

Suspension and Expulsion

Suspension

Suspension involves either in-school suspension or the dismissal of a student from school classes, buildings, and grounds. Suspension shall not be for more than maximum duration allowed by law. The parent(s) of the student are to be notified promptly by the school principal that suspension has been issued.

Initially the authority to determine whether a student shall be suspended rests with the assistant principals, principals, assistant superintendents, Superintendent, Dean of Students, or Activities Director and can be exercised AFTER the student is given:

1. Oral or written notice of the charges against him/her.
2. An explanation of the evidence against him/her.
3. An opportunity to present his/her side of the story.

There need be no delay between the time notice is given and the conduct of the above procedure. In those cases where a student's presence poses a continuing danger to persons or property or any ongoing threat of disrupting the educational process, the student may be immediately removed.

Expulsion

Expulsion shall not be for more than the maximum duration permitted by law and the District shall follow the procedure for conducting an expulsion hearing contained in state law. If the student involved has a disability, see the exhibit on suspension and expulsion of students with disabilities.

The responsibility of the school may not end with expulsion. Services may continue and involve other agencies as necessary and following FERPA.

Expulsion Pre-Hearing Notice to Student

The student and the student's parent shall be provided with the following notices, prior to the expulsion hearing outlined below:

1. **Notice of Charges:** The specific charges against the student shall be stated clearly enough for the student and the parent to understand the grounds of the charge and to be able to prepare a defense.
2. **Notice of Hearing:** The date of a hearing, which shall be within a reasonable time not to exceed ten school days, if the student is currently under suspension, unless a postponement is requested or agreed to by the parent.

3. **Presenting Evidence:** A student may present witnesses or documentary evidence to rebut the charges against the student.
4. **Notice of Right to Adult Representation:** The right to be represented and/or assisted at the hearing by a lawyer or other adult at the student's expense shall be explained. A parent or guardian who is unable to attend the hearing may provide written designation of another adult to assist the student in the parent's absence.

Conducting Hearings for Expulsion

1. **Nature of the Hearing:** The hearing is not a court proceeding and should not be referred to or conducted as such. There are no specific rules of evidence or procedure that must be followed. The intent of the hearing is to determine whether the evidence support the reasons offered for the proposed expulsion. The evidence offered at the hearing should be directed toward attaining the truth and shall include an opportunity for the presentation of evidence as to the existence of mitigating circumstances.
2. **The Hearing Panel:** The student is entitled to an impartial hearer of facts. In the event the Hearing Panel is the Superintendent/Assistant Superintendent, a three- member panel shall be established using the following procedure: The superintendent or assistant superintendent will act as chairperson and will select two building principals who are not directly involved in the incident leading to the hearing.

In the event the Hearing Panel is the Board, Board members will declare any conflict or potential conflict or relationship which may make him/her partial or appear to make him/her partial to an outcome.

3. **Representation of the Student:** There is no requirement that the student must have representation at the hearing; however, if the student or his/her parent(s) request that s/he be represented by an attorney at the student's expense, the request must be granted. The school may choose to involve the parents in the disciplinary proceedings from the outset.
4. **A Recording of the Hearing:** A record of the hearing should be made to substantiate that the required elements of procedural due process were afforded the student. This can be accomplished by several methods. The preferred method of recording is tape recording or court reporter transcription of the entire proceeding. All evidence that is introduced in the form of written documents should be marked to identify the origin and order of introduction (e.g., School Exhibit 1, 2, 3, and Student Exhibit 1, 2, 3). All records of a hearing should be kept at least six years after the expelled student reaches the age of 18 years.
5. **Open or Closed Hearing:** Since an expulsion hearing before a designated hearing officer or the school board is subject to the Family Rights and Privacy Act (FERPA) the hearing

shall be closed unless the parent/eligible student waives their rights under FERPA in writing.

