

Kindergarten to Age 8: Suspension and Expulsion Definitions, Data Collection and Reporting

Purpose

The Agency of Education (AOE) is providing this guidance to inform public and private schools of their obligations related to suspension and expulsion, data collection, and reporting for students under age 8.

Topics covered within this guidance include:

- Policy background
- Definitions of suspension and expulsion
- Definition of Imminent Harm and links to previous related AOE guidance
- Revised suspension/expulsion reporting requirements for public and private schools
- Due process considerations for a child with or without disabilities

Policy Background

On May 18, 2021, Governor Scott signed [Act 35](#) into law. The Act created new restrictions around the application of exclusionary practices to public school students younger than age 8. On June 1, 2022, the Governor signed [Act 166](#) (S.283) into law. This act expanded the restrictions that were articulated in Act 35 to include students under age 8 attending approved independent schools and prequalified private universal prekindergarten education programs.

On August 3, 2022, the Secretary of Education released the [New Requirement: Ban on Suspension and Expulsion of Students Under Age Eight](#) to Supervisory Union and Supervisory District superintendents. This memo served to notify the field of the additional limitations in the application of suspension or expulsion to students under age 8.

As of June 1, 2022, suspension and expulsion is not allowed for students under age eight enrolled in public schools and approved independent schools, except in the very rare occurrences when a student poses an imminent threat of harm or danger to others in the school/program.

Definitions of Suspension and Expulsion

AOE definitions of suspension and expulsion for students in grades K through 12:

1. **Out-of-school suspension** is whenever an administrator requires that a student be removed from the school premises during their scheduled school day and/or is directed

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not to attend school for any part of their scheduled school day, except for medical reasons.

2. **In-school suspension** refers to any time a student is removed from their scheduled school program or from a supportive setting provided through an IEP or section 504 plan, to another setting in the school for more than $\frac{1}{4}$ of the scheduled school day, except for medical reasons.
3. **Expulsion** is an out-of-school suspension, approved by the board of the school district, for more than 10 days and up to the end of the school year or 90 days, whichever is longer.

Definitions of “Imminent” and “Harm or Danger to Others”

As stated in Sec. 3. 16 V.S.A. § 1162, suspension and/or expulsion of a student under eight years old may only occur if the student’s behavior exhibits both “imminent” and “harm or danger to others” as defined below.

Harm or danger in this context can be defined as physical injury or bodily harm but is not limited to physical injury or bodily harm.

“Physical injury or bodily harm” is defined as harm severe enough to cause any of the following:

- a cut, abrasion, bruise, burn or disfigurement
- physical pain
- illness
- impair the function of a bodily member, organ, or mental faculty

Whereas verbal threats, harassment, and bullying are serious and can cause emotional/psychological harm to students and adults, these behaviors in young children (i.e., under the age of eight) less frequently rise to the level of harm or danger to others. They are best addressed by in-school/program measures to mitigate the emotional/psychological harm such as tending to the immediate needs of the student/adult who was hurt or harmed, reinforcing a positive, safe, and nurturing environment, supporting social and emotional skill development, and encouraging positive interaction with peers and adults.

A threat of harm or danger to others is “imminent” if it meets each of the three following criteria:

1. The effects of the child/student’s behavior are or will be immediate or could occur at any time,
2. The child/student has the ability or the means to enact physical injury or bodily harm through their behavior, and
3. Even after adults have provided interventions that are less restrictive than suspension or expulsion to de-escalate the event, the child/student’s behavior persists or cannot be prevented.

More information about the definition of Imminent Harm in the context of Suspension and Expulsion can be found [online](#).

Use of Suspension and Expulsion

Out-of-school suspension should only be used when harm is on-going or is likely to continue. It is not appropriate to send a student home if harmful behavior has ceased and it is probable that the student may remain in school without any further risk of harm. Out-of-school suspension should not be used as punishment.

If staff are uncertain whether a student will continue to be safe, temporary removal to a supportive environment in the school is preferred. If such removal lasts more than $\frac{1}{4}$ day (90 minutes), it must be reported as an in-school suspension.

Non-Traditional Examples of Suspension and Expulsion

Suspension and expulsion are traditionally understood as described above. But there are other actions that, while not commonly thought of as being forms of suspension or expulsion, result in the same denial of educational opportunities for students, and still meet the definitions of suspension and expulsion.

The following are examples of actions that may constitute a suspension or expulsion. This is not a comprehensive list; please contact the AOE for questions about student-specific applications of exclusionary discipline.

- Asking a family member to pick up a child early, except for health concerns.
- Recommending that a family keep a child out of school until a plan or supports are available.
- Requiring a student to stay home because assigned staff are not available.
- Placing a student with or without disabilities in a planning room or other setting not specified in an IEP for more than $\frac{1}{4}$ of a school day (90 minutes).
- Placing a child with or without disabilities in a non-instructional location (e.g., principal's office, staff planning area, hallway, gym, community space, dining area, etc.) for more than $\frac{1}{4}$ school day (90 minutes).

Kindergarten through age 7 Documentation and Reporting

Whenever a public school or approved independent school decides to suspend and/or expel a child with or without disabilities who is under the age of 8, the school shall document the incident resulting in exclusion and shall report the suspension or expulsion within five school days of the start of the suspension or expulsion, in accordance with Agency of Education (AOE) [reporting requirements](#). These incidents will also be reported in the annual Critical Incident Report.

Due Process Requirements, including as Related to Students with Disabilities

If a school is considering suspending or expelling a student, they must follow the appropriate due process requirements.

If a program is considering suspending or expelling a child identified who has an Individualized Education Program (IEP) and is receiving special education services or is in the evaluation process to determine eligibility for such services, a special education case manager must be included in the process.

If a child who is on an IEP is suspended or expelled for more than 10 days (consecutive or cumulative) the school district must convene a manifestation determination hearing to determine if the behavior leading to removal is a direct result of the student's disability. Removal for 10 or more days may be considered a change of placement and require an IEP meeting.