

To Suspend/Expel or Not to Suspend/Expel... That Is The Question!

Quick Reminder on Suspension/Expulsion Laws

53A-11-904(1) A student MAY be suspended or expelled for any of the following:

- Frequent or flagrant willful disobedience, defiance of proper authority, or disruptive behavior
- Willful destruction or defacing of school property
- Behavior or threatened behavior which poses an immediate and significant threat to the welfare, safety, or morals of other students or personnel
- Possession, control, or use of an alcohol beverage
- Possession or use of pornographic materials ON SCHOOL PROPERTY

53A-11-904(2) A student SHALL be suspended or expelled for the following:

- Any serious violation affecting another student or staff member
- Any serious violation occurring in a school building, in or on school property, or in conjunction with any school activity including:
 - The possession, control, or actual or threatened use of a real weapon, explosive, or noxious or flammable material
 - The actual or threatened use of a look alike weapon with intent to intimidate another person or disrupt activities
 - The sale, control, or distribution of a drug or controlled substance, an imitation controlled substance, or drug paraphernalia
- Any act that would be considered a felony or class A misdemeanor if committed by an adult

NOTE: Violations involving real of look alike weapons

- SHALL result in an expulsion of not less than 1 year, subject to the following:
 - Within 45 days of the expulsion the student and parents appears before the chief administrative officer who will determine
 - A. What conditions must be met by the student and the student's parents before returning to school
 - B. If the student should be placed on probation in a regular or alternative school setting and what conditions must be met to ensure safety at that placement
 - C. If it would be in the best interest of the school and the student, to modify the expulsion term to less than 1 year conditioned on approval from governing board and providing a safe school environment

REMINDER: DUE PROCESS, DUE
PROCESS DUE PROCESS!!!

**ALL SUSPENSIONS OVER 10 DAYS AND
EXPULSIONS MUST GO THROUGH DUE
PROCESS: NOTIFICATION AND RIGHT
TO A HEARING**



NOTE: A student may be denied admission to a public school on the basis of having been **expelled** from that or any other school during the preceding 12 months

Recent Situations:

- Student suspended from school district for burning down the playground. District thinks placement in the local charter school would be a better place for this student. Must the charter school accept him?
- Student suspended from one district for 9 months, moves to another school district. Must the new school district take him, even though his suspension is not complete?
- Student suspended from charter school for frequent violations of school rules. Must local school district take him?

Rule 277-419: Dropping Students after 10 Days?

- Rule 277-419 is the Pupil Accounting Rule. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.
- In order to generate membership for funding purposes, a student shall:
 - Not have previously earned a basic high school diploma
 - Not be enrolled in a Youth in Custody program
 - ***Not have unexcused absences on all of the prior ten consecutive school days***
 - Be a resident of Utah
 - Be of compulsory school age OR a retained senior

More On The 10 Days Provision:

- THIS RULE DOES **NOT** PROVIDE THAT A STUDENT MAY BE DROPPED FROM ENROLLMENT IF HE/SHE IS ABSENT FOR 10 CONSECUTIVE DAYS
- If a student is out 10 days or more due to injury, illness, surgery, suspension, pregnancy, pending court investigation or action, or if the school determines that home instruction is necessary, he may still be counted for purposes of school funds IF he receives direct instructional contact with a licensed educator for at least 120 minutes each week

Some Constitutional Issues to Consider

- Free Speech?

→ Students do not shed their constitutional rights at the school house gates. Schools must show that student conduct would “materially and substantially interfere” with the operation of the school.”

So what about conduct off campus?

"To reiterate, courts recognize the authority of school officials to discipline students for off-campus activity where the activity materially and substantially interferes with the education process.“ Frederick v. Morse(2007)

More Constitutional Issues

- 4th Amendment: Suspensions based on searches
→ "a school official may properly conduct a search of a student's person if the official has a ***reasonable suspicion*** that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies."

Both the reason for the search AND the appropriateness of the scope of the search must be reasonable

- For example, the school official must have reasonable grounds for expecting that the search will turn up evidence that the student has violated the law or rules of the school AND
- The breadth of the search should be reasonably related to the objectives of the search