



# Ohio School Boards Association Capital Conference and Trade Show

November 13 – 16, 2011

Greater Columbus Convention Center  
Columbus, Ohio

## Student discipline and expulsion

### Legal

Monday, November 14, 2011

9:00 a.m.

C 210–212

Bartholomew Freeze, Esq., Freund, Freeze & Arnold LPA

Sandra McIntosh, Esq., Freund, Freeze & Arnold LPA

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#### Ohio School Boards Association

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[www.osba-ohio.org](http://www.osba-ohio.org)

**Student Discipline and Expulsion:  
Process and Practical Considerations**

November 14, 2011

Sandra R. McIntosh, Esq.  
Bartholomew T. Freeze, Esq.  
FREUND FREEZE & ARNOLD, LPA

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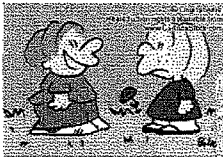
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**WHAT IS A SUSPENSION?**



"The Principal suspended me -- School is the only place in the world where you can get time off for bad behavior."

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**Definition & Duration of Suspension**

- A suspension is the temporary removal of a child from school for a violation of school policies or rules.
- Suspensions are generally imposed by the principal of the school and can last up to ten (10) school days.
- A school is not required to hold a student's suspension in abeyance until the appeal process is completely exhausted.

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PREVIOUS

### Examples of Suspensions

- In re Appeal of Huffer (1989), 47 Ohio St.3d 12 (student suspended for attending wrestling practice after drinking two beers at a college visit).



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PREVIOUS

### Examples of Suspensions

- Maveux v. Bd. of Educ., 11th Dist. No. 2007-L-099, 2008-Ohio-1335 (court upholds suspension of eighteen year-old student for having cigarettes in his car on school property).



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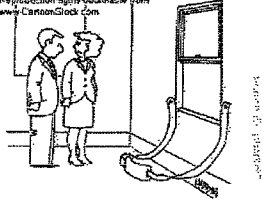
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PREVIOUS

### WHAT IS AN EXPULSION?

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"Once the decision to expel a student has been made, the Administration moves quickly!"

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Legal Definition of an Expulsion

- An expulsion is a more permanent removal of a child from school for a violation of more serious school policies or rules.

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Duration of Expulsion

- Expulsions are generally recommended by the principal of the school and generally follow a ten (10) day suspension, i.e., a student is first suspended and then the principal recommends expulsion.
- With a few exceptions, expulsions can last up to the greater of eighty (80) school days or the number of days remaining in the semester/term. If at the time the expulsion is imposed there are less than eighty days left in the school year, the superintendent may apply part or all of the period of the suspension to the following school year.

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Duration of Expulsion:  
Serious Violations

- Ohio law allows a board of education to make local policies allowing one year expulsions for very serious behavior.
- Examples:
  - bringing a firearm/knife to school or to a school related function
  - making a bomb threat to a school
  - committing an act that would be a crime if committed by an adult

