

Suspension and Expulsion

Students are expected to conduct themselves in a manner suitable to their age, grade and developmental level as described in Administrative Policy 6310 - Student Behavior, Discipline, and Reporting. Students who are disobedient or disruptive of the educational process are subject to appropriate discipline.

I. Definitions

The terms used in the Policy have the following meanings.

1. "Dangerous weapon" has the same meaning as provided in 18 U.S.C. 930(g)(2).
2. "Firearm" has the same meaning as provided in 18 U.S.C. 921.
3. "School property" has the same meaning as North Dakota Century Code 15.1-19-10.

II. Authority for Suspension and Expulsion

The Board of Education of the City of Fargo ("Board"), through the Executive Limitation Policies, hereby delegates to the Superintendent the authority to implement appropriate disciplinary measures, including suspension and expulsion, of students throughout the Fargo Public School District ("District"). The Superintendent designates to each principal the authority to implement appropriate disciplinary measures, including suspension and recommendations for expulsion, of students in their school. Suspensions shall not be imposed beyond the maximum duration permitted by law.

The Board further designates the Superintendent, or their designee, to serve as the hearing officer for expulsion hearings unless not qualified to serve as defined by this policy. The hearing officer may expel a student for conduct

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.

III. Conduct Subject to Suspension and/or Expulsion

Conduct, including but not limited to the following, exhibited while on school property, 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 firearm, dangerous weapon, weapon, or other dangerous objects or device which appear to be a weapon regardless of whether or not it is capable of actually causing bodily harm.

5. Possessing, consuming, distributing, or being under the influence of alcohol, any controlled substance, or intoxicant of any kind, and/or possession of drug paraphernalia.
6. Behavior or insubordination that is detrimental to the welfare, or safety of oneself or other students.
7. Verbal, non-verbal, or written communication that is threatening, harassing, discriminatory, obscene, defamatory, or incites violence which may be disruptive to the educational environment.
8. Extortion or attempted extortion.
9. Any student behavior, which is detrimental or disruptive to the educational environment, as determined by the principal.

IV. Carrying Weapons, Dangerous Weapons, and Firearms

No student may knowingly possess, handle, carry, or transmit a weapon, dangerous weapon, or firearm in any school building, on school grounds, in any school vehicle, school bus or at any school-sponsored activity.

Violation of this policy will result in disciplinary action. All weapons, dangerous weapons, and firearms will be confiscated and may be turned over to the student's parents or to law enforcement officials at the discretion of the administration. If the weapon, dangerous weapon, or firearm is not confiscated by law enforcement, the principal or designee will transport all weapons, dangerous weapons, and firearms 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 Safety and Emergency coordinator retrieve the weapon. Any weapons, dangerous weapons, or firearms not retrieved in 30 days will be properly discarded.

Bringing a firearm 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.

V. Enrollment of Suspended or Expelled Students

A student who has been suspended or expelled from another district will not be permitted to enroll in the District until eligible to reenroll in their former district or until the Superintendent and or designee has reviewed the prior suspension or expulsion and determines that the suspension or expulsion was illegal or improperly impose. 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 their regular school unless approved by the Superintendent or designee.

VI. Suspension or Expulsion of Students with Disabilities

Suspension or expulsion of students with disabilities must comply with the provisions of the Individuals with Disabilities Education Act (“IDEA”) and Section 504 and Americans with Disabilities Act (“ADA”). The District shall not expel any student with a disability when the student’s particular act is a manifestation of the student’s disability. Educational services must continue for IDEA eligible students who are expelled.

VII. Guidelines for Suspension and Expulsion

A. Suspension

Suspension involves the in-school dismissal of a student from school classes, activities, buildings, and grounds. The length of a suspension shall not be longer than the maximum duration allowed by law. Parents and guardians will be notified promptly by the school principal of the intent to suspend the student.

The authority to initially determine whether a student shall be suspended, for a period not to exceed ten consecutive school days per violation, rests with the principal, or their designee, and can be exercised AFTER the following:

1. The student is given oral or written notice of the reason for suspension.
2. The student is given an explanation of the evidence used to make the determination to suspend.
3. The student is provided an opportunity to present statements or evidence that may impact the decision to suspend.
4. Oral or written notification to the parent or guardian 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 student may be immediately removed. In emergency situations that are a result of risk to health and safety, the District may postpone the suspension notice process above until the emergency condition has passed.

