

Suspension and Expulsion

Students are expected to conduct themselves in a manner suitable to their age, grade and developmental level as described in AP 6310. Students disobedient or disruptive of the educational process are subject to appropriate discipline.

The School Board through the Executive Limitation Policies has hereby delegated to the Superintendent and each principal the authority to deal with disciplinary problems in his/her school.

A student may be suspended for up to ten (10) consecutive instructional school days by the appropriate building administrator or that same administrator may recommend expulsion of a student as the result of a specific behavior. The student's parent or representative shall be contacted prior to the commencement of the suspension. The Superintendent may expel a student for the remainder of the current school year, including the upcoming summer school sessions, after providing notice and a hearing. Conduct, including but not limited to the following, exhibited while on school grounds, during a school-sponsored activity, or during a school-related activity is subject to suspension or expulsion:

1. Causing or attempting to cause damage to school property or stealing or attempting to steal school property.
2. Causing or attempting to cause damage to private property or stealing or attempting to steal private property.
3. Causing or attempting to cause physical injury to another person.
4. Possessing or transmitting any firearms, knives, explosives, or other dangerous objects or devices which appear to be weapons regardless of whether or not they are capable of actually causing bodily harm.
5. Possessing, consuming, distributing, or being under the influence of alcohol or any controlled substance intoxicant of any kind, and/or any illegal drug paraphernalia.
6. Behavior or insubordination which is detrimental to the welfare, or safety of self or other students.
7. Verbal, non-verbal, or written language that is threatening, harassing, discriminatory, obscene, defamatory, or inciting to violence which may be disruptive to the educational environment.
8. Extortion or attempt to extort.
9. Any student behavior, which is detrimental or disruptive to the educational environment, as determined by the principal.

Enrollment of Suspended or Expelled Students

Any student who has been suspended or expelled from another district will not be permitted to enroll in the District until eligible to reenroll in his or her former district or until the Superintendent and or designee has reviewed the prior suspension or expulsion. If the decision is to allow the student entrance, a contract that outlines behavioral and/or academic expectations may be written. If the decision is to not allow entrance, this needs to be communicated immediately to the student and the parents/guardians.

Any student who has been suspended or expelled from a school in this District is not eligible to attend any other school within the District until eligible to return to his or her regular school unless approved by the superintendent or designee.

Suspension or Expulsion of Student with Disabilities

Suspension or expulsion of students with disabilities must comply with the provisions of the Individuals with Disabilities Education Act, Section 504 and Americans with Disabilities Act. Copies of these rules shall be posted within the website, be available in each school, and may be distributed to each student.

Legal Reference:

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

IDEA/B 300.530 Authority of School Personnel

NDCC 15.1-09-33(17) General powers and duties of school board

NDCC 15.1-19-09 Student - Suspension and Expulsion - Rules

NDCC 15.1-19-10 Possession of a weapon - Policy - Expulsion from school

Carrying Weapons

The School Board determines that possession and/or use of a weapon by a student is detrimental to the welfare and safety of the students and school personnel within the district.

No student will knowingly possess, handle, carry, or transmit any weapon or dangerous instrument in any school building, on school grounds, in any school vehicle, school bus or at any school-sponsored activity. Such weapons include but are not limited to any knife, razor, ice pick, explosive smoke bomb, incendiary device, gun (including pellet gun), slingshot, bludgeon, brass knuckles or artificial knuckles of any kind, or any object that can reasonably be considered a weapon or dangerous instrument. This definition is consistent with paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Violation of this policy will result in disciplinary action. All weapons will be confiscated and may be turned over to the student's parents or to law enforcement officials at the discretion of the administration. The principal or designee will transport all weapons to the District Office for storage in a safe that is supervised and cataloged by Safety Emergency coordinator or designee. Parents and Guardians may schedule an appointment with the the Safety and Emergency coordinator retrieve the weapon. Any weapons not retrieved in 30 days will be properly discarded.

Bringing a firearm, as defined in 18 U.S.C. 921, to school will require that the principal immediately initiate proceedings for the expulsion of the student involved for a minimum of one year. The Superintendent may recommend a modification of the expulsion on a case-by-case basis. This modification shall be based on the circumstances revealed in the investigation into the incident conducted by the Superintendent or other person designated by the Superintendent to conduct the investigation. The Superintendent or designee will notify local law enforcement.

