appealed after a hearing if the student has been expelled or given a long-term suspension?**

The Superintendent makes the decision on discipline. After the hearing examiner has made her or his findings, then the superintendent can change, revoke, or impose the hearing examiner's recommendation in the superintendent's report. However, what the superintendent chooses to do as a sanction can't be more severe than what the hearing examiner recommended (Neb. Rev. Stat. §79-282, 2008).

The findings of the hearing examiner and the decision of the superintendent both must be sent by certified or registered mail to the parents (Neb. Rev. Stat. §79-283(1), 2008). Upon receipt of the superintendent's decision to expel the student, the student may request an appeal to the school board within seven days. The hearing before the school board must be held within ten days of receipt of the student's request (Neb. Rev. Stat. §79-285, 2008). The school board can accept new information at this hearing. However, they may not impose a sanction more severe than the hearing officer's recommendation (Neb. Rev. Stat. §79-286, 2008).

The school board's decision must be sent by certified mail to the student and parents (Neb. Rev. Stat. §79-287, 2008). If the parent or school district is still dissatisfied by this hearing they may seek judicial review. Neb. Rev. Stat. §79-289 through 79-292 covers this procedure. Parents and students with disabilities may seek mediation or appeal directly to federal district court.

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**Does the school district have a requirement for continuing to provide education for expelled student during the time that they are expelled?**

As noted earlier students with disabilities must continue to be provided basic educational services including those identified in their Individualized Education Program (IEP) even if they otherwise would have been expelled. However some states including Nebraska, also requires some educational services to be extended to all other students who are expelled or suspended long term. Nebraska Revised Statute §79-266(1) states that beginning on July 1, 1997, "each school district shall have an alternative school, class, or educational program or the procedures of subsection (2) of this section available or in operation for all expelled students" (2008). See the Policy Q & A on School Discipline for specific details of this



requirement, and the Strategy Briefs on Discipline Recovery and Alternative Schooling for additional information about these types of programs.

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