



5400.1: STUDENT DISCIPLINE

I. General Statement. The District's disciplinary rules and procedures are designed to protect students' constitutional and statutory rights within the context of an orderly and effective educational process. Students will be excluded from school and/or school activities when their conduct interferes with an orderly and effective educational process.

II. Types of Exclusion and Disciplinary Action.

A. Short-term Suspension. Exclusion from all schools in the District not to exceed five (5) school days. If there are insufficient school days in the first semester to complete the suspension period, the suspension period will be carried over to the second semester.

B. Emergency Exclusion. Immediate exclusion if:

1. The student has a dangerous communicable disease transmissible through normal school contacts and poses an imminent threat to the health and safety of the school community; or

2. The student's conduct presents a clear threat to the physical safety of himself, herself, or others; or

3. The student's conduct is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education.

4. An emergency exclusion shall be based upon a clear factual situation warranting it and shall last no longer than is necessary to avoid the dangers necessitating the exclusion.

5. **Emergency Exclusion for Five (5) Days or Less.** The same procedures for short-term suspension shall be used for an emergency exclusion for five (5) days or less.

6. **Emergency Exclusion for Over Five (5) Days.** If the Superintendent or Superintendent's designee determines that the exclusion will extend beyond five (5) days, the following procedural provisions must be followed:

a. Hearing/Final Determination. A hearing will be held and a final determination made within ten (10) school days after the initial date of exclusion.

b. Hearing Procedures. The hearing will be conducted in compliance with the disciplinary hearing procedures which are used for long-term suspension, expulsion and reassignment.

C. Long-term Suspension. Exclusion from all schools in the District (except the location designated for alternative education for students suspended for ten (10) school days or more) for more than five (5) school days but less than twenty (20) school days. If there are insufficient school days in the first semester to complete the suspension period, the suspension period will be carried over to the second semester.

D. Expulsion. Exclusion from all schools in the District (except the location designated for alternative education) for a period not to exceed the remainder of the semester in which it took effect with the following exceptions:

1. If the misconduct occurred within ten (10) school days prior to the end of the first semester, the expulsion shall remain in effect through the second semester; or

2. If the misconduct occurred within ten (10) school days prior to the end of the second semester, the expulsion shall remain in effect for summer school and the first semester of the following school year subject to the annual review provision of Section II(D)(3)(d) below.

3. The time periods above do not apply to the following infractions which have the following periods of exclusion:

a. Firearms. Expulsion for (1) year of any student who knowingly possesses, handles, transmits, uses, intimidates with, or threatens with any firearm, explosive, or destructive device as provided in Rule 5400.6 (II)(D)(1), on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or his or her designee, or at a school-sponsored activity or athletic event. This subsection shall not apply to:

i. The issuance of firearms or the possession of firearms by members of the Reserve Officers Training Corps when training; or

ii. Firearms which lawfully are possessed by the person receiving instruction under the immediate supervision of an adult instructor who may lawfully possess firearms.

b. Dangerous Weapons. Students who use, intimidate with, threaten with, handle, transmit, possess on one's person or in one's vehicle any dangerous weapon, including but not limited to any stun gun, paintball gun, air soft gun, B.B. gun, or pellet gun, as provided in Rule 5400.6 (II)(D)(2), shall be excluded for twenty (20) days and may be excluded for one year.

c. Other Dangerous Weapons. Students who use or threaten with a knife, throwing star, brass knuckle, chemical substances, (including, but not limited to, mace, pepper guns, and bleach), and any other object that could be used to injure a person as provided in Rule 5400.6 (II)(D)(3), may be excluded for the remainder of the school year if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the exclusion shall remain in effect for summer school and may remain in effect for the first semester of the following school year.

d. Personal Injury. Students who knowingly and intentionally use force in causing or attempting to cause personal injury to a school employee, school volunteer, or student (unless caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person as hereafter provided) shall be excluded for a period not to exceed the remainder of the school year in which it took effect if the misconduct occurs during the first semester. If the expulsion takes place during the second semester, the exclusion shall remain in effect for summer school and may remain in effect for the first semester of the following

school year.

e. **Sexual Assault.** Students who sexually assault or attempt to sexually assault any person on school grounds shall be excluded for one (1) year. Students who sexually assault or attempt to sexually assault any person off school grounds may be excluded for one (1) year, provided that a complaint must have been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person off school grounds not at a school function, activity, or event, and the student's presence at school has a direct and immediate effect on maintaining discipline, order, or safety in the school. Sexual assault shall mean sexual assault in the first and second degree as defined in Neb. Rev. Stat. §§ 28-319 and 320 or sexual assault of a child in the first, second or third degree as defined in Neb. Rev. Stat. §§ 28-319.01 and 320.01, as such statutes now provide or may hereafter be amended. Neb. Rev. Stat. § 79-267(9).