Proper due process proceedings as defined in **Suspension and Expulsion** will be followed under this policy.

GUIDELINES FOR SUSPENSION AND EXPULSION

Suspension

Suspension involves either in school or the dismissal of a student from school classes, buildings, and grounds. The parent(s) of the student are to be notified promptly by the school principal.

The authority to initially determine whether or not a student shall be suspended, for a period not to exceed ten consecutive school days per violation, 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.
4. Notification to the parent regarding the incident and reason for suspension.

In those cases where a student's presence poses a continuing danger to persons or property or any ongoing threat of disrupting the educational environment, the students may be immediately removed.

Interim Alternative Educational Setting

School personnel may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 school days, if:

- The child carries a weapon to school or to a school function under the jurisdiction of the State or a local educational agency; or
- The child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the State or a local educational agency, or
- The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a SEA or a school district. (§300.530 (g)).

Remember that the safeguards and procedures for long-term removal (more than 10 days) must still be followed.

An interim alternative education placement is a temporary placement. At the end of the removal, the student is returned to his prior placement, unless the parents and LEA agree to a different placement that will meet the student's needs. If the parents and LEA are unable to reach an agreement and school officials believe that the student's return to his prior placement is likely to result in injury to the student or others, they have the authority to ask a hearing officer to extend the interim alternative educational setting placement for an additional 45 school days.

Expulsion

Expulsion of a student from school is under the authority of the School Board, and administered by the Superintendent and or designated hearing officer except when the behavior is bringing a

firearm to a school building, on school grounds, in any school vehicle, school bus or at any school-sponsored activity, and may not extend beyond the end of the termination of the regular current school year. Such action would follow only after suspension. If the student involved has a disability, a determination that the conduct is not a manifestation of the disability must precede the recommendation for expulsion. Expulsion can be from a program, a building, or from the district as a whole. The district may authorize the provision of educational services to the student in an alternative setting.

STUDENTS WITH DISABILITIES

1. Suspension of Student with Disabilities

Students with disabilities may be suspended for a period not to exceed ten cumulative school days for any conduct, which would warrant suspension for a student who does not have a disability. The suspension may be affected immediately upon the decision of the designated building administrator who will review the file to ascertain if the Individual Education Plan (IEP) or 504 Plan addresses the behavior in question. If the IEP or 504 Plan does address the behavior, the specified procedure 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 ten school days for separate acts of misconduct as long as such removals do not constitute a pattern of change in placement. Educational services must be provided in cases of removals (suspensions) in excess of ten cumulative school 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 or 504 Plan. The principal in consultation with the student's special education teacher or team shall make the service determination. If suspensions in excess of ten cumulative school days in a school year constitute a change of placement as defined in IDEA/B Regulation 300.530, then a manifestation determination review must be conducted before a suspension is implemented.

In any suspension, 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 affected for a student with a disability for any conduct, which would warrant expulsion for a student without a disability. A meeting to determine whether the conduct was a manifestation of the student's disability must be conducted prior to a decision to expel a student. The Individual Education Plan (IEP) Team or 504 Team will meet to determine whether the misbehavior is a manifestation of the disability based on the criteria of IDEA/B Regulation 300.530. If the IEP Team or 504 Team determines that the misbehavior is a manifestation of the disability, the student may **not** be expelled. The District has an obligation to provide educational services during the time of expulsion. The IEP Team or 504 Team will determine the manner in which the services are provided.

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 Individual 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/B Regulation 300.504. A student who is defined as having a disability under the Individuals with Disabilities Education Act may be placed in an alternative educational setting for up to 45 calendar days, during which time a determination will be made as to whether bringing a weapon as defined by IDEA/B Regulation 300.530 to school was a manifestation of the student's disability. Discipline and placement of the student will be in accordance with the Individuals with Disabilities Education Act.

AP 6312 Juvenile Referral of a Student with Disabilities

Legal Reference:

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

NDCC Ch. 14-02.4 Discrimination

NDCC 15.1-09-33(17) School Board - Powers

NDCC 15.1-19-10 Possession of a weapon - Policy - Expulsion from school

IDEA/B 300.504 Procedural Safeguard Notice

IDEA/B 300.530 Authority of School Personnel

Tinker v. Des Moines 393 U.S. 503 (1969)

Honig v. Doe PL 103-227 Goals 2000: Educate America Act, Title X, Section 1032

Elementary and Secondary Act of 1965 as amended by the Gun Free Schools Act of 1994

1973 Rehabilitation Act, Section 504

45 CFR Part 84 Regulations

20 U.S.C. 1400 et seq Individuals with Disabilities Education Act

18 U.S.C. 921 Definitions

Expulsion Pre-Hearing Notice To Student

The student and the student's parent shall be provided with the following notices, prior to the 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.

