

## Expulsion

### Due Process for Expulsion:

The board hearing to consider expelling a student shall be held in closed session. (The board expulsion hearing may be conducted in open session only upon parent/guardian request if the student is a minor or upon student request if the student is not a minor and if the relevant parties affirmatively waive public disclosure of student records and information). The vote taken on the issue of whether to expel a student shall be in open board meeting by roll call vote.

#### 1. Procedural Steps for Considering the Expulsion of a Student.

- A written statement of the alleged misconduct, causing the superintendent to recommend expulsion will be given to the student's parent/guardians at least three (3) working days prior to the hearing. The statement will include the names of the school officials and others believed to have knowledge to support the reasons for recommending expulsion and who may appear as witnesses or provide written statements for use at hearing. The written statement will be accompanied by a copy of the board policy and rules pertaining to procedures for a board expulsion hearing.
- A written notice of the date, time, and place of the hearing will be given to the student's parents/guardians at least five (5) calendar days prior to the hearing. If the parent/guardians of said student cannot be notified or be present at the hearing because of extenuating circumstances and request a postponement, the board may postpone the scheduled hearing until the parents/guardians are notified and indicate their availability to be present. Requests for postponement of a hearing shall be considered a request for, and consent to, a continuation of the suspension until the board hearing is held.
- If the student has reached the age of eighteen (18) at the hearing time, he/she is authorized to make decisions, sign documents and obtain representation on his/her behalf and may elect whether or not to be represented by parents/guardians. However, notification shall also be given to the parents/guardians, or representative(s).
- The appearance of counsel or other representatives deemed by parties involved is permitted.
- An opportunity may be granted, prior to the hearing, if requested, for the student or representatives to examine copies of documents to be used in the hearing and to discuss the matter with administrators, teachers, and other witnesses.

- Witnesses at the hearing, or persons whose testimony has been submitted in written form shall be subject to cross-examination by any party to the hearing.
- At the hearing, the opportunity will be granted for the student or his/her counsel or representative to present the student's version on the allegations through testimony or documents. No inference shall be drawn against the student for his/her refusal to testify.
- The board's decision on the recommendation to expel the student will be based solely upon evidence introduced at the hearing. A board decision to expel must be made by a majority of the board present for the hearing.
- Within ten (10) calendar days after the hearing, the board will mail or have delivered to the student and his/her counsel a written statement of the board's decision and the factual basis for it.
- A verbatim record of the hearing shall be made by electronic means or by shorthand reporter. Detailed minutes and tape recording of a closed session shall be sealed and shall not be public records opened to public inspection.
- The foregoing procedure may be waived or modified by mutual agreement of the parties.

## 2. Condition for Readmission of an Expelled Student.

- The board may consider and, by majority vote of those present, grant readmission to a student expelled by board action at any time and upon any condition it may determine.

## Expulsion Procedures – Special Education Student.

When District officials consider expulsion of a special education student, that proposed action automatically triggers due process IDEA procedures and safeguards. Knowing the extent to which District officials can use customary disciplinary actions with special students is important. To some, it may appear that a double standard exists. Statutory acts, (e.g., IDEA and Section 504) as well as significant court decisions have provided protections for special education students beyond those that exist for the general student population. The courts have unanimously determined that the IDEA prevents a District from expelling student with a disability when the behavior is determined to be related to the disability.

Removing a student from a current placement for a period exceeding ten (10) school days is considered a change of placement and the courts have unanimously supported the fact (Dept. of Educ., 1992, p. 14).

Although protections are provided, it does not mean the students cannot be disciplined.

The steps below shall be followed prior to recommending expulsion of a special education student.

1. Once a student is referred to the office, an Administrator shall conduct, in a timely manner, an informal

investigation of the alleged breach(es) of discipline.

2. The Administrator shall, in a timely manner, schedule and conduct a conference with all appropriate parties, provide notice of the alleged breach(es) of discipline, discuss the allegation(s), and give the student an opportunity to present his/her response. The Administrator, when deemed appropriate, may provide the student the opportunity to address witness(es) having knowledge about the breach(es) of discipline and/or have other witness(es) on his/her behalf. Such witnesses may include the teacher(s) or person making the charge(s).
3. When an Administrator believes that the student should be considered for expulsion, he/she will convene an IEP staffing to review the student's educational program. The Administrator shall also consult with the Superintendent, the Director of Special Needs, and the Special Education Consultant assigned to the building. Expulsion is considered a change of placement. Therefore, written notice is to be sent, in a timely manner, to the parent/guardian in their primary language or through an interpreter. The notice must include the purpose for the staffing meeting including specific, detailed information regarding the misconduct.

