

Dell Rapids School District #49-3

Policies and Regulations Code: JGD-R – Students



JGD-R STUDENT SUSPENSION/EXPULSION

Definitions of Terms:

Suspension: Shall mean the exclusion of a student either in or out of school from a class or classes for a period of time specified below:

Short-term suspension: is the temporary exclusion of a student by a principal or the superintendent of participation in a class, or classes of from school for not more than ten (10) school days. The term of a short-term suspension may be served either in-school (in-school suspension) or out-of-school (out-of-school suspension.)

Long-term suspension: is the temporary exclusion of a student by the Superintendent or School Board of participation in a class, classes or from school for more than ten (10) school days but not more than ninety (90) school days. The term of long-term suspension is served out-of-school.

Expulsion: Shall mean the action of the School Board to terminate a student's membership in school for a period of time for not more than twelve consecutive months.

Insubordination: Shall mean failure in a single instance to comply with reasonable rules, regulations, policies, orders or instructions given by the School Board or school staff members who act on behalf of the School Board.

Habitual Disobedience: Shall mean a repeated failure to comply on three (3) or more separate occasions with reasonable rules, regulations, policies, or instructions given by the School Board or school staff members who act on behalf of the School Board.

Under the Influence: Shall mean any detectable amount of mood altering substance, such as steroids, marijuana, alcohol, or other drugs.

Grounds for Short-Term Suspension

If a student's misconduct presents a clear threat to the physical safety of himself/herself or others or is so extremely disruptive as to make temporary removal necessary to preserve the rights of others students to pursue an education, the principal or superintendent may temporarily deny the student the right to attend school or take part in any school function or class, for a period of time not to exceed ten (10) school days on the following grounds:

1. Fighting in the school or on any school property (including parking lots and playgrounds) or in or at a school related activity;
2. Damage or theft involving school property or other person's property;
3. Use of obscene or disrespectful language or communication;
4. Use of or possession of tobacco products and alcohol in the school or on any school property or vehicles;
5. Possession of pornographic matter in the school or on any school property or vehicles;
6. Student conduct deemed to be insubordinate by the principal or designee (See definition of first page.);
7. Excessive tardies and/or unexcused absences and/or failure to attend detention;
8. Wearing clothing with profane language or suggestive themes, such as alcohol, drugs, sex, or violence.

9. Situations in which the student's misconduct is of such a nature that continuation of the student in school would clearly be detrimental to the physical safety of the student or would be clearly detrimental to the education, welfare, safety or morals of other students;
10. Leaving the school grounds without permission of the administration;
11. Reckless or exhibition driving on school parking lots or streets immediately surrounding the school;
12. Habitual disobedience (See definition on first page.)
13. Engaging in any activity forbidden by federal law, the laws of the State of South Dakota or the ordinances of the City of Dell Rapids, which activity constitutes a danger to other students or interferes with school purposes.

The principal or superintendent may temporarily suspend any such student in accordance with SDCL 13-32-4.2. Such rules or policies include but are not limited to rules and policies put forth in the Student and Parent Handbooks, Training Rules, and the following Board of Education Policies: (1) Student Conduct Policy; (2) Alcohol, Drug, and Chemical Use by Student policy; (3) Student Conduct on School Bus policy; (4) Sexual Harassment policy; and (5) Dangerous Weapons in the School policy. Students, who cut, deface, or otherwise injure any school building, equipment, or out-building are liable to suspension or expulsion in accordance with SDCL 13-32-5.

Procedure for Short-Term Suspension:

Short-term suspension shall be made only after the principal or superintendent has made an investigation of the alleged conduct or violation and has determined that such suspension is necessary to further school purposes or to prevent an interference with school purposes. If a short-term suspension is anticipated because of a student's misconduct, the principal or superintendent shall so inform the student either orally or in writing as soon as possible after discovery of the alleged misconduct, and, stating the facts that form the basis for the suspension.

The student shall be informed of the rule, regulation, or policy that has been allegedly violated. The student will be given an opportunity to answer the charges and present evidence in his/her behalf. The principal or superintendent shall render a decision as soon as possible after reviewing the case.