2. Notice of Nature of Testimony

The nature of the evidence against the student.

3. Notice of Hearing

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

4. Notice of Right to Present Evidence

The right to present witnesses or documentary evidence to rebut the charges against the student shall be explained.

5. Notice of Right to Adult Representation

The right to be represented and/or assisted at the hearing by a lawyer or other adult 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.

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 expulsion are supported by substantial evidence. The evidence offered at the hearing should be directed toward attaining the truth, and each situation may call for a slightly different approach. The key to conducting a successful hearing is to search for the truth through reasonableness and fairness.

2. The Hearing Officer

The student is entitled to an impartial hearer of facts. The superintendent or their designee will act as the officer and may select others who are not directly involved in the incident leading to the hearing.

3. Representation of the Student

There is no definite 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, his/her parent(s), or another adult, the request should be granted. The school should attempt to involve the parents in the disciplinary proceedings from the outset. The school may refrain from making its presentation through an attorney if counsel does not represent the student.

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. Audio recorder - The preferred method is to audio record the entire proceeding. The presence of an audio recorder has a constructive effect on the decorum of the hearing; however, its presence can also create an atmosphere so formal that the participants may be reluctant to discuss the issue in terms that will result in a resolution of the problem.

- b. Secretary - A second method is to have a secretary or other members of the staff keep, as nearly as possible, an accurate record of the proceedings.
- c. Court Reporter - If the expulsion should reach the level of the School Board, consideration may be given to utilizing a court reporter.

When any of the methods is used, the student and his/her parent(s) or other representative should be so advised. 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.

The audio recordings or notes need not be transcribed until an appeal has been perfected to the next level or a suit filed. When the appeal is to the School Board, it is generally not necessary to transcribe the recordings because the Board can simply listen to the recording. All records of a hearing will be kept for six (6) years after the student's graduation year.

5. Open or Closed Hearing

Since the North Dakota Open Meetings Law is not applicable to hearings before school administrators, such hearings will be closed to the public. Any appeal heard by the School Board is subject to the Family Rights and Privacy Act (FERPA) and 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. If ever in doubt as to whether cross-examination is necessary, permit it; to do otherwise is to invite litigation. If one side is permitted to cross-examine the witnesses or the other, the opposing side must have the same privilege.

8. Sworn Witnesses

If a notary public or other officer capable of taking oaths is available, witness should be sworn before offering testimony.

9. Suggested Procedures for Conducting an Expulsion Hearing

Recognizing that each situation may call for a slightly different method of presentation, the following guidelines are offered keeping in mind that the hearing itself should be kept informal so that the truth may be obtained and a fair and just result reached.

a) Advise the parties of the procedures to be followed

Advise that the hearing is being recorded (if it is), and either side may request the witnesses be sent to another room and be called individually. Advise that no formal rules

of evidence will be followed and that the hearing will be informal, as it is not a court proceeding. The parties and their representative capacities should be identified for the record, prior to commencing the hearing.

b) State the Reasons for the Proposed Expulsion

The hearing officer should read the written reasons which were mailed or otherwise delivered to the student, his/her parents, and his/her representative, which support the possible expulsion. This should be done to assure that the record would adequately reflect the reasons for the proposed expulsion, to substantiate that all parties had notice of the proposed reasons and possible punishment, and to narrow the issues.

c) Allow the School's Witnesses to Testify and Present Evidence

The witnesses for the administration then present their evidence, which supports the reasons given for the proposed expulsion. This may be done in any manner, which is conducive to reaching the truth and supports the reasons offered for possible expulsion.

d) All Student's Witnesses to Testify and Present Evidence

The student and/or his/her representative should be given an opportunity to present witnesses and evidence to disprove the reasons offered by the school's witnesses.

e) Allow Concluding Arguments

At the conclusion of the presentation of witnesses by the school and the student, each side should be allowed the opportunity to make concluding remarks regarding the evidence that has been presented and the reasons for the expulsion.

