

## STUDENT SUSPENSION / EXPULSION

The authority to suspend a student for up to ten (10) days, after an informal hearing is held, rests with the school administrator or principal. If a danger to students or staff members is present, the principal may immediately remove the student from school, with prior contact with the parents and with a notice and hearing following as soon as practicable. A student may be removed from contact with other students as a temporary measure but shall be reinstated by the next school day unless short-term suspension is imposed.

In all cases, except summary suspension where a danger to students or staff is evident, the student shall remain in school until applicable due process procedures are instituted. In *no* instance shall students be released early from school unless parents have been notified.

The Superintendent may designate a hearing officer for suspension/expulsion hearings.

### Definitions

"*Administrative authority*" means the local school district superintendent, a principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies (Subsection A of 6.11.2.7 NMAC).

"*Hearing authority*" means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing (Subsection I of 6.11.2.7 NMAC). As per policy JKD, "the appointed person (hearing authority) shall have no direct connection to the act or acts, person alleged to have perpetrated the acts, nor be an administrator of the school in which the acts took place."

"*Review authority*" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long-term suspension or expulsion (Subsection R of 6.11.2.7 NMAC).

### Regular Education Students

#### *Suspension for ten days or less:*

- *Step 1:* The student will receive notice, written or oral, of the reason for suspension and the evidence the school authorities have of the alleged misconduct.
  - After having received notice, the student will be asked for an explanation of the situation.
  - The authorized District personnel shall make reasonable efforts to verify facts and statements prior to making a judgment.

- *Step 2: Following Step 1:*
  - Provided that a written record of the action taken is kept on file, authorized District personnel may take one of the following actions:
    - ▲ Suspend the student for up to ten (10) days.
    - ▲ Choose other disciplinary alternatives.
    - ▲ Exonerate the student.
    - ★ Suspend the student for ten (10) days pending a recommendation that the student be given a long-term suspension or expulsion or both, considering the following: (See *Suspension for over ten days or expulsion* below,)
      - ◆ Return the student to school upon expiration of the temporary suspension.
      - ◆ Obtain the parents knowing and voluntary waiver of the student's right to return to school until the additional hearing.
      - ◆ Conduct an interim hearing in accord with these guidelines for Suspension for ten days or less to support the student's continued exclusion pending the outcome of the formal procedures.
      - ◆ Parent(s) (or a student of majority) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished. This shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.
  - When suspension is involved:
    - ▲ A parent must be notified before the student is allowed to leave campus. If no parent contact can be made, the student may be isolated until dismissal time and then given a written message to the parents.
    - ▲ A letter/form to the parents will be written and mailed/sent with student by the day after the short-term suspension to explain the terms (including the possibility that a long-term suspension and/or expulsion is being recommended) and reasons for the suspension and to request a meeting to solicit their help.

- No appeal is available from a short-term suspension.

***Suspension for over ten days or expulsion:***

- *Step 3:* If the offense is one that could result in a suspension of over ten (10) days or expulsion, in addition to Step 1 and Step 2 a formal hearing will be arranged and conducted by a hearing officer authority appointed by the Superintendent. The appointed person (hearing authority) shall have no direct connection to the act or acts, person alleged to have perpetrated the acts, nor be an administrator of the school in which the acts took place.

**Special Circumstances:** When formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired.

- In instances, where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:
  - ▲ A student and his or her parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official, or
  - ▲ The student and parent(s) have knowingly and voluntarily waived the student's right to return to school pending the outcome of the formal proceedings, or
  - ▲ The appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

Subparagraph (j-k) of Paragraph 4 of Subsection G of 6.11.2.12 NMAC

- *Step 4:* A formal letter addressed to the student through the responsible parent or guardian will be delivered by hand (with an adult witness present) at least five (5) working days prior to the formal hearing or mailed at least eight (8) days prior to the formal hearing date (mailed documents are assumed received in three [3] days). The hearing shall be scheduled no sooner than five (5) nor later than ten (10) school days

from the date of receipt of the notice by the parents. A copy of this letter will remain on file, and the letter should contain the following information:

