

## STUDENT DISCIPLINE AND DUE PROCESS

Category: P

See Also: Policies JI, JIC, JICI & JICK

Appendix: JICD-R

### A. Policy Statement.

This policy establishes the substantive parameters, procedures and due process that shall apply before a student may be subject to temporary (same day) removal from classrooms or activities, restriction from activities, detentions, suspensions and/or expulsion. Pursuant to Board policy JIC, response to misconduct, including disciplinary measures and consequences should be designed to maximize student academic, emotional and social success, while at the same time assuring safety of all students, staff and school visitors. Administration of any of the consequences described in this policy shall be consistent with the system of supports and graduated sanctions established pursuant to Policy JIC and the applicable Code of Conduct.

### B. Standards and Procedures Relative to Disciplinary Consequences.

1. "**Removal from the classroom**" means a student is sent to the building Principal's office or other designated area during the same school day. It is within the discretion of the person in charge of the classroom or activity to remove the student.

Students may be removed from the classroom at the classroom teacher's discretion if the student refuses to obey the teacher's directives, becomes disruptive, fails to abide by school or District rules, or the Code of Conduct, or otherwise impedes the educational purpose of the class. Before ordering the removal, the staff member ordering the removal shall warn the student of the infraction and allow the student to respond.

Detentions are not appealable.

2. "**Restriction from school activities**" means a student will attend school, classes, but will not participate in other school extra-curricular activities, including such things as competitions, field trips, and performances. A student who has been restricted from school activities may participate in practices at the discretion of the person imposing the restriction.

Before ordering the restriction, the supervising employee (e.g., teacher, coach, director, Principal, etc.) ordering the restriction shall warn the student of the infraction and allow the student to respond. If the restriction is immediate and outside of school hours, provision must be made to assure the student is not left unsupervised. The terms of the restriction shall be communicated to the Principal and the student's parent/guardian.

Restrictions under this policy are not appealable.

3. "**Detention**" means the student's presence is required for disciplinary purposes before or after the hours when the student is assigned to be in class, and may occur on one or more Saturdays.

Students may be assigned classroom detention at the classroom teacher's discretion, and building detention at the Principal's discretion, if the student refuses to obey the teacher/employee's directives, becomes disruptive, fails to abide by printed classroom, school or District rules, or the Code of Conduct, or otherwise impedes the educational purpose of the class. Before ordering the detention, the staff member ordering the detention shall warn the student of the infraction and allow the student to respond. Parents/guardians shall be notified at least 24 hours prior to a student serving detention.

Detentions before or after school shall not exceed one hour, and Saturday detentions shall not exceed three hours. The building Principal is authorized to establish, announce and post additional guidelines and rules regarding detention, supervision, building access, etc.. The length and timing of the detention, is within the discretion of the licensed employee disciplining the student or the building Principal, pursuant to the posted rules of the school.

Detentions are not appealable.

4. "**Temporary Reassignment**" or "in-school suspension" means the student will attend school but will be temporarily isolated from one or more classes while under supervision. A temporary reassignment should not exceed five consecutive school days. Parents/guardians shall be notified at least 24 hours prior to the administration of a temporary reassignment.

The building Principal is authorized to issue reassignment, restrictions from activities, or place a student on probation for repeated failure to conform to the Code of Conduct, classroom rules, or for any conduct that causes material or substantial disruption to the school/class environment, interferes with the rights of others, presents a threat to the health and safety of students, employees, and visitors, is otherwise inappropriate, or is prohibited by law.

5. "**Probation**" means a student is given a conditional suspension of a penalty for a definite period of time in addition to being reprimanded. The conditional suspension will mean the student must meet the conditions and terms for the suspension of the penalty. Failure of the student to meet these conditions and terms will result in reinstatement of the penalty. Notwithstanding the assignment of probation, no imposition of the suspended consequence may be administered unless and until all of the provisions of this policy applicable to the suspended consequence (i.e., long-term suspension, expulsion, etc.) are satisfied.
6. "**Out-of-school suspension**" means the temporary denial of a student's attendance at school for a specific period of time. It includes short-term and long-term out of school suspensions.

- a. Short-term suspension. A “short-term suspension” means an out-of-school suspension of ten (10) consecutive school days or less. RSA 193:13, I (a).

The Superintendent or his/her written designee is authorized to suspend a student for ten (10) school days or less.

A short term suspension may be imposed only for:

- i. Behavior that is detrimental to the health, safety, or welfare of pupils or school personnel (including, but not limited to, and act of theft, destruction or violence, as defined in RSA 193-D:1); or
- ii. Repeated and willful disregard of the reasonable rules of the school that is not remediated through imposition of the district's graduated sanctions described in JIC and the Code of Conduct.

