

R-SB100
BOARD &
ADMIN
REVIEW

This policy is **rewritten** in response to legislation (P.A. 99-456). The footnotes are included to explain the details of the Act, but they will be removed when the board adopts the policy.

February 2016

7:210

Students

This policy becomes effective and replaces the current policy on *Expulsion Procedures* on the first student attendance day of the 2016-2017 school year.

Expulsion Procedures 1

The Superintendent or designee shall implement expulsion procedures that provide, at a minimum, for the following: ²

1. Before a student may be expelled, the student and his or her parent(s)/guardian(s) shall be provided a written request to appear at a hearing to determine whether the student should be expelled. The request shall be sent by registered or certified mail, return receipt requested. ³ The request shall: ⁴
 - a. Include the time, date, and place for the hearing.
 - b. Briefly describe what will happen during the hearing.
 - c. Detail the specific act of gross disobedience or misconduct resulting in the decision to recommend expulsion.
 - d. List the student's prior suspension(s).
 - e. State that the School Code allows the Board of Education to expel a student for a definite period of time not to exceed 2 calendar years, as determined on a case-by-case basis.
 - f. Ask that the student or parent(s)/guardian(s) or attorney inform the Superintendent or Board Attorney if the student will be represented by an attorney and, if so, the attorney's name and contact information.
2. Unless the student and parent(s)/guardian(s) indicate that they do not want a hearing or fail to appear at the designated time and place, the hearing will proceed. It shall be conducted by the Board or a hearing officer appointed by it. ⁵ If a hearing officer is appointed, he or she shall report to the Board the evidence presented at the hearing and the Board shall take such final

Comment [APowell]: A sample notice (7:210-E1, *Notice of Expulsion Hearing*) is available using the district's PRESS Online service. Refer to the Update Memo for more detailed information concerning these requirements.

Issue 91, February 2016

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State or federal law requires districts to have a policy on student discipline (105 ILCS 5/10-20.14; 23 Ill. Admin. Code §1.280). State or federal law controls this policy's content. The discipline of special education students must comply with the Individuals With Disabilities Education Improvement Act of 2004 and the Illinois State Board of Education's Special Education rules. See 7:230, *Misconduct by Students with Disabilities*.

² Expulsion procedures are required by State law (105 ILCS 5/10-22.6(a)). The right to attend school is a property right protected by the due process clause of the U.S. Constitution. *Goss v. Lopez*, 95 S.Ct. 729 (1975). Thus, an expulsion of more than 10 days requires due process including, but not limited to, notice of the charges, an opportunity to hear the evidence in support of the charges, an opportunity to refute them, and a decision by an impartial decision maker based on the evidence presented. The adequacy of an expulsion hearing is frequently challenged; the board attorney should be consulted as every due process analysis will be highly fact specific. See fn 9, *infra*.

³ 105 ILCS 5/10-22.6(a). Whenever the term "registered mail" is used in the School Code, it shall be deemed to authorize the use of either registered mail or certified mail, return receipt requested (105 ILCS 5/1-3.5).

⁴ *Id.* Items a and b address due process, which includes the right to receive a notice with enough detail and with enough time to prepare a defense. Item c details the requirements pertaining to expulsions throughout 105 ILCS 5/10-22.6, amended by P.A. 99-456, eff. 9-15-2016. Items d through f are optional best practice inclusions. **Consult the board attorney about the specific documentation required in this portion of the notice to ensure the district's practice matches the policy language.**

⁵ A board may hear student disciplinary cases in a meeting closed to the public (5 ILCS 120/2(c)(9)).