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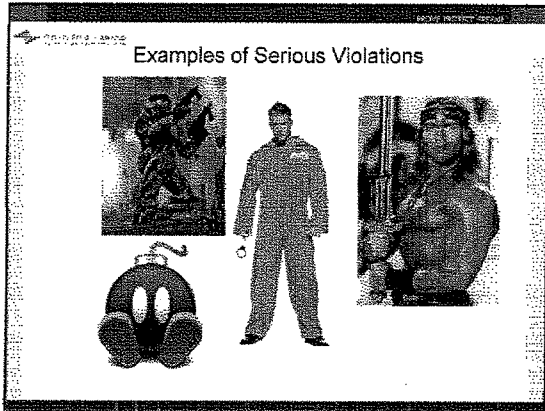
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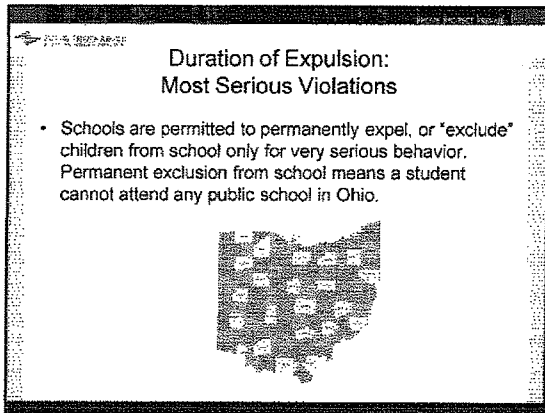
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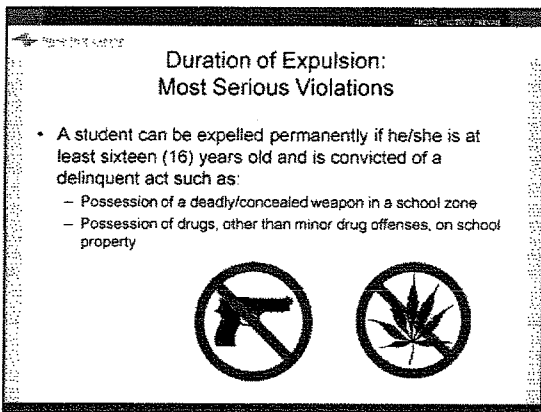
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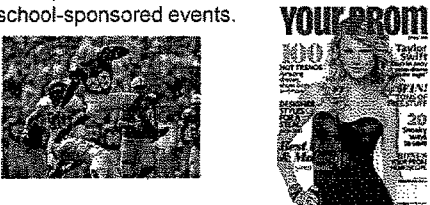
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**Expulsion Bonus Points**

- When a student is suspended or expelled, he/she is not permitted to enter school property, participate in extra-curricular activities, or attend school-sponsored events.



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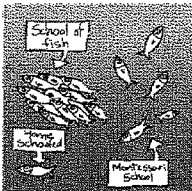
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**Expulsion Bonus Points**

- Any student who is expelled must be removed from the regular school setting, but the district is permitted to provide that student with educational services in an alternative setting.



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**Transfer of a Suspended/ Expelled Student**

- If a student is suspended/expelled from District A, he cannot necessarily transfer to District B.
  - There are certain rules that govern where a student attends school such as the residence of parents or payment of tuition.
  - The law also allows the receiving/new district (District B) to temporarily deny admission to a student who has been suspended or expelled from another district until the time period of the suspension/expulsion has expired.

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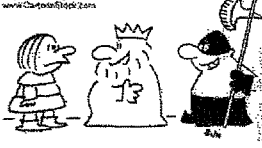
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11/14/2011 12:25:14

## DUE PROCESS: Notice and Hearing

© Original Art  
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www.Cartoonists.com



"And Dubois, here, is in  
charge of due process."

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### Initial Notice and Hearing

- Schools must follow certain procedures when suspending or expelling a student. Primarily, this means a school must provide a student with **notice** of the suspension/expulsion and an opportunity for a **hearing**.
- **GOOD NEWS:** Even if a school violates a student's due process rights in one hearing, if a student has the opportunity to cure the violation at a second hearing, then the student cannot prevail on a due process claim.
  - Rossman v. Conran (1988), 61 Ohio App.3d 246, 250
- These rules do not apply to "in-school" suspensions.

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## Suspension: Notice and Hearing

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OHIO'S MODEL CURRICULUM

### Suspension: Notice

- A school must provide written notice to the student
  - Of its intention to suspend the student; and
  - The reasons for the intended suspension
    - Buckosh v. Westlake City Sch., 8th Dist. No. 91714, 2009-Ohio-1093 (notice is valid even if student refuses service).



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OHIO'S MODEL CURRICULUM

### Suspension: Hearing

- A school must provide the student with an opportunity to appear at an **informal** hearing in front of the principal, assistant principal, superintendent, or superintendent's designee to challenge the reason for the intended suspension or otherwise explain his/her actions.
  - The student must first be told what he is accused of doing and what the basis of the accusation is.

