

MARION SCHOOL DISTRICT 60-3	NEPN Code: JIA
STUDENT POLICIES & REGULATIONS	

STUDENT DUE PROCESS POLICY

STUDENTS

The Marion School Board hereby adopts the following Student Due Process procedure.

Definitions: Terms used in this article, unless the context plainly requires otherwise, mean:

1. **“Expulsion”** - the action of the School Board to deny a student’s membership in school for a period of time that may extend beyond the end of the school year;
2. **“Long-term Suspension”** – the exclusion by the School Board or Superintendent of a student from class or classes for more that ten (10) school days, not to exceed ninety (90) days, (according to SDCL 13-32-4.2)
3. **“Parent”** - a parent, guardian, or person in charge of a student;
4. **“Policy”** – a rule, regulation or standard enacted by a school district board;
5. **“Short-term Suspension** – the exclusion of a student by a Principal or Superintendent from a class or from school for not more than ten (10) school days.
6. **“Insubordination”** – shall mean failure in a single instance to comply with reasonable rules, regulations, policies, orders or instructions given by the School Board or school staff who act on behalf of the School Board.

SHORT-TERM SUSPENSION HEARING PROCEDURE

- A. If a short-term suspension from a class, classes or school is anticipated because of a student’s violation of a rule, regulation, or policy, the Principal or Superintendent shall give oral or written notice to the student as possible after discovery of the alleged violation, stating the charges against the student and an explanation of the facts that form the basis of the proposed suspension. The student shall be given the opportunity to present his version of the incident.
- B. When a student is suspended out of school following the hearing, the parent shall be given oral notice, if possible, and sent a written notice; however, a student shall not be removed from the school premises before the end of the school day without contacting a parent.
- C. Short-term suspension shall be made only after the principal has made an investigation of the alleged conduct or violation and has determined that such suspension is necessary to further school purposes or prevent an interference with school purposes. If a short-term

suspension is anticipated because of a student's misconduct, the principal shall so inform the student either orally or in writing as soon as possible after discovery of the alleged misconduct, and further, shall similarly so inform the parents or guardian as soon as possible.

- D. The student shall be informed of the rule, regulation, or policy that has been allegedly violated. The student will be given an opportunity to answer the charges and present evidence in his/her behalf. The principal shall render a decision as soon as possible after reviewing the case.
- E. Upon suspending a student, if contact is possible, the principal shall provide oral notice of the suspension to the student's parents or guardian. The principal shall also provide the parents or guardian written notice informing them of the action taken. A student who is an emancipated minor shall not be removed from the school premises before the end of the school day without contacting a parent or guardian unless the student's presence poses a continuing threat or danger, in which case the student may be immediately removed from school and transferred into the custody of a parent or law enforcement. The principal shall make a reasonable effort to hold a conference with the parent(s)/guardian before or at the time the student returns to school.

LONG-TERM SUSPENSION HEARING PROCEDURE

Written Report Required:

If a long-term suspension or expulsion is anticipated because of a student's violation of a rule, regulation, or policy, the principal shall file a written report with the superintendent by the end of the school day following the day of discovery of the alleged violation. The term of long-term suspension or expulsion is served out of school.

The Superintendent may long-term suspend a student for up to ninety (90) school days. A student may be excluded from class or classes by using the short-term suspension while the long-term suspension is pending. If a long-term suspension is anticipated because of a student's misconduct, the principal must file a written report with the Superintendent by the end of the school day following the day of discovery of the alleged violation.

When a long-term suspension is imposed, the Superintendent must file a sealed, written report with the School Board by the end of the (5th) school day following the first (1st) day of the long-term suspension and may request that a hearing be held before the School Board. A hearing is not required unless requested by the student's parent or guardian. The report must include the facts of the situation, the action taken, the reasons for the action, and the Superintendent's decision or recommendation. The report must remain sealed in the possession of the Business Manager, sealed and unavailable for review by individual School Board members until the time set for a hearing.

The Superintendent must send a copy of the report and notice to the student's parent or to the student if the student is 18 years of age or older or an emancipated minor at the same time the report is filed with the Business Manager. The notice shall contain the following minimum information:

1. The rule of conduct or policy allegedly violated and the reason for the disciplinary proceedings.

2. A tentative time, date, and place for the hearing.
3. A statement that the student or his/her parents may waive the right to a hearing by written notification to the Superintendent at least 24 hours prior to the time set for the hearing. If the hearing is not waived, the hearing shall be held on the date, time and place set forth in the notice unless a different date, time and place is agreed to by the parents.
4. A description of the hearing procedures and a statement that the student may be represented by an attorney.
5. A statement that the evidence and the student's records are available at the school for examination by the student, the parents or the student's representative.
6. A statement that the student may present witnesses and shall submit to the Superintendent prior to the hearing a list of such witnesses and details of the evidence to be presented in the student's behalf.

If a hearing is requested, the Superintendent shall give notice to each School Board member of an appeal to the Board for a hearing. The Superintendent shall set the date, time, and place for the hearing and send notice by first class mail to each School Board member and by certified mail, return receipt requested, to the student's parent or to a student who is 18 years of age or older or emancipated minor. Hearing procedures described under "Hearing Procedures for Long-term Suspension or Expulsion" will be followed.

After a hearing has been scheduled, the student, if of the age of majority or emancipated, or the student's parent or guardian may waive the right to a hearing in writing to the Superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

If no hearing is requested or the hearing is waived, the action of the Superintendent is final.

