

LONG-TERM SUSPENSION, 365 DAY SUSPENSION, EXPULSION

Policy Code:

4353

The right to attend school is a civil right, fully recognized in the courts. It is not an absolute right, however, but is one which an individual possesses until the exercise of this right becomes damaging to the rights of others. The right of one person to attend school must not place in serious jeopardy the opportunity of others to profit from school.

A. DEFINITIONS

1. Superintendent

For purposes of this policy, superintendent includes the superintendent and the superintendent's designee.

2. Principal

For purposes of this policy, principal includes the principal and the principal's designee.

3. Long-Term Suspension

A long-term suspension is the disciplinary exclusion of a student from attending his or her assigned school for more than 10 school days. Disciplinary reassignment of a student to a full-time educational program that meets the academic requirements of the standard course of study established by the State Board of Education and that provides the student with the opportunity to make timely progress toward graduation and grade promotion is not a long-term suspension requiring the due process procedures set out in this policy.

Upon the recommendation of the principal, the superintendent may impose a long-term suspension on a student who willfully engages in a serious violation of the Code of Student Conduct and the violation either (1) threatens the safety of students, staff or school visitors, or (2) threatens to substantially disrupt the educational environment. The principal may recommend long-term suspension for a minor violation if aggravating circumstances justify treating the student's behavior as a serious violation.

If the offense leading to the long-term suspension occurred before the final quarter of the school year, the exclusion must be no longer than the remainder of the school year in which the offense was committed. If the offense leading to the long-term suspension occurred during the final quarter of the school year, the exclusion may include a period up to the remainder of the school year in which the offense was committed and the first semester of the following school year.

4. 365-Day Suspension

A 365-day suspension is the disciplinary exclusion of a student from attending his or her assigned school for 365 calendar days. The superintendent may impose a 365-day suspension only for certain firearm and destructive device violations, as identified in board policy 4333, Weapons, Bomb Threats, Terrorist Threats and Clear Threats to Safety.

5. Expulsion

An expulsion is the indefinite exclusion of a student from school enrollment for disciplinary purposes. Upon the recommendation of the superintendent, the board may expel a student who is 14 years of age or older for certain types of misbehavior as provided in board policies 4325, Drugs and Alcohol, 4330, Theft, Trespass and Damage to Property, 4331, Assaults, Threats and Harassment, and 4333, Weapons, Bomb Threats, Terrorist Threats and Clear Threats to Safety, if the student's continued presence in school constitutes a clear threat to the safety of other students or employees. . Additionally, a student who is subject to policy 4260, Student Sex Offenders, may be expelled if the student's continued presence in school constitutes a clear threat to the safety of other students or employees. During the expulsion, the student is not entitled to be present on educational property and is not considered a student of the school system.

B. DETERMINATION OF APPROPRIATE CONSEQUENCE

1. Principal's Recommendation

The principal may impose a short-term suspension or any other consequence that is consistent with policy 4351, Short-Term Suspension, policy 4302, School Plan for Management of Student Behavior, and the Code of Student Conduct. If the principal determines that a suspension of more than 10 days (either long-term or 365-day) or an expulsion is an appropriate consequence, the principal shall propose the disciplinary penalty based upon a review of the student's culpability and dangerousness and the harm caused by the student, plus any other mitigating or aggravating factors the principal finds relevant.

a. Culpability of Student – In assessing the culpability of the student for his or her behavior, the principal may consider criteria such as:

- 1) the student's age;
- 2) the student's ability to form the intent to cause the harm that occurred or could have occurred; and
- 3) evidence of the student's intent when engaging in the conduct.

b. Dangerousness of the Student – In assessing the dangerousness of the student, the principal may consider criteria such as:

- 1) the student's disciplinary or criminal record related to anti-social behavior or drugs and alcohol;
 - 2) whether a weapon was involved in the incident and if a weapon was involved, whether the student had the ability to inflict serious injury or death with the weapon;
 - 3) evidence of the student's ability to cause the harm that was intended or that occurred; and
 - 4) whether the student is subject to policy 4260, Student Sex Offenders.
- c. Harm Caused by the Student – In assessing the severity of the harm caused by the student, the principal may consider criteria such as whether any of the following occurred:
- 1) someone was physically injured or killed;
 - 2) someone was directly threatened or property was extorted through the use of a weapon;
 - 3) someone was directly harmed, either emotionally or psychologically;
 - 4) educational property or others' personal property was damaged; or
 - 5) students, school employees or parents were aware of the presence of a weapon or of dangerous behavior on the part of the perpetrator.