Pursuant to RSA 193:13, XI(b) and Board policy JIC, a short-suspension over 5 days must conform to the standards included in the Code of Conduct.

**Before any short-term suspension may be imposed, a student is entitled to the minimum due process (notice before meeting of the charge and explanation of evidence, notice of the possibility of suspension, opportunity for the student to respond, and a written decision explaining the disciplinary taken).** See New Hampshire Department of Education Rule Ed 317.04(f)(1).

- b. Long-term suspension. A “long-term suspension” is the extension or continuation of a short-term suspension for a period **not to exceed an additional 10 days** beyond the duration of the short-term suspension.

The Superintendent is authorized to continue the suspension and issue a long-term suspension of a pupil for a period in excess of ten (10) school days, provided only that if the Superintendent issued the original short-term suspension, then the School Board may designate another person to continue the short-term suspension and issue the long-term suspension.

A long-term suspension may only be imposed for:

- i. an act that constitutes an act of theft, destruction or violence, as defined in RSA 193-D;
- ii. bullying pursuant to Board policy JICK when the pupil has not responded to targeted interventions **and** poses an ongoing threat to the safety or welfare of another student; or
- iii. possession of a firearm, BB gun, or paintball gun.

Prior to a long-term suspension, the student will be afforded a hearing on the matter. The informal hearing need not rise to the level and protocol of a formal hearing, but **the process must comply with the requirements of Ed 317.04 (f)(2), and (f)(3)(g)**, including, without limitation, the requirements for advance notice and a written decision.

- c. Appeal of long-term suspension. Any long-term suspension issued other than by the School Board under this policy, is appealable to the School Board, provided the Superintendent or School Board chair receives the appeal in writing within ten (10) days after the issuance of the Superintendent's hearing and written decision required under N.H. Dept. of Education Rule Ed. 317.04 (f)(2)c, and sub-paragraph B.6.b, above. The Board shall hold a hearing on the appeal, but will rely upon the record of the decision being appealed from.

Any suspension in excess of ten (10) school days shall remain in effect while this appeal is pending unless the School Board stays the suspension while the appeal is pending. Any request to stay a long-term suspension should be included in the original appeal.

- d. Educational Assignments. As required by RSA 193:13, V, educational assignments shall be made available to students during both short and long term suspensions.
- e. Alternative Educational Services. The school shall provide alternative educational services to a suspended pupil whenever the pupil is suspended **in excess of 20 cumulative days** within any school year. The alternative educational services shall be designed to enable the pupil to advance from grade to grade.
- f. Re-entry Meetings and Intervention Plans. Prior to returning to regular classes, a suspended student, and parent/guardian (when available) shall meet with the building Principal or his/her designee to assist the student in smoothly returning to the school setting.

Any time a pupil is suspended **more than 10 school days in any school year**, upon the pupil's return to school the school district shall develop an intervention plan designed to proactively address the pupil's problematic behaviors by reviewing the problem behavior, re-teaching expectations, and identifying any necessary supports.

- g. Attendance Safe Harbor. A student may not be penalized academically solely by virtue of missing class due to a suspension.
7. **“Expulsion”** means the complete denial of a pupil's attendance at school for any of the reasons listed in RSA 193:13, II and IV.
- a. Grounds for Expulsion. An expulsion may only be imposed for an act that poses an ongoing threat to the safety of students or school personnel AND that constitutes:
    - i. A repetition of an act that warranted long term suspension under section B.6.b, above;
    - ii. Any act of physical or sexual assault that would be a felony if committed by an adult;
    - iii. Any act of violence pursuant to RSA 651:5, XIII;
    - iv. Criminal threatening pursuant to RSA 631:4, II(a); **OR**

- v. For bringing or possessing a firearm as defined in Section 921 U.S.C. Title 18 within a safe school zone as prohibited under RSA 193-D:1, or under the Gun Free School Zones Act, unless such pupil has written authorization from the Superintendent.

Before expelling a pupil, the Board shall consider each of the following factors:

- (1) The pupil's age.
  - (2) The pupil's disciplinary history.
  - (3) Whether the pupil is a student with a disability.
  - (4) The seriousness of the violation or behavior committed by the pupil.
  - (5) Whether the school district or chartered public school has implemented positive behavioral interventions under paragraph V.
  - (6) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.
- b. Due Process to Be Afforded Prior to Expulsion. Prior to any expulsion, the District will ensure that the **due process standards set forth in Ed 317.04(f)(3) through 317.04 (m)** are followed.
  - c. Duration of Expulsion. An expulsion will run for the duration stated in the written decision or until the School Board or Superintendent restores the student's permission to attend school as provided in this policy. An expulsion relating to a firearm in a safe school zone per B.7.a.v, shall be for a period of not less than 12 months.
  - d. Educational Services. The Superintendent is authorized, but not required, to arrange for educational services to be provided to any student residing in the District who has been expelled by the District or by any other school.

