

Your rights if your child is faced with expulsion from school in Illinois©

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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

Look for these symbols to tell you when to:



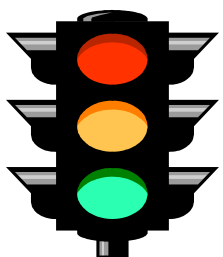
STOP!

You need legal representation or advice to continue.



USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-0617

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

Will County Legal Assistance

Serving Will County

815-727-5123

How to use this self help packet



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

Who these people are

This section describes the different people/agencies you may encounter when trying to resolve a problem at a school. Make sure you understand who these people are and what role they play.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Who can use this packet

This section discusses whether you should be using this packet to determine your child's rights.

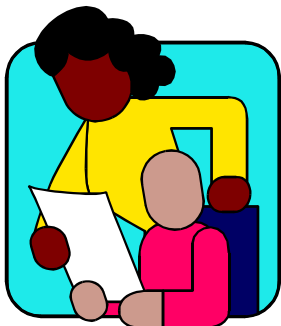
Your rights if your child is faced with expulsion from school

This section discusses what rights you (and your child) have and what the law requires a school board to do before it expels a student. You should read this section before taking any action on your own.

Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.

Who these people are



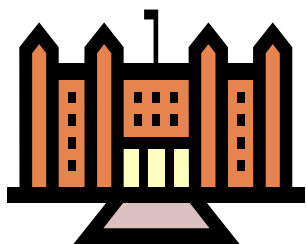
Principal

The principal is the person who is in charge of a particular school. The teachers, custodians, and librarians report to the principal. If you have a problem with the way your child(ren) is/are being treated or with the type of instruction they are being given by their teacher(s), you should speak first with the principal of the school.



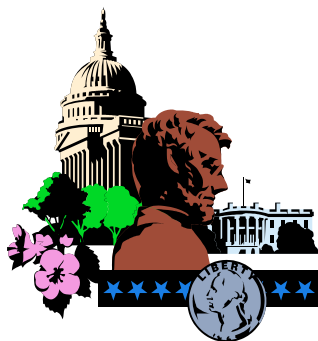
Superintendent

The superintendent is the person who is in charge of all of the schools in a particular school district. The principals of each of the schools in the district report to the school superintendent. If you have a problem with a principal of a school within a particular district, you should talk to the school superintendent.



School Board

The school board is an elected body of citizens which oversees the school superintendent, the schools, teachers, and all school personnel. The school board approves the contracts of all school personnel and decides on matters such as textbooks, school construction salaries, and expenses. If you have a problem with a school superintendent, you should talk to the school board.



Illinois State Board of Education

The Illinois State Board of Education is the agency which supervises public schools from pre-school through grade 12, adult schools, and vocational schools. The State Board of Education approves teacher training, certifies teacher placement and audits claims for funds. Most importantly, the State Board of Education gives legal counsel to school districts on the School Code.

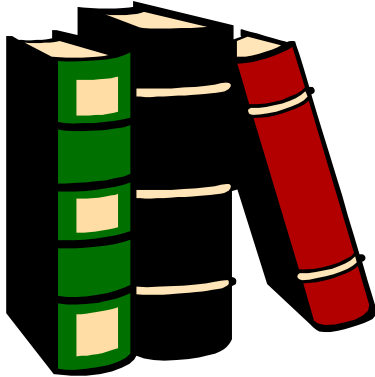
Who can use this packet



This packet deals only with the issue of expulsion, not suspension. If your child is being suspended, this packet does not discuss what the school can or cannot do to your child or what or your child's or your rights are.

This packet also is not for use when a child with disabilities as defined under state and federal law is being expelled. There are specific rules that a school must follow when expelling a disabled student. For more information about these rules and your rights, contact the Illinois State Board of Education.

Finally, this packet only discusses what state and federal law requires a school to do before it expels a student. You may have additional rights under your local school board policy, rule, or ordinance. If you think that your school board is not following such a policy, rule, or ordinance, you should seek the advice of an attorney licensed to practice in the State of Illinois.



Disclaimer: Please Read !!!