f. **Annual Review.** Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the beginning of the school year. The review shall be conducted by a hearing examiner after the hearing examiner has given notice of the review to the student and to the student's parents or guardian. The review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to the hearing examiner recommendation that the student be re-admitted for the upcoming school year. If the Board (or Board Committee) took the final action to expel the student, the student may be re-admitted only by Board action. Otherwise, the student may be re- admitted by the Superintendent.

E. **Mandatory Reassignment.** Involuntary transfer to another school in the District in connection with any disciplinary action.

F. **Exclusion from School Grounds and Activities.** During any time period that a student is excluded from school due to short-term suspension, long-term suspension, expulsion, or emergency exclusion, the student will be prohibited from being on school grounds (except the location designated for alternative education) and from participating in any District-sponsored extracurricular activities and from attending any extracurricular activities which take place on District property.

G. **Other Disciplinary Action.** Administrative and teaching personnel may take actions regarding student behavior which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, referral to restorative justice practices or services ,rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

III. **Standards for Student Conduct (Rule 5400.6).** In conjunction with the Student Discipline Act, the District shall adopt Standards for Student Conduct contained in Rule 5400.6 that will set forth student misconduct and the maximum sanction that the District shall impose. Rule 5400.6 shall be reviewed annually by

the Board, and shall be distributed to students at the beginning of the school year or, in the case of student transfers, upon enrollment in the District.

IV. Effective Date of Exclusion. When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the Superintendent, the student may be suspended by the principal until:

A. If no hearing is requested, the date the disciplinary action takes effect; or

B. If a hearing is requested, the date the hearing examiner makes the report of his/her findings and a recommendation of the action to be taken to the Superintendent, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of interference with an educational function or school purpose, or a personal injury to the student himself or herself, other students, school employees, or school volunteers.

V. Procedures for Exclusion. The District will adhere to the procedural requirements of federal and state law for the exclusion of students from school and school activities.

VI. Hearings. In cases involving emergency exclusion for more than five (5) school days, long-term suspension, expulsion, and mandatory reassignment, the student will have the right to a hearing to contest the exclusion. A Request for Hearing form will be provided to the student and the student's parents or guardian along with a description of the hearing procedures provided by the Student Discipline Act along with the procedures for appealing any decision rendered at the hearing.

VII. Formal Hearings and Appeal. If a principal makes a decision to discipline a student by long-term suspension, expulsion, or mandatory reassignment, the following procedures shall be followed:

A. Written Charge and Summary of Evidence.

1. On the date of the decision, a written charge and a summary of the evidence supporting such charge shall be filed with the Superintendent or designee.

2. The principal shall, within two (2) school days of the decision, send written notice by registered or certified mail to the student and his or her parent or guardian informing them of the rights established under the Student Discipline Act.

B. Written Notice. Written notice must include the violation and summary of evidence; the recommended penalty; the right to a hearing; the hearing procedure; and a statement that the principal, legal counsel for the school, the student, the student's parent or the student's representative or guardian shall have a right to examine the student's academic and disciplinary records and any affidavits to be used at the hearing, plus the right to know the identity of the witnesses to appear at the hearing and the substance of their testimony. A form on which

the student, the student's parent, or the student's guardian may request a hearing must accompany the written notice.

C. Suspension until Hearing. When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the Superintendent or designee, the student may be suspended by the principal until:

- 1. The date the disciplinary action takes effect if no hearing is requested;**
- 2. If a hearing is requested, the date the hearing examiner makes the report of his/her findings and a recommendation of the action to be taken to the Superintendent or designee, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of interference with an education function or school purpose or a personal injury to the student himself or herself, other students, school employees, or school volunteers.**

D. Procedures if a Hearing is not Requested. If a hearing is not requested by the student or the student's parent or guardian within five (5) school days following receipt of written notice, the punishment recommended in the charge by the principal or his/her designee will automatically go into effect upon the fifth (5th) school day following receipt of the written notice by the student or his/her parent or guardian.

