

## **JICD-R ADMINISTRATIVE PROCEDURE FOR STUDENT CONDUCT, DISCIPLINE, AND DUE PROCESS (SAFE SCHOOL ZONES)**

The School District rules relative to student conduct, discipline, and due process in the schools are adapted from the Rules of the New Hampshire State Board of Education (ED 317). The purpose of the State Board rules is set forth as follows:

### **PURPOSE**

1. These rules provide due process and statewide uniformity in the enforcement of RSA 193-D relative to disciplinary action for misconduct by a pupil in a Safe School Zone, including possessing a firearm or any other dangerous weapon, and RSA 193:13 relative to suspension and expulsion of pupils.
2. Since RSA 193-D:2, II provides that School Boards may adopt policies relative to pupil conduct and disciplinary procedures. These rules also provide a standard so that the policies of School Boards are consistent throughout the state.
3. These rules also link discipline and due process in Safe School Zones to the requirements of ED 1109 relative to special needs students.

### **DEFINITIONS**

1. "Expulsion" means the permanent denial of a pupil's attendance at school for any of the reasons listed in RSA 193:13, II and III.
2. "Weapon" means a) a firearm (see 18USC Section 921), to include a pellet or BB gun; b) any object prohibited, licensed, or regulated under RSA 159; c) a knife, but not a folding pocket knife or cafeteria-issued dining utensil; and/or d) a knife and/or any other substance or object which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing serious injury.
3. "Gross misconduct" means an act or acts which: a) results in violence to another person or property; or b) poses a direct threat to the safety of others in a safe school zone; or c) is identified in RSA 193-D:1; or d) involves repeated instances of misconduct or inappropriate behavior for which the pupil has been previously warned or disciplined.
4. "Neglect," in the context of RSA 193:13 I and II, means the failure of a pupil to pay attention to an announced, posted, or printed school rule.
5. "Possession" shall include, but not be limited to, having control over a weapon during any part of a school day or during any part of a school-related activity, including transporting the weapon to school or to a school-related activity and storage of the weapon anywhere on school premises, whether in the student's locker or in another student's locker or in any other place on school premises. Possession is also deemed to include doing any other act whereby the actor knowingly contributes to causing a weapon to be on school premises or contributes to causing use of a weapon on school premises.
6. "Pupil" means a child through age 21 in attendance at the school during the school day. (If the pupil is age 18 or older and under guardianship, the written notices required below to issue to a parent shall issue instead only to the pupil and, further, all consents or decisions required in the suspension or expulsion process will issue from the pupil.)
7. "Refusal," in the context of RSA 193:13 I and II, means the defiance of a pupil to comply with an announced, posted, or printed school rule.
8. "Safe school zone" means a safe school zone as defined in RSA 193-D:I,II.

9. "School day" shall include not only the instructional portion of the day, but may also include travel to and from school or a school-related activity, as well as the time spent as a participant or spectator at a school-related activity.
10. "School premises" shall include the school and surrounding school property, including, without limitation, parking areas, athletic fields, and playgrounds; school buses or other vehicle furnished by the District or its agents for transportation to or from school or a school-related activity; school bus stops; and/or those premises and surroundings being used for a school-related activity. For purposes of this procedure and without intending to interfere with the rights and duties of the police and/or private property owners, school premises shall also be deemed to include streets and exterior property in the school neighborhood during the course of travel to and from school or a school-related activity.
11. "Superintendent" means the school Superintendent or, in the absence of the Superintendent, the Assistant Superintendent for the School District.
12. "Suspension" means the temporary denial of a student's attendance at school for a specific period of time for gross misconduct or for neglect or refusal to conform to announced, posted, or printed school rules.
13. "Day," with respect to the number of days, shall refer to school days unless there is specific reference to "calendar" days.

