

Billings School District 2

STUDENTS

Student Discipline: Due Process

Suspension and Expulsion

The District recognizes and honors students' constitutional right to educational opportunity. However, as provided for in Montana law, the District will exercise its right to suspend or expel a student when necessary. The District expects all students to know and follow the District's policies, procedures, rules, and handbooks. The District considers a student's failure or refusal to comply with District policies, procedures, rules, and handbooks cause for discipline, including suspension or expulsion. Students with disabilities will be suspended or expelled pursuant to the provisions of the Individuals with Disabilities Education Act (IDEA), Section 504, and corresponding Montana law. See Policies 3360 P-3 and P-4.

A. Definitions and Rudimentary Procedures

1. Suspension

"Suspension" means the exclusion of a student from attending individual classes, school, school functions or activities and participating in school activities for an initial period not to exceed ten (10) consecutive school days per incident. Following an alleged infraction, a school administrator shall give the student oral or written notice of the alleged misconduct. If the student denies the allegations, the administrator shall explain the evidence of the misconduct to the student. The student shall then be given an opportunity to present the student's position.

The administrator shall make every reasonable attempt to contact the responsible adult as soon as possible, by phone, email, or letter. If requested by the responsible adult, a meeting with the responsible adult shall be scheduled at the earliest convenience. K-8 students will not be sent home during the school day, but may be suspended effective at the end of the school day unless a responsible adult has been notified and will transport the student to home or other safe place. The student may not participate in school sponsored activities during the term of suspension or alternative placement.

An administrator may hold an informal hearing with the student and responsible adult on or before day ten (10) to determine if the student's immediate return to school would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process. A student may be suspended for an additional period of time not to exceed a total suspension of twenty (20) consecutive school days. Only an administrator may order the suspension of a student.

2. Expulsion

"Expulsion" is any removal of a student for more than twenty (20) school days without the provision of educational services. Only the Board of Trustees may expel a student.

B. Due Process Hearing

There are two (2) distinct situations that may lead to a due process hearing:

1. A series of problems with documented efforts by the school to solve these problems; and
2. A situation where there is a single severe violation of the policies, procedures, rules, or handbooks.

The hearing can result in four (4) possible actions being taken by the hearing officer:

1. Reinstatement of the student at the conclusion of the current disciplinary action;
2. A suspension, not to exceed twenty (20) days, from date of initial suspension;
3. Alternative placement, which could extend up to one school year. If the violation occurs in the second semester of the school year, the disciplinary action may extend through the first semester of the following school year; and
4. A recommendation of the hearing officer, through the Superintendent, to the Board of Trustees, that the student be expelled from the Billings Public Schools.

Correspondence and the record of the due process hearing and outcome will become a part of the student's permanent record as provided by law.

Building Administrator: If a due process hearing is warranted, the administrator who made the decision to hold a due process hearing will send a notice to the responsible adult (hand-delivered or certified return mail) or if the student is over age 18, by hand-delivery. This notice must be postmarked or hand-delivered with receipt, not later than two (2) school days following the day the administrative decision to pursue due process hearing was made. This notice shall contain:

1. Name of hearing officer (different person from the one deciding to invoke process, and only licensed administrators contracted by the District may act as hearing officers);
2. A description of possible disciplinary action;
3. A description of the alleged misconduct and standards of student conduct allegedly violated;
4. Notice that all educational records will be reviewed;
5. A statement of time and place of the hearing, with not less than two (2) days between notice and the actual hearing to permit preparation of defense;
6. A statement of procedural rights accorded the student including the right to be represented by an attorney, the right to question witnesses, and the right to present witnesses and evidence, the right to an impartial hearing officer, the right to have a personal copy of the official record at the student's own expense, and the right to reasonable access to the student's records and relevant non-privileged evidence which may be used at the hearing. However, in the event of sexual abuse or severe harassment, the District may protect the victim and limit any right to face-to-face cross-examination;
7. The student or responsible adult must give written notice to the building administrator at least 48 hours before the date of the hearing if the student will have an attorney present;
8. The administrator must contact the appropriate executive director or Superintendent to request legal counsel if the student is represented by an attorney; the building administrator must also notify the hearing officer that attorneys will be present. If the

hearing officer requests legal counsel, one will be secured through the appropriate executive director or the Superintendent;

9. A statement that nonappearance of the student or the student's representative shall entitle the hearing officer to conduct the hearing in the student's absence;
10. A copy of this Policy and any related policies, procedures, rules, and handbooks; and
11. A statement that any reasonable accommodations, such as an interpreter, will be provided as requested;
12. The hearing may be waived and the proposed disciplinary action imposed if the student and responsible adult furnish the hearing officer a signed statement to that effect;
13. A statement that the hearing shall be recorded.
14. The hearing shall be closed to the public unless the student requests in writing an open hearing prior to its commencement.

