

The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules when school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law.

This policy prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools.

The procedures in this policy apply only to disciplinary detentions, suspensions, and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence, or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for 10 consecutive school days in accordance with Section 22-8-2B, NMSA 1978.

Nothing in the policy should be construed as prohibiting the Board or administrative authorities from involving other school staff, students, and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

## **DEFINITIONS**

“Detention” means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school. A student shall not be put on detention for more than 10 days for any single incident of misbehavior.

“Expulsion” means the removal of a student from attendance at all schools of the District either permanently or for an indefinite period of time exceeding 10 school days.

“Immediate removal” means the immediate removal of a student from school for one school day or less under emergency conditions and without a prior hearing.

“In-school suspension” means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere. In-school suspension shall be administered in accordance with State Board of Education Regulation 81-3 and according to the procedures for a temporary suspension as outlined herein.

“Long-term suspension” means the removal of a student from attendance at all schools of the District for a specified or indefinite period of time exceeding 10 school days.

“Temporary suspension” means the removal of a student from attendance at all schools of the District for a specified period of 10 school days or less after a rudimentary hearing conducted in accordance with requirements specified in State Board of Education Regulation 81-3.

“Work detention” means restricting students’ liberty at times when other students are free and requiring the student to perform a given task involving physical labor. A student shall not be put on work detention for more than 10 days for any single incident of misbehavior.

## INITIATION OF PROCEEDINGS

### Short-Term Suspension

#### Procedures for Short-Term Suspension:

Prior to imposing a short-term suspension, the school administrative authority (principal, assistant principal) shall conduct an informal hearing through informal discussion with the student.

The informal hearing may be conducted in the school administrative authority's office, or in any other place that is private and free of distractions.

The administrative authority shall inform the student of the charge against him or her.

If the student admits the charge, the administrative authority may impose a short-term suspension.

If the student denies the charge, the administrative authority shall:

Inform the student of the factual basis for the charge by stating the acts he or she is accused of committing and the reasons for believing he or she committed such acts;

Provide the student with the opportunity to state his or her version of the facts; and

Determine whether the imposition of short-term suspension is warranted on the basis of the evidence.

In conducting the informal hearing, the administrative authority:

Is not required to provide for advance notice to the student's parents or guardian;

Is not required to allow the student to be represented by any third party, or to confront or cross-examine witnesses; and

Is not required to divulge the identity of informants provided there is good cause to withhold such information, such as a reasonable likelihood of harm to the informant.

#### Notice of Short-Term Suspension:

If the administrative authority determines that the student shall be subject to Short-Term Suspension only, the administrative authority shall complete a Notice of Short-Term Suspension, in a form substantially equivalent to that adopted and attached

hereto, and serve it upon the student through his or her parent or guardian, personally or by mail.

A student may not be suspended from school for more than 10 school days on the basis of an informal hearing alone.

Suspensions beyond 10 school days are long-term suspensions, and require that the student be afforded a formal hearing, as described below, unless such formal hearing is waived.

If the formal hearing for long-term suspension or expulsion provided for in subsection b, below, is not waived and is not held within the 10-day period of the short-term suspension, the student must be returned to school after 10 school days until the hearing is held, but may be placed in in-school suspension during that time.

**Combined Short-Term Suspension and Long-Term Suspension or Expulsion:**

In all instances in which, in addition to short-term suspension, a long-term suspension or expulsion of the student is recommended by the administrative authority, the administrative authority shall:

Complete the informal proceedings as described above; and

Complete a Notice of Short-Term Suspension and Notice of Hearing Relating to Long-Term Suspension or Expulsion, in a form substantially equivalent to that adopted and attached hereto, and serve it on the student through his or her parent or guardian, personally or by mail.

**Long-Term Suspension or Expulsion Hearing**

**Contents of Notice:**

The notice of the formal hearing regarding the recommended long-term suspension or expulsion, shall be in a form substantially equivalent to that adopted and attached herein, Notice of Short-Term Suspension and Notice of Hearing Relating to Long Term Suspension or Expulsion, and shall include all the contents thereof.

**Timing of the Formal Hearing:**

The formal hearing for which notice is provided in the Notice of Short-Term Suspension and Notice of Hearing Relating to Long-Term Suspension or Expulsion shall be held no sooner than five school days nor later than 10 school days from the date of receipt of the notice by the parent or guardian.

