

Regulation

SUSPENSION AND EXPULSION

GENERAL STATEMENT

The following guidelines for suspension and expulsion are established to ensure the good order of the Little Silver School District, provide appropriate notice of penalties for violations of school regulations, teach students the consequences and provide examples of disruptive behavior, provide notice of penalties for assault and weapons violations, and establish due process rights of any student that is suspended or expelled.

STAFF RESPONSIBLE

The following chart lists the staff members responsible for the implementation of the regulation and summarizes their responsibilities:

Position	Summary of Main Responsibilities
Superintendent	<ul style="list-style-type: none"> • General policy procedure oversight within the district • Reporting all suspensions and expulsions to the board • Notification of due process and appeal rights • Conducting meetings • Documentation of all steps of the procedure • Biannual report
Board of Education	<ul style="list-style-type: none"> • General oversight of the superintendent • Board hearings in closed session
Building Principal	<ul style="list-style-type: none"> • Written report to the board in cases of assault by a student • Notice to case manager and parents/guardians along with reasons for removal for classified students
Classroom Teachers and/or aides	<ul style="list-style-type: none"> • Attendance • Impartial witness to disciplinary infractions • Report all disciplinary infractions to administration
IEP Team and Case Manager	<ul style="list-style-type: none"> • Ensure that the removal of a special education student to an alternative interim educational placement is limited to 45 days • Ensure that services provided to suspended special education students provides for advancement in the general education curriculum and toward the achievement of IEP goals and objectives.
Special Education Teacher	<ul style="list-style-type: none"> • Ensure that services provided to suspended special education students allow for both advancement in the general education curriculum and toward the achievement of IEP goals and objectives.

DEFINITIONS

"Bodily injury" means physical pain, illness or any impairment of physical condition.

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"Firearm" means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument from which may be fired or ejected any solid object or gas, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Weapon" means any object readily capable of inflicting serious bodily injury. The term includes, but is not limited to, (1) components which can be readily assembled into a weapon; (2) knives, clubs, slingshots, bands studded with metal filings or razor blades imbedded in wood; and (3) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other object or substance intended to produce temporary physical discomfort or permanent injury.

"School rules" means any applicable state or federal statute, code, regulation, ordinance, or legal directive issued by an authority having control over students and shall include the code of student conduct.

"Informal hearing" means a discussion between a school administrator and a student regarding the student's alleged misconduct in which the student is informed of his or her alleged violation of the code of student conduct (see N.J.A.C. 6A:16-7.1, and board policy 5131 Conduct and Discipline) and the basis for the accusation, and potential for discipline. During the informal hearing, the student is given the opportunity to explain his or her version of the facts and events regarding the alleged violation.

"Formal hearing" is held before the board of education and at a minimum shall:

- A. Be conducted by the board or it may be delegated by the board to a board committee, a school administrator, or an impartial hearing officer for the purpose of determining facts or making recommendations. Before taking final action, the board as a whole shall receive and consider either a transcript or detailed report on the hearing;
- B. Include an opportunity for the student to confront and cross-examine witnesses if there is a question of fact and present his or her own defense, and produce oral testimony or written supporting affidavits;
- C. Take place no later than 30 calendar days following the day the student is suspended from the general education program; and
- D. Result in the district board of education's decision that shall be based, at a minimum, on the preponderance of evidence, which means that the board shall determine which facts are more likely to have happened than not.

PROCEDURES

Procedures for Suspension of Classified Students

- A. For disciplinary reasons, classified students may be suspended from their current educational placement for 10 or fewer consecutive or cumulative school days per year, by the building principal/designee so long as they receive the same due process protections and educational services as non-classified students during the period of suspension. However, upon removal, the building principal/designee must

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forward a written notice and description of the reasons for the student's removal to the case manager and the student's parents:

1. In imposing a removal of ten days or less on a classified student, the building principal may, on a case-by-case basis, consider any unique circumstances pertaining to the violation of the student code of conduct. Any such unique circumstance shall be included in the above written description of the reasons for removal.
2. Special education students are entitled to receive general educational services on or before the fifth day of suspension. A building principal who imposes a suspension of five days or more on a special education student must contact the case manager to ensure that appropriate services are provided.