#### STANDARD FOR EXPULSION BY THE SCHOOL DISTRICT

1. If the School Board expels a pupil under RSA 193:13, II or III, it shall state in writing the act or acts leading to expulsion; and the specific statutory reference prohibiting that act or acts as set forth in RSA 193:13 and/or RSA 193-D; and shall provide notice that the expulsion may be reviewed prior to the start of each school year in accordance with policy as stated herein.
  - a. An expelled pupil has the right to request a review of the expulsion prior to the start of each school year.
  - b. A request for review should be directed by the pupil to the Superintendent of Schools and should be received by the Superintendent on or before August 15. The request shall set forth each and all reasons why the pupil's right to attend school should be reinstated. Of particular importance would necessarily be such information as might convince school authorities that the conduct, which led to the expulsion, would not be repeated.
  - c. The Superintendent of Schools or Assistant Superintendent and the Principal or an Assistant School Administrator (as designated by the Principal) at the applicable school shall direct written recommendation to the Board with a copy to the pupil.
  - d. The expulsion may be continued; the pupil may be reinstated without conditions; or the pupil may be required to meet certain conditions prior to reinstatement. A code of conduct and consequences may be established for a reinstated pupil, which are more strict than for the general student population.
2. The Principal of each school shall make certain that the pupil has received notice of the requirements of RSA 193:13 and RSA 193-D:1 through announced, posted, or printed school rules. The statutory text shall be printed in the school handbook to be distributed to each student at the beginning of the school year; and shall be announced, posted, and printed at other appropriate locations and times in the middle school and high school.

Nothing herein shall prevent a Principal from printing, posting, and/or announcing other rules applicable to the school.

3. If the student is subject to expulsion and a weapon is involved, the responsibility shall be upon the Superintendent to contact local law enforcement officials whenever there is any issue concerning:
  - a. Whether a firearm is legally licensed under RSA 159; or
  - b. Whether a firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.
4. If a pupil brings or possessed a weapon in a Safe School Zone without written authorization from the Superintendent, the following shall apply:
  - a. The pupil shall be suspended for a period of not less than 10 days and, if the weapon is determined to be a firearms as defined in 18 USC Section 921, the School Board shall hold a hearing with 10 days to determine whether the student was in violation of RSA 193:13 III, and, therefore, is subject to expulsion for a period of not less than 12 months; and whether the student's expulsion will be modified under policy as stated herein.

The mandatory 12-month expulsion from school for bringing or possessing a firearm in a Safe School Zone may be modified on a case-by-case basis in the sole discretion of the Superintendent of Schools in the following situations:

- i. The Superintendent determines that possession of the firearm was inadvertent in that another person had left the firearm in the pupil's vehicle; and the pupil had not noticed that she/he was bringing the firearm within the safe school zone; or
- ii. The Superintendent determines that the pupil intended to use the firearm for sport immediately before or after school and had no intention to display the firearm to other students; or
- iii. The pupil is in the fifth grade or lower grade and the Superintendent determines that the pupil did not properly understand the dangers of firearms when the firearm was brought to school.
- iv. The Superintendent determines that the firearm was not loaded; and that no ammunition was reasonably available; and that the pupil had no intention to display the firearm to other students.

**DISCIPLINARY AND DUE PROCESS PROCEDURES** – There shall be the following levels of discipline available to school officials enforcing RSA 193:13 and/or RSA 193-D relative to the suspension and expulsion of pupils.

1. **A SHORT-TERM SUSPENSION NOT TO EXCEED TEN (10) DAYS.** The Board hereby designates that the Superintendent, the Assistant Superintendent for the School District, and each Principal and Assistant School Administrator (as designated by the Principal) shall have authority to suspend a pupil for 10 days or less. Due process shall include, at a minimum, the following:
  - a. The pupil shall be informed of the purpose of the meeting.
  - b. At or before the meeting, oral and/or written notice of the charges and an oral and/or written explanation of the evidence against the pupil shall be provided to the pupil.

