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Descriptor Term:
STUDENT DISCIPLINE PROCEDURES AND APPEALS

Descriptor Code:
4.3620

Legal References: G.S. 115C-45(c), -47, -288, -307, -390, -391

Cross References: 2.5000 Hearings Before the Board; 4.3600 Code of Student Conduct

A. DEFINITIONS

1. Days

Except as otherwise provided herein, days are defined as days of the week (Monday through Friday) during which school is in session and are exclusive of Saturdays, Sundays. In counting days, the first day shall be the first full working day following the imposition of sanctions, receipt of the appeal, date of decision or date of hearing.

2. Final Administrative Decision

A final administrative decision is a decision made by a school employee from which no further appeal to a school administrator is available.

3. Parent

For purposes of this policy, the term "parent" shall include the student's parents, legal guardian, legal custodian or person standing *in loco parentis* with respect to the student.

B. DISCIPLINARY SANCTIONS OTHER THAN LONG-TERM SUSPENSION, 365 DAY SUSPENSION AND EXPULSION [In-school Discipline or Out-of-school Discipline less than 10 Days]

1. Procedural and Notice Requirements

a. Notice to Parent

Notice that a disciplinary sanction other than a Long-Term suspension, 365 Day Suspension or Expulsion has been imposed against a student shall be given to the student's parent by the principal or his/her designee.

b. Timing of Notice to Parent

In cases of disciplinary sanctions resulting in after-school detention, suspension from school transportation, revocation of driving/parking privileges or out-of-school suspensions for 10 days or less, notice that such disciplinary sanction has been imposed against a student shall be given to the student's parent before such disciplinary sanctions is imposed.

c. Manner of Providing Notice to Parent

The principal or his/her designee shall provide notice of disciplinary sanctions to the student's parent via telephone conference, facsimile transmission, email or any other method designed to achieve actual notice to the student's parent.

d. Content of Notice to Parent

The notice to the parent shall include the following:

- i. the date of the incident giving rise to the sanction;
- ii. the date the sanction was imposed or is scheduled to be imposed;
- iii. a description of the incident giving rise to the disciplinary sanction;
- iv. the specific provisions of board policy, school standard or school rule that was violated;
- v. that the student has the right and opportunity to take textbooks home for the duration of the in-school discipline or out-of-school suspension period;
- vi. that the student has the right to inquire about homework assignments for the duration of the in-school discipline or out-of-school suspension period; and
- vii. that the student has the right and opportunity to take any quarterly, semester or grading period examinations missed during the in-school discipline or out-of-school suspension period.

2. Appeals for Disciplinary Sanctions Other Than Long-Term Suspension, 365 Day Suspension and Expulsion

a. Notice of Appeal

Any student or parent of a student who has been sanctioned for violating board policy and whose sanction is in-school discipline or out-of-school suspension for 10 days or less may appeal the decision to the superintendent in writing.

The written appeal must be received by the superintendent or his/her designee from the student or the student's parent within three (3) days of the sanction being imposed. The student and the student's parent shall complete any forms required by the superintendent in order to effectuate an appeal under this provision.

The disciplinary sanction imposed shall be postponed pending the outcome of the appeal, unless the superintendent determines there is reasonable concern for the safety of persons or property if the disciplinary sanction is not imposed.

The written appeal shall include the following:

- i. the student's name;
- ii. the name of the school the student was attending at the time the sanction was imposed;
- iii. the date of the incident giving rise to the sanction;
- iv. the date the sanction was imposed or is scheduled to be imposed;
- v. a description of the alleged violation and sanction from which the student is appealing;
- vi. any statement or evidence to support the student's position.

The superintendent shall immediately communicate the receipt of any appeal to the

- b. principal of the school imposing the sanction.
Response by the Principal

Immediately upon receiving notice of the appeal from the superintendent, the principal of the school at which the sanction was imposed shall submit in writing to the superintendent a written statement containing the following information:

- i. the student's name;
- ii. the name of the school the student was attending at the time the sanction was imposed;
- iii. the name of the school administrator who imposed the sanction;
- iv. the date of the incident giving rise to the sanction;
- v. the date the sanction was imposed or is scheduled to be imposed;
- vi. a description of the violation and sanction from which the student is appealing, including a description of the board policy, school standard or school rule that was violated;
- vii. the basis for the sanction, including the student's disciplinary record; and
- viii. any statement or evidence to support the principal's position.

