

Due Process Procedures for a Student Suspension or Expulsion

The following Due Process procedures are taken from the Administrative Rules of South Dakota.

Please review and follow the due process procedures when your school district is implementing a student suspension or expulsion.

Moreover, when implementing a long term student suspension or expulsion, please contact your school attorney to protect your district from potential liability in a civil lawsuit.

ARTICLE 24:07

STUDENT DUE PROCESS

Chapter

- [24:07:01](#) General provisions.
- [24:07:02](#) Short-term suspension procedure.
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CHAPTER 24:07:01

GENERAL PROVISIONS

Section

24:07:01:01. Definitions. Terms used in this article mean:

- (1) "Expulsion," the action of the school board that terminates a pupil's membership in school for not more than 12 consecutive months;
- (2) "Long-term suspension," the exclusion of a pupil by the superintendent or school board from a class or classes or from school for more than 10 but not more than 90 school days;
- (3) "Parent," a parent, guardian, or person in charge of a pupil;
- (4) "Policy," a rule, regulation, or standard enacted by a school district board;
- (5) "Short-term suspension," the exclusion of a pupil by a principal or superintendent from a class or from school for not more than 10 school days.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

CHAPTER 24:07:02

SHORT-TERM SUSPENSION PROCEDURE

Section

24:07:02:01. Short-term suspension procedure. If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the principal or superintendent shall give oral or written notice to the pupil as soon as possible after discovery of the alleged violation, stating the facts that form the basis for the suspension. The pupil must be given the opportunity to answer the charges. If a pupil is suspended, the principal or superintendent shall give the parent oral notice, if possible, and shall send the parent or a pupil who is 18 years of age or older or an emancipated minor a written notice which provides information regarding the pupil's due process rights. A pupil who is an unemancipated minor may not be removed from the school premises before the end of the school day without contacting a parent unless the pupil's presence poses a continuing threat or danger, in which case the pupil may be immediately removed from the school and transferred into the custody of a parent or law enforcement.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

CHAPTER 24:07:03

LONG-TERM SUSPENSION PROCEDURE

Section

- [24:07:03:01](#) Written report required.
- [24:07:03:02](#) Right to request hearing -- Notice of hearing.
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- [24:07:03:05](#) Repealed.
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- [24:07:03:07](#) Attendance policies.
- [24:07:03:08](#) Referral to placement committee of pupils in need of special education.

Section

24:07:03:01. Written report required. The superintendent must file a sealed, written report with the school board by the end of the fifth school day following the first day of the long-term suspension and may request that a hearing be held before the school board. The report must include the facts of the situation, the action taken, the reasons for the action, and the superintendent's decision or recommendation. The report must remain in the possession of the school board secretary or business manager, sealed and unavailable for review by individual school board members, until the time set for a hearing. The superintendent must send a copy of the report to the pupil's parent or to the pupil if the pupil is 18 years of age or older or an emancipated minor at the same time the report is filed with the school board's secretary or business manager.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

24:07:03:02. Right to request hearing -- Notice of hearing. If the superintendent finds grounds for a long-term suspension from a class or classes, the superintendent may exclude the pupil from a class or classes by using the short-term suspension procedure in §24:07:02:01. The superintendent shall give a written notice to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor and may schedule a hearing. The notice shall contain the following minimum information:

- (1) The policy allegedly violated;
- (2) The reason for the disciplinary proceedings;
- (3) Notice of the right to request a hearing or waive the right to a hearing.
- (4) A description of the hearing procedure;
- (5) A statement that the pupil's records are available at the school for examination by the pupil's parent or authorized representative; and
- (6) A statement that the pupil may present witnesses.

If a hearing is requested, the superintendent shall give notice to each school board member of an appeal to the board for a hearing. The superintendent shall set the date, time, and place for the hearing and send notice by first class mail to each school board member and by certified mail, return receipt requested, to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor.

If no hearing is requested or the hearing is waived, the action of the superintendent is final.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

24:07:03:03. Right of waiver. The pupil, if of the age of majority or emancipated, or the pupil's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#).

24:07:03:04. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. A verbatim record of the hearing will be made and will be sealed pending court order;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president or business manager;
- (8) Each party may raise objections; however, objections are limited to relevancy and scope of the question;
- (9) All relevant evidence must be admitted; however, unproductive or repetitious evidence may be limited by the hearing officer;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a closing statement;
- (12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney.