The staffing shall be scheduled at a time and location to insure parent/guardian involvement and participation. The staffing meeting shall occur prior to the Superintendent possibly making a recommendation to the Board for expulsion.

4. The staffing team shall consist of: a representative of the school who is qualified to provide or supervise the program of special education; the student's teacher; a member of the diagnostic educational team; a teacher or other specialist with knowledge in the identified disability area; one or both of the student's parents (subject to rule 51.31 of the Rules of Special Education); the student, when appropriate; and other individuals as designated by the parents/guardians, District personnel, or Special Education Director for the AEA.
5. The IEP staffing team is to consider:
  - a. the relationship of the student's inappropriate behavior to his/her disability. It is recommended the staffing team use two of the following three approaches for determining the relationship between the behavior and his/her disability; 1) analyze the student's records for evidence of past behavior problems to note any trends or patterns; 2) review documented behavior characteristics of all special education students within the District having the same disability as the student being considered for expulsion; and 3) review the behavior characteristics of each disability category according to

research studies. The team shall consider the whole child and not focus entirely on the label or identified disability.

b. the appropriateness of the current educational program. The staffing team should pay particular attention to whether the student has made progress on the IEP goals and objectives prior to the time of the misconduct. Consideration may also be given to changes in the student's life, such as: transition from one educational level to another, family issues, health matters, personal traumatic events, etc. When the current educational placement is not meeting the student's needs, an alternative program/placement should be developed.

c. a reevaluation shall be completed to provide current information.

Information obtained through the reevaluation shall be used by the staffing team to determine (a) and (b) above. School personnel are required to inform the parents/guardians that they have a right to request an independent evaluation at public expense to determine the educational needs.

d. determining (a) and (b) above must be made prior to the recommendation for expulsion of any special education student to the School Board by the Superintendent.

6. The IEP staffing team provides a report that describes the relationship between the student's misbehavior and the student's disability and the appropriateness of the current educational programming. The staffing team does not address the issue of expulsion. If they determine the student's misconduct is related to his/her disability or that the student has been placed in an inappropriate program, the student may not be expelled. It may consider a changed or placement following procedural safeguard requirements. If the team determines that the student's misconduct is not related to his/her disability and the current educational program is appropriate, the Superintendent may recommend to the Board that the student be expelled.

When expulsion is the recommended action, the parents/guardians must be informed of their right to file an appeal for an impartial administrative hearing through special education procedures.

A "stay put" provision would then remain in effect during the hearing process. The "stay put" provision allows the student to remain in his/her current educational program. The school cannot unilaterally remove a student from his/her current placement. When the parents/guardians of a "dangerous" student refuse an offer of an interim placement, the student can be suspended a maximum of ten (10) days (or the number of days left of the allowable 10 days in a school year). The District may use this time to seek a temporary court injunction to bar the student from attending school. A court injunction order will only

give the school a temporary reprieve. The District must prove that the student is likely to injure others (or him/herself) if he/she is allowed to return to school.

7. Due Process for Expulsion of a Special Education Student may be modified to include:

- a. Modify the expulsion notice to include the requirement of parent/guardian participation.
- b. Provide a complete evaluation of independent evaluation, if requested.
- c. Modify procedures at the expulsion hearing to include:
  1. the IEP staffing team evaluation report and recommendation(s).
  2. additional witnesses or representatives to address the student's handicap and educational needs, and to completely describe the relationship between the student's disability and the cause/effect relationship to the inappropriate behavior.
- d. Modify a Board expulsion action to include:
  1. the Board's decision to accept, modify, or reject the recommendations of the IEP staffing team/evaluation report.
  2. written notice to the parents/guardians of the proposed change, because expulsion constitutes a change of placement.

8. When the Board has decided the student is to be expelled the IEP staffing team will need to meet to determine an appropriate alternative educational program. Expulsion does not mean that educational services are terminated but the nature of those services will be determined by the student's IEP staffing team.