The following is a list of publications which discuss the issues of school law. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

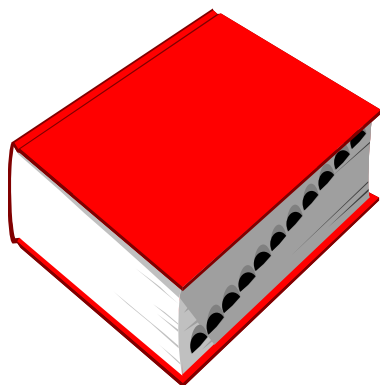
Parents Guide to Suspensions and Expulsions in Illinois Public Schools

Author: Wallace C. Winter, Supervising Attorney for the Legal Assistance

Foundation of Metropolitan Chicago

Online article available at www.illinoislegalaid.org

What these legal words mean



case law

A decision by a court of the state or federal government. Decisions by the court are binding on the citizens within its jurisdiction and have the same effect as a statute.

due process

A person has 2 due process rights any time a state or the federal government takes an action against him/her. Those rights are a right to substantive due process and procedural due process.

expulsion

Removal of a student from school by the school board for any length of time up to 2 years.

guardian of a child

A person who by court order is given both the power and the duty of taking care of a minor child including managing the child's property, enforcing the child's rights, and making decisions about the child's health, education, and welfare.

parent

The mother or father of a child or the person(s) who legally adopted a child.

procedural due process

Procedural due process is not the action that is taken by the state or federal government against an individual, but the process in deciding whether to take the action. This process must guarantee that the individual is treated fairly.

statute

A law passed by the legislature and signed by the executive of the state or federal government. Statutes are binding on the citizens within its jurisdiction.

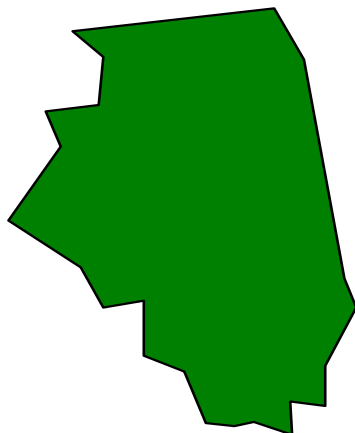
substantive due process

Substantive due process is not the process used by the state or federal government in deciding whether to take a specific action against an individual, but the action itself. This action must not be contrary to the State or U.S. Constitution.

suspension

Temporary removal of a student from school (or from a school bus) for a period of no more than 10 school days. A student can be suspended from a school bus for more than 10 days if he/she engages in gross disobedience or misconduct.

Summary of the law in this area



The one law which governs most of the area of school and school districts is the Illinois School Code. It can be found at Chapter 105, Act 5 of the Illinois Compiled Statutes.

Expulsion is specifically discussed in Chapter 105, Act 5, Section 10-22.6 of the Illinois Compiled Statutes.

In Illinois, a student can be expelled for gross disobedience or misconduct.

A student can only be expelled after the student's parents or guardian have been asked to appear at a meeting of the school board, or with a hearing officer selected by the board, to discuss the student's behavior. The parent or guardian must be notified of this meeting by certified or registered mail or delivery of the notice in person.

At the hearing, the reasons for the expulsion as well as the starting date for the expulsion must be discussed. The student has the right to present evidence and to cross examine witnesses at the hearing. After the hearing, the board takes whatever action it deems appropriate.

An expulsion can last up to 2 years.

If a student is found having brought a weapon to school, a school event, or any activity relating to school activities, he or she must be expelled for at least one year. A weapon is defined by Illinois law as any object which could cause bodily harm.



Most of the rights that you as a parent have are found in case law, not statutes, in Illinois. As such, you may need to have the services of an attorney to enforce your rights.

This packet explains your rights by answering the most commonly asked questions about expulsion.

Q: When can a student be expelled?

A: A student can be expelled when he/she is guilty of gross disobedience or misconduct. While the school board must write rules which put students on notice as to what conduct may lead to expulsion, the law does not require them to describe in detail every type of conduct which might lead to expulsion.

Consequently, the fact that your child did not know that a specific act would lead to expulsion will not prevent him/her from being expelled as long as he knew that a type of behavior would lead to expulsion.

Q: What is the process that a school must follow before expelling a student?

A: By statute, the school board must conduct a hearing to discuss the student's behavior. The board can select a hearing officer to conduct this meeting for the board.

Q: What kind of notice of the expulsion hearing is a parent or guardian entitled to under the law?

A: The statutes of Illinois state that a parent or guardian must be notified of the expulsion hearing by certified or registered mail. The notice must state the time, date, place, and purpose of the hearing, the specific acts of misconduct, the student's right to present written and oral testimony, as well as the student's right to be represented by counsel.

