

What is Ohio's Safe Act?

The Supporting Alternatives for Fair Education (SAFE) Act was passed by the Ohio General Assembly in 2018. The overall purpose of this legislation is to limit a school's use of out-of-school suspensions and expulsions of students in pre-K through 3rd grade for conduct that is disruptive or non-violent, and to address behavior using positive interventions rather than simply punishing children. The requirements of this legislation will be phased in over a period of three years, with full implementation required by the 2021-2022 school year.

What is the timeline for implementation by school districts?

For the 2019-2020 school year, school districts will be required to fully implement the mental health consultation requirements. Schools will still be permitted to issue out-of-school suspensions and expulsions for students in pre-K through 3rd grade, but must reduce such suspensions and expulsions by 25% from the 2018-2019 school year baseline number. For the 2020-2021 school year, school districts will still be permitted to issue out-of-school suspensions and expulsions for students in pre-K through 3rd grade, but must reduce such suspensions and expulsions by 50% from the 2018-2019 school year baseline number. Starting with the 2021-2022 school year, school districts will be prohibited from issuing out-of-school suspensions for students in pre-K through 3rd grade absent conduct that affects the safety and well-being of classmates, teachers, and other school personnel.

Topic 1: Suspension and Expulsion of Students in Pre-K through 3rd Grade**Can a school suspend or expel a student in pre-K through 3rd grade for behavior that is disruptive or non-violent?**

Generally, no. RC 3313.668(B)(1) prohibits a school from issuing an out-of-school suspension or expulsion to students in pre-K through 3rd grade except in certain limited circumstances discussed below.

What types of behaviors can a student in pre-K through 3rd grade still be suspended or expelled for?

Schools may issue an out-of-school suspension or expulsion to a student in pre-K through 3rd grade if the student engages in conduct set forth in RC 3313.66(B)(2)-(5). Specifically, out of school suspension and expulsion are permitted for a student in grades Pre-K through three if a student brings a firearm or a knife capable of causing serious bodily injury to school or to a school-sponsored program or activity. A school may also issue an out-of-school suspension or expulsion if a student makes a bomb threat to the school or engages in behavior that would be a crime if committed by an adult and that results in serious physical harm to another person while at school or at a school-sponsored program or activity. The only other circumstance in which a school can suspend or expel a student in 3rd grade or below is when removing the child from the school is necessary to protect

the immediate health and safety of the student, classmates, teachers, and other school personnel.

Can a school issue an in-school-suspension to a student in pre-K through 3rd grade?

Yes, in-school suspensions are still permitted for students in pre-K through 3rd grade, as long as the student serves the suspension in a supervised learning environment and is able to complete his assignments for credit.

What procedures must a school adhere to when suspending or expelling to a student in pre-K through 3rd grade?

A student in pre-K through 3rd grade is entitled to all the same procedural protections provided for all students who are suspended or expelled. For a suspension, the school must provide written notice to the student of its intent to suspend the student and the reasons for it and provide a chance for the student to attend an informal hearing to challenge the reasons for the suspension. For an expulsion, the school must provide written notice of its intent to expel to the student and the student's parent or guardian and provide them with an opportunity for a hearing with the superintendent to challenge the reasons for the expulsion. These procedural protections are detailed in Ohio Revised Code 3313.66. Additionally, for students in pre-K through 3rd grade, the principal is required to consult with a mental health professional prior to a suspension or expulsion and, if additional mental health services are needed, the school or the mental health professional must assist the student's parent or guardian with locating a provider and obtaining necessary services.

What can I do if I do as a parent or guardian if my child is suspended or expelled?

Review the notice provided by the school carefully. In the case of a suspension, ask for a meeting with your child's teacher and principal and ask for a copy of your child's records and for a copy of the school district's discipline policies (or look them up on the school district's website). In the case of an expulsion, make a note of the time and date of the meeting with the superintendent and request a different date if your work schedule or other obligations make you unavailable on the date and time set by the school. You have a right to request and review educational records used to make a disciplinary decision, such as witness statements or security/bus video. Make your request in writing prior to the hearing. You also have a right to bring witnesses to the expulsion hearing. Also note that you may request an appeal of either a suspension or an expulsion. If you feel like you need legal assistance and you cannot afford a private lawyer, call your local legal aid office.

