

PROCEDURES FOR STUDENT SUSPENSIONS AND EXPULSIONS

PROCEDURAL CHECKLIST FOR SHORT TERM SUSPENSION (ARSD 24:07:02:01)

1. Give oral or written notice to student and to parents, guardian, or other responsible person, if available, as soon as possible after discovery of misconduct.
2. The notice is to contain the rule, regulation, or policy violated. The student must be given an opportunity to answer the charges.
3. This process does not involve board participation.
4. The hearing is no more than an informal setting granting the student the opportunity to answer the charges and present his/her side of the story.
5. The superintendent or principal should issue a decision as soon as possible. This may be done right on the spot.
6. If the student is suspended, written notice of due process rights must be provided to the student and the parent, guardian, or other responsible person. An unemancipated minor may not be removed from the school during school without notice to the parent, guardian, or responsible person. Dangerous students may be turned over to law enforcement.

*Many of the due process guidelines set forth in this chapter may be helpful in dismissal of non-certified employees under contract.

PROCEDURAL CHECKLIST FOR LONG TERM SUSPENSION (ARSD 24:07:03)

1. The superintendent must prepare and seal a written report to the school board not later than the end of the fifth school day following the first day of a long-term suspension. The superintendent may request that a hearing be held before the school board. (It is recommended that the school board conduct a hearing for any suspension extending more than ten (10) days.)
2. The superintendent's report includes the facts of the situation, the action taken, the reasons for the action, and the superintendent's decision or recommendation. The report remains in the possession of the school board secretary or business manager, sealed and unavailable to individual school board members until and unless a hearing is held. A copy of the report must be sent to the 18-year-old pupil and, as to unemancipated minors, to the parent, guardian, or responsible person at the time it is filed with the secretary or business manager. ARSD 24:07:03:01.
3. The superintendent may exclude the pupil from class or classes by using a short-term suspension procedure. Note: An activity should be considered a class, especially if credit is given for the activity. The superintendent must give notice to the 18-year-old pupil or the unemancipated minor's parent, guardian, or responsible person of a proposed long-term suspension, and may schedule a hearing. The notice must contain:
 - a. Policy allegedly violated;
 - b. The reason for the discipline;
 - c. Notice of the right to a hearing or the right to waive this hearing;
 - d. A description of the hearing procedure;

- e. A statement that the records are available for examination; and
 - f. Notice that the pupil may present witnesses.
4. If a hearing is requested, the superintendent shall set the date, time, and place for the hearing and send notice to the school board members, as well as a notice by certified mail to the 18-year-old pupil or the parents of an unemancipated minor.
 5. If no hearing is requested or if the hearing is waived, the proposed action or decision of the superintendent is final. ARSD 24:07:03.
 6. A hearing may be waived by an 18-year-old pupil or the parents of an unemancipated minor, in writing. If the hearing is not waived, the hearing shall be held as set forth in the notice. ARSD 24:07:03:03.

CONDUCTING THE HEARING

1. The school board is the hearing board.
2. The hearing is closed to the public.
3. Each party may make an opening statement, introduce evidence, present witnesses, and examine and cross-examine witnesses.
4. The school administration shall present its case.
5. Each party may be represented by an attorney.
6. If the school attorney is going to present the administration's case, the attorney should not also advise the board. The board should engage separate counsel in that case.
7. Witnesses, other than the student and his/her representative, are present only while testifying.
8. Each party may raise objections to relevancy and scope of the questions. All relevant evidence must be admitted; however, unproductive or repetitious evidence may be limited by the hearing board.
9. The hearing board may ask questions of witnesses.
10. Each party may make a closing statement.
11. After the hearing is closed, the board shall deliberate in executive session. The school board may seek advice during deliberation from any attorney not representing a party at the hearing.
12. The decision must be based upon the evidence presented at the hearing and be contained in a motion made in open meeting. The motion must omit the name of the pupil and must state the reason(s) for the board's action.
13. The 18-year-old pupil or a parent or guardian of an unemancipated minor pupil must be given notice in writing of the board's decision, which must state the length of the suspension or expulsion.
14. The board's decision may be appealed to the circuit court. ARSD 24:07:03:06; SDCL ch. 13-46.

SPECIAL EDUCATION STUDENTS

1. If a student attending school on an Individualized Educational Program (IEP) is the subject of a long-term suspension procedure, special considerations apply. ARSD 24:07:03:08.
2. A long-term suspension of a special education student requires a referral to a placement committee. If the action, behavior, or activity which caused the long-term suspension is the result of the pupil's disability, the placement committee shall prepare a revised IEP and the long-term suspension terminates upon implementation of the plan. ARSD 24:05:26:09.
3. Any suspension of more than ten (10) school days constitutes a change in placement and requires prior notice and the right to due process, as specified for a change of placement. ARSD 24:05:26:10.
4. A special education student's parent may grant written parental approval for the change in placement. ARSD 24:05:26:12.
5. If it is necessary to suspend a special education student for more than ten (10) days and no parental agreement can be achieved for an interim placement or continued suspension, the district must apply to the circuit court for permission to suspend the student. ARSD 24:05:26:12.
6. In any such court action, there is a presumption in favor of the current educational placement, which may be rebutted only by showing that the current placement is "substantially likely to result in injury to the pupil or to others." ARSD 24:05:26:13.
7. Failure to carefully follow due process procedures with respect to special education students can result in serious ramifications to the district.