

Determining the Appropriateness of Suspension or Expulsion for Students Under Age Eight

Purpose

This guidance describes criteria recommended when considering which behaviors may be perceived as an “imminent threat of harm or danger to the others in the school” in the context of evaluating whether to suspend or expel a student under age eight as a disciplinary measure. This guidance lays out the Agency of Education’s interpretation of new requirements (Act 35 of 2021, and subsequent amendments to 16 V.S.A. § 1162(d)) related to suspension or expulsion of a student under the age of eight in public schools, approved independent schools, or prequalified private prekindergarten education programs.

Additionally, this guidance describes required actions that approved independent schools, SU/SDs, and private prekindergarten education programs must complete and document when suspending or expelling a student of any age.

Statutory Basis for Suspension or Expulsion

Under 16 V.S.A. § 1162(a), a student may be suspended or expelled only for misconduct:

- (1) on school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the student harmful to the welfare of the school;*
- (2) not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or*
- (3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student’s equal access to educational programs.*

Evaluating Suspension or Expulsion as an Option for Students under Age Eight

Recent amendments to 16 V.S.A. § 1162, limit the instances in which a school may suspend or expel a student under the age of eight:

- (d) Notwithstanding anything to the contrary in this chapter, a student enrolled in a public school, approved independent school, or prequalified private prekindergarten program who is under eight years of age shall not be suspended or expelled from the school; provided, however, that the school may suspend or expel the student if the student poses an imminent threat of harm or danger to others in the school.*

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Therefore, public schools, approved independent schools or prequalified private prekindergarten education programs may not suspend or expel a student under eight years of age, unless the student “poses an imminent threat of harm or danger to others in the school.”

Suspension or expulsion of a student under eight years old may be warranted if the student’s behavior meets both the definition of “imminent” and “harm or danger to others” below.

Definition of Harm or Danger to Others

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
- impairment 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 measures to mitigate the harm, to tend to the needs of the targeted student, and to support the accused student in engaging in restorative practices and/or learning new skills.

Definition of Imminent

A threat of harm or danger to others is “imminent” if it meets each of the 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.
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.

Local-level Documentation and Reporting Responsibilities When Suspending or Expelling a Student under Age Eight

Suspending or expelling children/students under the age of eight is no longer allowable, except if a child/student poses an imminent threat of harm or danger to others in the school.

Documentation Requirements for Public and Private Prekindergarten Programs

If a public or private prekindergarten education program makes a determination to suspend

and/or expel a child/student, the program shall document the incident resulting in the disciplinary measure and shall report the suspension and expulsion within five school days of the start of the suspension or expulsion, in accordance with Agency of Education (AOE) reporting and [child care licensing requirements](#). That documentation shall include:

1. Evidence of “harm” or imminent threat of harm or danger, as defined above;
2. Evidence that the school employed or attempted to employ less restrictive interventions and strategies to address the student’s needs, where possible, before ultimately arriving at suspension or expulsion as the last resort.

All suspensions and expulsions of prekindergarten students, including students in private prekindergarten education programs, must also be reflected in the AOE’s end of year required suspension and expulsion data collection, in accordance with the AOE’s annual reporting requirements.

Documentation Requirements for Schools Serving Students in K-Age 8

Beginning in SY22-23, when suspending or expelling a student who is under age 8, a public school or approved independent school shall document the incident resulting in the disciplinary measure, and shall report the suspension and expulsion within five school days of the start of the suspension or expulsion, in accordance with AOE reporting and [child care licensing requirements](#). That documentation shall include:

1. Evidence of “harm” or imminent threat of harm or danger, as defined above;
2. Evidence that the school employed or attempted to employ less restrictive interventions and strategies to address the student’s needs, where possible, before ultimately arriving at suspension or expulsion as the last resort.

Additionally, schools must meet all reporting requirements associated with Special Education Rules and Regulations (SBE Rule 4313).