Topic 2: Emergency Removal of Students

What is emergency removal?

Removal from school without going through the suspension or expulsion procedures described above. For example, if you are called during the day and asked to pick up your child from school, that is considered an emergency removal.

When is a student allowed to be “emergency removed” from the classroom or school?

Students can only be “emergency removed” when the situation is an emergency. An emergency exists when a student poses an immediate danger or an ongoing threat of disrupting academic process, and the danger or threat cannot be solved without removing the child. If the school removes your child in a non-emergency situation, you should contact the school to fix the problem. If the school fails to do so, call your local legal aid office.

Who can emergency remove students?

The superintendent, principal, or vice-principal can remove a student from school premises. A teacher can remove a student from the activities that teacher controls, but a teacher cannot remove a student from the school premises without approval from the superintendent, principal, or vice principal.

What are the restrictions on emergency removal?

The situation must truly constitute an emergency to permit such removal. For students in pre-K through 3rd grade, emergency removal can only occur for the remainder of the school day in which the danger occurs, and the student must be allowed to return the next school day.

What are the procedural requirements after an emergency removal?

First, the school must provide the student with written notice of the reason for the emergency removal as soon as practicable. Second, no later than the next school day after the emergency removal, the school must hold a hearing that corresponds with the rules of suspensions and expulsions, depending on which action the school proposes to take. Third, the person who ordered or requested the emergency removal must be present at the hearing. However, the notice and hearing requirements do not apply if the student is emergency removed for less 24 hours.

What can I do if I do as a parent or guardian if I object to my child’s emergency removal?

File a complaint with the state board of education and/or call your local legal aid office. If a school is using the emergency removal procedures often with your child, you may

want to request a special education evaluation or a behavior improvement plan to address the roots of the behaviors that are leading to the removals.

Topic 3: Consultation with a Mental Health Professional

Does my pre-K through 3rd grader who falls under an exception to the ban on suspension and expulsion have any protections?

Yes. Wherever possible, schools must consult with a mental health professional before suspending or expelling students in pre-K through 3rd grade. If the events leading up to the suspension or expulsion indicate a need for mental health services, that professional must assist the child's parent or guardian in finding such services.

What should I do as a parent or guardian if the school tries to suspend or expel my child without going through a mental health professional?

Call your school administrator and ask the administrator to work with a mental health professional. If they refuse, point them to the Ohio Revised Code, section 3313.668(B)(2). If you are still unable to get your child the needed services, call your local legal aid office.

Topic 4: Completion of Assignments

Can a student in pre-K through 3rd grade complete assignments missed as a result of a suspension?

Yes. Ohio law requires each school district to adopt a policy setting forth guidelines for completion and grading of assignments missed due to a suspension. Such a policy must allow the student an opportunity to complete missed classroom assignments and receive at least partial credit for a completed assignment. The school district's policy may permit a grade reduction based on the suspension, but the policy must prohibit the receipt of a failing grade on a completed assignment based solely on the fact that the student was suspended.

What can I do as a parent or guardian if my child is not permitted to complete assignments missed as a result of a suspension or is given a failing grade solely based on the suspension?

Contact your child's teacher or principal and ask for an explanation as to why your child was not provided an opportunity to complete missed assignments or received a failing grade on the completed assignment. Additionally, request and review a copy of the school district's policy on completion of missed assignments missed due to suspension. If it does not comply the above summary, refer the school to Ohio Revised Code, section 3313.66(A)(3). If the school still prohibits your child from completing missed assignments due to suspension or persists in an unwarranted failing grade, call your local legal aid.



Education

The information on this flyer is not legal advice. If you are seeking representation or legal advice, please contact SEOLS. An attorney-client relationship does not exist between you and the Legal Aid Society of Columbus or Southeastern Ohio Legal Services.
