From Classroom to Courtroom: Teens, Law Enforcement, and School Discipline

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I. Criminal and Juvenile Law in the School Setting: The Legal Rights of Students

a. Common Crimes: While there are many offenses that may be committed in the school setting, some of the most common school offenses are:
   - i. Terrorist Threats (Wis. Stat. § 947.019)
   - ii. Battery (Wis. Stat. § 940.60)
   - iii. Disorderly Conduct (Wis. Stat. § 947.01)
   - iv. Possession of a Controlled Substance (Wis. Stat. Ch. 961)
   - v. Sexual Assault (Wis. Stat. §§940.225, 948.02)
   - vi. Possession of a Dangerous Weapon (Wis. Stat. §948.60)

b. Interrogation in Schools: Case law provides some guidelines for interrogations that occur at school. Courts have recognized that juveniles should be treated differently for purposes of interrogations, confessions, etc.
   - i. *In re Gault*, 387 U.S. 1 (1967)
     1. Landmark case holding that the Due Process clause of the Fourteenth Amendment requires juvenile proceedings to measure up to the essential due process requirements for adults. Children charged in delinquency proceedings require the assistance of an attorney.
   - ii. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)
     1. Due process considerations for voluntariness of a confession permit consideration of the child's age. In other words, a child's age is appropriate to consider when determining whether the child was in custody for purposes of *Miranda* warnings.
   - iii. *State v. K.R.C.*, 2026 WI 10
     1. Student questioned by law enforcement at school where child would not have felt free to leave required *Miranda* warnings.

c. The Fourth Amendment in Schools:
   - i. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)
     1. Fourth Amendment applies to searches conducted at schools.
   - ii. *In re the Interest of Isiah B.*, 176 Wis. 2d 639 (1993)
     1. Students do not have a reasonable expectation of privacy in their lockers. Schools may adopt policies regarding ownership of locker and provide notice to students.
   - iii. *In re the Interest of Angelia D.B.*, 211 Wis. 2d 140 (1997)
     1. Standard for a search of student at school is whether there are reasonable grounds – rather than probable cause.
   - iv. *State v. Schloegel*, 2009 WI App 85

1. A search of vehicle is reasonable when a student is suspected of violating rules, has received notice of a policy, and has consented to search of vehicle as part of agreement to park vehicle at school.

II. School Discipline: Student's Rights Related to Suspension, Expulsion, and Special Education

a. Basic Requirements:

i. Due process clause forbids arbitrary deprivation of liberty

ii. Suspension for 10+ days requires opportunity to be heard

iii. Basic right to be heard means a hearing appropriate and consistent with the nature of the case

iv. Notice of hearing is required.

b. Case Law Regarding School Discipline:

i. *Goss v. Lopez*, 419 U.S. 565 (1975)

1. Students are entitled to the protection under the due process clause for suspensions up 10 days. This requires a notice of violations and an opportunity to provide their version of events. There are some occasions where that notice and ability to hear from student are not feasible before removal of student.

ii. *Butler v. Oak Creek-Franklin School Dist.*, 172 F. Supp. 2d 1102 (E.D. Wis. 2001)

1. Due process in student discipline requires schools to provide students with sufficiently specific notice of both the rule allegedly violated and the conduct underlying the accusation so the student can prepare a defense.

c. Expulsion:

i. Governed by Wis. Stat. §120.13

1. Schools can seek to expel students for actions that occur at school
2. Wisconsin law does not require school districts to provide any educational services to non-special education students during a period of expulsion.
3. If a school district pursues an expulsion hearing, a student and parent/guardian must be provided separate notice of an expulsion hearing at least 5 days in advance of the hearing. This notice must contain the provisions listed in the expulsion statute, including notice that a student may be represented by counsel at the expulsion hearing.

ii. Notice Requirements: Notice must be provided to student and parent (separately) at least 5 days prior to the expulsion hearing.

iii. Right to Present a Defense: The district must allow a student the opportunity to present evidence that will mitigate the punishment, and the district has a constitutional obligation to consider mitigating evidence before deciding to expel the student. *Betts v. Board of Education,* 466 F.2d 629, 633 (7th Cir. 1972)

d. Special Education & Expulsion
    i. When a student has an Individualized Education Plan (IEP), there are different requirements prior to imposition of school discipline.
        1. Manifestation Hearing: must occur within 10 days of the alleged violation. If determined that behavior was a manifestation of disability, student cannot be expelled (20 USC § 1415 (2)(1)(E))
    ii. If an IEP was not in place, then a disability determination can be requested. School may proceed with expulsion pending the results of that determination. (20 USC § 1415(k)(5)(D)(ii)).
    iii. Numerous laws are implicated in school discipline for students with special education protections. For example, Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, Title IX, Anti-Bullying Act (Wis. Stat. §118.46), Section 1983, FERPA, NCLB, Fostering Connections Act

III. How Criminal Behavior Impacts Title IX Investigations and Wisconsin Interscholastic Athletic Association (WIAA)

a. Title IX
    i. Title IX provides protections against sex-based discrimination/harassment in school. When a Title IX complaint is received, the school will initiate an investigation.
    ii. Students may have an advisor assist during the process. That advisor can be, but does not need to be, an attorney. Both the complainant and the respondent have the right to use an advisor.
    iii. Respondent is presumed innocent during this process.
    iv. If there is a finding that sex-based discrimination/harassment, disciplinary sanctions can be imposed including detention, suspension, expulsion, or other remedies like no contact orders
    v. Title IX process must be conducted in a timely manner. This means cannot always wait to see what happens during a law enforcement investigation or delinquency proceedings before deciding whether to make a statement.
b. WIAA
    i. Rules that student athletes need to follow are governed by WIAA statewide eligibility standards and the member school's code of conduct
    ii. After an alleged rule violation is reported, the school district or athletic department will investigate. This process will vary by school but may include interviewing, reviewing evidence, speaking with parents or witnesses.
    iii. If a violation is found to have occurred, school will determine the discipline. If violation of certain rules is found, WIAA requires suspension for at least one game/contest/meet.
    iv. Schools are permitted to impose stronger discipline (multi-game suspension, removal from team, athletic probation)

v. A student charged and/or convicted of a felony shall, upon the filing of felony charges, become ineligible for all further participation until the student has paid his/her debt to society and the courts consider the sentence served
vi. WIAA High School Rules at a Glance: https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAARules2025-26.pdf