6. **Witnesses in the Room:** At the request of the school representative or the student or his/her parents, witnesses may be excluded from the room except when offering testimony. The hearing officer should make this option known at the beginning of the hearing, before any evidence is presented.
7. **Cross-Examination:** The hearing officer should permit cross-examination if any circumstances indicate that it is necessary in order to reach the truth or to otherwise conduct a hearing, which is fundamentally fair.
8. **Evidence:** If, at the conclusion of the hearing, the evidence offered at the hearing supports the reasons given for the proposed expulsion, the student may be expelled. The action of the student does not have to be proven beyond a reasonable doubt as in a criminal trial, but the evidence must support the action. There must be evidence presented upon which the hearing officer can conclude that the student did do the alleged acts. In determining whether there is evidence to support an expulsion, the hearing officer may take into consideration only that evidence presented at the hearing.
9. **Making the Decision and Giving Notice to the Parties:** After the hearing, the hearing panel decides whether to expel a student. The hearing officer has the responsibility of promptly informing the student, his or her parents, the student's counsel, or his or her representative in writing of the decision. The decision must be specific enough so that a reasonable person can be advised of the finding and basis for the decision to expel. The decision should also contain information on how to appeal to the Bismarck School Board, if the Board did not serve as the hearing panel.
10. **Review by the School Board:** Except when the Board served as the hearing panel, a request for a review of the hearing panel's decision may be made to the Board based upon a review of the record of the expulsion hearing. This decision should be reviewed at the next regular meeting of the Board, except when good cause is shown for calling a special meeting for that purpose. Since the expulsion will affect or become a part of the student's educational record, the review hearing before the Board will be in executive session unless the parent/guardian signs a written waiver of their rights under the Family Educational Rights and Privacy Act. Parents may attend the executive session, though additional testimony will not be taken by the Board.

Conduct Subject to Suspension/Expulsion

For the purpose of this policy, school property is defined as all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by the District, and the site of any school-sponsored activity.

Conduct, including but not limited to the following, exhibited while on school grounds, during a school-sponsored activity, or during a school-related activity is subject to suspension or expulsion:

1. Causing or attempting to cause damage to school property or stealing or attempting to steal school property of value;
2. Causing or attempting to cause damage to private property or stealing or attempting to steal private property;
3. Violations of policy ACE (Violent and Threatening Behavior), including causing or attempting to cause physical injury to another person except in self-defense and threats of violence, bomb threats, or threats of injury to individuals or property;
4. Violations of policy FFD (Weapons on School Property);
5. Violations of ABBA and FFA (Tobacco and Student Alcohol and Other Drug Use/Abuse) including, but not limited to, possessing, using, transmitting, or being under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind;
6. Disobedience or defiance of proper authority;
7. Behavior that is detrimental to the welfare, safety, or morals of other student including, but not limited to, violations of policy AAC and ACEA (Nondiscrimination and Anti-Harassment policy and Bullying);
8. Truancy as defined in regulation FFB-AR (Attendance and Absence Regulations);
9. Offensive and vulgar language, whether or not it is obscene, defamatory, or inciteful to violence, where it is disruptive of the educational process;
10. Any student behavior that is detrimental or disruptive to the educational process, as determined by the principal.

Copies of these rules shall be posted in a prominent place in each school and shall be published in student handbooks.

Suspension or Expulsion of Students with Disabilities

Suspension or expulsion of students with disabilities must comply with the provisions of the Individuals with Disabilities Education Act.

The District is not required to refer a regular education student who has been suspended or expelled for violation of school rules and/or district policy for special education assessment and evaluation to determine if such a student might have a disability. A suspended regular education

student is not entitled to reinstatement to classroom and campus privileges pending any assessment and evaluation that is to be made during the term of the student's suspension.

Modification of Expulsion Duration

The Superintendent may modify the duration of an expulsion based on the following criteria. These criteria are not applicable to weapons violations, which are instead governed by policy FFD.

1. The student satisfies the Superintendent of their personal contrition;
2. The student satisfies the Superintendent of their personal resolve not to repeat the acts or other acts that would result in expulsion;
3. The student is not currently incarcerated for the act that led to expulsion;
4. The parent/guardian demonstrates to the Superintendent that all necessary precautions (home instruction and discipline, professional counseling, etc.) have been taken over the appropriate duration to prevent recurrence by the student, and the parent/guardian assures that s/he will continue to provide the supports necessary to prevent recurrence by the student.