

GUIDELINES FOR SUSPENSION AND EXPULSION**SUSPENSION**

Suspension involves either in-school suspension or the dismissal of a student from school classes, buildings, and grounds. Suspension shall not be for more than 10 consecutive school days. The parent(s) of the student are to be notified promptly by the school principal that suspension has been issued.

The authority to initially determine whether or not a student shall be suspended, for a period not to exceed 10 days, rests with the principal or assistant principal and can be exercised AFTER the student is given:

1. Oral or written notice of the charges against him/her.
2. An explanation of the evidence against him/her.
3. An opportunity to present his/her side of the story.

There need be no delay between the time notice is given and the conduct of the above procedure. In those cases where a student's presence poses a continuing danger to persons or property or any ongoing threat of disrupting the educational process, the student may be immediately removed.

EXPULSION

Expulsion of a student from school is appealable to the school board, and, except when the behavior is bringing a firearm or other weapon to school, may not extend beyond the end of the current school year. Such action would follow only after suspension and following a conference of the parent(s) and the administration. If the student involved has a disability, see the section entitled Students with Disabilities.

The responsibility of the school may not end with expulsion. The guidance department may notify other appropriate agencies when a student has been expelled.

EXPULSION PRE-HEARING NOTICE TO STUDENT

The student and the student's parent shall be provided with the following notices, prior to the expulsion hearing outlined below:

1. Notice of Charges

The specific charges against the student shall be stated clearly enough for the student and the parent to understand the grounds of the charge and to be able to prepare a defense.

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ADMINISTRATIVE REGULATION
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2. Notice of Hearing

The date of a hearing, which shall be within a reasonable time not to exceed 10 school days, if the student is currently under suspension, unless a postponement is requested or agreed to by the parent, shall be provided.

3. Presenting Evidence

A student may present witnesses or documentary evidence to rebut the charges against the student.

4. Notice of Right to Adult Representation

The right to be represented and/or assisted at the hearing by a lawyer or other adult at the student's expense shall be explained. A parent or guardian who is unable to attend the hearing may provide written designation of another adult to assist the student in the parent's absence.

STUDENTS WITH DISABILITIES**1. Suspension of Students with Disabilities**

Students with disabilities may be suspended for a period not to exceed 10 consecutive school days for any conduct which would warrant suspension for a student who does not have a disability. The suspension may be effective immediately upon the decision of the designated building administrator who will review the file to ascertain if the Individual Education Plan (IEP) addresses the behavior in question. If the IEP does address the behavior, the procedure specified in the IEP should be followed. The administration must make and document efforts to contact and notify the parent prior to the suspension.

A student with disabilities may be suspended for additional periods of up to 10 consecutive school days for separate acts of misconduct as long as such removals do not constitute a change of placement. Educational services must be provided in cases of removals (suspensions) in excess of 10 days in a school year. The services are to be provided to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his/her IEP. The principal in consultation with the student's special education teacher shall make the service determination. Beginning with the eleventh day of suspension in a school year, the school must also comply with the provisions of Regulation 300.520 of the Individuals with Disabilities Education Act (IDEA). If suspensions in excess of 10 days in a school year constitute a change of placement as defined in IDEA Regulation 300.519(b), then a manifestation determination review (Regulation 300.523(a)) must be conducted before a suspension is implemented.

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In any suspension of a student with a disability, the student's parent or representative shall be given oral or written notice of the charges, an explanation of the evidence supporting the charges, and an informal opportunity to respond to and rebut the charges.

2. Expulsion of Students with Disabilities

An expulsion may be effected for a student with a disability for any conduct which would warrant expulsion for a student without a disability. Prior to expulsion, the Individual Education Plan (IEP) Team will meet to determine whether the misbehavior is a manifestation of the disability based on the criteria of Regulation 300.523(c) of IDEA. If the IEP Team determines that the misbehavior is a manifestation of the disability, the student may **not** be expelled. The District has an obligation to continue to provide educational services during the time of any expulsion, with the manner in which the services are provided to be determined by the IEP Team.

A student with a disability must continue to receive a free appropriate public education whether or not they are expelled. A student with a disability for whom expulsion has been recommended is entitled to all the due process rights available to a student without a disability for whom expulsion has been recommended. In addition, the student with a disability is entitled to all the due process procedures available to a student with a disability under the Individuals with Disabilities Education Act and applicable state policies and procedures.

A special education student who is a danger to self or others or who has carried a weapon as defined by IDEA regulations to school or to a school function may be removed from his or her current placement. Such a student shall be placed in an appropriate interim alternative placement in accordance with the IDEA Regulation 300.521-529.

