

Discipline Standards

Discipline of students with disabilities may take form in a variety of actions by district personnel, such as dismissal, removal, exclusion, suspension, or expulsion. Each action requires that specific procedures and processes be followed to ensure free appropriate public education (FAPE) remains available to all children with disabilities, including children with disabilities who have been suspended or expelled from school. These procedures include, but are not limited to: informal administrative conference, written notice, IEP meeting, change of educational placement, manifestation determination review, functional behavioral assessment, conciliation conference, mediation, and due process hearing.

The Minnesota Pupil Fair Dismissal Act contains additional provisions that do not involve removal, exclusion, suspension, or expulsion and that apply to all students. Please refer to the Act, at Minnesota Statutes, sections 121A.40 to 121A.56, for more information about these provisions.

Information regarding the use of Restrictive Procedures for Children with Disabilities may be found at Minnesota Statutes, sections 125A.0941 and 125A.0942. Please refer to these statutes for more information regarding the definitions and standards for restrictive procedures.

Discipline of Students with a Disability

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in the Code of Federal Regulations, title 34, section 300.530(d). (34 C.F.R. § 300.101(a).)

Minnesota Statutes, sections 121A.40 to 121A.56 may be cited as the "Pupil Fair Dismissal Act." (Minn. Stat. § 121A.40.)

Definitions:

For purposes of this section, the following definitions apply: (1) Controlled substances means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). [NOTE: Alcohol and tobacco are not included on any of the Controlled Substances Act schedules.] (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (4) Weapon has the meaning given the term

“dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (34 C.F.R. § 300.530(i).)

The term “serious bodily injury” means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3).)

The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length. (18 U.S.C. § 930(g)(2).)

Subdivision 1. As used in Minnesota Statutes, sections 121A.40 to 121A.56, the terms defined in this section shall have the meanings assigned them. Subd. 2. "Dismissal" means the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not include removal from class. Subd. 3. "District" means any school district. Subd. 4. "Exclusion" means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year. Subd. 5. "Expulsion" means a school board action to prohibit an enrolled pupil from further attendance for up to 12 months from the date the pupil is expelled. Subd. 6. "Parent" means (a) one of the pupil's parents, (b) in the case of divorce or legal separation, the parent or parents with physical custody of the pupil, including a noncustodial parent with legal custody who has provided the district with a current address and telephone number, or (c) a legally appointed guardian. In the case of a pupil with a disability under the age of 18, parent may include a district-appointed surrogate parent. Subd. 7. "Pupil" means any student: (1) without a disability under 21 years of age; or (2) with a disability under 21 years old who has not received a regular high school diploma or for a child with a disability who becomes 21 years old during the school year but has not received a regular high school diploma, until the end of that school year; and (3) and who remains eligible to attend a public elementary or secondary school. (b) A "student with a disability" or a "pupil with a disability" has the same meaning as a "child with a disability" under section 125A.02. Subd. 8. "School" means any school defined in Minnesota Statutes, section 120A.05, subdivisions 9, 11, 13, and 17. Subd. 9. "School board" means the governing body of any school district. Subd. 10. "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. Consistent with Minnesota Statutes, section 125A.091, subdivision 5, the readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of readmission. The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil

will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 days. Subd. 11. "Alternative educational services" may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district or in an alternative learning center under section 123A.05 selected to allow the pupil to progress toward meeting graduation standards under section 120B.02, although in a different setting. (Minn. Stat. § 121A.41.)

Subdivision 1. "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a pupil from attending a class or activity period for a period of time not to exceed five days, pursuant to procedures established in the school district discipline policy adopted by the school board pursuant to section 121A.61. Subd. 2. "Class period" or "activity period" means a period of time as defined in the district's written discipline policy. Subd. 3. "School site mediation board" means a board representative of parents of students in the building, staff, and students that shall have the responsibilities as defined in Minnesota Statutes, section 121A.62. The principal or other person having general control and supervision of the school, shall serve as an ex officio member of the board. Subd. 4. "School-based ombudsperson" means an administrator, a teacher, a parent, or a student representative who shall have the responsibilities under section 121A.63. (Minn. Stat. § 121A.60.)

(a) The following terms have the meanings given them. (b) "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage. (c) "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement and where body contact is the only source of physical restraint. The term physical holding does not mean physical contact that: (1) helps a child respond or complete a task; (2) assists a child without restricting the child's movement; (3) is needed to administer an authorized health-related service or procedure; or (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal. (d) "Positive behavioral interventions and supports" means interventions and strategies to improve the school environment and teach children the skills to behave appropriately. (e) "Restrictive procedures" means the use of physical holding or seclusion in an emergency. (f) "Seclusion" means confining a child alone in a room from which egress is barred. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion. (Minn. Stat. § 125A.0941.)