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OHIO'S MODEL CURRICULUM

### Suspension: Hearing

- This is an **informal** hearing, so the school need not notify the student of a right to legal counsel nor allow the student to question witnesses.
- \*\*\* There need not be a delay between the time the school gives the student "notice" and the time of the hearing. Goss v. Lopez (1975), 419 U.S. 565, 583.

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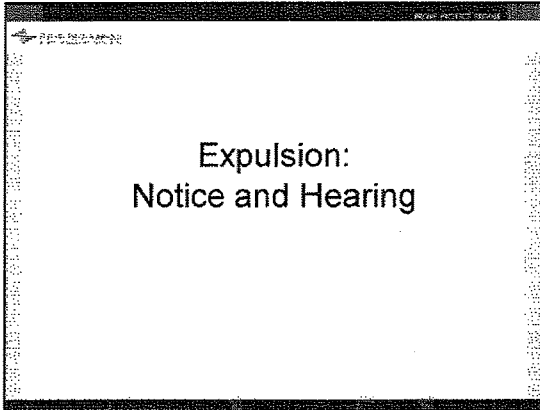
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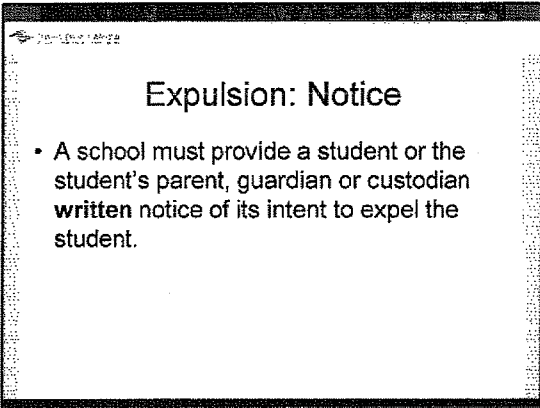
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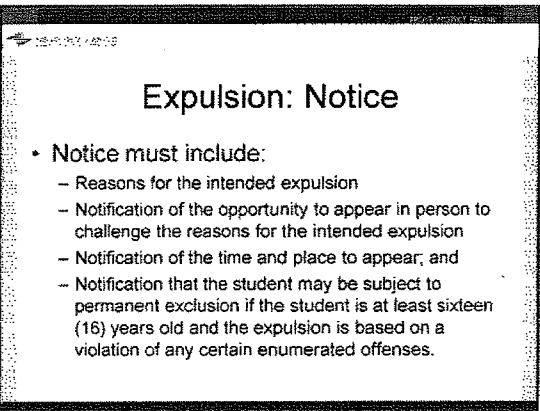
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Expulsion: Hearing

- A school must provide a student and his/her parent guardian, or custodian an opportunity to appear in person before the superintendent or superintendent's designee to challenge the reasons for the intended expulsion or otherwise explain his/her actions.
- A school is not required to subpoena witnesses on a student's behalf, nor to engage in traditional discovery practices.

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Expulsion: Hearing

- The student may bring an attorney to the expulsion hearing. He/she may also bring witnesses and present evidence at the hearing.



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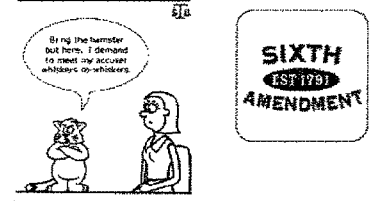
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Expulsion: Hearing

- A student does not have a **due process** right to cross-examine his student accusers, or even to know who they are.
- *Buckosh v. Westlake City Sch.*, 8th Dist. No. 91714, 2009-Ohio-1093; *Newsome v. Batavia Local School Dist.*, (6th Cir. 1988), 642 F.2d 920, 920.



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10-318-01-0002

### Expulsion: Hearing

- The hearing must be scheduled no earlier than three school days and no later than five school days after notice is given, unless the student or the student's parents request otherwise.

