



5400.3: DISCIPLINE OF STUDENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

I. General Statement. Suspension and expulsion of eligible disabled students under Section 504 of the Rehabilitation Act of 1973 shall comply with District procedures and federal and state statutes, regulations, and rules.

II. Eligible Disabled Students.

An eligible disabled student is any student between the ages of five (5) and twenty-one (21) who has not graduated, and who has been determined by a Building 504 Team to qualify as disabled under Section 504, and for whom the District has made available an accommodation plan.

III. Expulsion.

A. Expulsion defined. For the purposes of this Rule, any exclusion from school for more than ten (10) school days at one time shall be deemed an expulsion from school and a significant change in placement.

B. Building 504 Team manifestation determination. Before a disabled student is expelled from school, the student's Building 504 Team will convene to determine whether the student's misconduct was a manifestation of the student's disability.

C. Manifestation determination. In carrying out a manifestation determination, the Building 504 Team may determine that the misconduct of the student was not a manifestation of the student's disability only if:

1. The Building 504 Team first considers, in terms of the misconduct which is the subject of the disciplinary action, all relevant information in the student's file, any teacher observations, any relevant information supplied by the parents of the student, and the student's accommodation plan and placement.

2. The Building 504 Team then determines if the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the District's failure to implement the student's 504 Plan.

3. If the Building 504 Team determines that any of the standards in the immediately preceding Section III (C) (2) were not met, then the misconduct must be considered a manifestation of the student's disability.

D. Behavior not a manifestation of the disability. If the Building 504 Team determines that the misconduct is not a manifestation of the student's disability, then the student may be excluded from school pursuant to the procedures set forth herein and in District Rule 5400.1. If a student is excluded pursuant to District Rule 5400.1, then the student shall be eligible for academic credit upon successful participation in and completion of District alternative school, classes, or programs pursuant to District Rule 5400.5. When a student so participates in District alternative school, classes, or programs pursuant to District Rule 5400.5, the student's Building 504 Team shall convene to consider appropriate changes to the student's 504 Plan. All students suspended from the District also have the opportunity to complete any classwork, homework, and examinations missed during the period of suspension, as provided in District Rules 5400.5(III) and 6235.1. The District will also accept at the conclusion of an expulsion and reinstatement of a student, any nonduplicative, grade-appropriate credits earned by an expelled student during the term of the expulsion, from any Nebraska accredited institution or institution accredited by one (1) of the six (6) regional accrediting bodies in the United States pursuant to District Rule 5400.5(D).

E. Behavior which is a manifestation of the disability. If the Building 504 Team determines that the misconduct is a manifestation of the student's disability, then the student may not be excluded for more than ten (10) school days. The Building 504 Team will determine whether the student's current educational placement and related aids and services contained in the student's current 504 Plan are appropriate. If deemed inappropriate, then changes to the 504 Plan will be considered by the Building 504 Team.

F. Expulsion procedures. When a disabled student is excluded from school for more than ten (10) school days, the student and the student's parent are entitled to Section 504's procedural rights including an opportunity for the examination of records, an impartial hearing (with participation of parents and opportunity for counsel), and review by an independent reviewer. In those cases where parents disagree with the manifestation determination, or with the subsequent placement and related aids and services decisions (in those cases where the misconduct is determined to be a manifestation of the disability), they may then request an informal conference or due process hearing as set forth in Sections VII through XI below.

G. District Alternative Education Program. Expelled disabled students will have available District alternative education pursuant to District Rule 5400.5. The District will also accept at the conclusion of an expulsion and reinstatement of a student, any nonduplicative, grade-appropriate credits earned by an expelled student during the term of the expulsion, from any Nebraska accredited institution or institution accredited by one (1) of the six (6) regional accrediting bodies in the United States pursuant to District Rule 5400.5(D).

IV. Drugs and Alcohol.

The District shall take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use or possession of drugs or in the use or possession of alcohol, to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. The procedural safeguards provided in 34 C.F.R. § 104.36 and in Section III (F) above and Sections VII through XI below, shall not apply to such disciplinary actions.

V. Suspension.

A. Behavior which is a manifestation of the disability. A student may be suspended from school for ten (10) school days or less, even if the student's misconduct is a manifestation of the student's disability.

B. Suspension not a change in placement. A suspension of ten (10) school days or less at one time does not constitute a change of placement; however, if a student is suspended for more than ten (10) cumulative school days during the school year, then the Building 504 Team shall convene for each subsequent suspension to review and determine the appropriateness of the student's 504 Plan.

C. Suspension conditions and procedures. A suspension of five (5) school days or less shall follow the conditions and procedures for a short-term suspension set forth in District Rule 5400.1. A suspension of more than five (5) school days, but not more than ten (10) school days, shall follow the conditions and procedures for a long-term suspension set forth in District Rule 5400.1. All students suspended from the District have the opportunity to complete any classwork, homework, and examinations missed during the period of suspension, as provided in District Rules 5400.5(III) and 6235.1.

VI. Emergency Exclusion.

A disabled student may be subject to emergency exclusion for the reasons and pursuant to the procedures set forth in District Rule 5400.1.