**C. Modification or Reinstatement After Suspension or Expulsion.**

Expelled or suspended students may request a modification of, or reinstatement from, an expulsion or suspension as provided below. Except for students establishing residency from out-of-state, requests for modification or reinstatement from expulsion/suspension shall be submitted in writing to the Superintendent no later than August 15. The request should set forth the reasons for the request, and include additional information to establish that it is in the best interest of the student and school community to reinstate the student. Such additional information may include such things as work history, letters of reference, medical information, etc. All reinstatements shall include an Intervention Plan as described in paragraph B.6.f, above, including such conditions as the reinstating authority (Superintendent or Board) deem appropriate.

- 1. **Modification by Superintendent.** Subject to all other applicable laws, regulations and Board policies, and paragraph C.3, below (relating to firearms), the Superintendent is authorized to reinstate any student who has been suspended or expelled from a school in

this District, and or enroll a student suspended or expelled from another school or district, on a case-by-case basis.

2. **Review and reinstatement by Board.** A student may request the School Board (of the district of attendance) to review an expulsion decision prior to the start of each school year by filing a written request with the Superintendent detailing the basis of the request. The Board will determine whether and in what manner it will consider any such request after consultation with the Superintendent.
3. **Modification of Expulsion for Firearms.** A student who has been expelled from this District or any other public or private school for bringing or possessing a firearm in a safe school zone as prohibited under RSA 193-D1, or under the Gun Free Schools Act, may only be reinstated or enrolled if the Superintendent first determines: possession of the firearm was inadvertent and unknowing; the firearm was for sporting purposes and the student did not intend to display the firearm to any other person while within the safe schools zone; the student is/was in the fifth or lower grade when the incident occurred; or the Superintendent determines that the firearm was not loaded; and that no ammunition was reasonably available; and that the pupil had no intention to display the firearm to other students.

Additionally, the School Board may enroll a student expelled from a school outside of New Hampshire for a violation of the Gun Free Schools Act upon the student establishing residency.

- D. **Appeals to State Board of Education.** Any decision by the Board (i) to expel a student, (ii) not to reinstate a student upon request, or (iii) enroll a student from another state who had been expelled for a violation of the Gun Free Schools Act, may be appealed to the State Board of Education at any time that the expulsion remains in effect, subject to the rules of the State Board of Education.
- E. **Sub-committee of Board.** For purposes of sections B.6 and B.7 of this policy, "Board" or "School Board" may either be a quorum of the full Board, or a subcommittee of the Board duly authorized by the School Board.
- F. **Superintendent and Principal Designees.**

Except where otherwise stated in this policy, the Superintendent may delegate any authority s/he has under this policy, and a principal may delegate any authority s/he has under this policy, to other appropriate personnel.

- G. **Disciplinary Removal of Students with Disabilities.**

If a student is disabled under the Individuals with Disabilities Act (IDEA), the New Hampshire RSA 186-C, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, or any other law providing special rights to disabled students, those laws shall govern and shall supersede these local policies to the extent these local policies are inconsistent with those laws. Accordingly, any suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

## **H. Notice and Dissemination.**

This policy shall be made available to families, students and staff as provided in Board policy JIC.

## **I. Conflict in Law or State Regulation.**

If any provision of this policy shall conflict with State or Federal law, or regulation of the New Hampshire Department of Education, then such law or regulation shall apply, and the remainder of the policy shall be read and interpreted to be consistent with the law or regulation. School administrators and families are strongly encouraged to review the links for pertinent statutes and laws as referenced in this policy.

### **Legal References:**

*18 U.S.C. § 921, Et seq., Firearms*

*20 U.S.C. § 7151, Gun-Free Schools Act*

*RSA 189:15, Regulations*

*RSA 193:13, Suspension & Expulsion of Pupils*

*RSA Chapter 193-D, Safe Schools Zones*

*RSA 631:4, Criminal Threatening*

*RSA 651:5, XIII "Act of Violence"*

*NH Code of Administrative Rules, Section Ed 306.04(a)(3), Discipline*

*NH Code of Administrative Rules, Section Ed 306.04(f), Student Discipline Policy*

*NH Code of Administrative Rules, Section Ed. 306.04(g), Suspension & Expulsion*

*NH Code of Administrative Rules, Section Ed 317.04, Suspension and Expulsion of Pupils*

*Assuring Due Process Disciplinary Procedures*

*In re Keelin B., 162 N.H. 38, 27 A.3d 689 (2011)*

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