B. Preschool students with disabilities shall not be suspended or expelled.

C. The case manager shall monitor each removal and make an initial determination as to whether the removal constitutes a potential change in placement.

D. Change in Placement

Every removal of a classified student from his IEP designated placement for disciplinary reasons, shall constitute a change in placement if:

1. The removal is for more than ten consecutive school days; or
2. Separate removals constitute a pattern of removal because they cumulatively amount to more than ten school days in a school year. In determining whether a pattern of removal exists, consideration should be given to similarities among the following factors:
 - a. The length of each removal;
 - b. The total amount of time the student has been removed;
 - c. The proximity of the removals to one another;
 - d. The similarity of conduct necessitating removal;
 - e. Factors precipitating the conduct;
 - f. The building principal/designee must consult with the case manager in determining whether a pattern of removals exists. If a pattern is found to exist, the removals constitute a change-in-placement. The director of special education services should also be consulted as to the determination.
3. Where a change in placement is found, the child and parents are entitled to all due process protections listed in N.J.A.C. 6A:14-2.3 et. seq. as follows:
 - a. The building principal/designee shall provide written notice, within 15 calendar days of the above determination, to the parent regarding the change in placement;
 - b. The building principal/designee shall provide notice, fifteen calendar days in advance, of any proposed action. Notice shall be compliant with N.J.A.C. 6A:14-2.3(g). Any proposed action may be taken in less than 15 calendar days upon parental consent;
 - c. The proposed action shall be implemented on the 16th calendar day unless the parent disagrees and measures are taken by the building principal/designee to resolve the disagreement; or
 - d. The parent files a request for mediation or due process pursuant to N.J.A.C. 6A:14-2.6 or 2.7. If such a request is filed, the proposed action must be delayed pending the results of mediation or due process, as the case may be;
 - e. The board, through the case manager, shall ensure that services to a student with a disability who has been removed from his or her education placement for more than 10 consecutive or cumulative school days, are sufficient to allow the student to progress appropriately in the

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general education curriculum and advance appropriately toward the student's IEP goals and objectives.

- f. A classified student who is subjected to disciplinary action that includes removal to an interim alternative educational setting, suspension for more than 10 consecutive or cumulative school days in a school year, or expulsion is entitled to additional protections as listed in 20 U.S.C. § 1415(k). Upon removal, the building principal/designee shall ensure:
 - I. Education services are provided that are sufficient to allow the student to progress appropriately in the general education curriculum and advance appropriately toward the student's IEP goals and objectives;
 - II. A functional behavioral assessment, behavioral intervention services, and modifications to address the behavior so that it does not recur.

4. Manifestation Determination

Within 10 school days of any change in a classified student's placement due to a violation of the code of student conduct, the case manager shall convene an IEP meeting and with the parent, shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to conduct a manifestation determination to determine:

- a. Whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. Whether the conduct in question was the direct result of the district's failure to implement the IEP.

5. Manifestation Found

If the IEP team determines that the conduct was caused by, or had a direct and substantial relationship to, the child's disability; or was the direct result of the district's failure to implement the IEP, that conduct shall be determined to have been a manifestation of the child's disability. In such cases, the IEP team shall:

- a. Review the functional behavioral assessment from 6(ii) above, or conduct a new functional behavioral assessment if warranted;
- b. Review and revise the student's behavioral intervention plan to address the student's non-compliant behavior; and
- c. Return the child to his or her prior placement, unless the parent agrees to a change in placement as a modification of the behavioral intervention plan.

6. Manifestation Not Found

Where the IEP team determines that the student's conduct was not a manifestation of the child's disability, the student shall be entitled to the due process protections afforded general education students for violations of the code of student conduct. If the student is removed for five or more school days, the building principal/designee shall notify the student's case manager and special education teacher, who shall determine the educational services that are sufficient to allow the student to progress appropriately in the general education curriculum and advance appropriately toward the student's IEP goals and objectives during the period of suspension.