E. Procedures if a Hearing is Requested.

1. Request for Hearing. A hearing must be requested within five (5) school days after receipt of the written notice.

a. Request of Hearing Beyond Five Days. If a hearing is requested more than five (5) school days but not more than thirty (30) calendar days following the actual receipt of the written notice, the hearing shall be held but the imposed punishment shall continue in effect pending final determination.

2. Appointment of Hearing Examiner. If a hearing is requested the Superintendent shall appoint a hearing examiner. The hearing examiner can be any person designated by the Superintendent or designee if such person has not brought the charges against the student, is not a witness at the hearing, and has no involvement in the charge.

3. Notice of Time and Place for Hearing. Within two (2) school days after being appointed, the hearing examiner shall give written notice to the principal, the student, and the student's parent or guardian of the time and place for the hearing.

a. The hearing shall be scheduled within a period of five (5) school days after it is requested, but such time may be changed by the hearing examiner for good cause.

b. No hearing shall be held upon less than two (2) school days actual notice to the principal, the student, and the student's parent or guardian, except with the consent of all the parties.

4. Right to Examine Records and Statements. The principal or legal counsel for the District, the student, and student's parent or guardian, or representative, shall have the right to examine the records, affidavits and written statements referred to Section VII (B) of this Rule, and the statement of any witness in the possession of the principal at a reasonable time prior to the hearing.

F. Hearing Procedures.

1. Required Attendance at Hearing. The hearing examiner, student, student's parent or guardian, the student's representative, if any, and legal counsel for the principal or District, if any, shall attend the hearing.

2. Witnesses. Witnesses shall be present only when they are giving information at the hearing. The student, the student's parent, guardian, or representative, the principal, or the hearing examiner may ask witnesses to testify at the hearing. Such testimony shall be under oath, and the hearing examiner shall be authorized to administer the oath. The hearing examiner, upon proper advance request, shall make reasonable effort to assist the student or the student's parent, guardian, or representative in obtaining the attendance of the witnesses. The principal, District, and legal counsel for the District shall not be required to obtain or to assist in obtaining the attendance of any witness desired by the student, or the student's parent, guardian, or representative.

a. Cross-Examination. The student, the student's parent, guardian, or representative, the principal, the principal's or the District's legal counsel, and the hearing examiner shall have the right to question any witness giving information at the hearing.

b. Immunity. Any person giving evidence by written statement or in person at a hearing shall be given the same immunity from liability as a person testifying in a court case.

3. Student Testimony. The student may speak in his or her own defense and may be questioned on his or her testimony, but he or she may choose not to testify and, in such case, shall not be threatened with punishment nor be later punished for refusal to testify.

4. Individuals may be Excluded from the Hearing. The student may be excluded from the hearing in the discretion of the hearing examiner at times when the student's psychological evaluation or emotional problems are being discussed. The hearing examiner may exclude anyone from the hearing when his or her actions substantially disrupt an orderly hearing.

5. Evidence on the Student's Conduct and Records. The principal may present to the hearing examiner statements, in affidavit form, of any person having information about the student's conduct and the student's records, provided that such statements and records have been made available to the student or the student's parent, guardian, or representative prior to the hearing. The information contained in such records shall be explained and interpreted, prior to or at the hearing, to the student, parent or guardian, or representative, upon request, by appropriate District personnel.

6. Rules of Evidence. In conducting the hearing, the hearing examiner shall not be bound by the rules of evidence

or any other rule of courtroom procedure.

7. Proceedings Recorded. The proceedings of the hearing shall be recorded at the expense of the District.

8. Joint Hearings. A joint hearing may be conducted when more than one (1) student is charged with violating the same rule and acted in concert, and the facts are substantially the same for all such students.

a. Discretion of Hearing Examiner. A joint hearing may be conducted if the hearing examiner believes that a joint hearing is not likely to result in confusion and no student shall have his or her interests substantially prejudiced by a single hearing.

b. Order for Separate Hearing. If during the conduct of the hearing the hearing examiner finds that a student's interests will be substantially prejudiced by a joint hearing or that the hearing is resulting in confusion, the hearing examiner may order a separate hearing for any student.

G. Post-Hearing Report. After the hearing, a report shall be made by the hearing examiner to the Superintendent or designee. The report shall contain the hearing examiner's findings and recommendation of the action to be taken, and the report shall explain in terms of the needs of both the student and the District, the reasons for the particular action recommended.

1. Range of Recommendations. The recommendation by the hearing examiner may range from no action, through the entire field of counseling, to long-term suspension, expulsion, mandatory reassignment, or an alternative education placement.