- c. Superintendent's Review

The superintendent shall review the student's record and the foregoing written documents and shall conduct any investigation of the facts necessary before rendering a decision. Unless the superintendent determines that the evidence cannot fairly be presented by the above-described written documents, the written documents shall constitute the record to be reviewed by the superintendent. In such event, the superintendent may call a meeting with the student, student's parent, administrator and/or witness related to the appeal.

The superintendent shall review the written documents and the results of any investigation and determine the following:

- i. whether there was a reasonable basis for determining that the student engaged in the specified misbehavior;
- ii. whether a board policy, school standard or rule was violated;
- iii. whether the consequence for the violation was reasonable; and
- iv. whether procedures required by board policy were followed.

- d. Superintendent's Decision

The superintendent may affirm, modify or reverse the school administrator's decision. The superintendent may not impose a more severe consequence than the original sanction unless necessary to comply with board policy or unless further investigation brings additional information to light that was not part of the principal's original decision. If the superintendent determines that the student did not violate any board policy, school standard or school rule, any reference to the alleged misbehavior shall be removed from the student's record.

The superintendent shall provide the student and the student's parent with a written decision regarding the appeal within ten (10) days after receiving the written appeal.

If the decision is mailed, the decision must be postmarked on the tenth (10th) day after the superintendent receives the written appeal. In his/her decision, the

superintendent may not disclose information about other students or employees that is considered confidential by law.

Failure of a student to appeal a sanction to the superintendent within the specified time limit shall be considered acceptance of the sanction by the student and the student's parent.

Failure of the superintendent to communicate a decision regarding the appeal within the specified time limit shall permit the student or the student's parent to appeal the sanction to the board pursuant to Section C.6. of this policy unless the superintendent has notified the student and the student's parent of the delay and the reason for the delay, such as the complexity of any investigation or report.

The decision of the superintendent shall be final. With respect to in-school discipline or out-of-school suspensions for 10 days or less, neither the student nor his/her parent has any right to appeal the decision of the superintendent to the board.

C. LONG-TERM SUSPENSIONS, 365 DAY SUSPENSIONS AND EXPULSIONS

1. Long-term Suspension

a. Definition

Long-term suspension is the suspension of a student from school for a period in excess of 10 school days but not exceeding the remainder of the school year in which the long-term out-of-school suspension occurs.

b. Who Can Suspend Long-Term

The principal, with prior approval of the superintendent, may suspend any student long-term.

2. 365 Day Suspension

a. Definition

365 Day Suspension is the out-of-school suspension of a student from school for a full calendar year.

b. Who Can Suspend for 365 Days, Who Can be Suspended for 365 Days and When Can a Student be Suspended for 365 Days.

The superintendent or the board shall suspend for 365 days any student who brings onto or possesses on school property or at or to school sponsored activities off school property, a weapon defined by N.C.G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g) and 14-269.2(h).

The superintendent or the board shall suspend for 365 days any student who perpetrates a hoax regarding or makes a false report regarding explosives on school property or at or to school sponsored activities off school property.

3. Expulsion

a. Definition

Expulsion is the permanent removal of a student from the school system.

b. Who Can Expel, Who Can Be Expelled and When Can a Student be Expelled

The board may expel a student upon recommendation of the principal and the superintendent IF:

- i. the student is at least fourteen (14) years or older;
- ii. the student's behavior shows or indicates that the student's continued presence at school threatens the safety of other students or employees; and
- iii. the board approves the expulsion based upon clear and convincing evidence and upon recommendation of the principal and superintendent.

sex

In addition, the board may expel any student subject to N.C.G.S. 14-208.18 (registered sex offenders) IF the board determines that a student is a registered offender and should be expelled based upon clear and convincing evidence pursuant to N.C.G.S. 14-208 et al.

4. Procedural Requirements for Long-term Suspensions, 365 Day Suspensions and Expulsions

a. Investigation by Principal

Prior to the principal making a recommendation to the superintendent that a student receive long-term suspension, 365 day suspension or expulsion as a disciplinary sanction, the principal shall conduct a thorough investigation of the incident(s) giving rise to the principal's recommendation for long-term suspension, 365 day suspension or expulsion as a disciplinary sanction. This investigation shall include obtaining written statements from witnesses or the student involved, interviewing witnesses or the student involved and reviewing and preserving any documentary, physical or electronic evidence involved.

b. Notice Requirements

i. Notice to Parent

When a principal recommends to the superintendent that a student receive long-term suspension, 365 day suspension or expulsion as a disciplinary sanction, the principal shall give written notice to the student's parent.