Removal of Children with Disabilities

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (34 C.F.R. § 300.530(a).)

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under the Code of Federal Regulations, title 34, section 300.536). (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section. (34 C.F.R. § 300.530(b).)

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section. (34 C.F.R. § 300.530(c).)

Services for Child with Disability Removed from Current Placement

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must (i) Continue to receive educational services, as provided in the Code of Federal Regulations, title 34, section 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting. (3) A public agency is only required to services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under section 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed , as provided in section 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. (5) If the removal is a change of placement under section 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section. (34 C.F.R. § 300.530(d).)

Change of Placement for Disciplinary Removals

For purposes of removals of a child with a disability from the child's current educational placement under the Code of Federal Regulations, title 34, sections 300.530 through 300.535, a

change of placement occurs if (1) The removal is for more than 10 consecutive school days; or (2) The child is subjected to a series of removals that constitute a pattern (i) Because the series of removals totals more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (34 C.F.R. § 300.536(a).)

(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings. (34 C.F.R. § 300.536(b).)

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or (3) Has inflicted a serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. (34 C.F.R. § 300.530(g).)

Determination of Setting

The child's IEP Team determines the interim alternative educational setting for services under the Code of Federal Regulations, title 34, section 300.530(c), (d)(5), and (g). (34 C.F.R. § 300.531.)

Parental Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in the Code of Federal Regulations, title 34, section 300.504. (34 C.F.R. § 300.530(h).)

Manifestation Determination

Making the Determination

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must 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 determine (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the

conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies. (34 C.F.R. § 300.530(e)).

Functional Behavioral Assessment and Behavioral Intervention Plan

If the LEA, the parent, and relevant members of the IEP Team made the determination that the conduct was a manifestation of the child's disability, the IEP Team must (1) Either (i) Conduct a functional behavioral assessment unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. (34 C.F.R. § 300.530(f).)

Services When Behavior is Not a Manifestation of Disability

When a pupil who has an individual education plan is excluded or expelled under Minnesota Statutes, sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the pupil's disability, the district shall continue to provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's individual education plan and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion. (Minn. Stat. § 121A.43.)

Placement and Determination Appeals

The parent of a child with a disability who disagrees with any decision regarding placement under the Code of Federal Regulations, title 34, sections 300.530 and 300.531, or the manifestation determination under section 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to section 300.507 and section 300.508(a) and (b). (34 C.F.R. § 300.532(a).)

Placement Pending Appeal

When an appeal under the Code of Federal Regulations, title 34, section 300.532 has been requested by either the parent or the LEA, the child must remain in the interim educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in section 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. (34 C.F.R. § 300.533.)

Authority of Hearing Officer

(1) A hearing officer under the Code of Federal Regulations, title 34, section 300.511, hears and makes a determination regarding an appeal requested under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of section 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or others. (34 C.F.R. § 300.532(b).)

Expedited Hearing

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of the Code of Federal Regulations, title 34, sections 300.507 and 300.508(a) through (c) and sections 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section. (2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in section 300.506 (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint, and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint. (4) A State may establish different State-imposed procedural rules for expedited due process hearings, conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in section 300.510 through 300.514 are met. (5) The decisions on expedited due process hearings are appealable consistent with section 300.514. (34 C.F.R. § 300.532(c).)

Standards for Restrictive Procedures

Subdivision 1. Schools that intend to use restrictive procedures shall maintain and make publicly accessible a restrictive procedures plan for children that includes at least the following: (1) the list of restrictive procedures the school intends to use; (2) how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee; and (3) a written description and documentation of the training staff completed under subdivision 5. Subd. 2.(a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification

Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under Minnesota Statutes, section 120B.363, or mental health professional under Minnesota Statutes, section 245.4871, subdivision 27, who has completed the training program under subdivision 5. (b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (d). (c) When restrictive procedures are used twice in 30 days or when a pattern emerges and restrictive procedures are not included in a child's individualized education program or behavior intervention plan, the district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. At the meeting, the team must review any known medical or psychological limitations that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan. (d) An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used. Subd. 3. Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements: (1) the physical holding or seclusion must be the least intrusive intervention that effectively responds to the emergency; (2) physical holding or seclusion must end when the threat of harm ends and the staff determines that the child can safely return to the classroom or activity; (3) staff must directly observe the child while physical holding or seclusion is being used; (4) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion shall document, as soon as possible after the incident concludes, the following information: (i) a description of the incident that led to the physical holding or seclusion; (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical; (iii) the time the physical holding or seclusion began and the time the child was released; and (iv) a brief record of the child's behavioral and physical status; (5) the room used for seclusion must: (i) be at least six feet by five feet; (ii) be well lit, well ventilated, adequately heated, and clean; (iii) have a window that allows staff to directly observe a child in seclusion; (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings; (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and (vi) not contain objects that a child may use to injure the child or others; (6) before using a room for seclusion, a school must: (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and (ii) register the room with the commissioner, who may view