CONDUCTING HEARINGS FOR EXPULSION

1. Nature of the Hearing

The hearing is not a court proceeding and should not be referred to or conducted as such. The administrative hearing should be conducted without the rigidity of court hearings, and there are no specific rules of evidence or procedure that must be followed. The thrust of the entire hearing is directed toward a determination of whether the reasons offered for the proposed suspension or expulsion is supported by substantial evidence. The evidence offered at the hearing should be directed toward attaining the truth and shall include an opportunity for the presentation of evidence as to the existence of mitigating circumstances. The key to conducting a successful hearing is to

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search for the truth through reasonableness and fairness.

2. The Hearing Officer

The student is entitled to an impartial hearer of facts. If the school board has designated a hearing officer, the hearing officer may conduct the hearing unless he/she is biased or prejudiced against the student and the student can establish that this bias or prejudice deprived him/her of a fair hearing. The hearing officer may conduct the hearings if his/her acts, judgments, or decisions are not at issue, i.e., if the confrontation or the incident at issue did not involve the hearing officer directly. If the hearing officer is not qualified under this rule, another hearing officer should be called upon to conduct the hearing. If in doubt about whether the hearing officer's acts, judgments, or decisions are at issue or if the hearing officer cannot conduct a fair and impartial hearing, the hearing officer should not conduct the hearing. The intent is to have a hearing officer who is impartial and can render a fair decision.

3. Representation of the Student

There is no requirement that the student must have representation at the hearing; however, if the student or his/her parent(s) request that he/she be represented by an attorney at the student's expense, his/her parents, or another adult, the request must be granted. The school may choose to involve the parents in the disciplinary proceedings from the outset.

4. A Recording of the Hearing

A record of the hearing should be made to substantiate that the required elements of procedural due process were afforded the student. This can be accomplished by several methods.

- a. The preferred method of recording is tape recording or court reporter transcription of the entire proceeding.

All evidence that is introduced in the form of written documents should be marked so as to identify the origin and order of introduction. Examples of this would be, "School Exhibit 1, 2, 3," etc., and "Student Exhibit 1, 2, 3," etc.

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5. Open or Closed Hearing

Since an expulsion hearing before a designated hearing officer or the school board is subject to the Family Education Rights and Privacy Act (FERPA) the hearing shall be closed unless the parent waives their rights under FERPA in writing.

6. Witnesses in the Room

At the request of the school representative or the student or his/her parents, witnesses may be excluded from the room while the others are offering testimony. The hearing officer should make the suggestion at the beginning of the hearing, before any evidence is presented, that if either side wishes to have witnesses excluded from the room, it may do so. At no time may the student or his/her parent or representative be excluded from the room.

7. Cross-Examination

The hearing officer should permit cross-examination if any circumstances indicate that it is necessary in order to reach the truth or to otherwise conduct a hearing which is fundamentally fair.

8. Sworn Witnesses

Witnesses should be given an oath or affirmation before offering testimony.

9. Substantial Evidence

If, at the conclusion of the hearing, the reasons given for the proposed expulsion are supported by the evidence offered at the hearing, the student may be expelled.

The action of the student does not have to be proven beyond a reasonable doubt as in a criminal trial, but the action must be supported by substantial evidence. There must be evidence presented upon which the hearing officer can conclude that the student did do the alleged acts. In determining whether there is substantial evidence to support an expulsion the hearing officer may take into consideration only that evidence presented at the hearing.

10. Making the Decision and Giving Notice to the Parties

After the hearing officer decides whether to expel a student, the hearing officer has the responsibility of promptly informing the student, his or her parents, the student's counsel, or his or her representative, both orally and in writing, of the decision. If the student is found guilty of misconduct, the decision should specify the misconduct in sufficient detail to inform the student fully of what he

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or she was found to have done. The decision must be specific enough so that a reasonable person can be advised of the finding and basis for the decision to expel. The decision should also contain information on how to appeal to the school board.

11. Appeal to School Board

An appeal of the hearing officer's decision may be made to the school board, based upon a review of the record of the expulsion hearing, and should be reviewed at the next regular meeting of the Board, except when good cause is shown for calling a special meeting for that purpose. Since the expulsion will affect or become a part of the student's educational record, the appeal hearing before the Board will be in executive session unless the parent/guardian signs a written waiver of their rights under the Family Educational Rights and Privacy Act.

For expulsion procedures, see the guidelines for hearings. (FHDA-E1)

Legal Ref: 20 U.S.C. 1232g(e)(f)	Family Educational Rights and Privacy Act
45 <u>CFR</u> 99.30/99.31	Regulations
NDCC 15.1-09-33(17)	School board - Powers
NDCC 15.1-19-09	Students - Suspension and expulsion - Rules
NDCC 15.1-19-10	Possession of a weapon - Policy - Expulsion from school
<u>Goss v. Lopez</u> , 419 U.S. 565 (1975)	

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