Upon suspending a student, if contact is possible, the principal or superintendent shall provide oral or written notice of the suspension to the student's parents or guardian. The principal or superintendent shall also provide the parents or guardian written notice informing them of the action taken. A student who is an non-emancipated minor shall not be removed from the school premises before the end of the school day without contacting a parent or guardian unless the student's presence poses a continuing threat or danger, in which case the student may be immediately removed from school and transferred into the custody of a parent or law enforcement.

Each suspension will include a verbal or written re-admission plan. The re-admission plan may include procedures for the student's return to school and classes, provisions for an alternative program, or changes in the school educational setting to which the student is assigned. An alternative program may include makeup work, changes in assigned courses, changes to the student's time schedule, tutorial assistance, or reassignment to a different educational setting.

Grounds for Long-Term Suspension or Expulsion

A student may have long-term suspension or expulsion for persistent violation of rules/policies, insubordination or misconduct. In addition, a student may have long-term suspension or expulsion for a single action which evidences behavior that is serious enough to warrant removal to protect the physical safety of others or to prevent substantial interference with the right of others to pursue an education.

The school board authorizes the suspension of students by the superintendent of schools for not more than ninety (90) school days. If a long-term suspension is possible because of a student's violation of a rule, regulation or policy, the building principal shall file a written report with the superintendent. A reasonable effort should be made to file this report by the end of the school day following the day of discovery of the alleged violation. The report will include the (1) charges; (2) factual basis for the anticipated long-term suspension/expulsion; (3) description of the student's opportunity to present the student's version of the incident and the version as given by the student; and (4) the principal's rationale and recommendation for length of suspension.

The following student misconducts shall constitute grounds for long-term suspension or expulsion:

1. Use of violence, force, coercion, threat, intimidation or similar conduct that constitutes substantial interference with school purposes;
2. Willfully causing or attempting to cause damage to private or school property, stealing or attempting to cause damage to private or school property, stealing or attempting to steal private or school property or repeated damage or theft involving private or school property;
3. Causing or attempting to cause physical injury to a school employee or to any student. (Cases in which physical injury to a school employee or to any other action undertaken on the reasonable belief that it was necessary to protect some person or self shall not constitute a violation of this rule.);
4. Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon on school grounds or at a school function; if a student intentionally brings a firearm onto school premises, the expulsion may not be for less than twelve months. However, the Superintendent may increase or decrease the length of a firearm suspension on a case by case basis.
5. Coming to school or a school function under the influence of a controlled or mood altering substance, such as steroids, marijuana, alcohol, or other chemicals.
6. Engaging in the unlawful possession, selling, dispensing, or use of a controlled or mood-altering substance, such as steroids, marijuana, inhalants, alcohol, and other chemicals in the school or at school functions;
7. Bomb threats or false fire alarms involving school property or personnel;
8. Sexual harassment of a school employee or student;
9. Habitual disobedience (See definition on the first page.);
10. Engaging in any activity forbidden by federal law, the State of South Dakota, or the ordinances of the City of Dell Rapids, which activity constitutes a danger to other students or interferes with school purposes.

Procedures for Long-Term Suspension or Expulsion:

The Superintendent may long-term suspend a student for up to ninety (90) school days. If the decision of the superintendent is to suspend a student for beyond ten (10) days, the superintendent must file a sealed, written report with the School Board by the end of the fifth school day following the first 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 student's parent. 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 in the possession of the school board secretary or 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 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 school board's secretary or business manager. The report or notice shall contain the following minimum information:

1. The rule or policy allegedly violated;
2. The reason(s) for the disciplinary proceedings;
3. Notice of the right to request a hearing and the right to waive the hearing;
4. A description of the hearing procedure;
5. A statement that the student's records are available at the school for examination by the student's parent or authorized representative;
6. A statement that the student may present witnesses;
7. A statement that the student may be represented by an attorney.

The student, or his/her parents or others having his/her custodial care may appeal the decision of the superintendent to the Board of Education. The request for appeal must be made in writing and directed to the superintendent, and must be submitted within five (5) days of receipt of the copy of the report of the superintendent. Failure to submit a written request constitutes a waiver of the right to request a hearing and the action of the superintendent shall be final.