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10-318-01-0002

### Exception to Usual Notice and Hearing Requirements

- An exception to the usual Notice and Hearing requirement exists when a school finds a student to be a "continuing danger to persons or property" or if the student's presence in school presents an "ongoing threat of disrupting the academic process" either in school or on school property.
  - The principal, assistant principal, or superintendent can remove the student from school.
  - A teacher can remove the student from the classroom.

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10-318-01-0002

### Exception to Usual Notice and Hearing Requirements

- Once the student is removed, the school must give him/her written notice of the reasons for his removal and his right to attend a hearing to challenge the decision or explain himself. The hearing must be held within three (3) days after removal.

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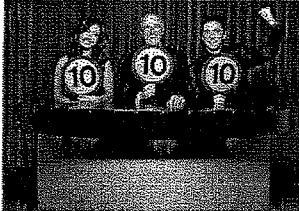
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APPEAL TO THE BOARD OF EDUCATION  
(more notice and hearing)



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Appeal to BOE: Notice

- Within **one day** after the decision suspending or expelling a student, the superintendent or principal must provide the student's parent or guardian with written notice of the suspension or expulsion.

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Appeal to BOE: Notice

- The notice must include:
  - The reasons for the expulsion or suspension;
  - Notification of the student's right to appeal to the board of education (or its designee);
  - Notification of the student's right to be represented by an attorney or advocate in all appeal proceedings; and
  - Notification of the student's right to be granted a hearing before the board of education to challenge the suspension or expulsion.

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← Home | Back | Forward

### Appeal to BOE: Hearing

- A student or a student's parent, guardian, or custodian may appeal the suspension or expulsion to the board of education.

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### Appeal to BOE: Hearing

- The school board may appoint a hearing officer to hold the appeal hearing and make a recommendation to the full board about whether it should uphold the suspension or expulsion.
- The student has a right to request the school board hear the details of the appeal in a executive session so that the details of the hearing are not open to the public. However, the board must issue its decision during a public meeting. The student has a right to attend that meeting.

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← Home | Back | Forward

### APPEAL TO A COURT OF COMMON PLEAS



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Parents' Guide

### Appeal to a Common Pleas Court

- If the board of education upholds the decision to suspend/expel a student, the student can appeal the decision to an Ohio Court of Common Pleas by filing a notice of appeal with the court within thirty (30) of the school board's decision.
- The student must also ask the court clerk issue a copy of the notice to the board of education.

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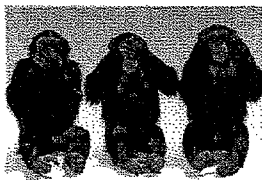
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Parents' Guide

### Limited to the RECORD

- In an action under R.C. 2506.01, the trial court is "confined to the transcript" filed by the administrative agency. Only where R.C. 2506.03 allows for an exception to this rule may a trial court hear any additional evidence not contained in the transcript.



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Parents' Guide

### Limited to the RECORD, but . . .

- Even if an exception under R.C. 2506.03 applies, the moving party is not entitled to a de novo hearing; instead, the purpose of the statute is to allow for the trial court to fill gaps in the transcripts.
  - *Moody v. Westerville City School Dist. Bd. of Edu.*, 10th Dist. No. 07AP-551, 2008-Ohio-591.
- The exceptions under R.C. 2506.03(A) are:
  - (1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.

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APPELLANT LIMITED

### Limited to the RECORD, but . . .

- (2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:
  - (a) Present the appellant's position, arguments, and contentions;
  - (b) Offer and examine witnesses and present evidence in support;
  - (c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions; \*\*
  - (d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
  - (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.

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APPELLANT LIMITED

### Limited to the RECORD, but . . .

- (3) The testimony adduced was not given under oath.
- (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body. \*\*
- (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

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APPELLANT LIMITED

### Deference of Common Pleas Court

CALVIN and HOBBS

YOU KNOW WHAT WE NEED, HOBBS? WE NEED AN ATTITUDE.

AN ATTITUDE?

YEAH, YOU CAN'T BE COOL IF YOU DON'T HAVE AN ATTITUDE.

REALLY? SURE, THEY'RE ALL THE SAME. HOW MANY KINDS OF ATTITUDE COULD WE HAVE?