If the student is a student with a disability, the district will immediately remove the student from their current placement to an Interim Alternative Educational Setting (“IAES”). In accordance with IDEA, school personnel may change the placement of a student with a disability for up to 45 days without consideration of the impact of the disability if:

1. The student carries a weapon to school or to a school function under the jurisdiction of the State or a local educational agency; or
2. The student 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
3. The student 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.

A Manifestation Determination Review (“MDR”) will be completed as soon as possible after the student is placed in the IAES. If the MDR team determines that the disability did not directly cause the student’s behavior, the student may be suspended or expelled in the same manner as a student without a disability. If the MDR determines that the disability did have a direct cause to the student’s behavior, the student will be returned to their previous placement unless all members of the student’s Individual Education Program (IEP) team agree to a change in placement. The District will follow the same procedure for students who have a Section 504 plan.

B. Expulsion

The Superintendent or their designee may expel a student for up to twelve months, for conduct in violation of this policy. A student who possesses a firearm on school property shall be expelled for at least one year unless modified in accordance with this policy. Expulsion can be from a program, a building, or from the district as a whole. The district may also authorize the provision of educational services to the student in an alternative setting.

In determining the duration expulsion, the Superintendent, or their designee, shall consider severity of the infraction, the age of the student, and the disciplinary history of the student. If the student satisfies the conditions for reinstatement established by the school district, if any, the school district may review and reduce the duration of the expulsion. Prior to expelling a student, the District shall follow the procedures outlined below.

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.

C. Students with Disabilities

1. Suspension of Student with Disabilities

Students with disabilities may be suspended for a period not to exceed ten consecutive school days for any conduct, or ten (10) cumulative days in which a pattern of behavior exists, without determining if the disability was a manifestation of the student’s disability. If the MDR team determines that the disability did not directly cause the behavior, the suspension may be affected immediately upon decision by the building principal, or their designee.

If non-consecutive suspensions do not constitute a pattern, a student with disabilities may be suspended for additional periods of up to ten school days for those separate acts of misconduct without it being considered a change in placement. The District must be prepared to provide educational services to students with disability who are suspended or expelled 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 their IEP. A removal of a student from their current education setting in excess of ten consecutive days or if a pattern of behavior exists, ten cumulative school days within a school year constitute a change of placement as

defined in IDEA/B Regulation 300.530. Therefore, prior to removal, or any subsequent removals, an MDR is required. The requirements are the same for students who are identified as having a disability under Section 504.

2. Expulsion of Students with Disabilities

Prior to requesting an expulsion of a student with a disability, an MDR must be conducted. The MDR Team will meet to determine whether the behavior in question is a manifestation of the disability based on the criteria of IDEA/B Regulation 300.530. If the MDR Team determines that the behavior in question 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 will determine the manner in which the services are provided.

VIII. Expulsion Procedure

A. Expulsion Pre-Hearing Notice To Student

Parent, guardians, and students 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 Hearing

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

3. Notice of Right to Present Evidence

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

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.

B. 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 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 purpose of the 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 shall

include an opportunity for the presentation of evidence as to the existence of mitigating circumstances.

2. The Hearing Officer

The student is entitled to an impartial hearer of facts. The Superintendent, or their designee, will act as the officer unless they are biased against the student or were directly involved with the incident at issue. If the hearing officer is not qualified under this rule, another hearing officer shall be selected by the Superintendent.

3. Representation of the Student

There is no requirement that the student must have representation at the hearing; however, if the student or their parent(s) request that they be represented by an attorney, their parents, or another adult, the request should be granted. The cost of representation of the student shall be the expense of the student and their parent. The school should attempt 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. 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. 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. 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

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 their 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, their parents, and their representative, which support the possible expulsion. This should be done to ensure 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 their 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, their parents, the student's counsel, or their 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 they were 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.

IX. 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:

NDCC 15.1-09-33

NDCC 15.1-19-09

NDCC 15.1-19-10

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