that room; and (7) until August 1, 2012, a school district may use prone restraints under the following conditions: (i) a district has provided to the department a list of staff who have had specific training on the use of prone restraints; (ii) a district provides information on the type of training that was provided and by whom; (iii) prone restraints may only be used by staff who have received specific training; (iv) each incident of the use of prone restraints is reported to the department within five working days on a form provided by the department or on a district's restrictive procedure documentation form; and (v) a district, prior to using prone restraints, must review any known medical or psychological limitations that contraindicate the use of prone restraints. The department will report back to the chairs and ranking minority members of the legislative committees with primary jurisdiction over education policy by February 1, 2012, on the use of prone restraints in the schools. Subd. 4. The following actions or procedures are prohibited: (1) engaging in conduct prohibited under Minnesota Statutes, section 121A.58; (2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain; (3) totally or partially restricting a child's senses as punishment; (4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment; (5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible; (6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under Minnesota Statutes, section 626.556; (7) withholding regularly scheduled meals or water; (8) denying access to bathroom facilities; and (9) physical holding that restricts or impairs a child's ability to breathe. Subd. 5 .(a) To meet the requirements of subdivision 1, staff who use restrictive procedures shall complete training in the following skills and knowledge areas: (1) positive behavioral interventions; (2) communicative intent of behaviors; (3) relationship building; (4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior; (5) de-escalation methods; (6) standards for using restrictive procedures; (7) obtaining emergency medical assistance; (8) the physiological and psychological impact of physical holding and seclusion; (9) monitoring and responding to a child's physical signs of distress when physical holding is being used; and (10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used. (b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings. Subd. 6. School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports. Nothing in this section or Minnesota Statutes, section 125A.0941 precludes the use of reasonable force under Minnesota Statutes, sections 121A.582; 609.06, subdivision 1; and 609.379. (Minn. Stat. § 125A.0942.)

Suspension Procedures

Subdivision 1. The school administration shall not suspend a pupil from school without an informal administrative conference with the pupil. The informal administrative conference shall take place before the suspension, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension. Subd. 2. At the informal administrative conference, a school administrator shall notify the pupil of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the pupil may present the pupil's version of the facts. Subd. 3. A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of Minnesota Statutes, sections 1221A.40 to 121A.56, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's parent or guardian by mail within 48 hours of the conference. The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following suspension. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the pupil and the pupil's parent or guardian within 48 hours of the suspension. Service by mail is complete upon mailing. Subd. 4. Notwithstanding the provisions of subdivisions 1 and 3, the pupil may be suspended pending the school board's decision in the expulsion or exclusion hearing; provided that alternative educational services are implemented to the extent that suspension exceeds five days. (Minn. Stat. § 121A.46.)

Whenever a pupil fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the pupil and the pupil's parents by mail of the pupil's right to attend and to be reinstated in the public school. (Minn. Stat. § 121A.54.)

Exclusion and Expulsion

Exclusion and Expulsion of Pupils with a Disability

Before initiating an expulsion or exclusion under Minnesota Statutes, sections 121A.40 to 121A.56, the district, relevant members of the child's individualized education program team, and the child's parent shall, consistent with federal law, determine whether the child's behavior was caused by or had a direct and substantial relationship to the child's disability and whether the child's conduct was a direct result of a failure to implement the child's individualized education program. When a child with a disability who has an individualized education program is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the child's disability, the district shall continue to provide special education and related services during the exclusion or expulsion. (Minn. Stat. § 121A.43(d).)

Expulsion for Possession of Firearm

(a) Notwithstanding the time limitation in Minnesota Statutes, section 121A.41, subdivision 5, a school board must expel for a period of at least one year a pupil who is determined to have

brought a firearm to school except the board may modify this expulsion requirement for a pupil on a case-by-case basis. For the purposes of this section, firearm is as defined in United States Code, title 18, section 921. (b) Notwithstanding chapter 13, a student's expulsion or withdrawal or transfer from a school after an expulsion action is initiated against the student for a weapons violation paragraph (a) may be disclosed by the school district initiating the expulsion proceeding. Unless the information is otherwise public, the disclosure may be made only to another school district in connection with the possible admission of the student to the other district. (Minn. Stat. § 121A.44.)