VII. Informal Conference.

Parents and students of majority age may file with the school principal a written request for an informal conference to discuss suspension, expulsion, or the manifestation determination. Within ten (10) school days of the receipt of the request, the principal will convene an informal conference team consisting of the parents, school administrators, and the student's Building 504 Team to attempt to resolve any disagreements.

VIII. Preliminary Procedures for Formal Hearings.

A. The following rules apply for formal hearings:

- 1. The student's parents must file a written request with the District's Director of Student Services for a formal due process hearing with respect to the suspension or expulsion of their child, or the manifestation determination. The written request must include an explanation of the parents' concern related to the suspension, expulsion, or manifestation determination.**
- 2. If a formal hearing is requested, the Director of Student Services will appoint an impartial hearing officer. The hearing officer shall not be a witness at the hearing, must have no involvement in the case, must not be a District employee, and must be available to answer any questions relative to the hearing. The District, however, may pay the hearing officer as an independent contractor.**
- 3. The hearing must be held within twenty (20) school days after a parent's initial request for a hearing, but cannot be held without providing the principal and the student's parents at least five (5) school days prior notice.**
- 4. The student's parents or representative shall have the right to examine the records and written statements (including the statements of any witnesses for the District) at a reasonable time prior to the hearing.**
- 5. The hearing officer will also be available preceding the hearing to answer questions concerning the nature and conduct of the hearing.**

IX. The following rules apply when a formal hearing is conducted:

- A. The following shall attend the hearing: the hearing officer, the principal (or designee), the student's parents, and the student's representative (if any). The principal and Board may also have counsel present.**
- B. Witnesses may be present only when giving information at the hearing.**
- C. The hearing shall be closed to the public. The decision shall be treated as a record of the student, and will not be made available to the public.**
- D. The student may be present if requested by the parents; however, the hearing officer may exclude the student at times when the student's psychological evaluation or emotional problems are being discussed.**
- E. The principal shall present statements, in affidavit form, to the hearing officer of anyone having information pertinent to the case only if the affidavits have been made available to the student's parents or representative prior to the hearing.**
- F. The hearing officer is not bound by the rules of evidence or other rules of courtroom procedure.**
- G. The following persons may ask persons to testify at the hearing: the student; the student's parents or representative; the principal (or designee); and the hearing officer. 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 or representative.**

H. The persons listed in the preceding paragraph shall have the right to question any witness giving information at the hearing.

I. The testimony shall be under oath and the hearing officer shall administer the oath.

J. Any person giving testimony is given the same immunity from liability as a person testifying in a court case.

K. The hearing shall be recorded at District expense.

X. Decision of the Hearing Officer.

A. The decision of the hearing officer shall conform with the following:

1. It shall be issued within ten (10) school days after the hearing. It will contain findings of fact, a decision of the action(s) to be taken, and the reasons therefor. The decision will be based solely upon the evidence presented at the hearing.

2. Written notice of the decision of the hearing officer shall be sent by the Director of Student Services, by registered or certified mail, or by personal delivery, to the student's parents.

B. Upon receipt of the written notice, the hearing officer's decision shall take effect.

XI. Review Procedure.

A. Either the complainant or the school may appeal the decision of the hearing officer to an independent reviewer appointed by the Director of Student Services. The independent reviewer must not be a witness at the hearing, must have no involvement in the case, and must be available to answer any questions relative to the hearing. The independent reviewer cannot be an employee of, or under contract with the District. Payment to the independent reviewer for his/her services does not make the reviewer an employee of, or under contract with the District.

B. A written request for appeal must be filed with the Director of Student Services within five (5) days of the receipt of the written notice of the decision of the hearing officer. A request for appeal must be based on an alleged error of fact or law, and the written request must explain the reasons for the appeal and the alleged error of fact or law.

C. The non-appealing party may file a written response with the independent reviewer within five (5) school days of that party's receipt of the written request for appeal.

D. The independent reviewer shall hold a hearing within twenty (20) school days of the filing of the written request for appeal, but such hearing cannot be held without providing all parties with at least five (5) school days notice. The proceedings of the hearing shall be limited to the presentation of oral arguments regarding the alleged errors of fact or law. The independent reviewer is not bound by the rules of evidence or other rules of courtroom procedure.

E. The independent reviewer will complete the review and issue a written decision within ten (10) school days of the hearing. The independent reviewer has the authority to revise the findings and decision of the hearing officer and the decision of the independent reviewer will be final.

Date of Adoption

December 6, 1993

Date of Revision

June 15, 1998

September 25, 2000

August 7, 2006

December 7, 2009

December 20, 2010

April 16, 2018

August 21, 2023

Related Policies and Rules

[5400: Student Discipline](#)

[5400.1: Student Discipline](#)

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

[5400.4: Curtailment of Extracurricular Activities](#)

[5400.5: Academic Credit for Expelled and Suspended Students](#)

[5400.6: Standards for Student Conduct](#)

Legal Reference

Section 504 of the Rehabilitation Act of 1973

34 C.F.R. § 104.1 through 104.10

34 C.F.R. § 104.31 through 104.39

Neb. LB 705, Sections 61 and 65 (2023)