After considering the above factors, the principal shall make a recommendation to the superintendent, stating the nature of the offense, the substance of the evidence involved and the length of suspension recommended. The principal also must consider and make a recommendation as to whether any alternative education services, counseling or other programs should be part of the consequence for violating board policy, the Code of Student Conduct, school standards or school rules.

If the principal recommends a 365-day suspension, he or she must identify the type of firearm or destructive device involved and the evidence substantiating that the student brought it to school grounds or to a school activity or possessed it on school grounds or at a school activity.

If the principal recommends an expulsion, he or she shall identify the basis for

determining that there is clear and convincing evidence that the student's continued presence in school constitutes a clear threat to the safety of other students or employees.

2. Notice to the Student's Parent

The principal must provide to the student's parent written notice of the recommendation for long-term suspension, 365-day suspension or expulsion by the end of the workday during which the long-term suspension or expulsion is recommended when reasonably possible or as soon thereafter as practicable. The notice must be written in plain English and, when appropriate language resources are readily available, also in the parent's native language. The notice must contain the following ten elements:

- a. the notice type, i.e., notice of long-term suspension, 365-day suspension or expulsion;*
- b. a description of the incident and the student's conduct that led to the recommendation;
- c. the specific provision(s) of the Code of Student Conduct that the student allegedly violated;
- d. the specific process by which the parent may request a hearing to contest the decision and the deadline for making the request;*
- e. the process by which the hearing will be held, including all due process rights to be accorded the student during the hearing;
- f. notice of the right to retain an attorney to represent the student in the hearing process;
- g. notice that an advocate, instead of an attorney, may accompany the student to assist in the presentation of the appeal;
- h. notice of the right to review and obtain copies of the student's educational records prior to the hearing;
- i. a reference to policy 4345, Student Discipline Records, regarding the expungement of disciplinary records; and
- j. the identity and phone number of a school employee whom the parent may call to obtain assistance in receiving a Spanish translation of the English language information included in the document.*

*This information must be provided on the notice in both English and

Spanish.

3. Superintendent's Decision

The student or student's parent may request a hearing before the superintendent within three days of receiving notice from the principal of the recommendation for long-term suspension, 365-day suspension or expulsion. Any hearing held will follow the hearing procedures outlined in Section A of policy 4370, Student Discipline Hearing Procedures. A decision will be rendered before the long-term suspension is imposed.

If the student or parent makes a timely request for a hearing, the superintendent shall confirm that the charges against the student, if substantiated, could warrant the recommended disciplinary action and shall give the student and parent reasonable notice of the time and place of the hearing.

If neither the student nor the parent appears for a scheduled hearing after being given reasonable notice of the time and place of the hearing, the student and parent are deemed to have waived the right to a hearing.

If the student and parent fail to make a timely request for a hearing or if they waive the right to a hearing by failing to appear for a duly scheduled hearing, the superintendent shall review the circumstances of the recommended long-term suspension. Following this review, the superintendent (1) may impose the long-term or 365-day suspension if it is consistent with board policies and appropriate under the circumstances, (2) may impose another appropriate penalty authorized by board policy or (3) may decline to impose any penalty.

If the student or parent requests a postponement of the hearing, or if the request for the hearing is untimely, the hearing will be scheduled, but the student does not have the right to return to school pending the hearing.

Based on substantial evidence presented at the hearing, the superintendent shall decide whether to uphold, modify or reject the principal's recommendation. The superintendent shall immediately inform the principal of the decision regarding the recommended disciplinary penalty of a long-term or 365-day suspension and, when applicable, of any modifications to the penalty recommended by the principal.

The superintendent shall send notice of the decision via certified mail to the student and parent. The notice must include:

- a. the basis of the decision, with reference to any policies or rules that the student violated;
- b. notice of what information will be included in the student's official record

pursuant to G.S. 115C-402;

- c. notice of the student's right to appeal the decision and the procedures for such appeal;
- d. if the decision is to suspend the student for 365 days, notice of the student's right to petition the board for readmission under G.S. 115C-390.12;
- e. if applicable, notice that the superintendent or designee is recommending to the board that the student be expelled and any required notifications related to the expulsion if the student did not already receive such notice from the principal or designee; and
- f. if the student is to be suspended, notice of the superintendent's or designee's decision on whether to offer alternative education services to the student during the period of suspension, and, as applicable, a description of the services to be offered or the reason justifying the superintendent's or designee's decision to deny such services.

Following issuance of the decision, the superintendent shall implement the decision by authorizing the student's return to school upon the completion of any short-term suspension or by imposing the suspension reflected in the decision.