10. 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. After a full and fair hearing has been conducted, it may not be necessary to expel the student because the problem has been worked out. Frequently, agreement between the administrator and the student and his/her parents can be reached as to the student's future conduct at school, or as an alternative the student may be transferred to another facility within the district, a special program or alternative educational setting.

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 establish that the student did do the alleged acts. In determining whether there is substantial evidence to support a finding of misconduct, the hearing officer may take into consideration only that evidence presented at the hearing. The hearing officer should not consider any rumor or other suggestion heard outside the room prior to or after the hearing.

11. 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/her parents, the student's counsel, or his/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/she was found to have done. The decision must be specific enough so that a reasonable person can be advised of the finding and know what to appeal to the next level. In

informing the student of the decision, the hearing officer should also inform the parties of the right to appeal the decision to the next level and how to do so.

The findings of the expulsion hearing will become part of the student's cumulative record.

12. Appeal to the Superintendent

An appeal of the hearing officer's decision may be made to the Superintendent.

13. Appeal to the School Board

An appeal of the hearing officer's decision may be made to the School Board and should be reviewed at the next regular meeting of the Board, except when good cause is shown for called 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.

Expungement of Records of Expelled Students Procedure

A student's record of expulsion may be expunged in accordance with the procedure that is set forth below:

- I. Criteria for Expungement: The criteria for consideration of expungement of expulsion records include:
 1. the expulsion did not involve the possession of a firearm;
 2. the student earned passing grades in 90% of coursework as documented by the high school;
 3. the student held at least an 85% attendance rate while the student was in school;
 4. the student did not have more than 10 unexcused absences each year after returning from being expelled.
 5. evidence of substantial progress in the area of personal responsibility and positive behavior demonstrated by letters of recommendation or character references from (3) three adult person(s), from the student's personal life, with direct contact or knowledge of the student since the expulsion;
 6. the student has evidence of substantial progress in the area of personal responsibility and positive behavior by providing letters supporting expungement from at least one (1) District administrator and two (2) District professional staff members;
 7. the student did not engage in any level 3, 4, or 5 behaviors as defined in the Fargo Public Schools Code of Conduct for a minimum of 12 months before the request for expungement.
 8. the petition for expungement may not occur:
 - a. earlier than the last 60 calendar days before the end of the student's junior year of high school; and
 - b. until 12 months have passed since the expulsion period ended.
- II. Procedure for Expungement: The student (and parent/guardian, if the student is a minor) shall submit a signed written letter explaining why the student requests expungement and why expungement is appropriate. Expungement will not be automatic.

1. The student's petition shall include:
 - a. Information as to why the non-removal of the expulsion record would be detrimental or an undue hardship to his/her future opportunities.
 - b. Letters supporting expungement from at least one (1) District administrator and two (2) District professional staff members;
 - c. Letters of recommendation or character references from (3) three adult person(s) (from the student's personal life) with direct contact or knowledge of the student since the expulsion;
 - d. Each of the above letters must include factual information supporting the basis for why the student's expulsion record should be expunged;
2. The Superintendent or Designee shall:
 - a. Consider the student's petition and supporting documentation when making their decision;
 - b. Arrange a Hearing, where the student must be present, to discuss the request to expunge. The Hearing may be conducted via video conferencing.
 - c. Notify the student and parent/guardian of his/her decision by letter.
3. Other:
 - a. If the application for expungement is denied, the student may not reapply for expungement at a later date;
 - b. If the Superintendent, or their Designee, grants the student's request for expungement, such expungement shall be effective on the date on which the Superintendent, or their Designee, approves the expungement;
 - c. Expungement is defined as the removal of the documentation of the expulsion from the student's individual school record. Expungement does not apply to District records, records sent to another school or school district, or if a student is referred for an expulsion a second time.
 - d. Should a student engage in a level 3, 4 or 5 behavior as defined in the Fargo Public Schools Code of Conduct subsequent to the expungement of his/her expulsion record, the expulsion record shall be reinstated.
 - e. Expungement means that any information about the expulsion in the student's individual school records is expunged and that the school's administrative staff and school counseling department staff will not disclose any information concerning the expulsion.

Legal Reference:

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990)

20 U.S.C. 1232g(e)(f) Family Educational Rights and Privacy Act

45 CFR 99.30/99.31 Regulations

NDCC 15.1-19-33(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

Gross v. Lopez, 419 U.S. 565 (1975)

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