

**RULES OF PROCEDURE  
FOR CONDUCTING STUDENT HEARINGS**

The Board of Education of the Milford School District adopts and promulgates the following rules which shall govern all formal student hearings before the Board of Education. Said rules shall not apply to conferences or other informal investigations or proceedings at or upon which no formal ruling or decision is made.

**I. NOTICE OF HEARING**

When it comes to the attention of the Secretary of the Board of Education that the Administrative Staff is recommending that a student be referred to the Board for disposition, the Secretary shall cause a letter to be mailed to the student and the student's parents by Certified Mail (Return Receipt Requested) and by an unmarked envelope (by mail, with proof of mailing) at the same time, informing them of the charges or allegations being made against the student and to be the subject of a hearing before the Board of Education. The letter shall advise the student and the student's parents or guardian of the student's procedural rights regarding the conduct of the hearing, and a copy of these Rules of Procedure shall be included therein, along with pertinent information stating the nature of the alleged charges or violations.

The school district will provide five days official notice of the hearing by certified mail and/or hand delivery.

The letter containing the notice of hearing shall specifically advise the student of the following rights:

- A. You have the right to be represented by legal counsel or any other advisor or spokesman. If you cannot afford an attorney, you are advised that you may qualify for free legal services provided by the Community Legal Aid Society, Inc. at Georgetown, Delaware, whose phone number is 856-0038. If you plan to bring an attorney to the hearing with you, please notify the Board of Education immediately since they reserve the right to have their own attorney present in situations where the student will be represented by an attorney.
- B. You have the right to make a statement or to testify in your own behalf and to present other witnesses to testify in your behalf concerning your case. You also have the right to cross-examine any persons who testify against you concerning the charges.
- C. You have the right to a public or a private hearing. Unless you request otherwise, this will be a private hearing where the Board of Education will hear you, your parents, or any other witnesses who will testify in your behalf, and those members of the School District Administrative Staff and others who will testify against you. If you will be represented by an attorney (not required), you must notify the Superintendent's Office no later than three

days before the scheduled hearing.

- D. A record of this hearing will be made by tape recorder, and it will be preserved for a period of sixty (60) days and will be made available to you for your use if you decide to appeal your case to the State Board of Education. You have the right to appeal the decision of the Milford Board of Education to the State Board of Education by filing with the State Board a notice of appeal within thirty (30) days after you receive the decision of the Milford Board of Education in your case.
- E. A written notice of the Board's decision concerning your case will be forwarded to you Certified Mail after it is made.

## **II. ORDER OF PROCEDURE - PRELIMINARY MATTERS**

- A. The President of the Board of Education or his/her designated representative shall act as hearing officer, and will announce that the hearing is being conducted under the provisions of the Board Rules governing the conduct of formal student hearings in disciplinary matters. The hearing officer will declare the hearing to be open and will inquire as to whether the Secretary of the Board of Education has met the requirements for giving notice of the hearing as specified in I, above.
- B. The Secretary of the Board of Education shall produce a copy of the notice of hearing letter mailed to the student and parent or guardian, together with the mail receipt showing prior delivery thereof.
- C. The President or designated hearing officer will inquire as to whether the student is represented by an attorney or has chosen a designated spokesman to speak on the student's behalf.

## **III. ORDER OF PROCEDURE - PRESENTATION OF EVIDENCE**

- A. Charges or evidence against the student will be presented by designated member of the Administrative Staff of the District who may make an opening statement, testify to matters within his knowledge, or present other witnesses who will testify regarding the occurrence of the alleged violation or acts. (All testimony will be under oath.)
  - (1) Opportunity will be given at the conclusion of testimony of each witness, for the student or student's representative or attorney to cross-examine each witness against the student.
  - (2) Board and its Secretary will be given opportunity to examine each witness.
- B. The student or the student's designated representative or attorney will present an opening statement and evidence through testimony of the student

or other witnesses on student's behalf concerning the charges or alleged violation.

- (1) Opportunity will be given at the conclusion of testimony of each witness for cross-examination by the member of the staff or attorney presenting the case to the Board.
  - (2) Board will be given the right to examine each witness.
- C. The Administrative Staff will be given an opportunity to present any testimony in rebuttal to that offered by or on behalf of the student, including the calling or recalling of witnesses to testify in rebuttal.
- (1) Opportunity will be given for cross-examination of each witness by the student or his/her representative or attorney.
  - (2) The Board and its Secretary may question any rebuttal witness again.
- D. Closing Statements -
- Closing statements summarizing the evidence given may be offered to the Board, with the staff member presenting the case to the Board having the first and last opportunity to address the Board. Opening or closing statements not given in testimonial manner by witness testifying to matter within his/her own knowledge are not to be considered as evidence.
- E. President of the Board of Education or the designated hearing officer will declare the hearing to be terminated and will advise the student that the Board will render a decision within 20 class days, which will be forwarded to the student and the student's parent or guardian by Certified Mail.