Grounds for Dismissal

Subdivision 1. No school shall dismiss any pupil without attempting to provide alternative educational services before dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property. Subd. 2. A pupil may be dismissed on any of the following grounds: (a) willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements; (b) willful conduct that significantly disrupts the rights of others to an education, or the ability of school personnel to perform their duties, or school sponsored extracurricular activities; or (c) willful conduct that endangers the pupil or other pupils, or surrounding persons, including school district employees, or property of the school. Subd. 3. If a pupil's total days of removal from school exceeds ten cumulative days in a school year, the school district shall make reasonable attempts to convene a meeting with the pupil and the pupil's parent or guardian before subsequently removing the pupil from school and, with the permission of the parent or guardian, arrange for a mental health screening for the pupil. The district is not required to pay for the mental health screening. The purpose of this meeting is to attempt to determine the pupil's need for assessment or other services or whether the parent or guardian should have the pupil assessed or diagnosed to determine whether the pupil needs treatment for a mental health disorder. (Minn. Stat. § 121A.45.)

Exclusion and Expulsion Procedures

Subdivision 1. No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent. Subd. 2. Written notice of intent to take action shall: (a) be served upon the pupil and the pupil's parent or guardian personally or by mail; (b) contain a complete statement of the facts, a list of the witnesses and a description of their testimony; (c) state the date, time, and place of the hearing; (d) be accompanied by a copy of Minnesota Statutes, section 121A.40 to 121A.56; (e) describe alternative educational services accorded the pupil in an attempt to avoid the expulsion proceedings; and (f) inform the pupil and parent or guardian of the right to: (1) have a representative of the pupil's own choosing, including legal counsel, at the hearing. The district shall advise the pupil's parent or guardian that free or low-cost legal assistance may be available and that a legal assistance resource list is available from the Department of Education; (2) examine the pupil's records before the hearing; (3) present evidence; and (4) confront and cross-examine witnesses. Subd. 3. The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed

five days, is requested for good cause by the school board, pupil, parent or guardian. Subd. 4. The hearing shall be at a time and place reasonably convenient to pupil, parent or guardian. Subd. 5. The hearing shall be closed unless the pupil, parent or guardian requests an open hearing. Subd. 6. The hearing shall take place before: (1) an independent hearing officer; (2) a member of the school board; (3) a committee of the school board; or (4) the full school board; as determined by the school board. The hearing shall be conducted in a fair and impartial manner. Subd. 7. The school board shall record the hearing proceedings at district expense, and a party may obtain a transcript at its own expense. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths. Subd. 8. At a reasonable time prior to the hearing, the pupil, parent or guardian, or representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based. Subd. 9. The pupil, parent or guardian, or representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system. Subd. 10. The pupil, parent or guardian, or representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony. Subd. 11. The pupil cannot be compelled to testify in the dismissal proceedings. Subd. 12. The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and must be made to the school board and served upon the parties within two days of the end of the hearing. Subd. 13. The school board shall base its decision upon the recommendation of the hearing officer or school board member or committee and shall render its decision at a meeting held within five days after receiving the recommendation. The school board may provide the parties with the opportunity to present exceptions and comments to the hearing officer's recommendations provided that neither party presents any evidence not admitted at the hearing. The decision by the school board must be based on the record, must be in writing, and must state the controlling facts on which the decision is made in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision. Subd. 14. A school administrator shall prepare and enforce an admission or readmission plan for any pupil who is excluded or expelled from school. The plan may include measures to improve the pupil's behavior, including completing a character education program, consistent with section 120B.232, subdivision 1, and require parental involvement in the admission or readmission process, and may indicate the consequences to the pupil of not improving the pupil's behavior. (b) The definition of suspension under section 121A.41, subdivision 10, does not apply to a student's dismissal from school for one school day or less, except as provided under federal law for a student with a disability. Each suspension action may include a readmission plan. A readmission plan must provide, where appropriate, alternative education services, which must not be used to extend the student's current suspension period. Consistent with section 125A.091, subdivision 5, a readmission plan must not obligate a parent or guardian to provide psychotropic drugs to their student as a condition of readmission. School officials must not use the refusal of a parent or guardian to consent to the administration of psychotropic drugs to their student or to consent to a psychiatric evaluation, screening or examination of the student as a ground, by itself, to prohibit the student

from attending class or participating in a school-related activity, or as a basis of a charge of child abuse, child neglect or medical or educational neglect. (Minn. Stat. § 121A.47.)