The hearing shall be scheduled within five (5) school days after the hearing notice has been sent. If the student requests a postponement of the hearing the student is to remain out of school pending a decision by the hearing officer. The postponement may be granted only if the student and the student's representative agree that the student shall remain out of school pending a decision by the hearing officer, waiving the statutory and constitutional right of reinstatement after twenty (20) days.

The student has a right to an impartial hearing officer. Upon written objection of the student made at least two (2) days before the hearing, stating the reason for the objection, another hearing officer may be designated. If the first assigned hearing officer conducts the hearing, that officer must address the objection and make a finding of impartiality.

The student has the right to question all witnesses and challenge all evidence (except the victim of sexual abuse or severe sexual harassment). The student may submit evidence, present witnesses and testify in the student's own defense. Freedom from self-incrimination is not applicable in school disciplinary proceedings. While a student will not be compelled to testify, the refusal to do so may be used to support a finding that the student did engage in the charged conduct.

Hearing Officer: The hearing officer is not required to conform to the formal rules of evidence. The student is presumed innocent until evidence proves otherwise. The hearing officer has two (2) school days to make the findings and decision. The student's initial disciplinary action will remain in effect until notified by the hearing officer of the due process decision.

The student and responsible adult shall be notified of the result of the hearing in writing, by hand-delivery, or by certified return mail, posted within two (2) school days after the hearing. The letter from the hearing officer must:

1. Be on district or school letterhead;
2. Indicate date of hearing;
3. Name the student;
4. Explain behavior that made due process hearing necessary;
5. State the beginning and ending date of disciplinary action, if any, and restrictions on student's presence on school premises and at school activities;

6. Identify an alternative placement;
7. Inform as to appeal procedure; and
8. Be signed by the hearing officer.

Superintendent Review: The Superintendent or the Superintendent's designee shall review the Hearing Officer's final report. If the Superintendent is satisfied that Board Policy, including the right to substantive and procedural due process, was followed by the building administrator and Hearing Officer, then the Superintendent shall affirm the Hearing Officer's report. If the Superintendent is not satisfied that Board Policy was followed, then the Superintendent shall remand the matter to the building administrator and/or hearing officer for further action. The Superintendent shall give written notice to the building administrator, hearing officer, student, and responsible adult within five (5) school days of receipt of the hearing officers' final report, unless the student has sent the Superintendent a written appeal, in which case the time to review is extended an additional two (2) days.

Appeal: The student or responsible adult may appeal the issue of whether substantive and procedural due process was provided by writing to the Superintendent within three (3) days of receipt of the hearing officer's decision. The Superintendent may designate a review by an impartial individual for a recommendation concerning the appeal.

C. Board Hearing

If the hearing officer believes, after a due process hearing, that the Board should consider an expulsion, the hearing officer shall forward the record of the hearing, along with a written recommendation of expulsion, to the Superintendent. The hearing officer's recommendation shall contain the following:

1. Date due process hearing occurred;
2. Reasons for expulsion recommendation; and
3. Hearing officer's signature.

Superintendent: The Superintendent shall provide the record from the due process hearing and the recommendation for expulsion to the Board if the Superintendent concurs in the recommendation. The record and recommendation provided to the Board shall include:

1. All documents, including exhibits, statements, notices, letters, and other written communications between the School District and the student, concerning the alleged misconduct and the hearing;
2. A detailed description of the due process hearing including date, location, persons present and role of each person present;
3. A reasonably detailed summary of the testimony and evidence of the hearing by the hearing officer;
4. A reasonably detailed statement of the hearing officer's assessment of the evidence and testimony;
5. A proposed statement of the facts, including all facts necessary to determine that expulsion is proper; and

6. A statement of why the hearing officer believes the conduct may warrant expulsion, and the date and location of the hearing.