The courts in Illinois have held that notice of the hearing can be delivered in person and that if the parents knew or were put on notice about the misconduct leading to expulsion that the charges of expulsion need not be stated specifically in the notice.

Q: How much notice is a parent or guardian entitled to under the law?

A: How many days before the hearing the notice must be received is not specifically discussed by the statutes of Illinois. The courts in Illinois have held that as little as 2 days notice is enough when the parents were apprised of the incidents as they occurred. The courts in Illinois have also upheld a notice received 5 days before a hearing.

Parents should know that refusing to accept a certified or registered letter giving notice of the hearing will not prevent the hearing from occurring and it will prevent the parents from raising the issue that you did not receive proper notice if they attempt to challenge the decision of the school board.

Q: What happens at the hearing?

A: The statutes of Illinois do not discuss what exactly will happen at the hearing other than to state that the reasons for the expulsion as well as the starting date for the expulsion must be discussed.

The courts of Illinois have held that a student has a right to cross-examination and to present evidence.

The Supreme Court of the United States has also held that the student must be given the opportunity to respond to any charges made against him/her.

Q: Are there rules of evidence at the hearing?

A: An expulsion hearing is not a court proceeding. As such, the rules of evidence which prevent certain types of testimony (hearsay, irrelevant, incompetent) from being admitted or used in a courtroom are not followed in an expulsion hearing. For example:

A prior record of the student's improper conduct, even if not related to the incident in question, is admissible;

A student does not have a right to confront or cross examine his specific accuser (for example, if he strikes another student or school employee); and

Unless there is a local school board rule saying otherwise, a student has no Fifth Amendment right of self-incrimination as long as there are no criminal proceedings pending or planned against him/her or there is no possibility for future criminal prosecution. If you are unsure as to whether you should waive this right, you should seek the advice of an attorney.



Q: Does a student have the right to an attorney at an expulsion hearing?

A: A student can have an attorney represent his/her interests at the expulsion hearing. The school district or board, however, is not required to pay for the student's attorney. If a student cannot afford an attorney and cannot find free legal assistance, he/she will have to represent themselves through their parents or guardian.

Q: Can the hearing be taped?

A: The hearing may or may not be recorded.

Q: Is the school board an impartial “judge” to be deciding whether a student is expelled?

A: The courts in Illinois have held that the school board is an impartial hearing body.

Q: What remedies are available to the school board after the expulsion hearing?

A: After the hearing, the school board takes whatever action it deems appropriate.

Q: Must the school board send out a written decision or explain what they based their decision on?

A: No court has held that the school board must either explain its decision or state its findings in writing.

Q: How long can an expulsion last?

A: By law an expulsion can last up to 2 years.

Q: Can a school board decision be appealed to a higher body like the State Board of Education?

A: There is no administrative review of a school board decision to expel a student.

A parent or guardian can bring an action in court if he/she believes that his/her constitutional rights (for example, the right to due process) were violated during the expulsion proceedings. You should seek the services of an attorney licensed to practice in the State of Illinois if you believe that this may have happened in your case as this packet does not discuss how to file a constitutional claim in court.





3 Commonly held beliefs about expulsion which are not true:

I have the right to an attorney

No, you don't. You have the right to have an attorney present, but if you cannot afford an attorney or find free legal representation, the school board of the State does not have to provide or pay for an attorney to represent you.

A student cannot be expelled when he/she did not know that the act they committed would lead to expulsion.

While the school board must have a policy about what general conduct will lead to expulsion, and it must make students aware of this policy, it does not need to specifically state all of the possible acts which could lead to expulsion.

A student cannot be expelled for more than the duration of the school year.

Wrong. A student can be expelled for up to 2 school years.



Be firm but cooperative

As a parent, you may end up being the only representation that your child has during the expulsion process. As such, while you need to be aware of your child's rights, you should cooperate as much as you can with the school board and school personnel during the process. Bad feelings, improper conduct or comments, and hostile actions toward school personnel can only make a stressful situation worse for your child.

Be prepared

As stated above, you may not have legal representation at your hearing unless you can find free or afford to hire an attorney. As such, as a parent you need to have all of your evidence, witnesses, and testimony ready when you show up to the expulsion hearing.

Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, acting on your child's behalf during the expulsion process may be much more stressful than it needs to be. If, however, you have a friend who can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if dealing with the school board proves to be too difficult a task for you, talk to an attorney.