In his/her notice, the principal may not disclose information about other students or employees that is considered confidential by law.

ii. Timing of Notice to Parent

Such written notice shall be given by the principal to the student's parent by the end of the workday during which the long-term suspension, 365 day

suspension or expulsion is recommended, when reasonably possible, but in no event longer than the end of the following workday.

If the written notice is provided by mail, the mailing must be postmarked by the end of the workday during which the long-term suspension, 365 day suspension or expulsion is recommended, when reasonably possible, but in no event later than the end of the following workday.

iii. Manner of Providing Notice to Parent

Such written notice may be provided by certified mail, facsimile, email or any other written method reasonably designed to achieve actual notice to the student's parent.

iv. Content of Notice to Parent

The written notice from the principal to the student's parent shall include the following:

- a) the date of the incident giving rise to the sanction;
- b) the date any sanction was imposed or is scheduled to be imposed;
- c) a description of the incident leading to the recommendation for long-term suspension, 365 day suspension or expulsion;
- d) the recommended period of suspension;
- e) the specific provisions of board policy, school standard or school rule that was violated;
- f) the specific process by which the student or the student's parent may appeal decision of the superintendent approving the long-term suspension, 365 day suspension or expulsion to the board including the number of days within which the hearing must be requested;
- g) the process by which any appeal hearing will be held including, to the extent provided by law, the student's opportunity to examine evidence and present evidence to confront and cross examine witnesses supporting the charge and to call witnesses to verify the student's version of the incident;
- h) that the student or the student's parent is permitted to retain an attorney to represent the student in any appeal hearing process;
- i) the extent to which board policy permits the student or the student's parent to have an advocate accompany the student to assist in the presentation of his/her appeal instead of any attorney; and
- j) that the student and the student's parent has the right to review the student's educational records and any evidence prior to any appeal hearing.

c. Recommendation to the Superintendent

At the same time the principal provides notice to the student's parent that he/she is recommending long-term suspension, 365 day suspension or expulsion as a disciplinary sanction to the superintendent, the principal shall also provide to the superintendent a written statement that the principal is recommending that a

student receive long-term suspension, 365 day suspension or expulsion as a disciplinary sanction.

This written recommendation from the principal to the superintendent shall include the following:

- i. the name of the student;
- ii. the name and address of the student's parents;
- iii. a copy of the student's discipline record, attendance record and transcript;
- iv. the date of the incident giving rise to the sanction;
- v. the date any sanction was imposed or is scheduled to be imposed;
- vi. a description of the incident leading to the recommendation for long-term suspension, 365 day suspension or expulsion;
- vii. the recommended period of suspension;
- viii. the specific provisions of board policy, school standard or school rule that was violated;
- ix. a description of the substance of the evidence involved, including any written statements from witnesses or the student being disciplined, interview notes of witnesses or the student being disciplined and a description of any documentary, physical or electronic evidence supporting the long-term suspension, 365 day suspension or expulsion;
- x. that the principal has considered recommending alternative educational services for the student; the type of alternative educational services recommended, if any; and any reason the principal is not recommending alternative educational services.

d. Approval of the Superintendent

i. Response by Student or Parent

Within two (2) days of receiving notice from the principal that the principal is recommending long-term suspension, 365 day suspension or expulsion as a disciplinary sanction, the student or the student's parent may submit to the superintendent any written statement or evidence to support the student's position that recommended long-term suspension not be imposed.

ii. Review of Evidence by Superintendent

Upon receiving a copy of a principal's written statement recommending long-term suspension, 365 day suspension or expulsion, the superintendent shall promptly conduct an administrative review to determine if the principal complied with board policies and procedures. The superintendent shall also review any statements, evidence or materials provided to the superintendent from the parent and the materials provided to the superintendent by the principal to determine whether the evidence supports the recommended long-term suspension, 365 day suspension or expulsion as a disciplinary sanction.