Special Circumstances for Classified Students

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The building principal may remove a student with a disability to an interim alternative educational setting for not more than 45 school days, without regard to the results of a manifestation determination, where a classified student:

- A. Possesses a weapon on school grounds, on a school bus, or during a board-approved activity;
- B. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance on school grounds, on a school bus, or during a board-approved activity; or
- C. Has inflicted serious bodily injury upon another person on school grounds, on a school bus, or during a board-approved activity.
- D. On the date of removal, the building principal shall notify the parents and the case manager in writing of the removal to an interim alternative educational setting for not more than 45 school days and of the procedural safeguards provided to the student in effectuating the removal.
- E. Where a student with a disability is removed from his or her current educational placement due to special circumstances, the IEP team shall convene within five school days to determine the interim alternative educational setting. During the IEP meeting, the case manager/designee shall ensure that the parent is advised, in writing, of the right to appeal any decision regarding placement or the manifestation determination to the Commissioner of Education.
- F. Where the IEP believes that maintaining a student with a disability in his or her current educational placement is substantially likely to result in injury to the student, or to others, the district may request a hearing before the Commissioner to change the child's placement. In such cases, the director of special education shall consult with the building principal and superintendent in determining to seek a change in placement.

Procedures for Short-term Suspension (10 days or less)

The following procedures apply to all students in the general education program and to classified students when the CST has determined that the student's misconduct was not a manifestation of his or her disability.

According to N.J.S.A. 18A:37-4, the building principal shall have the authority to suspend a student from his or her educational program. N.J.A.C. 6A:16-7.2 allows the building principal to delegate to an administrator, the informal hearing set forth in this regulation, however, any suspension may only be imposed by the building principal. All suspensions must be reported to the board of education at the first regular meeting following the suspension. The building principal, prior to imposing a suspension of 10 days or less, shall:

- A. Provide an informal hearing before the suspension, conducted by the building principal/designee. The informal hearing shall include the following:
 - 1. A description of behaviors alleged to warrant suspension, including verbal or written notice of the alleged violations of school rules and if those allegations are denied, an explanation of the underlying evidence. Notice of the allegations may be prior to or concurrent with the informal hearing;
 - 2. A copy of the applicable provisions of the board approved code of student conduct. Those provisions must include, but are not limited to, the age-appropriate behavioral expectations, as well as disciplinary consequences that are graded according to the severity of the offense, developmental age of the student, and any prior disciplinary history.
 - 3. An opportunity to respond to the allegations, including statements in defense, explanation, or mitigation;

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4. During the informal hearing, the student is not entitled to representation through counsel, nor through a parent/guardian, nor is the student entitled to call or cross-examine witnesses. The administrator/designee conducting the informal hearing may exercise discretion with regard to speaking to witnesses and investigating the allegations. In all cases, any disciplinary recommendation must be based on objective factual determinations, even if those determinations are reasonably debatable, meaning that the administrator/designee's factual determinations shall not be deemed invalid just because reasonable minds disagree. No disciplinary recommendation may be based in discrimination prohibited by state or federal statute or regulation.
 5. Where a student's conduct poses a continuing danger to persons or property or the student's conduct presents an ongoing threat of disrupting the educational process, the building principal may remove the student immediately and convene the informal hearing as soon as practical thereafter.
- B. The building principal/designee shall ensure that the informal hearing is conducted by a school administrator who has been trained in the conduct of student disciplinary hearings.
 - C. The building principal shall immediately notify the superintendent, in writing, of any suspension along with the reasons for the suspension and the terms and conditions imposed upon the student. The superintendent shall ensure that the suspension is reported to the board of education at the next regular meeting following the suspension.
 - D. The building principal/designee shall provide oral or written notification to the parents/guardians, of student's suspension (adequate supervision shall be provided while the student awaits the parent/guardian). Such notice shall be provided to the students upon discharge of the student to the parent/guardian and shall include:
 1. The specific charges;
 2. The facts on which the charges are based;
 3. The provision(s) of the code of student conduct the student is accused of violating;
 4. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3 and this section; and
 5. The terms and conditions of the suspension.
 - E. The building principal/designee shall notify the student's teacher(s) in writing of the period of suspension and shall ensure that academic instruction consistent with the student's current coursework is provided on or before the fifth day of suspension.
 - F. At the completion of the suspension period, the student shall return to the program from which they were suspended. The student shall be responsible for turning in all assigned coursework upon his or her return.
 - G. The building principal/designee shall have discretion to convene a re-entry meeting to ensure that the student is prepared to return to his or her educational program. Where the building principal/designee has reason to believe that the student is not ready to return to the educational program, such belief and the reasons therefore shall be documented in the student's disciplinary file and the building principal/designee shall consider intervention and referral services (I&RS team).
 - H. The superintendent/designee shall document in writing the date of each of the above steps with a brief description recording the circumstances surrounding each step. Such documentation shall be maintained in the student's disciplinary file.
 - I. The superintendent/designee shall provide notice of each short-term suspension and the student's return to the board of education at the next regular meeting. The building principal/designee shall have discretion to reinstate the student prior to the completion of the short-term suspension.