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action as it finds appropriate. Whenever there is evidence that mental illness may be the cause for the recommended expulsion, the Superintendent or designee shall invite a representative from the Dept. of Human Services to consult with the Board. ⁶

3. During the expulsion hearing, the Board or hearing officer shall hear evidence concerning whether the student is guilty of the gross disobedience or misconduct as charged. School officials must provide: (1) testimony of any other interventions attempted and exhausted or of their determination that no other appropriate and available interventions were available for the student, and (2) evidence of the threat or disruption posed by the student. The student and his or her parent(s)/guardian(s) may be represented by counsel, offer evidence, present witnesses, cross-examine witnesses who testified, and otherwise present reasons why the student should not be expelled. ⁷ After presentation of the evidence or receipt of the hearing officer's report, the Board shall decide the issue of guilt and take such action as it finds appropriate.
4. If the Board acts to expel the student, its written expulsion decision shall: ⁸
 - a. Detail the specific reason why removing the student from his or her learning environment is in the best interest of the school. ⁹
 - b. Provide a rationale for the specific duration of the recommended expulsion. ¹⁰
 - c. Document how school officials determined that all behavioral and disciplinary interventions have been exhausted by specifying which interventions were attempted or whether school officials determined that no other appropriate and available interventions existed for the student. ¹¹
 - d. Document how the student's continuing presence in school would (1) pose a threat to the safety of other students, staff, or members of the school community, or (2) substantially disrupt, impede, or interfere with the operation of the school. ¹²

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⁶ 105 ILCS 5/10-22.6(c).

⁷ A student's opportunity to offer evidence, present witnesses, cross-examine witnesses, and otherwise present reasons why the student should not be expelled generally outweighs a district's interest in not providing the student these opportunities. See, Camlin v. Beecher Comm. Sch. Dist., 791 N.E.2d 127 (Ill.App. 3d Dist. 2003) and Colquitt v. Rich Tsp H. S. Dist., 699 N.E.2d 1109 (Ill.App. 1st Dist. 1998). Determining whether denying these opportunities would violate a student's right to due process requires a careful analysis of the facts and federal case law. See Brown v. Plainfield Dist., 500 F. Supp.2d 996 (N.D. Ill. 2007) and Coronado v. Valleyview Sch. Dist., 2008 WL 3316022 (7th Cir. 2008).

⁸ Consult the board attorney to request specific training for school officials to apply these statutory terms in the context of expulsions. See 7:210-E1, *Notice of Expulsion Hearing*. The law gives school officials discretion while also requiring them to resolve threats, address disruptions, and minimize the length of student exclusions to the greatest extent practicable (105 ILCS 5/10-22.6(b-20), amended by P.A. 99-456, eff. 9-15-2016). Yet, the law also requires school districts to make reasonable efforts to provide ongoing professional development to teachers, administrators, school board members, school resources offices, and staff on the adverse consequences of school exclusion and justice-system involvement, effective classroom management strategies, culturally responsive discipline, and developmentally appropriate disciplinary methods that promote positive and healthy school climates (105 ILCS 5/10-22.6(c-5), amended by P.A. 99-456, eff. 9-15-2016).

⁹ 105 ILCS 5/10-22.6(a).

¹⁰ *Id.*

¹¹ 105 ILCS 5/10-22.6(b-20), amended by P.A. 99-456, eff. 9-15-2016 requires and grants school officials the sole authority to determine on a case-by-case basis: (1) whether "appropriate and available behavioral and disciplinary interventions have been exhausted," and (2) whether "the student's continuing presence in school would either (i) pose a threat to the safety of other students, staff, or members of the school community or (ii) substantially disrupt, impede, or interfere with the operation of the school."

¹² *Id.*

5. Upon expulsion, the District may refer the student to appropriate and available support services. ¹³

LEGAL REF.: 105 ILCS 5/10-22.6(a).
Goss v. Lopez, 95 S.Ct. 729 (1975).

CROSS REF.: 5:100 (Staff Development); 7:130 (Student Rights and Responsibilities), 7:190 (Student Behavior), 7:200 (Suspension Procedures), 7:230 (Misconduct by Students with Disabilities)

Please compare this version with the district's current version of policy 7:210. Custom language from the current version may be added; however, before adding custom language that may alter any of the items in these lists, confer with the board attorney.

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¹³ 105 ILCS 5/10/22.6(b-25). **Consult the board attorney about transfers to an alternative program pursuant to Article 13A of the School Code.** See Leak v. Board of Education of Rich Township High School District 227, 2015 IL App (1st) 143202, requiring *obiter dictum* that before school officials transfer students to alternative schools for extended periods of time, they must provide students with a meaningful opportunity to be heard.