The formal hearing may be postponed by the Hearing Authority upon a request for good cause by the parent or guardian, but, if the postponement would be to a date beyond the expiration of the period of the student's short-term suspension, the

Hearing Authority, may condition such postponement upon the agreement of the parent or guardian to voluntarily keep the student home beyond the period of the 10 day short-term suspension until the postponed hearing date, or upon such other conditions as the Hearing Authority determines to be appropriate.

Waiver of Hearing:

If, prior to the formal hearing on long-term suspension or expulsion, the parent or guardian executes and submits to the administrative authority or the Hearing Authority, the Waiver of Right to Hearing Relating to Long-Term Suspension or Expulsion, or otherwise waives such right in a signed document submitted to the administrative authority or the Hearing Authority, then the proposed long-term suspension or expulsion may be imposed immediately and without further proceedings.

Standards for the Formal Hearing:

If the formal hearing is not waived, it shall be conducted as follows:

The student shall appear at the hearing with a parent or guardian unless the student has reached the age of majority or can provide satisfactory evidence of legal emancipation.

Failure of the student and parent/guardian to appear shall not delay the hearing and, the Hearing Authority may impose the proposed penalty by default if:

The student and a parent or guardian have not appeared for the hearing within 20 minutes after the time stated in the Notice for the hearing to begin, and the parent or guardian has not personally communicated to the Hearing Authority what the Hearing Authority determines to be good cause for the failure of the student and parent/guardian to appear; and

Reviewing the school administrative authority's evidence, the Hearing Authority determines that it is sufficient to support the charges of misconduct by the student.

In the event the student's parent or guardian communicates what the Hearing Authority determines to be good cause for the failure to appear, the Hearing Authority may delay or postpone the hearing, with or without conditions to be met by the student and parent/guardian.

The Principal or administrative authority, who signed the Notice will have the obligation of proving by a preponderance (majority) of the evidence that the student committed the charged misconduct. The administrative authority may be represented by counsel or another representative.

The student has the right to be represented at the hearing by legal counsel or some other representative, provided such representative is designated in a written notice delivered to the Hearing Authority three school days before the date of the hearing.

The student or his or her representative shall have the right to cross-examine the witnesses against the student, subject to reasonable limitations by the Hearing Authority.

The student or his or her representative shall have the right to call his or her own witnesses and present evidence, subject to reasonable requirements of substantiation and relevancy as determined by the Hearing Authority.

The student shall have the right to have a decision by the Hearing Authority based solely on the evidence presented at the hearing and the applicable rules governing student conduct.

Procedures for the Formal Hearing Decision:

Technical rules of evidence and procedure will not be applied. Each party's right to call, examine, and cross-examine witnesses and to introduce documentary evidence, will be subject to reasonable standards of relevancy and substantiation, as determined by the Hearing Authority.

The Hearing Authority may require each side to exchange and to provide to the Hearing Authority in advance of the hearing, a list of witnesses proposed to be called, with a brief summary of the expected testimony of each witness, and a list of exhibits to be offered, and may exclude any witness or exhibit not listed.

The Hearing Authority will make arrangements for an official record of the hearing to be kept either by tape recording or by minutes kept by the Hearing Authority or his or her designee. Other than notes taken by the parties, no other record of the hearing shall be permitted.

The Hearing Authority will open the hearing with a statement indicating the purpose of the hearing, the charges, and a description of the procedure for conducting the hearing.

The student and parent or guardian shall have the right to determine whether the hearing is held in public session or closed session.

Each party will have an opportunity to make an opening statement.

The school administrative authority will then present its case.

At the close of the administrative authority's case, the student, parent/guardian, and/or counsel will then present the student's case.

Upon the close of the student's case, the school administrative authority may present rebuttal evidence.

Each witness presented by each side will be subject to direct examination by the party calling the witness, cross-examination by the opposing party or parties, and re-direct examination by the party that called the witness.

At the close of the evidence, testimony, and exhibits each party shall be afforded an opportunity to make a closing statement.

The Hearing Authority may announce a decision at the close of the hearing, and shall mail or deliver a written decision to the student's parent or guardian within five school days of the last day of the hearing.