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- J. Any student may appeal a short-term suspension from the general education program, based upon a removal for assault upon a teacher, administrator, board member, district employee, or another student, with a weapon, on school property, at a school function, or on a school bus, to the board of education. In all other cases involving removal from the general education program, an appeal may be filed before the Commissioner of Education pursuant to N.J.A.C. 6A:3-1.3 through 1.17. A student with a disability retains the due process protections contained in N.J.A.C. 6A:14.

Procedures for Long-term Suspension (more than 10 days)

- A. The superintendent shall ensure that the procedures for short term suspension as listed in short-term suspension above, in addition to the procedures in this section for long-term suspension, including documenting the steps taken, are followed for any student assigned a long term suspension. No suspension may extend past the second regular board meeting following the suspension except by board action. In the event that the first regular meeting following the student's suspension is cancelled, the board shall consider continuing the student's suspension at the subsequent regular meeting. If the second regular meeting subsequent to the suspension is cancelled, and the administration and/or board has not taken action with respect to the student's suspension, the board shall schedule a special meeting as soon as practical to consider a continuation of the student's suspension.
- B. Parents/guardians shall receive written notification within 2 days of the suspension stating of the following:
1. The specific charges;
 2. The facts on which charges are based;
 3. The student's rights to due process and a formal board hearing held within 30 days of the student's removal; and
 4. Notice that further conduct warranting expulsion shall amount to a knowing and voluntary waiver of the student's right to a free public education, in the event that the board determines to expel the student;

The parent/guardian shall be requested to provide written acknowledgement of the notifications.

- C. Other information that shall be provided in writing at least five calendar days prior to the formal hearing:
1. The list of witnesses and their statements;
 2. The manifestation determination, if applicable;
 3. Notice of the right to have an attorney present and available legal resources in the community;
 4. The right to educational services that are comparable to those provided in the student's general education program;
 5. The right to impartial officials – no official hearing the case can be involved in the incident;
 6. The right to a translator.

Comparable educational services shall be provided to the student on or before the fifth day of suspension.

Procedures for Long-term Suspension – Board Responsibilities

- A. The board shall conduct a formal hearing on or before the second regular board meeting following the student's suspension. At this hearing, the board may reinstate the student, or affirm, continue, or modify the suspension.

