

# **WINNER SCHOOL DISTRICT 59-2 OFFICIAL SCHOOL BOARD POLICY**



## **STUDENT DUE PROCESS**

Discipline in the schools is critical to the provision and implementation of public education. The Board and school administrators have the legal authority to deal with any student for violation of rules or policies, for misconduct, for disruption and for insubordination. The United States Constitution and the South Dakota Constitution entitles all students to due process when they are subjected to deprivation of a property right. The Board recognizes the importance of safeguarding a student's constitutional rights.

A student whose conduct may warrant suspension or expulsion shall be provided with appropriate due process. Due process, in the context of the administrative proceedings carried out by school authorities, refers to the notification and hearing procedures established by the South Dakota Board of Education.

No student may be suspended unless:

1. The student is given oral or written notice of the charges against him or her;
2. The student is given an oral or written explanation of the facts that form the basis of the proposed suspension; and
3. The student is given an opportunity to present his or her version of the incident.

Due process procedures shall be fair and apply equally to all. This involves:

- Adequate and timely notice and an opportunity to prepare a defense;
- An opportunity to be heard at a reasonable time and in a meaningful manner and;
- The right to a speedy and impartial hearing on the merits of the case.

School principals may suspend a student from school for not more than 10 school days (short term suspension). The Superintendent of schools may suspend students for a period not to exceed 90 days (long term suspension). The Winner School District will follow the Administrative Rules of South Dakota Procedures for suspending and expelling a student.

### **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 soon possible after discovery of the alleged violation, stating the charges against the student and an as 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.

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**LONG-TERM SUSPENSION HEARING PROCEDURE**

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 fifth (5<sup>th</sup>) school day following the first (1<sup>st</sup>) 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 or 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 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 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 an emancipated minor. Hearing procedures described under "Hearing Procedures for Long-term Suspension or Expulsion" will be followed.

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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 a 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 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 or 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 sealed and unavailable for review by individual School Board members until the time is set for a hearing.

At the same time that the report is filed 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 representative.

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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 students 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 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 WINNER SCHOOL DISTRICT:**

1. At least a majority of the School Board members must be present at the hearing and no member of the board not present at the hearing may vote on the decision of the board.

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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.

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 the action, behavior or activity which resulted in the 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 education 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.