

MODEL STUDENT SUSPENSION/EXPLUSION POLICY

Local school boards should review their district policies on student suspensions/expulsions! District policies should include the following minimal procedures and define the necessary terms. The district policy should explain criteria for student attendance and participation in extracurricular activities during the suspension/expulsion process. Note: Time periods are based on "school days" not "calendar days."

I. DEFINITIONS

- A. "Notification" means notice to parents by a reasonable, reliable process, e.g. by mail, by notice in school newsletter, by student delivery, at school registration.
- B. "Timely hearing" means that a hearing will be scheduled no more than 5 school days following the suspension/expulsion. Allowance may be made by mutual agreement of the parties, inability of district to contact parent(s)/guardian(s) despite documented good faith efforts, or lack of cooperation by parent(s)/guardian(s).

II. SHORT-TERM SUSPENSION

If a school administrator intends to suspend a student for less **than 10 school days** the following procedures should be followed:

- A. Student and parents should be notified immediately of the school's intent to suspend:
 - 1. If the school intends to suspend the student immediately, parents should be notified immediately.
 - 2. Students younger than 14 should never be released until and unless a parent or emergency contact is notified.
 - 3. Students older than 14 should be released to a parent and should never be sent from schools without making a very deliberate effort to notify a parent or emergency contact.
- B. A student should hear a brief explanation of reason(s) for suspension prior to suspension.
- C. A student should have the opportunity to tell his side of the story prior to suspension.
- D. This student/administrator or student/teacher conversation or meeting should be documented by the teacher/administrator in writing or on a permanent computer file.

III. LONG-TERM SUSPENSION

If a student is suspended for **more than 10 school days**, school district policy shall provide for the following minimum standards:

- A. Notice of reasons for suspension to student and parents, preferably in writing.
- B. Notice of opportunity for a **timely** hearing.

- C. If a parent requests a hearing, the parent shall have and receive notice of:
 1. names of witnesses against him and opportunity to present witnesses (witnesses' names may be protected if school determines they would suffer physical/psychological harm; student cannot **compel** witnesses);
 2. reasonable time to prepare the case;
 3. the opportunity for counsel, if school district/local board uses an attorney;
 4. the right to notice of procedures for the hearing in writing, in student handbook or on district website;
 5. the right to have the hearing recorded;
 6. a **fair** hearing officer (credible and objective person or panel – not necessarily uninformed);
- D. The decision must not be based **solely** on hearsay; rules of evidence do not control.
- E. The student has no official protection against self-incrimination; though if criminal charges are also pending, this may require consultation with local law enforcement.
- F. A decision must be made **only on evidence presented at the hearing**.
- G. Student/parent has the right to written findings.
- H. Decision is by a preponderance (>50%) of the evidence.
- I. Student should have at least one level of appeal.
- J. Student/parents must “exhaust administrative remedies” and participate and cooperate in one of these processes, prior to appealing a decision to District Court.

IV. OTHER ISSUES TO CONSIDER IN THE DEVELOPMENT OR REVIEW OF A DISTRICT POLICY

- A. If administrator offers student/parent **opportunity** to explain or have a hearing, and student or parent refuses or waives the right, due process is satisfied.
- B. Make-up work - A district policy shall allow/disallow make-up work for student absences during suspensions/expulsions or provide criteria under which make-up work is allowed. **Most** courts favor allowing students to do make-up work for classes that they miss. Note: The make-up assignments may not and need not be exactly what the student missed.
- C. School holidays, teacher workdays, school-wide activities or team assessments should not be used as excuses for delaying due process or for short-term suspensions resulting in long-term suspensions. If a school foresees delays, the school should use the more formal due process.

- D. A school or school district policy should provide for administrators, rather than teachers, to make longer-term suspension decisions.
- E. Rule of thumb: The longer the suspension, the greater the process that is due.
- F. Even a short-term suspension that causes a student to miss significant work (e.g. mid-terms, finals, final reports) may necessitate greater due process.

Case References:

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

When a student's right to an education is affected, due process requires some kind of notice and some kind of hearing – though procedures may be flexible.

Newsome v. Batavia Local School District, 842 F.2d 920 (6th Cir. 1988)

and

J.S. v. Bethlehem Area School District, 757 A.2d 412 (Commonwealth Court of Pennsylvania 2000)

Student due process rights in a formal hearing.

Keough v. Tate County Board of Education, 748 F.2d 1077 (5th Cir. 1984)

Rejects due process claim based on failure to receive names of witnesses where student and parents were fully advised of the charges, the underlying facts supporting the charges, the nature of the hearing and that they were entitled to counsel.

Atcitty v. San Juan County School Dist., 967 P.2d 1261 (Utah Ct. App. 1998)

Due process rights not violated where principal informed student of allegations against him and provided several opportunities to explain his side of the story, but student at direction of parent refused to respond.

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