Consultation with any other person during deliberation may occur only if a representative of the pupil is present; and

(13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion must omit the name of the pupil and must state the reason for the board's action. The school board shall notify the pupil or the pupil's parents in writing of the decision. The notice must state the length of the suspension or expulsion.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

24:07:03:06. Right of appeal. The student may appeal an adverse decision by the school board to the circuit court.

Source: 1 SDR 24, effective September 5, 1974; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

24:07:03:07. Attendance policies. The attendance policy of a school district may not exclude a pupil from a class or from school for more than ten days without providing due process procedures pursuant to this chapter.

Source: 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.1](#), [13-32-4.2](#).

24:07:03:08. Referral to placement committee of pupils in need of special education.

If a pupil identified as in need of special education or special education and related services pursuant to SDCL [13-37-1](#) is expelled or subjected to long-term suspension, the procedure in § 24:05:26:09 applies.

Source: 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

CHAPTER 24:07:04 EXPULSION PROCEDURE

Section

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| 24:07:04:01 | Written report required. |
| 24:07:04:02 | Notice of hearing. |
| 24:07:04:03 | Right of waiver. |
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| 24:07:04:05 | Right of appeal. |
| 24:07:04:06 | Attendance policies. |
| 24:07:04:07 | Referral to placement committee of students in need of special education or special education and related services. |

24:07:04:01. Written report required. If expulsion is anticipated because of a student's violation of a rule or policy or for insubordination or misconduct, the superintendent must file a sealed written report with the school board no later than the end of the fifth school day following the first day of the student's removal from one or more classes or from school and schedule a hearing before the school board. The report must include the facts of the situation, the action, the reasons for the action and the superintendent's recommendation. The report must remain in the possession of the school board secretary sealed and unavailable for review by individual school board members, until the time set for a hearing.

At the same time that the report is filed with the school board's secretary, the superintendent must send a copy of the report to the student's parent or to the student if the student is 18 years of age or older or is an emancipated minor.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:04:02. Notice of hearing. If the superintendent finds grounds for expulsion from one or more classes or from school, the superintendent may exclude the student immediately by using the short-term suspension procedure in § 24:07:02:01. The superintendent shall give a written notice to one or both of the student's parents or to a student who is 18 years of age or older or an emancipated minor. The notice must contain the following information at a minimum:

- (1) The rule, regulation, or policy allegedly violated;
- (2) The reason for the disciplinary proceedings;
- (3) Notice of the right to request a hearing;
- (4) A description of the hearing procedure;
- (5) A statement that the student's records are available at the school for examination by the student's parent or parents or another authorized representative;
- (6) A statement that the student may present witnesses; and
- (7) A statement that the student may be represented by an attorney.

The superintendent shall set the date, time, and place for the school board hearing. The superintendent shall send notice of the hearing to each school board member by first class mail and to the student's parent or to a student who is 18 years of age or older or an emancipated minor by certified mail, return receipt requested. If the superintendent recommends expulsion, the school board must act on the recommendation before it is implemented.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-32-4](#).

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).

24:07:04:03. Right of waiver. The student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date and at the time and place set in the hearing notice unless a different date, time, and place are agreed to by the parties. If the hearing is waived in writing, the school board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-1-12.1](#).

Law Implemented: SDCL [13-32-1](#), [13-32-4](#).

24:07:04:04. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president, hearing officer or other person authorized by law to take oaths and affirmations;
- (8) Each party may raise any legal objection to evidence;
- (9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a statement;

(12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the student is present; and

(13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion shall omit the name of the student and shall state the reason for the board's action. The school board shall notify the student's parent or parents or a student who is 18 years of age or older or who is an emancipated minor in writing of the decision. The notice shall state the length of the expulsion.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-1-12.1](#).

Law Implemented: SDCL [13-32-1](#), [13-32-4](#).

24:07:04:05. Right of appeal. The student may appeal an adverse decision by the school board to the circuit court.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-1-12.1](#).

Law Implemented: SDCL [13-32-1](#), [13-32-4](#).

24:07:04:06. Attendance policies. The attendance policy of a school district may not exclude a student from one or more classes or from a school for more than ten consecutive school days without providing the due process procedures in this chapter or chapter 24:07:03.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-1-12.1](#).

Law Implemented: SDCL [13-32-1](#), [13-32-4](#).

24:07:04:07. Referral to placement committee of students in need of special education or special education and related services. If a student identified as in need of special education or special education and related services pursuant to SDCL [13-37-1](#) is the subject of proposed expulsion, the procedure in § 24:06:26.01:08 applies.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL [13-32-4](#), 13-37-1.1.

Law Implemented: SDCL [13-32-4](#), [13-32-4.2](#).