EXPULSION HEARING PROCEDURE

A student who is being threatened by a sanction as serious as expulsion from the school system is constitutionally entitled to procedural protection generally afforded to persons faced with serious loss of personal freedom. The action of expulsion is imposed after hearing and decision by the School Board.

In situations where a student's presence poses a continuing danger to persons or property or threatens the ongoing academic processes of the school, the student may be immediately removed from school after being notified as described under short-term suspension.

The following procedures are required to impose expulsion of a student:

1. Written report of the incident. If an expulsion is anticipated because of a student's misconduct, the principal will file a written report with the Superintendent by the end of the school day following the day of discovery of the alleged misconduct. The report shall set forth the known details of the incident or incidents and the known parties involved.
2. Notice of hearing. If the Superintendent deems that there are grounds for an expulsion, the Superintendent must file a sealed, written report with the School Board not later than the end of the fifth school day following the first day of the student's removal from one or more classes from school and schedule a hearing before the School Board. The report must include the facts of the situation, the action, the reasons for the action and the

Superintendent's recommendation. The report must remain in the possession of the Business Manager and unavailable for review by individual School Board members until the time set for a hearing.

At the same time that the report is filled with the Business Manager, the Superintendent must send a copy of the report and notice of hearing to the student's parent or to the student if the student is 18 years of age or an emancipated minor. The notice shall contain the following information:

1. The rule of conduct or policy allegedly violated and the reason for the disciplinary proceedings.
2. A tentative time, date, and place for the hearing.
3. A statement that the student or his/her parents may waive the right to a hearing by written notification to the Superintendent at least 24 hours prior to the time set for the hearing. If the hearing is not waived, the hearing shall be held on the date, time and place set forth in the notice unless a different date, time and place is agreed to by the parties.
4. A description of the hearing procedure and a statement that the student may be represented by an attorney.
5. A statement that the evidence and the student's records are available at the school for examination by the student, the parents or the student's representatives.
6. A statement that the student may present witnesses and shall submit to the Superintendent prior to the hearing a list of such witnesses and details of the evidence to be presented in the student's behalf;

The written notice to the student and the student's parents or guardian shall be sent by certified mail, return receipt requested, and shall also include a copy of the School Board policy rules of suspension and expulsion.

After a hearing has been scheduled, the student, if of the age of majority or emancipated, or the student's parent or guardian may waive the right to a hearing in writing to the Superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

HEARING PROCEDURE

The School Board shall constitute the hearing board and shall conduct the hearing in the following manner:

1. A school Board member or a School Board designee who is not an employee of the school district shall be appointed as presiding officer;
2. Each party may make an opening statement;
3. Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
4. Each party may be represented by an attorney;
5. The administration shall present its case first;

6. The hearing shall be closed to the public and there shall be no verbatim record by mechanical or electronic means;
7. Witnesses may be present only when testifying. All witnesses shall take an oath or affirmation to be administered by the school board president or business manager;
8. Each party may raise objections; however, objections shall be limited to relevancy and scope of the question;
9. All relevant evidence shall be admitted; however, unproductive or repetitious evidence may be limited by the presiding officer;
10. The presiding officer may ask questions of witnesses and may allow other School Board members to interrogate witnesses;
11. Each party may make a closing statement;
12. After the hearing the School Board shall continue to meet in executive session for deliberation. No one other than the presiding officer of the hearing shall meet with the School Board during deliberation. The School Board may seek advice during deliberation from an attorney not present at the hearing. Consultation with any other person during deliberation shall occur only if a representative of the student is present; and
13. The decision of the School Board shall be based solely on the evidence presented at the hearing and shall be formalized by a motion made in open meeting. The motion shall omit the name of the student and shall state the reason for the Board's action. The student or the student's parents shall be notified in writing of the decision. The notice shall state the length of the suspension or expulsion.

ADDITIONAL RULES FOR THE MARION SCHOOL DISTRICT:

1. At least a majority of the school board members must be present at the meeting and no member of the board not present at the hearing may vote on the decision of the board.
2. When students are charged with violating the same rule, and have apparently acted in concert, and the facts are basically the same for all students, a single hearing may be conducted for them if it is believed that the following conditions exist:
 - a. A single hearing will not likely result in confusion, and
 - b. No student will have his interest substantially prejudiced by a group hearing.
3. If, during the hearing, it is found that a student's interests will be substantially prejudiced by a group hearing, a separate hearing for that student may be ordered.

RIGHT OF APPEAL:

An adverse decision to the student by the School Board may be appealed to a court of law

ATTENDANCE POLICIES:

No attendance policy may exclude a student from a class or from school for more than ten days without providing due process procedures pursuant to this chapter.

REFERRAL TO PLACEMENT COMMITTEE OF EXPELLED OR LONG-TERM SUSPENDED STUDENTS:

Whenever a student identified as in need of special assistance or prolonged assistance pursuant to SDCL 13-37-1 is expelled or subjected to long-term suspension, a referral shall be made by the superintendent to the district's placement committee. The placement committee shall determine whether action, behavior, or activity which resulted in long-term suspension or expulsion is the result of the student's handicapping condition. If the placement committee determines that the long-term suspension or expulsion of a student is based upon action, behavior or activity by the student arising from the student's handicapping condition, the placement committee shall immediately prepare a revised individual educational plan to provide education services to the student. The student's long-term suspension or expulsion shall terminate upon implementation of the student's revised individual educational plan.

LEGAL REFERENCE: SDCL 13-32-4.2; SDCL 13-37-1

FORMERLY: S-12

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