The superintendent shall offer alternative education services to any student who receives a long-term or 365-day suspension unless the superintendent provides a significant or important reason for declining to offer such services. Alternative education services are part-time or full-time programs that provide direct or computer-based instruction to allow the student to progress in one or more core academic courses. Such services may include programs described in policy 3470/4305, Alternative Learning Programs/Schools.

The student may appeal to the board the superintendent's decision not to provide alternative education services, as permitted by G.S. 115C-45(c)(2). Any appeal to the board must be made in writing within five days of receiving the superintendent's decision. The superintendent shall inform the board chairperson of the request for an appeal and arrange in a timely manner a hearing before the board. In advance of the hearing, the superintendent shall provide to the student and parent and to the board a written explanation for the denial of services along with any documents or other information supporting the decision. The hearing will be conducted pursuant to policy 2500, Hearings Before the Board. The board will provide to the student and parent and to the superintendent written notice of its decision within 30 days of receiving the appeal.

If the superintendent determines that expulsion is appropriate, the superintendent shall submit to the board a recommendation and the basis for the recommendation along with any proposal for alternative education services.

4. Hearings Before the Board

a. Long-Term or 365-Day Suspensions

A student or his or her parent may appeal an imposed long-term or 365-day suspension. The student or parent must appeal to the board in writing within three days of receiving the superintendent's decision. The superintendent shall inform the board chairperson of the request for an appeal and shall arrange in a timely manner a hearing before the board. The suspension need not be postponed pending the outcome of the appeal. The hearing will be conducted pursuant to Section B of policy 4370, Student Discipline Hearing Procedures. The board will provide to the student and parent and to the superintendent written notice of its decision not more than 30 calendar days after receiving the appeal.

b. Expulsions

The student or parent may request a hearing within five days of receiving notice of the superintendent's recommendation that the student be expelled. The hearing will be scheduled with the board within five days of the superintendent's receipt of the hearing request. The superintendent shall notify the student and parent of the date, time and place of the hearing. Any appeal of a long-term or 365-day suspension will be addressed in the same hearing. The hearing will be conducted pursuant to Section B of policy 4370.

If a hearing is not requested by the student or parent, the superintendent shall submit written evidence to support his or her recommendation to the board. The board may elect to request a hearing or to request additional records and documents.

When the board decides to expel a student, the board will document the basis for its determination that there is clear and convincing evidence that the student's behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The board also will consider and make a written determination of whether alternative education services are to be provided to the expelled student. Regardless of whether the school system provides alternative education services, the board expects school system administrators to work with other agencies to help the student and parent identify other types of services that may be of assistance to the student. The board will send via certified mail to the student's parent a copy of the decision, notification of what information will be included in the student's official record, the procedure for expungement of this information under G.S. 115C-402, and notice of the right to petition for readmission pursuant

to G.S. 115C-390.12.

C. EDUCATIONAL SERVICES FOR STUDENTS WITH DISABILITIES DURING LONG-TERM SUSPENSION, 365 DAY SUSPENSION OR EXPULSION

Students with disabilities recognized by the Individuals with Disabilities Education Act shall receive educational services during periods of suspension or expulsion to the extent required by *Policies Governing Services for Children with Disabilities* and state and federal law.

D. REDUCING SUSPENSION AND EXPULSION RATES

Though the board believes that suspension or expulsion may be an appropriate and necessary consequence in certain situations, the board also recognizes that excessive use of suspension and expulsion may have a negative impact on academic achievement and graduation rates. Thus, the board encourages school administrators to find ways to reduce suspension and expulsion rates in the schools.

Legal References: U.S. Const. amend. XIV, § 1; Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, 34 C.F.R. pt. 300; N.C. Const. art. I, § 19; G.S. 115C art. 9; 115C-45(c)(2), -47, -276(r), -288, -390.1, -390.2, -390.7, -390.8, -390.9, -390.10, -390.11, -390.12; *Policies Governing Services for Children with Disabilities*, State Board Policy Number GCS-D-000

Cross References: Hearings Before the Board (policy 2500), Alternative Learning Programs/Schools (policy 3470/4305), Student Sex Offenders (policy 4260), School Plan for Management of Student Behavior (policy 4302), Drugs and Alcohol (policy 4325), Theft, Trespass and Damage To Property (policy 4330), Assaults, Threats and Harassment (policy 4331), Weapons, Bomb Threats, Terrorist Threats and Clear Threats to Safety (policy 4333), Criminal Behavior (policy 4335), School-Level Investigations (policy 4340), Student Discipline Records (policy 4345), Short-Term Suspension (policy 4351), Student Discipline Hearing Procedures (policy 4370)

Adopted: August 18, 2008

Revised: August 2, 2011