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- B. The board may refer the hearing to a board student disciplinary committee, a school administrator, or an impartial hearing officer for the purpose of determining facts or making recommendations. Before taking final action, the full board shall receive and consider either a transcript of the hearing or a detailed report on the hearing.
1. Where the board determines to continue the suspension, such determination shall be based on the following criteria:
 - a. The nature and severity of the offense;
 - b. The board's removal decision or administrative recommendation as appropriate;
 - c. The results of relevant testing, assessments, or evaluations of the student; and
 - d. The recommendation of the superintendent, after considering input from the principal or director of the alternative education program or home or other in-school or out-of-school instruction program in which the student has been placed.
 2. In each instance where the board has determined to continue a suspension, at each subsequent meeting, the board shall consult with the superintendent to determine:
 - a. The status of the student's suspension;
 - b. The appropriateness of the suspended student's current educational program; and
 - c. Whether the suspended student's disciplinary placement should continue or whether the student should return to the general education program.
- C. Where the student has not been reinstated pursuant to administrative or board action, the board shall approve an appropriate educational program for the student based on the following:
1. A behavioral evaluation, including referral to the child study team;
 2. Results of relevant testing and assessment;
 3. Academic, health and behavioral records;
 4. Superintendent and other relevant staff recommendations;
 5. Parental input;
 6. Consultation with intervention and referral services (I&RS) team.
- D. The formal hearing shall provide an opportunity for the student to:
1. Present a defense/explain their side of the story;
 2. Present witnesses;
 3. Present signed statements by witnesses;
 4. Face and question school witnesses on questions of fact. The board has no authority to determine the constitutionality of any statute.
- E. After the conclusion of the hearing the board shall notify the parent in writing of the decision within 5 days. The board's determination shall be based on a more likely than not standard, meaning that the board may find a fact to be true if its probability of occurrence is more likely than not. Notification shall include:
1. The charges considered;
 2. Summary of all the evidence;
 3. Factual findings for each charge;
 4. Identification of educational services to be provided;
 5. Terms and conditions of the long-term suspension;
 6. Notice of the right to appeal to the commissioner of education within 90 days.

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- F. In establishing a long-term suspension the board shall consider:
1. Nature and severity of the offense;
 2. The removal decision;
 3. Test results;
 4. Recommendation of the superintendent and other relevant staff.
- G. The board shall have discretion to reinstate the student to his or her educational program prior to the expiration of the suspension period. If the board continues the suspension, it shall review the case at each board meeting following that determination. The review shall include:
1. The status of the suspension;
 2. The educational services provided;
 3. Whether services shall be continued, adjusted or the student returned to general education;
 4. If expulsion should be considered.
- H. When determining to continue a student's suspension, the board shall make a final determination on:
1. When the student is prepared to return to the general education program;
 2. Whether the student will remain in an alternative education program or receive home or other in- or out-of-school instruction, based on the board's approval of the student's educational program, the criteria set forth in (C)1 through 6 above; or
 3. Whether to initiate expulsion proceedings in accordance with board policy and this regulation and law (N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.4).
- I. Appropriate educational services shall be provided to suspended students until the student graduates from high school or reaches the age of 20, whichever comes first.

Procedures for Expulsion

- A. Expulsion may only be considered:
1. After a long-term suspension, including all due process rights;
 2. After the provision of appropriate educational services;
- B. A formal hearing shall be provided by the board according to the procedures for notification and hearings detailed under long-term suspension.
- C. The student shall be entitled to comparable educational services through the conclusion of any appeal to the commissioner of education.

Mandatory Removal from School

In compliance with law, serious behavioral infractions related to violence and weapons require that the student be removed from the educational program. All procedures for short- and long-term suspension as described in this procedure shall apply when a student's removal from the educational program is required by law. Serious and dangerous offenses requiring mandatory removal from school include:

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- A. Assault against board member or school personnel in the performance of their duties, or as a result of the individual's relationship to a public school district;
- B. Assault against board member, school personnel, or student with a weapon on school property, school bus or at a school function;
- C. Gun possession on school property, on a school bus or at a school function;
- D. Conviction of possession of a gun or a crime involving a gun off school property.

For the specific procedures for the mandatory removal of a student see board policies 5131.5 Violence and Vandalism, 5131.6 Substance Abuse, 5131.7 Weapons and Dangerous Instruments; and regulation 5131.5/5131.7 Violence and Weapons, Regulation.

REGULATION HISTORY

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