WE COULD BE CONTEMPTUOUSLY DEFERENTIAL.

OH, GOOD. THAT'S REAL COOL.

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DECEMBER 19, 2011

### Deference of Common Pleas Court

- Whether a court finds the actions of a board of education to be wise, compassionate, or even prudent is not the issue.
- The common pleas court determines only whether the suspension or expulsion is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.
  - *Kresser v. Sandusky Bd. of Educ.* (2001), 140 Ohio App. 3d 634, 635 (overturning expulsion when school waited two weeks to provide a requested hearing).

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DECEMBER 19, 2011

## DISCIPLINING SPECIAL EDUCATION STUDENTS

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DECEMBER 19, 2011

### Individualized Education Programs

- When a student qualifies as a special education student, a school must convene an IEP team to create a specific educational program for that student.
- Sometimes these programs also contain behavioral goals, which alter the way a school can apply its discipline rules to that student.

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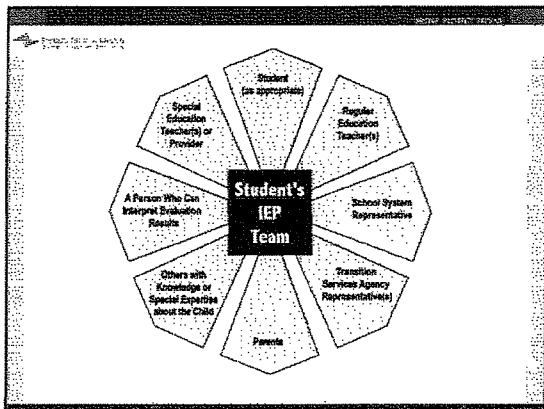
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### IEPs & School Discipline

- Unless a student's IEP behavior plan says otherwise, the school discipline code applies to the special education student in the same way it applies to all students.

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### IEPs & School Discipline

- The IEP team (not the school itself) decides if any part of the discipline code should not apply to a special education student. If any part of the code does not apply, the IEP team must write that clearly in the student's behavior plan.

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**Suspension of a Special Education Student**

- The school can suspend a special education student for ten (10) days or less just as they can a child without a disability.

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**Expulsion of a Special Education Student**

- The school must do more if it wants to expel a special education child for eleven (11) days or more. The school must have a "manifestation determination review" and a new IEP meeting.
- The purpose of the manifestation determination review is to decide if the student's disability caused the behavior that got him into trouble. If the behavior is because of his disability, the school cannot expel the student.

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**Expulsion of a Special Education Student**

- If a school expels a special education student, it must still provide "services" to the student. The services must help the child reach the goals in his IEP.
- Schools usually give students home instruction or send them to an alternative school.

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**Exception: Behavior Involving Weapons or Drugs**

- If a special education student brings a weapon or drugs to school, different rules apply. The school can move the student to an interim alternative educational setting (IAES) for forty-five days (45 days).




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**Exception: Behavior Involving Weapons or Drugs**

- The IEP team decides what IAES is most appropriate for an expelled special education student.
  - The IAES must provide the student with services so he can meet the goals in his IEP.
  - The IAES must also address the behavior that got the student into trouble.
- Most schools put students on home instruction or in an alternative school during this time.

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**Questions and Comments**

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**Contact Us**

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## Due Process Timeline for Suspension/Expulsion of Student

If the board of education upholds the decision to suspend or expel a student, the student can appeal the decision to an Ohio Court of Common Pleas by filing a notice of appeal with the court within thirty (30) of the board's decision.

Within one (1) day after the decision suspending or expelling a student, provide the student's parent or guardian with written notice of the suspension or expulsion.

Issue written notice of suspension or expulsion.

Provide opportunity for a hearing.

Suspension: No delay is necessary between the time the school issues the notice and the time of the hearing.

Expulsion: Hearing must be scheduled no earlier than three (3) school days and no later than five (5) school days after notice is given, unless the student or the student's parents request otherwise.

If a student appeals the decision to the board of education, provide an opportunity for a hearing.

