

## **JGD-R**

### **DUE PROCESS PROCEDURES**

The Rochester School Board adopts these procedures in conformance with New Hampshire Educational Administrative Code, Part Ed 317, and RSA 193-D.

#### **Part 1: Short-term suspension of students (for periods of up to ten days)**

Prior to a short-term suspension of a student, an informal hearing shall be conducted by the superintendent, assistant superintendent, principal or other administrator designated in writing by the superintendent as having authority to suspend students. This hearing shall include at least:

1. Written notification to the student explaining the purpose of the hearing and that the alleged violation is grounds for suspension.
2. Written specification of the alleged violation, in detail, and an oral or written explanation of the evidence against the pupil.
3. An opportunity for student to respond to the charge.
4. A written statement to the pupil and at least one of the pupil's parents or guardian explaining any disciplinary action taken against the student.

In the event that the student denies wrongdoing or claims extenuating circumstances, and the principal was not a witness, the principal shall make further inquiries.

The following infractions are to be considered as grounds for short-term suspension. The list is intended to be illustrative, not exhaustive. Suspension is to be spent in school in supervised studies or away from school. The duration and place of suspension is to be determined by the administration. In each case of suspension, the administration will notify parents of grounds, duration and place of suspension.

1. Possession and/or detonating firecrackers in school building or on school grounds.
2. Fighting
3. Improper use of motor vehicle
4. Unexcused absence from homeroom, class, or supervised study
5. Refusal to identify one's self to staff member
6. Excessive trancies
7. Leaving school grounds without authorization
8. Unauthorized presence in gym and locker room areas
9. Grossly disrespectful conduct
10. Violation of the policy on smoking
11. Disrupting school activity
12. Throwing or projecting missiles of any kind, including snowballing
13. Repeated unexcused tardiness to homeroom, class, or assigned study
14. In parking area without authorization (repeated offenses)
15. Endangering safety and well-being of a member of the school community
16. Gambling
17. Unauthorized presence in restricted area of building
18. Causing a false alarm
19. Gross misconduct
20. Neglect or refusal to conform to the reasonable rules of the school under RSA 193:13, I & II
21. Possession of over the counter drugs or other non-approved substances.

Items listed below as grounds for long-term suspension and/or expulsion may also result in a short-term suspension as a precursor to the formal due process hearing required for long-term suspension and/or expulsion.

**Part 2: Long-term suspension of students (for periods from ten to twenty days)**

Prior to a long-term suspension of a student, a formal hearing shall be conducted in accordance with the provisions of the New Hampshire Code of Administrative Rules, Ed 317.04(e)(3) by the school board or its designated committee, or by the superintendent or assistant superintendent, except that the hearing may not be conducted by the individual who issued a short-term suspension for the violation leading to the hearing. The school board, through the superintendent or assistant superintendent, shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the date, time and place for a hearing before the local board or its designated committee or representative. This notice shall include:

1. A written statement including an explanation of the charges, of the nature of the evidence against the pupil, and specifying that the alleged violation is grounds for a long-term suspension; and
2. A written recommendation from the superintendent for board action, if the hearing is to be held before the board, and a description of the process used by the superintendent to reach his/her recommendation; and
3. This notice shall be delivered at least five days prior to the hearing.

The following hearing procedures shall apply:

1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges;
2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;
3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;
4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and
5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses
6. A written or oral recommendation shall be given for student action to correct the discipline problem;
7. A written decision shall be delivered in person or by mail to the pupil's last known address, to the pupil and at least one of the pupil's parents or guardian, that includes the legal and factual basis for the conclusion that the pupil should be suspended, if suspension is issued, and explaining any disciplinary action taken against the student
8. If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired and pending the long-term suspension hearing;

If the hearing was conducted by the superintendent or assistant superintendent, the decision may be appealed to the Rochester School Board under RSA 193:13, I.

If the hearing was conducted by the Rochester School Board, the decision may be appealed to the New Hampshire State Board of Education.

The following infractions are to be considered as grounds for long-term suspension (and may lead to expulsion). The list is intended to be illustrative, not exhaustive.

1. Arson
2. Theft of property
3. Destruction of property
4. Possession and/or use of alcoholic beverages
5. Illegal possession of a controlled drug
6. Possession of over the counter drugs or other non-approved substances.
7. Physically assaulting a teacher
8. Possession of a firearm without the written consent of the superintendent
9. Ongoing gross misconduct

### **Part 3: Expulsion of students**

Students may be expelled by the Rochester School Board or by the Rochester School Board Discipline Committee. In an expulsion, due process shall include the following minimal requirements:

- a. A formal hearing shall be held before any expulsion;
- b. Such hearing may be held either before or after the short-term suspension has expired;
- c. If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired and pending the expulsion hearing.
- d. The school board shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the date, time and place for a hearing before the local board;
- e. The written notice required by d. above shall include:
  1. A written statement of the charges and the nature of the evidence against the pupil; and
  2. A superintendent's written recommendation for school board action and a description of the process used by the superintendent to reach his/her recommendation;
- f. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardian at least 5 days prior to the hearing.
- g. The following hearing procedures shall apply:
  1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges made by the superintendent;
  2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;
  3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;

4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and
5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses;
- h. The decision of the school board shall be based on a dispassionate and fair consideration of substantial evidence that the accused pupil committed the act for which expulsion is to be imposed and that such acts are, in fact, a proper reason for expulsion;
- i. The decision shall state whether the student is expelled and the length of the expulsion. If the decision is to expel the pupil the decision shall include the legal and factual basis for the decision;
- j. A statement of the time period for which the student is expelled and any action the student may take to be restored by the board; and
- k. A statement that the pupil has the right to appeal the decision. If the expulsion is issued by the Rochester School Board Discipline Committee, the appeal may go either to the full Rochester School Board or to the state board of education, at the choice of the student and his/her parent(s) or guardian. If the expulsion order is issued by the full Rochester School Board, the appeal is directly to the state board of education.

**Part 4: Suspension and expulsion of students with educational disabilities**

- a. Any suspension or expulsion of a student with an educational disability as defined in Ed 1102.31 shall be in accordance with Ed 1119.11.
- b. If, under the provisions of Ed 1119.11(c), the special education placement team determines that the behavior leading to the suspension or expulsion is not a direct result of the student's educational disability, Ed 317.01 through Ed 317.05 shall apply unless otherwise required by federal law.
- c. In the case of a student with an educational disability who is determined to have brought a firearm as defined in 18 USC 921(a)(3) the federal requirement of section 615(e) of Public Law 101-476, 20 USC 1415(e)(B) shall apply, and the student may be placed in an interim alternative educational setting for the time periods determined by that Public Law.

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