



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 13, 2025

TO Members, Joint Education Interim Committee

FROM Tania Hytrek, Operations Administrator

SUBJECT Overview of School Discipline: Suspension, Expulsion, Seclusion, and Restraint

INTRODUCTION

The Joint Education Interim Committee's (Committee) Priority #2, 2025 Interim Topic, is School Discipline. School discipline at the state level is typically discussed in the context of suspension and expulsion and includes discussion of the State's obligation to educate students in grades kindergarten through grade twelve. In that vein, this memo provides a succinct summary of the Wyoming Statutes governing suspension and expulsion and includes references to relevant case law. Additionally, the Interim Topic notes seclusion and restraint as an area of interest to the Committee. The statute governing the obligation of school districts in that realm is also summarized below.

This memo does not outline the laws governing discipline of students receiving educational services under the Individuals with Disabilities in Education Act (IDEA) or Section 504 of the Federal Rehabilitation Act of 1973 (Section 504). That is an area currently occupied by federal law. The substantive and due process requirements associated with any change in placement or educational services under those laws are separate and distinct from the laws discussed within this memo.

WYOMING STATUTES AND CASE LAW GOVERNING SUSPENSION AND EXPULSION

The Wyoming Constitution guarantees all children, ages six through twenty-one, the fundamental right to the opportunity to receive an adequate education through attendance of public schools to be established by the Legislature. Wyo. Const. Art. 7, §§ 1 through 14, Art. 21, § 28. That said, this right is not absolute. School districts "have a compelling interest in providing for the safety and welfare of its students and that it is this interest that the expulsions protect." *RM v. Washakie County Sch. Dist. No. One*, 2004 WY 162, ¶16, 102 P.3d, 868 (Wyo. 2006). The State, and by extension school districts, have an obligation to provide the opportunity for an education, but the "actual receipt of educational services is accordingly contingent upon appropriate conduct in conformity with state law and school rules." *Id.* at ¶19. Generally, the State is not obligated to provide educational services to a student lawfully suspended or expelled. Wyoming Statute 21-4-306(d) states that districts are not prohibited from providing educational services to expelled students in an alternative setting, but it is not required.

Wyoming Statutes 21-4-305 through -308 govern the suspension or expulsion of students that attend Wyoming's public schools, with the exception of students receiving educational services under IDEA or Section 504. The board of trustees of any school is authorized to suspend or expel a student. The board may delegate that authority to the "administrative and supervisory staff." W.S. 21-4-305(a). School districts are also authorized to adopt rules "for reasonable forms of punishment and disciplinary measures" and teachers, principals, and superintendents may enforce those rules for insubordination, disobedience, and other misconduct. W.S. 21-4-308(a).

NOTICE AND HEARING REQUIREMENTS

The school district must give the student written or oral notice of the allegations against him or her, along with an explanation of the evidence supporting suspension or expulsion. W.S. 21-4-305(b)(i). Additionally, the school district must make a "good faith" attempt to notify the student's parents, guardians, or custodians within 24 hours of the student's suspension or expulsion. The school district is required to keep a record of the efforts to provide notice of the suspension or expulsion to the student's parents, guardians, or custodians. W.S. 21-4-305(b)(ii).

The student must also be given an opportunity to be heard, which means "at a minimum a meeting in which the disciplinarian or his designee provides the substantive information regarding the suspension or expulsion to the student to be suspended, and the student to be suspended may dispute the substantive information provided." W.S. 21-4-305(g); see also 21-4-305(b)(iii) and (c)(i). The opportunity to be heard must be provided to the student as soon as practicable after the misconduct warranting suspension or expulsion occurs. W.S. 21-2-305(c). For suspensions of ten days or less, the opportunity to be heard must be given prior to removal of the student, unless the student's presence "endangers persons or property or threatens disruption of the academic process[.]" W.S. 21-4-305(c)(i). In that instance, the student may be removed immediately and the opportunity to be heard must be provided within 72 hours after removal of the student from school, not counting Saturdays and Sundays. *Id.*

If the suspension exceeds ten days or the student is being expelled, a hearing in accordance with the Wyoming Administrative Procedures Act (WAPA) is required. The hearing must be held within ten days of the recommendation for a suspension exceeding ten days or expulsion unless an extension requested by the student is granted by the appropriate administrator. The student remains suspended until the hearing is held and in no event, may a student be suspended or expelled for longer than one year. W.S. 21-4-305(c)(ii) and (e).