The superintendent may approve, modify or deny the principal's recommendation for long-term suspension, 365 day suspension or expulsion. The superintendent may also provide for the student to receive

alternative educational services that the superintendent deems appropriate. The superintendent may not impose a more severe consequence than the original recommended sanction unless necessary to comply with board policy or unless further investigation brings additional information to light that was not part of the principal's original decision. If the superintendent determines that the student did not violate any board policy, school standard or school rule, any reference to the alleged misbehavior shall be removed from the student's record.

c. Notice to Parent

The superintendent shall notify the principal and the student's parent in writing whether he/she approves the principal's recommendation for long-term suspension, 365 day suspension or expulsion as a disciplinary sanction.

In his/her written notice, the superintendent may not disclose information about other students or employees that is considered confidential by law.

d. Timing of Notice to Parent

Such written notice shall be given by the superintendent to the principal and the student's parent within ten (10) days of receiving a copy of the principal's written statement recommending long-term suspension, 365 day suspension or expulsion. If the written notice is provided by mail, the mailing must be postmarked at least by the tenth day after the superintendent receives a copy of the principal's written statement recommending long-term suspension, 365 day suspension or expulsion.

Failure of the superintendent to communicate a decision regarding the principal's recommendation for long-term suspension, 365 day suspension or expulsion within the specified time limit shall permit the student or the student's parent to appeal the principal's recommendation of long-term suspension, 365 day suspension or expulsion to the board pursuant to Section C.6. of this policy unless the superintendent has notified the student and the student's parent of the delay and the reason for the delay, such as the complexity of any investigation or report.

e. Manner of Providing Notice to Parent

Such written notice to the student's parent may be provided by certified mail, facsimile, email or any other written method reasonably designed to achieve actual notice to the student's parent.

f. Content of Notice to Parent

If the superintendent approves the long-term suspension, 365 day suspension or expulsion recommended by the principal, the written notice from the superintendent to the student's parent shall include the following:

- i. the date of the incident giving rise to the sanction;
- ii. the date any sanction was imposed or is scheduled to be imposed;

- iii. a description of the incident leading to the recommendation for long-term suspension, 365 day suspension or expulsion;
- iv. the recommended period of suspension;
- v. the specific provisions of board policy, school standard or school rule that was violated;
- vi. whether the superintendent is approving or modifying the principal's recommendation for long-term suspension, 365 day suspension or expulsion and to what extent;
- vii. the specific process by which the student or the student's parent may appeal the decision of the superintendent approving the long-term suspension, 365 day suspension or expulsion to the board including the number of days within which the hearing must be requested;
- viii. the process by which an appeal hearing will be held including, to the extent provided by law, the student's opportunity to examine evidence and present evidence to confront and cross examine witnesses supporting the charge and to call witnesses to verify the student's version of the incident;
- ix. that the student or the student's parent is permitted to retain an attorney to represent the student in any appeal hearing process;
- x. the extent to which board policy permits the student or the student's parent to have an advocate accompany the student to assist in the presentation of his/her appeal instead of any attorney; and
- xi. that the student and the student's parent has the right to review the student's educational records and any evidence prior to any appeal hearing;
- xii. that the principal has considered recommending alternative educational services for the student; the type of alternative educational services recommended, if any; and any reason the principal is not recommending alternative educational services.

5. Appeals to the Board and Hearings before the Board for Long-Term Suspensions, 365 Day Suspensions and Expulsions approved by the Superintendent

The decision of the superintendent to approve the principal's recommendation for long-term suspension or 365 day suspension or expulsion as a disciplinary sanction may be appealed to the board in writing by the student or the student's parent. The written appeal must be received by the superintendent or his/her designee within three (3) days after the parent receives notice of the superintendent's approval of the long-term suspension or 365 day suspension. The student and the student's parent shall complete any forms required by the superintendent in order to effectuate an appeal under this provision.

All decisions of the superintendent to approve the principal's recommendation for expulsion must be approved by the board at a hearing before the board.

The disciplinary sanction imposed shall be postponed pending the outcome of the appeal, unless the superintendent determines there is reasonable concern for the safety of persons or property if the disciplinary sanction is not imposed.

The written appeal shall include the following:

- a. the student's name;
- b. the name of the school the student was attending at the time the sanction was imposed;
- c. the date of the incident giving rise to the sanction;
- d. the date the sanction was imposed or is scheduled to be imposed;
- e. a description of the alleged violation and sanction from which the student is appealing;
- f. any statement or evidence to support the student's or student's parent's position.

The superintendent shall immediately communicate the receipt of any appeal to the principal of the school imposing the sanction.

Failure of a student or the student's parent to appeal a sanction to the board within the specified time limit shall be considered acceptance of the sanction by the student and the student's parent.