- The charges and the rule or regulation violated.
  - The extent of the punishment to be considered.
  - The date, time, and place of the formal hearing.
  - A request for the parents and student to attend.
  - The hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty.
  - Failure of the student or parent to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default.
  - A designation of the District's witnesses.
  - That the student may present witnesses.
  - That the student may be represented by counsel or a representative designated in a written notice filed at least seventy-two (72) hours prior to the hearing date with the hearing officer or administrator.
  - The name, business address and telephone of the hearing authority or contact person through whom the student, parent or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing.
  - That the conduct of the hearing will be informal, not adhering to the rules of evidence.
- *Step 5:* A formal hearing will be held, during which the student will be informed of the following:
    - Nothing in these procedures shall be construed to prevent the students who are subject to the action and their parents or legal guardians and legal counsel from attending any executive (closed) session pertaining to the proposed disciplinary action, or from having access to the minutes and testimony of such session or from recording such a session at the parent's or legal guardian's expense.
    - The student is entitled to a statement of the charges and the rule(s) or regulation(s) violated.

- The student may be represented by counsel, without prejudice.
  - The student may present witnesses.
  - The student or counsel may cross-examine witnesses presented by the District.
  - The District has the right to cross-examine witnesses, and may be represented by an attorney.
  - The burden of proof of the offense lies with the District by a preponderance of the evidence.
  - Either the hearing must be recorded on tape or an official record must be kept in some other appropriate manner. In addition, parents are to be allowed to tape-record the hearing at their own expense.
- Step 6: The following will be the result of the hearing:
    - Upon the conclusion of a hearing by a hearing authority, the decision by the hearing officer may be given but shall be provided, in writing, within five (5) days to the student and parents. If initial notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.
    - Upon the conclusion of a hearing and notice that an act or acts of misconduct have been proved, the discipline proposed or a lesser form of discipline as determined by the recommending administrator shall be imposed by the disciplinarian. The action may take place immediately upon the hearing officer's determination and informing of the student and parents. If the disciplinary action imposes any sanction it shall go into effect immediately and continue during any subsequent review.
  - *Step 7: Administrative Review* may be conducted as follows:
    - Upon the conclusion of a hearing where determination that an act or acts of misconduct were proven, notice to the student and parents was given and discipline imposed, a review may be requested if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. To arrange such an appeal, the parent(s) of the student or the student must deliver to the Superintendent a letter directed to the review hearing authority within ten (10) days after receiving written notice of the determination. The letter must describe in detail any objections to the hearing or the decision rendered. Failure to meet the dates or provide the written requirement will result in rejection of the request.

- The appeal to the review hearing authority will be on the record of the hearing held by the hearing officer and no later than fifteen (15) days following the request being received. If the review hearing authority determines that the student was not afforded due process rights or that this policy was not followed in all substantive respects, the student shall be given another hearing. If the review hearing authority determines that the punishment was not reasonable, they may modify the punishment. The review hearing authority may uphold the hearing officer if no substantive errors in procedure are noted.
- All deliberations and decisions shall be held in closed session to avoid discussion of personally identifiable information in public.
- The review hearing authority shall prepare a written decision, including concise reasons in response to legitimate objections of the student or parent, and mail or deliver it to the administrator, the hearing officer and the student, through the parent, within ten (10) working days after the review is concluded. The decision of the review hearing authority is the final administrative review.

### **Membership of Review Hearing Authority**

The Review Hearing Authority shall consist of three (3) persons, appointed by the Board at a meeting held in accordance with the Open Meeting Act, 10-15-1 NMSA *et seq.* (1978).

Each appointee shall:

- Have experience as a supervisor in a business or governmental agency.
- Be familiar with the application of policy and procedures in the discipline procedure.
- Be a resident of the District, and not a parent of a student in the School District.