- c. The pupil shall be provided an opportunity to present his/her side of the story.
  - d. Following the meeting, a written statement shall issue to the pupil and at least one of the pupil's parents or guardians, delivered in person or by mail to the pupil's last known address, including an explanation of the charges, the evidence, the findings, any recommendation for additional suspension or expulsion, and a recommendation for student action to correct the discipline problem.
2. A LONG-TERM SUSPENSION BETWEEN ELEVEN (11) AND TWENTY (20) DAYS. Following a hearing, the Superintendent, the Assistant Superintendent for the School District, and each Principal shall have the authority to extend a short-term suspension to twenty (20) days. This hearing shall be conducted and the decision shall be issued by a different administrator than the administrator who suspended the pupil for the first ten (10) days. Due process shall include, at a minimum, the following:
- a. The written statement issued under the short-term suspension shall establish a date for a hearing. The hearing will not generally be postponed if the postponement would interrupt the continuity of a short-term suspension into a long-term suspension.
  - b. A hearing in accordance with the following hearing procedures:
    - i. The pupil, together with a parent or guardian, may waive the right to a hearing and accept the findings.
    - ii. 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 of reply.
    - iii. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian. Provided, nevertheless, that if the nature of the evidence will violate the privacy of other students or if the school officials determine that substantial harm to the pupil could result from an ill-conceived decision to hold the hearing in public, then the school officials reserve the right and obligation to insist upon a private hearing.
    - iv. During the hearing, the pupil, parent, guardian, or counsel representing the pupil, shall have the right to examine any and all witnesses.
  - c. A written decision which includes the legal and factual basis for the conclusion that the pupil should be suspended for an additional ten (10) days or less.
  - d. Within ten (10) calendar days of the decision, this decision may be appealed to the School Board under RSA 193:13 I. The Board may or may not stay the suspension while the appeal is pending. The Board reserves the right to issue a decision without hearing any evidence or all proffered evidence, but may instead rely upon the record as it has been developed during the suspension process.
3. AN EXPULSION BY THE SCHOOL BOARD. Conditions are established for reinstatement as outlined in this policy. Due process shall include, at a minimum, the following:
- 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, pending the expulsion hearing. The School Board reserves the right to deny a request for postponement of a scheduled hearing if the request for postponement is objected to by either the pupil or the administrator recommending expulsion.
  - d. The written statement issued under a short-term or long-term suspension shall establish a date for the expulsion hearing and shall also include a complete description of the process used by administration to reach its recommendation that the student should be expelled.
  - e. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardians at least five (5) calendar days prior to the hearing.
  - f. The following hearing procedures shall apply:
    - i. The pupil, together with a parent or guardian, may waive the right to a hearing and accept the findings.
    - ii. 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 of reply.
    - iii. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian. Provided, nevertheless, that if the nature of the evidence will violate the privacy of other students or if the School Board determines that substantial harm to the pupil could result from an ill-conceived decision to hold the hearing in public, then the School Board reserves the right and obligation to insist upon a private hearing.
    - iv. During the hearing, the pupil, parent, guardian, or counsel representing the pupil, shall have the right to examine any and all witnesses.
  - g. 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 or acts for which expulsion is to be imposed and that such acts are, in fact, a proper reason for expulsion.
  - h. The decision shall state whether the student is expelled; 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.
  - i. If the decision is to expel the pupil, the decision shall include the legal and factual basis for the determination.
  - j. A decision shall include a statement that the pupil has the right to appeal the decision to the State Board of Education.
  - k. All appeals to the State Board allowed under RSA 193:13 II or III shall be filed within twenty (20) calendar days of receipts of the written decision of the School Board and shall be in accordance with RSA 541-A and ED 200.
4. AN INDEFINITE EXPULSION BY THE SCHOOL BOARD whereby no conditions are established for reinstatement. Review of expulsion is outlined in this policy.