2. Review by Superintendent or Designee. A review of the hearing examiner's report shall be made by the Superintendent or designee. The Superintendent or designee may change, revoke, or impose the sanction recommended by the hearing examiner but shall not impose a sanction more severe than that recommended by the hearing examiner.

3. Decisions Based on Evidence. The findings and recommendations of the hearing examiner, the determination by the Superintendent, and any determination on appeal to the Board, shall be made solely on the basis of the evidence presented at the hearing or, in addition, on any evidence presented on appeal.

H. Final Disposition. Written notice of the findings and recommendations of the hearing examiner and the determination of the Superintendent or designee shall be made by certified or registered mail or by personal delivery to the student or the student's parent or guardian. Upon receipt of such written notice by the student, parent, or guardian, the determination of the Superintendent or designee shall take immediate effect.

VIII. Request for Appeal to the Board. The student or the student's parent or guardian may, within seven (7) school days following receipt of the Superintendent's written notice of the determination, appeal the determination to the Board by a written request which shall be filed with the secretary of the Board or with the Superintendent.

A. Appeal Hearing.

1. When. A hearing shall be held before the Board within a period of ten (10) school days after it is requested, and such time for a hearing may be changed by mutual agreement of the student and Superintendent.

2. Deliberating Body. The hearing may be held before a committee of the Board of not less than three (3) members.

3. Appeal Proceedings. Such appeal shall be made on the record, except that new evidence may be admitted to avoid a substantial threat of unfairness. Any such new evidence shall be recorded at the expense of the District. The Board or designated committee shall allow oral arguments, and the length of such oral arguments may be limited.

4. Deliberation. After examining the record, taking new evidence, if any, and hearing oral arguments, the Board or designated committee may withdraw to deliberate privately upon such record and new evidence.

a. Limitations. Any such deliberation shall be held in the presence only of Board members in attendance at the appeal proceeding but may be held in the presence of legal counsel who has not previously acted as the designee of the principal in presenting the school's case before the hearing examiner.

b. Questions during Deliberation. If any questions arise during such deliberations which require additional evidence, or information, the deliberating body may reopen the hearing to receive such evidence, or information subject to the right of all parties to be present.

5. Action on Appeal. The deliberating body may alter the Superintendent's disposition of the case if it finds the decision to be too severe but may not impose a more severe sanction.

6. Dispatch of Final Action. The final action of the deliberating body shall be evidenced by personally delivering or mailing by certified mail a copy of the deliberating body's decision to the student and his or her parent or guardian.

B. Judicial Review. Any person aggrieved by a final decision in a contested case under this Rule, whether such decision is affirmative or negative in form, shall be entitled to judicial review. Nothing in the Rule shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

IX. Settlement. Nothing in this Rule shall preclude the student, the student's parents, guardian, or representative from discussing and settling disciplinary proceedings with appropriate school personnel prior to the hearing stage.

X. Reporting of Criminal Acts to Law Enforcement Agencies. The school principal or principal's designee shall notify as soon as possible the appropriate law enforcement authorities of any student act which the principal or principal's designee knows or suspects is in violation of the Nebraska Criminal Code.

XI. Annual Report to State Department of Education. The Superintendent or Superintendent's designee shall annually provide to the State Department of Education:

A. An assurance that the District has in effect the expulsion policy for bringing a firearm to school required by state; and

B. A report, in a manner prescribed by the State Department of Education, which describes the circumstances surrounding any expulsion for possessing, using or transmitting a firearm on school grounds or in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or designee, or at a school-sponsored activity or athletic event, including the name of the school concerned, the number of students expelled from the school, the types of weapons concerned, and the types of programs to which students have been assigned.

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June 1, 1998

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Related Policies and Rules

[5300.1: Bus Conduct](#)

[5300.2: Conduct at School](#)

[5400: Student Discipline](#)

[5400.2: Discipline of Students with Disabilities](#)

[5400.3: Discipline of Students under Section 504 of the Rehabilitation Act of 1973](#)

[5400.4: Curtailment of Extracurricular Activities](#)

[5400.5: Academic Credit for Expelled Students and Students Suspended for Ten School Days or More through Alternative Courses or Programs](#)

[5400.6: Standards for Student Conduct](#)

[5410.1: Substance Abuse](#)

Legal Reference

20 U.S.C. § 5812 (7); 20 U.S.C. § 5961 et seq.; Neb. Rev. Stat. § 28-1204.04; Neb. Rev. Stat. § 79-254 et seq.; Title 92, Nebraska Administrative Code, Chapter 17-004.