The scheduling and hearing of any appeal conducted by the board shall comply with policy 2.5000 Hearings Before the Board and with the Rules Governing Scheduling of Hearings and Hearings Before the Board as set forth in Section C.6. of this policy.

6. Scheduling of Hearings and Rules Governing Hearings Before the Board

a. Scheduling Hearings

The superintendent or his/her designee shall arrange in a timely manner any hearing before the board. The superintendent or his/her designee shall notify the student and the student's parent of the time and place of the hearing and shall give at least three (3) days notice of the date, time and place of the hearing. The appeal hearing shall take place within thirty (30) days from the date the superintendent or his/her designee receives the written notice of appeal.

Failure of a student and/or the student's parent to attend any board appeal hearing scheduled by the superintendent or his/her designee within thirty (30) days from the date the superintendent receives the written notice of appeal shall be considered acceptance of the superintendent's decision by the student and the student's parent and a dismissal of the student's or student's parent's appeal before the board.

The board may hear an appeal from a long-term suspension at the same time it hears a recommendation for a 365 days suspension or expulsion if it is for the same conduct.

The board may designate a panel of not less than three (3) members to hear and act on behalf of the board.

The student and his/her parents are encouraged to be present at the hearing and may be represented by counsel. If the student is represented by counsel, the superintendent or his/her designee must be notified of such representation at least two (2) days prior to the hearing.

b. Rules Governing Hearings Before the Board

In addition to the requirements of policy 2.5000, Hearings Before the Board, the following rules shall govern hearings before the board for Long-term Suspensions, 365 Day Suspensions or Expulsions or the appeal of the imposition of the same to the board:

- i. the hearing shall be conducted in private;
- ii. witnesses should be present only when they are providing information;
- iii. the hearing may be attended by the superintendent or his/her designee, the principal and other school personnel as needed, the student and/or his/her parent, and, if desired, his/her representative, and such other persons as the board deems necessary;
- iv. the board may consider the school records of the student as well as the testimony of any witnesses and any documents presented;
- v. formal rules of evidence will not apply and the board may rely on evidence that reasonably prudent people would consider in the conduct of serious affairs;.
- vi. the principal or other representatives of the school have the burden of proving the misbehavior, the violation of board policy or school standards or rules, and the appropriateness of the recommended consequence for the violation; the superintendent or his/her designee, principal or other representatives of the school shall be the first to present witnesses and documentary evidence to the board; next, the student or his/her representative may present evidence, including any documents and witnesses.
- vii. both the principal or school representative and the student or his/her representative may examine the witnesses presented by the other side; the board has the power to limit questioning by any person, if such questioning is unproductive, unnecessarily lengthy, repetitive or irrelevant.
- viii. the length of the hearing may be limited by the board.
- ix. the superintendent or his/her designee shall make a record of the hearing.
- x. after the evidence has been presented to the board, all parties shall leave the hearing room and the board shall deliberate; the board shall consider only the evidence presented.

c. Board's Decision

The board shall review the evidence presented at the hearing and determine the following:

- i. whether the evidence supported a finding that the student engaged in the specified behavior;
- ii. whether a board policy, school standard or school rule was violated;
- iii. whether the consequence for the violation was reasonable;
- iv. whether procedures required by board policy were followed; and
- v. whether alternative educational services are to be provided for the student.

The board may modify, affirm or reverse the superintendent's decision. The board may modify or reverse the superintendent's decision based upon a determination that:

- i. the evidence did not support a finding of a violation of the code of student conduct or applicable rules;
- ii. the evidence supported a finding that a different part of the Code of Student Conduct, board policy or applicable rules was violated which warranted a different disciplinary measure;
- iii. the length of suspension was not commensurate with the violation or the penalty mandated by board policy;
- iv. proper procedures were not followed; or
- v. any other basis deemed reasonable by the board.

If the board decides to affirm a recommendation for expulsion of a student, the board shall document the basis for the board's 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 shall provide the student and the student's parent with a written decision regarding the appeal within thirty (30) days after receiving the written appeal. The written decision of the board shall include a determination by the board of whether alternative educational services will be provided to the student.

The written decision by the board shall be mailed to the student's parent via certified mail.

d. Appeal of Board's Decision

An adverse decision by the board of education may be appealed by the student or the student's parent to a court of law, in certain circumstances, as provided by statute.