Any decision by a school district or a designated administrator to suspend or expel a student is a final agency action and subject to appeal in the district court of the county in which the school district is located, pursuant to the WAPA. W.S. 21-4-305(f). A superintendent may, with the approval of the board of trustees, modify the period of any expulsion on a case-by-case basis. W.S. 21-4-306(d).

GROUND FOR SUSPENSION OR EXPULSION

Pursuant to W.S. 21-4-306, the following are grounds for suspension or expulsion of a student from a Wyoming public school:

- Continued willful disobedience or open defiance of the authority of school personnel.
- Willful destruction or defacing of school property during the school year or any recess or vacation.
- Any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils, including the use of foul, profane or abusive language or habitually disruptive behavior. Habitually disruptive behavior means "overt behavior willfully initiated by a student causing disruption in the classroom, on school grounds, on school vehicles or at school activities or events, which requires the attention of a teacher or other school personnel." W.S. 21-4-306(b).
- Torturing, tormenting, or abusing a pupil or in any way maltreating a pupil or a teacher with physical violence.

- Possession, use, transfer, carrying, or selling a deadly weapon as defined under W.S. 6-1-104(a)(iv)¹ within any school bus as defined by W.S. 31-7-102(a)(xl) or within the boundaries of real property used by the district primarily for the education of students in grades kindergarten through 12. The board of trustees and the superintendent are required to expel a student for a period of one year if a student violates this provision, subject to the ability to modify an expulsion on a case-by-case basis, and the superintendent is required to notify the district attorney of the name of the student and the nature of the violation.

Statute prohibits imposition of suspension or expulsion for offenses punishable under law, unless the offense was committed at a school function, against school property, or the student's presence in the school setting would "clearly be detrimental to the education, welfare, safety or morals of other pupils." W.S. 21-2-305(e).

POTENTIAL IMPLICATION OF CRIMINAL STATUTES

To that point, there are numerous criminal statutes that may be implicated depending on the student's conduct. By way of example, W.S. 6-2-505 governs terroristic threats and provides:

- A person is guilty of a terroristic threat if he threatens to commit any violent felony with the intent to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such inconvenience.
- A terroristic threat is a felony punishable by imprisonment for not more than three years.

A violent felony is defined in W.S. 6-1-104(a)(xii) as "murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, strangulation of a household member, aircraft hijacking, arson in the first or second degree, aggravated burglary, a violation of W.S. 6-2-314(a)(i) or 6-2-315(a)(ii), a third, or subsequent, domestic battery under W.S. 6-2-511(a) and (b)(iii) or a violation of W.S. 6-5-204(b)."

In the instance of a violent threat by a student in a school setting, this statute may be implicated. This is not meant to be an exhaustive list of the potential criminal statutes that may be implicated. It is meant to be illustrative of additional considerations in the realm of student discipline and the potential criminal penalties that a student may face. Those consequences would be fact specific depending on the student's conduct and consequences of those actions.

WYOMING STATUTES GOVERNING SECLUSION AND RESTRAINT

All school districts are required to adopt a policy and training procedures regarding the use of seclusion and restraint in schools. School districts are required to submit a copy of the policy to the state superintendent of public instruction. In the event a school district utilizes seclusion or restraint with a student, the parent or legal guardian of the student must be notified. Additionally, the law prohibits locked seclusion. W.S. 21-3-110(a)(xxxi).

"Restraint" means the use of physical force, with or without the use of any physical device or material, to restrict the free movement of all or a portion of a student's body, but does not include comforting or calming a student, holding the hand or arm of a student to escort the student if the student is complying, intervening in a fight or using an assistive or protective device prescribed by an appropriately trained professional or professional team. "Seclusion" means removing a student from a classroom or other school activity and isolating the student in a separate area but does not include a student requested break or in-school suspension, detention or other appropriate disciplinary measure. W.S. 21-3-110(a)(xxxi)(A) and (B).

Should you have further questions or need any additional details regarding this information, please advise.

¹ Deadly weapon as defined by W.S. 6-1-104(a)(iv) means "but is not limited to a firearm, explosive or incendiary material, motorized vehicle, an animal or other device, instrument, material or substance, which in the manner it is used or is intended to be used is reasonably capable of producing death or serious bodily injury[.]"