## REPORTING PROCEDURES

1. In accordance with RSA 193-D:4, each written report by a supervisor to the Principal relating to an act of theft, destruction, or violence in a Safe School Zone shall be on standardized New Hampshire Board of Education Form Ed 317.
2. The report by a supervisor to a Principal on Form Ed 317 shall contain all the statutory information, required by RSA 193:D:4.
3. Form Ed 317 shall be completed and filed with the local law enforcement authority within 48 hours of such incident.
4. Form Ed 317 shall contain the following information:
  - a. School name
  - b. School address
  - c. School telephone number
  - d. Name of school principal
  - e. Date of incident involving an act of theft, destruction, or violence, or the possession of a firearm
  - f. Time of incident
  - g. Location of incident
  - h. Alleged offense
  - i. Description of incident
  - j. Name of suspect
  - k. Grade in school of suspect
  - l. Address of suspect
  - m. Gender of suspect
  - n. Name of victim
  - o. Grade in school of victim
  - p. Address of victim
  - q. Gender of victim
  - r. Name of employee reporting incident
  - s. Date report was completed by employee
  - t. Date report was filed with law enforcement authority by school principal.
5. Form 317-Fed, Report on Students Disciplined Under the Gun Free School Act of 1994, shall be completed and filed with the Commissioner of Education on or before June 30 of each school year.
6. For 317-Fed shall contain the following information:
  - a. Name of school district
  - b. School name
  - c. Pupil's grade in school
  - d. Type of firearm – handgun, rifle/shotgun, or other firearm
  - e. Number of expulsions modified to less than 12 months
  - f. Number of modifications for students who are not students with educational disabilities, and
  - g. Number of expulsions which resulted in a referral to an alternative school or program.

Any person who knowingly fails to comply with the reporting requirements under RSA 193-D:4 for acts of theft, destruction, or violence, unless such report is waived under RSA 193-D:5, shall be guilty of a violation. Per Ed 510, it is the duty of the Superintendent to report all such charges

of misconduct against a credential holder to the NH Department of Education. Such misconduct may be grounds for suspension or revocation of an educator's certification.

**DISCIPLINE OF STUDENTS WITH AN EDUCATIONAL DISABILITY** – The District shall comply with the provisions of the Individual With Disabilities Education Act (IDEA) when disciplining students.

1. No special education student shall be expelled if the student's particular act of gross disobedience/misconduct is a manifestation of his or her disability. Any special education student whose gross disobedience/misconduct is not a manifestation of his or her disability may be expelled pursuant to the expulsion procedures, except that such disabled student shall continue to receive educational services as provided in the IEP during such period of expulsion. The IEP team (PPT) will decide the level of services to be provided to a student with disabilities who is expelled for behavior unrelated to his/her disability.
2. A special education student may be suspended for an aggregate of ten (10) days of school per school year, regardless of whether the student's gross disobedience/misconduct is a manifestation of his or her disabling condition without the need for the district to provide any educational services.
3. A special education student may be suspended for additional removals of up to ten (10) days for separate acts of misconduct, as long as the removals do not constitute a pattern. During such subsequent suspensions for ten (10) school days or less the district must provide services to the student with disabilities to the extent determined necessary to enable the student to appropriately advance in the general curriculum and toward achieving his/her IEP goals. School administrators and the special education teacher will determine the services needed.
4. Any special education student may be temporarily excluded to an appropriate alternative educational setting for no more than forty-five (45) days by court order or by order of a duly appointed hearing officer if the District demonstrates that maintaining the student in his/her current placement is substantially likely to result in injury to the student or others.
5. A special education student who has carried a weapon to school or to a school function or who knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function may be removed from his/her current placement. Such a student shall be placed in an appropriate interim alternative educational setting for no more than forty-five (45) days in accordance with IDEA.

**TRANSFER RECORDS** – All elementary and secondary educational institutions, including academies, private schools, and public schools, shall upon request of the parent, pupil, or former pupil, furnish a complete school record for the pupil transferring into a new school system. Such record shall include, but not be limited to, records relating to any incidents involving suspension or expulsion, or delinquent or criminal acts, or any incident reports in which the pupil was charged with any act of theft, destruction, or violence in a Safe School Zone per RSA 193-D:8.

#### Statutory/Regulatory/Policy/Handbook Cross References

Policy JICD (Student Conduct, Discipline, and Due Process)

JICD-R7

RSA 193:13 (Suspension & Expulsion of Pupils)  
RSA 193-D (Safe School Zones)  
RSA 189:15 (Regulations)  
NH Code of Administrative Rules ED 317.04 (b) (Disciplinary Procedures)  
Handbook (Referenced in Handbooks)

APPROVED: September 22, 2005

PREVIOUS POLICY: October 1994 – Gun Free Assurances