### **Special Education Students**

#### ***Suspension for Ten Days or Less***

Short-term suspension (ten [10] days or less) may be used for special education students for disciplinary reasons on the same basis as for a regular education student. (It is not considered a change of placement.)

- *Step 1:* The student will receive notice, written or oral, of the reason for suspension and the evidence the school authorities have of the alleged misconduct.
  - After having received notice, the student will be asked for an explanation of the situation.

- The authorized District personnel involved shall make reasonable efforts to verify facts and statements prior to making a judgment.
- *Step 2:* Following Step 1:
  - Provided that a written record of the action taken is kept on file, authorized District personnel may:
    - ▲ Suspend the student for up to ten (10) days.
    - ▲ Choose other disciplinary alternatives.
    - ▲ Exonerate the student.
    - ▲ Suspend the student for ten (10) days pending a recommendation that the student be given a long-term suspension or expulsion or both.
  - When suspension is involved:
    - ▲ A parent must be notified before the student is allowed to leave campus. If no parent contact can be made, the student may be isolated until dismissal time and then given a written message to the parents.
    - ▲ A letter to the parents will be written to the student in care of the parents by the day following the suspension to explain the terms (including the possibility that a long-term suspension and/or expulsion is being recommended) and reasons for the suspension and to request a meeting to solicit their help.
  - No appeal is available from a short-term suspension.

### ***Suspension for Over Ten Days***

If a special education student is recommended for a suspension of more than ten (10) days during the school year (a possible change in placement), a manifestation determination conference must be held.

- *Step 3:* A recommended suspension of a special education student for more than ten (10) consecutive days, or a series of suspensions totaling more than ten (10) days, may constitute a change of placement and shall require a manifestation determination conference. Such a conference shall be for the purpose of determining whether or not the offense is a manifestation of the student's disability.
- *Step 4:* If the offense is not a manifestation of the disability of the student, the student may be suspended by following the District policies for students in general, provided that educational services are continued during the period of disciplinary removal for a student

with a disability qualified under the Individuals with Disabilities Education Act (IDEA). A student with a disability qualified for educational services under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, and not qualified under IDEA, may be suspended or expelled from school, and educational services may be ceased, if nondisabled students in similar circumstances do not continue to receive educational services.

- *Step 5:* If the behaviors are a manifestation of the disability of the student, the District may not extend the suspension of the student beyond the initial ten (10) school days.

An exception to the above allows for an IDEA qualified student to be given a change in placement to an interim alternative educational setting for not more than forty-five (45) days, in accord with federal law and regulation, if the removal is for IDEA defined drug or weapons offenses or is based upon a due process hearing officer's determination that injury to the child or another is substantially likely if current placement is maintained.

Any interim alternative educational setting must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current individualized educational program (IEP); and include services and modifications which are designed to prevent the behaviors for which the placement was made from recurring. (Caution: refer to IDEA statutes and regulations before implementing the exception.)

## **Expulsion**

A student qualified under the Individuals with Disabilities Education Act (IDEA) as revised in 1997 may not be expelled from school but in compliance with federal law and regulation may be given a change in placement. The Individualized Education Program Team generally determines a change in placement of an IDEA qualified student. During any change in placement, the School District must provide payment for services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's Individualized Education Programs.

A student with a disability qualified under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973 and not qualified under the Individuals with Disabilities Education Act as revised in 1997, may be suspended or expelled from school and education services may be ceased, if nondisabled students in similar circumstances do not continue to receive education services.

*Adopted:* date of manual adoption

LEGAL REF.: 22-5-4.3 NMSA (1978)

6.11.2.7 NMAC

6.11.2.8 NMAC

6.11.2.9 NMAC

6.11.2.10 NMAC



6.11.2.11 NMAC

6.11.2.12 NMAC

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

20 U.S.C. 7151 *et seq.*, The Gun-Free School Act of 1990

29 U.S.C. 794 Rehabilitation Act of 1973, (Section 504)

CROSS REF.: IHB - Special Instructional Programs

JR - Student Records