The Hearing Authority's decision is effective upon its announcement or upon its receipt by the student, whichever is earlier.

**Content of the Hearing Authority's Written Decision:**

The written decision shall include:

Concise summary of the evidence and facts upon which the Hearing Authority based its factual determinations; and

A statement of the penalty, and the reasons the particular penalty was chosen.

**Review of Disciplinary Penalty:**

The student/parent/guardian shall have the right to have the penalty imposed by the Hearing Authority reviewed by the Board if the penalty imposed was at least as severe as:

expulsion;

long-term suspension;

in-school suspension exceeding one semester in duration; or

denial or restriction of student privileges for one semester or longer.

**Request for Review:**

The right of review must be exercised by delivering a written request for review to the Superintendent within 10 school days after *the earlier of* the Hearing Authority's announcement of its decision or the student's receipt of the written decision. The request shall state the reasons it is contended that the penalty imposed is inappropriate, and:

If the request for review is based in whole or in part, upon a contention that there is newly discovered evidence, the request shall so state, and shall specify why such evidence could not reasonably have been discovered in time for the hearing before the Hearing Authority, and why it is contended that the newly discovered evidence would change the outcome of the prior hearing; and

If the request for review is based in whole or in part, upon a contention that a factual determination of the Hearing Authority was arbitrary, capricious, or not supported by substantial evidence, the request shall so state, and shall specify the bases for such contention.

**Form of Review:**

The Board shall determine the form of its review, which may include one or more of the following:

The Board's review of the record of the hearing and decision;

Submission of a written statement to the Board by the student and parent guardian followed after a specified number of days by the submission of a written response to the Board by the Hearing Authority; and

Presentation of oral statement to the Board by the student or the parent or guardian, followed by an oral response to the Board by the Hearing Authority at a meeting of the Board, provided, that in the event a hearing in person is granted by the Board, the student and parent or guardian shall have the right to determine whether such hearing is held in public or in executive session.

**Scope of Review:**

The scope of review shall be limited to a determination of whether the penalty imposed by the Hearing Authority was appropriate.

On the basis of its review of the penalty imposed by the Hearing Authority, the Board may, in its discretion, affirm or modify the penalty, and the Board's modification may include either reducing or increasing the penalty.

The Board shall be bound by, and shall not reconsider, the factual determinations upon which the Hearing Authority based its decision, unless:

The student and parent/guardian includes notice in the request for review and proves to the Board's satisfaction:

That new evidence has come to light since the hearing before the Hearing Authority; and

That such evidence could not reasonably have been discovered by the student and parent or guardian in time for the hearing; and

That newly discovered evidence would clearly change a factual determination material to the outcome; or

The student and parent or guardian includes in the request for review, and proves to the Board's satisfaction, that a finding of fact by the Hearing Authority was arbitrary, capricious, and unsupported by substantial evidence, meaning that there is no credible evidence in the record that, if believed by the Hearing Authority, would support the determination, regardless of whether there was contrary evidence as well.

If, on one of the foregoing grounds, the Board determines that it should review one or more of the Hearing Authority's factual findings, it may do so by:

receiving new evidence itself from both the student and parent/guardian and the administrative authority, limited to the specific factual finding(s) questioned; or by

conducting a *de novo* hearing itself on the issue of the student's culpability; or by

referring the issue or issues back to the Hearing Authority for further proceedings and findings.

**Decision:**

The Board shall reach a decision regarding the review by majority vote, subject to any requirements for keeping the student's identity confidential.

The Board may announce its decision at the conclusion of any hearing held on the review, and, in any event, shall issue a written decision within 10 school days of its decision.

The Board's decision shall constitute final administrative action.

**Students with Disabilities:**

This policy does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or §504, except as provided for above. The procedures for long-term suspension or expulsion of disabled students are set forth in the District's Student Conduct Policy (701).

**Immediate Removal:**

Students whose presence poses in imminent danger to persons or property or an ongoing threat of interference with the educational processes of the school may be immediately removed from school on the following conditions:

The student shall be provided with a rudimentary hearing, as required for temporary suspensions, as soon as practicable.

The student shall be reinstated after no more than one school day unless a temporary suspension is imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).

Reasonable efforts shall be made to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.