The Superintendent shall send notice of the expulsion hearing to the student and responsible adult at least five (5) school days before the date scheduled for the hearing. In addition to that date, the notice of the hearing shall include:

1. A definition of expulsion;
2. The date, time and place of the hearing;
3. Information describing the process to be used to conduct the hearing;
4. Notice that the student or responsible adult must give notice at least two (2) school days before the hearing that they will have an attorney present at the hearing;
5. Information that the student, or the student's responsible adult or attorney may make arrangements with the Superintendent to review the due process hearing record; and
6. The Board's decision to conduct the hearing in closed session unless the responsible adult or emancipated student waives the right to hold the hearing in executive session. Such waiver requests must be made to the School Board, in writing, at least two (2) school days before the hearing. The Board's decision as to whether to hold the hearing in executive session will be made in accordance with state law.

An expulsion hearing may be rescheduled by the student or responsible adult by submitting a written request showing good cause to the Superintendent or the Superintendent's designee at least two (2) school days prior to the date of the hearing as originally scheduled. A student's request to reschedule constitutes a waiver of any statutory or constitutional right to be reinstated within twenty (20) days of the first day of suspension. The Superintendent or the Superintendent's designee shall determine if the request shows good cause.

Board of Trustees: The Board shall consider expulsion in a *de novo* hearing. The expulsion hearing is not an appeal of the due process hearing officer's decision, and the Board's determination on the question of expulsion shall not affect any disciplinary action already imposed. The *de novo* board hearing on expulsion should be scheduled so that it may be resolved within twenty days of initial suspension, unless the student or responsible adult has waived that deadline.

The expulsion hearing will be conducted by the Board in accordance with Montana law. Formal rules of evidence are not binding upon the Board's conduct of the hearing. Before the expulsion hearing the student will be entitled to:

1. Access to any and all evidence which may be presented, as well as access to the student's own records; and
2. Representation by the responsible adult, or someone else designated in writing by the responsible adult.

During the expulsion hearing, the student shall be entitled to:

1. The opportunity to comment on any evidence discovered after the due process hearing;

2. Not be compelled to testify, although the refusal to do so may be used to support a finding that the student did engage in the charged conduct;
3. The opportunity to comment on any alleged violation of due process;
4. Representation by the responsible adult, or someone else designated in writing by the responsible adult.
5. The opportunity to present evidence or testimony of any witness on the student's behalf.
6. The opportunity to cross-examine witnesses, except the victim of sexual abuse or severe sexual harassment.

At the expulsion hearing, the record of the due process hearing shall be entered into evidence. The Board will announce its decision and shall cause notice of the decision to be sent by certified mail (return receipt requested) or by hand-delivery with receipt, to the student and responsible adult.

After the lapse of one year, the student so expelled may apply for reentry to the school by making written application to the Board through the Superintendent. The application for readmission shall contain facts and evidence indicating resolution of the problem that caused the expulsion. Any supporting statements from persons other than the responsible adult or student should be included with the application. The Board shall consider each application individually and make an independent determination of whether or not the request will be granted.

The Board may order a hearing to be held on any application for readmission to school. The hearing shall follow procedures the same as those of the expulsion hearing, except the student shall have the burden of establishing the resolution of the student's particular difficulties. Readmission may occur only at the beginning of a grading period.

Cross References:

3300	Student Discipline: Consequences for Violations of Student Rules, Responsibilities, and Code of Conduct
3350	Student Discipline: Due Process
3350-P1	Detention
3350-P2	Suspension and Expulsion
3350-P3	Discipline Procedure for Special Education Students (SPED)
3350-P4	Discipline Procedure for 504 Students
6430	Development of Administrative Procedures

Legal References:

- § 20-5-101, MCA Admittance of child to school
§ 20-5-102, MCA Compulsory enrollment and excuses
§ 20-5-103, MCA Compulsory attendance and excuses
§ 20-5-201, MCA Duties and sanctions
§ 20-5-202, MCA Suspension and expulsion
§ 20-4-302, MCA Discipline and punishment of pupils – definition of corporal punishment
20 U.S.C. 1400, et seq. Individuals with Disabilities Education Act

34 CFR 300.519-521 Procedural Safeguards

Tinker v. Des Moines Ind. Sch. Dist., 89 S.Ct. 733 (1969)

Policy History

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