#### **IV. GENERAL HEARING PROCEDURES**

- A. The President of the Milford Board of Education, or his/her designated representative, shall be the presiding hearing officer and shall conduct the hearing and make rulings on the admissibility of evidence.
- B. All evidence is admissible which is relevant, material, reliable and probative but which is not unduly repetitious or cumulative.
- C. Objections to the admission of evidence shall be brief and shall state the ground for such objections. Objections with regard to the form of question will be considered.
- D. Strict judicial rules of evidence shall not be applicable to hearings conducted under these rules; and in each case, the test of admissibility shall be whether the offered evidence is reasonable relevant to a material factual issue and whether it has substantial probative value with respect to such material issue.

The presiding officer may limit or refuse to admit cumulative or repetitious evidence and may curtail redundant questioning.

- E. All testimony shall be given under oath, with the following form of oath being used: "Do you swear or affirm that the testimony you are about to give is true and correct to the best of your knowledge?"
- F. All parties to the controversy may be represented by counsel.
- G. The Secretary of the Board of Education shall note in the Minutes of the Board the names of the persons appearing and their counsel if they are represented.
- H. The Board may continue, adjourn, or postpone a hearing for good cause upon application of or on behalf of the student or on its own application.
- I. The Board shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Said electronic transcript shall be destroyed if no request is made to preserve it within sixty (60) calendar days of said hearing's decision being received by the student's parent or guardian.
- J. Any person who testifies as a witness shall be subject to cross-examination by the other parties in the order set forth in III above, unless otherwise determined by the Board President or his/her designated presiding representative. Any witness is subject to examination by any member of the Board.
- K. Any documents introduced into evidence shall be marked by the Secretary of the Board and shall be made a part of the record of the hearing. Documents introduced by the school administration shall be marked as "School Exhibit," and all exhibits introduced by the student shall be marked as "Student Exhibit," with the exhibits for each side bearing consecutive numerical designations, such as School Exhibit 1, or Student Exhibit 1. The Secretary shall prepare a record listing the names of all persons present, their attorneys, the witnesses testifying for each side, and shall list all exhibits introduced during the course of the hearing.
- L. Burden of Proof -

In a suspension or expulsion hearing, the administration shall proceed first to present its evidence and shall have the burden of proving by a preponderance or a majority of the evidence whether the student is guilty of the conduct charged or alleged.

In a hearing on an application for readmittance from expulsion, the burden of proof of rehabilitation rests with the student, while the burden of proof of a lack of potential for academic success rests with the school administration.

- M. On its own initiative or at the request of the student, the Board may order that witnesses be separated and only called before the Board while they are offering testimony.
- N. The Board may consider customary school records and may take administrative notice of its own acts and records and notes as evidence.

**V. POST HEARING PROCEDURE**

- A. Each decision and order of the Board shall be delivered in writing, with copies to all parties. Each decision and order shall set forth the findings of fact made by the Board and the conclusions based thereon, and shall state the specific disposition of the case with the penalties imposed in the event of a finding of guilt, and shall be provided to the student. Formal action of the Board shall be taken publicly at a Board meeting following the hearing; but no other information will be released by the Board or School Administration, except as noted above.
- B. In the event of a finding of guilt and where expulsion is ordered as the penalty, in addition to providing a copy of the Board's decision to the student, the Board shall also provide the student with information concerning alternative instructional programs not operated by the Milford School District, and shall provide a copy of current Board criteria for readmission following expulsion; and, further, the student and his/her parent or guardian shall again be advised of the student's rights to appeal the decision of the Board to the State Board of Education by filing a notice of appeal with the Superintendent of the State Department of Public Instruction within thirty (30) calendar days after receipt of the Board's decision.
- C. Copies of the Board decision shall be mailed to the student, parents or guardian, Certified Mail, Return Receipt Requested.
- D. In the event of a finding of guilt and where probation is ordered as the penalty, and where the length of the probation is not specified, the probation shall be for one full calendar year from the date of the Board's decision.

Reference: Milford School District Policy Series 5400

Title 14, Delaware Code, Sections 121, 122, 701, 1043, 1058, 2702, 2706, 2711, 4113, 4114; Title 10 of Delaware Code, Sections 921, 925, 926; Title 11, Delaware Code, Sections 468.

ADOPTED: April 21, 1975

AMENDED: 1/26/76, 4/26/76, 3/21/77, 8/22/77, 1/29/07

IMPLEMENTATION: Start of 1975-76 School Year