If a written request for an appeal is received within five (5) days, the superintendent shall give notice to each School Board member of an appeal to the Board for a hearing. If a hearing is requested, the long-term suspension shall be stayed until the Board renders its decision, unless in the judgment of the Superintendent, the student's presence

poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process. In such case, the student may be immediately removed from school, and the notice and hearing shall follow as soon as practicable.

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.

After a hearing has been scheduled, the student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing by submitting a written statement waiving this right to the superintendent at least 24 hours prior to the date and time set for the hearing.

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:

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 a 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" found in ARSD 24:07:02:01.

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 (1) charges; (2) factual basis for the anticipated expulsion; (3) description of the student's opportunity to present the student's version of the incident and the version as given by the student; and (4) the principal's rationale and recommendation for length of expulsion.
2. **Notice of 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 of from school and schedule a hearing before the School Board. The report must the facts of the situation, the action taken, the reason(s) for the action and the superintendent's recommendation. The report must remain in the possession of the School Board secretary or business manager sealed and unavailable for review by individual School Board members until the time set for the hearing.

At the same time that the report is filed with the School Board secretary or 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 older or an emancipated minor. The notice shall contain the following information:

- a. The rule of conduct or policy allegedly violated and the reason(s) for the disciplinary proceedings.
- b. A tentative time, date and place for the hearing.
- c. 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.
- d. A description of the hearing procedure and a statement that the student may be represented by an attorney.
- e. 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.

- f. 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 and rules on suspension and expulsion.

Hearing Procedure for Long-Term Suspension or Expulsion

Right of Waiver. The student, if of the age of majority or emancipated, or the student's parent may waive the right of 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 the student, his/her parent or guardian, or representative do not waive their right to a hearing or request postponement for good and sufficient cause, and are not present at the time and place scheduled in the hearing notice, the hearing shall proceed without them. If the hearing is waived in writing, the School Board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

The school board is the hearing board and shall conduct the hearing in the following manner:

1. The hearing shall be closed to the public. A verbatim record will be made and will be sealed pending court order.
2. The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing or presiding officer.
3. Each party may be represented by legal counsel. The student, the student's parents, guardian or representative has the right to legal counsel or some other adult representation, and each party shall have the opportunity to present witnesses or evidence and to cross-examine those who have primary knowledge of the facts.
4. Each party may make an opening statement.
5. The school administration shall present its case first.
6. The Superintendent, School Board or designated representative, counsel shall have the right of access to evidence presented in the accused student's behalf and may cross-examine those who have primary knowledge of the facts.
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 hearing officer or other person authorized by law to take oaths and affirmations.
8. Each party may raise legal objections to evidence, however, objections are 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 hearing officer.
10. The hearing officer may ask questions of witnesses and may allow other School Board members to interrogate witnesses.
11. The student shall have the right to speak in his/her own defense and may be questioned on his/her testimony, or he/she may choose not to testify, in which case he/she shall not be threatened with punishment or later punishment for refusal to testify, nor shall refusal in any way be construed as an indication of guilt.
12. Each party may make a closing statement.
13. After the hearing, the School Board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the School Board during deliberation. The School Board may seek advice during deliberation from an attorney not representing any of the parties at the hearing. Consultation with any other person during deliberation shall occur only if a representative of the student is present.
14. The School Board shall reach its decision by a majority vote of its members.
15. 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 School 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.
16. If no misconduct is found, the matter is terminated and no further action may be taken against the student.
17. A decision adverse to the student may be appealed to the circuit court.

Procedures for Long-Term Suspension or Expulsion of Students with Special Needs

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, the following procedures shall be followed:

1. A suspension of more than ten consecutive school days is a change in placement and requires that prior notice be given to a parent or guardian, including the right to a due process hearing.
2. School personnel may order a change in placement of a student with a disability to an appropriate interim alternative setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 days, if: (1) the student carries a weapon to school or to a school function under the jurisdiction of a state or local education agency; or (2) the student knowingly possesses or use illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.
3. A hearing officer under section 615 of the Individuals with Disabilities Education Act may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing: (1) determines that the district had demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others; (2) considers the appropriateness of the student's current placement; (3) considers whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and (4) determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's education teacher meets the requirements of ARSD 24:05:26:09.02.
4. If a student identified as in need of special education or special education and related services is the subject of long-term suspension or expulsion a referral shall be made by the superintendent or chief administering officer to the district's IEP team.
5. Within ten business days after first removing a student for more than ten school days in a school year or for weapons violations, drugs, violations, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the school district: (1) if the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the suspension occurred, the district shall convene an IEP team meeting to develop an assessment plan; (2) if the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior; (3) as soon as practicable after developing the plan described in subdivision (1) of this section, and completing the assessments required by the plan, the district shall convene an IEP team meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions; (4) if a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subsequently subjected to a removal that does not constitute a change of placement, IEP team members shall review the behavioral intervention plan and its implementation to determine whether modifications are necessary. If one or more of the IEP team members believe that modifications are needed, the committee shall meet to modify the plan and its implementation to the extent the committee determines necessary.
6. Any interim alternative educational setting in which a student is placed under shall: (1) be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in the individualized education program; and (2) include services and modifications designed to address the behavior that are designed to prevent the behavior from recurring. The individualized education program team shall determine an interim alternative educational setting.
7. If an action is contemplated by school district personnel or a hearing officer that involves removing a student for weapons violations, drug violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement the following actions shall be taken by the school district: (1) not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice in this article; and (2) as soon as possible, but in no case later than ten school days after the date on which the decision to remove the student is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

8. The IEP team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team: (1) first considers, in terms of the behavior subject to disciplinary action, all relevant information including: (a) evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student; (b) observations of the student; and (c) the student's individualized education program and placement; and (2) then determines that (a) in relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement; (b) the student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and (c) the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action. If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's ability. The manifestation determination review described in this section may be conducted at the same IEP meeting that is convened to address a functional behavioral assessment and behavioral intervention plan. If the review identifies deficiencies in the student's IEP or placement or in their implementation, the district must take immediate steps to remedy those deficiencies.
9. If the results of the manifestation determination review indicate that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education shall continue to be made available to those students consistent with this article. The student's IEP team shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability. If the school district initiates disciplinary procedures applicable to all students, the district shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, the student shall remain in the student's current educational placement or interim alternative educational setting consistent, whichever applies.
10. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing. The school district shall arrange for an expedited hearing in any case described in this section if requested by the parent. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the district has demonstrated that the student's behavior was not a manifestation of the student's disability.
11. If a parent requests a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period provided for, whichever occurs first, unless the parent and the school district agree otherwise. If a student is placed in an interim alternative education setting and school personnel propose to change the student's placement after expiration of the interim alternative placement during the dependency of any proceeding to challenge the proposed change in placement, the student must remain in the current placement (the student's placement before the interim alternative education setting) except that if school personnel maintain that it is dangerous for the student to be in the current placement (placement before removal to the interim alternative education setting) during the dependency of the due process proceedings, the district may request an expedited due process hearing.
12. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the school district may assert any of the protections provided for in this section if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. The school district is deemed to have knowledge that a student is a student with a disability if: (1) the parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the student is in need of special education and related services; (2) the behavior or performance of the student demonstrates the need for these services; (3)

the parent of the student has requested an evaluation of the student pursuant to this article; or (4) the teacher of the student, or other personnel of the district or to other public agency has expressed concern about the behavior or performance of the student to the director of special education of the district or to other personnel of the district in accordance with their established child find or special education referral system. The district is not deemed to have knowledge that the student is a student with a disability, if as a result of receiving the information, the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability or determined that an evaluation was not necessary and if the district provided notice to the student's parents of its determination consistent with this article. If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

13. Nothing prohibits the school district from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. The school district, should it report a crime committed by a student with a disability, shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. The school reporting a crime under this provision may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

LEGAL REFS.: SDCL 13-32-4; 13-32-4.2; 13-32-5; 13-32-7
22-42-19; 22-14A-22; 22-14A-2A; 22-14A-25
ARSD 24:07:01; 24:07:02; 24:07:03; 24:07:06
24:07:08; 24:05:26;
Improving America's School Act of 1994, P.L. 103-382, page 59

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