A violation of the technical provisions of the Pupil Fair Dismissal Act, made in good faith, is not a defense to a disciplinary procedure under the act unless the pupil can demonstrate actual prejudice as a result of the violation. (Minn. Stat. § 121A.48.)

Whenever a pupil fails to return to school within ten school days of the termination of dismissal, a school administrator shall inform the pupil and the pupil's parents by mail of the pupil's right to attend and to be reinstated in the public school. (Minn. Stat. § 121A.54.)

Appeal to an Exclusion and Expulsion Decision

A party to an exclusion or expulsion decision made under sections 121A.40 to 121A.56 may appeal the decision to the commissioner of education within 21 calendar days of school board action. Upon being served with a notice of appeal, the district shall provide the commissioner and the parent or guardian with a complete copy of the hearing record within five days of its receipt of the notice of appeal. All written submissions by the appellant must be submitted and served on the respondent within ten days of its actual receipt of the transcript. All written submissions by the respondent must be submitted and served on the appellant within ten days of its actual receipt of the written submissions of the appellant. The decision of the school board must be implemented during the appeal to the commissioner. In an appeal under this section, the commissioner may affirm the decision of the agency, may remand the decision for additional findings, or may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the school district; (3) made upon unlawful procedure, except as provided in section 121A.48; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record submitted; or (6) arbitrary or capricious. The commissioner or the commissioner's representative shall make a final decision based upon the record. The commissioner shall issue a decision within 30 calendar days of receiving the entire record and the parties' written submission on appeal. The commissioner's decision shall be final and binding upon the parties after the time for appeal expires under section 121A.50. (Minn. Stat. § 121A.49.)

Enrollment Options Program

(a) An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations in this section.

(b) A district may refuse to allow a pupil who is expelled under section 121A.45 to enroll during the term of the expulsion if the student was expelled for: (1) possessing a dangerous weapon, as defined by United States Code, title 18, section 930, paragraph (g)(2), at school or a school function; (2) possessing or using an illegal drug at school or a school function; (3) selling or soliciting the sale of a controlled substance while at school or a school function; or (4) committing a third-degree assault as described in section 609.223, subdivision 1. (Minn. Stat. 124D.03, subd. 1.)

Referral to an Action by Law Enforcement and Judicial Authorities

Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (34 C.F.R. § 300.535(a).)

Transmission of Disciplinary Information

Transmission of Disciplinary Action with the Student Record

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. (b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child. (34 C.F.R. § 300.229.)

Transmission to Law Enforcement Authorities

An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. (34 C.F.R. § 300.535(b)(1).)

An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (34 C.F.R. § 300.535(b)(2).)

Basis of Knowledge — Protections for Children Not Yet Eligible

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before that behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534(a).)

When there is Basis of Knowledge

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to the

Code of Federal Regulations, title 34, sections 300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (34 C.F.R. § 300.534(b).)

A. Exceptions: A public agency would not be deemed to have knowledge under paragraph (b) of this section if (1) The parent of the child (i) Has not allowed an evaluation of the child pursuant to sections 300.300 through 300.311; or (ii) Has refused services under this part; or (2) The child has been evaluated in accordance with sections 300.300 through 300.311 and determined to not be a child with a disability under this part. (34 C.F.R. § 300.534(c).)

When there is No Basis of Knowledge

If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section. (34 C.F.R. § 300.534(d)(1).)

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under section 300.530, the evaluation must be conducted in an expedited manner. (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of sections 300.530 through 300.536 and section 612(a)(1)(A) of the Act. (34 C.F.R. § 300.534(d)(2).)

Suspension and Expulsion Rates

The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities (1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within those agencies. (34 C.F.R. § 300.170(a).)

If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revises (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act. (34 C.F.R. § 300.170(b).)

The school board must report through the department electronic reporting system each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report must include a statement of alternative educational services given the pupil and the reason for, the effective date, and the duration of the exclusion or expulsion. The report must also include the student's age, grade, gender, race, and special education status.

The school board must include state student identification numbers of affected pupils on all dismissal reports required by the department. The department must report annually to the commissioner summary data on the number of dismissals by age, grade, gender, race, and special education status of the affected pupils. All dismissal reports must be submitted through the department electronic reporting system. (Minn. Stat. § 121A.53.)