



# **ROCHESTER BOARD OF EDUCATION**

## **APPENDIX C – DUE PROCESS Policy 1400-E2**

*Amended Date*

# APPENDIX C

## Due Process

### DUE PROCESS PROTECTIONS

If a parent believes a removal or other disciplinary action was not in compliance with the Code of Conduct, they may reach out to the Office of the School Chiefs. If a parent disagrees with a short-term suspension, long-term suspension or expulsion, they may refer to that section of this appendix for guidance on the appeal process.

### **Referral for Disciplinary Action**

If school staff believe that a student's conduct warrants a disciplinary intervention, staff should complete a referral for disciplinary action to trigger an investigation of the incident. The purpose for a referral is to track and document the facts and interventions used by staff in order to ascertain the best course of action when a serious infraction occurs that necessitates the removal of a student from the class. However, written referrals shall not be used to document supports offered to students within the classroom (i.e., timeouts and other informal measures).

When the student is removed from a classroom for consideration of short-term in-school or out- of-school suspension or long-term suspension, the teacher must provide a referral form to accompany the student. This referral must be filled out prior to the Principal making a decision and at the earliest convenience of the teacher when they have been able to ensure that their classroom is in order.

The form filled out by the teacher shall be a district-wide standardized form that will include the teacher's methods of positive intervention approaches already implemented.

The referrals will be input into a digital system. A computerized program should be able to provide a cumulative report that will be able to track the number of referrals per teacher in regular intervals. Administrators will have a meeting with teachers with high numbers of referrals or with high rates of disparities among student subgroups (i.e., race, ethnicity, disability status, etc.) in order to provide additional supports and uncover challenges.

The information gathered from the tracking process will be used to inform teachers and administrators with respect to students and staff who are in need of support, as well as to inform teachers and administrators as to the effectiveness of strategies and supports that have been implemented.

**Investigative Procedures for School Discipline**

It is the responsibility of the Principal or their designee to take the following investigative steps before a decision is made:

1. Question the victim and any other witnesses to the incident and, when possible, obtain their signed written statements.
2. Investigative procedures must seek to understand the entire event including precipitating factors.
3. Review and retain for a reasonable time any documentary, photographic, or video evidence.
4. Whenever practicable, inform the accused student of the misconduct of which they are being accused and provide the accused student with an explanation of the evidence.
5. Whenever practicable, provide the accused student an opportunity to present their side of the event and identify witnesses.
6. In circumstances where the student has been arrested, the student must be advised that any statement made by the student may be used against the student in a court of law, and the student's parent should be notified immediately.

**Classroom Removal****Notice Requirement:**

Schools must provide the following notice to parents when a student is removed from the classroom:

1. All reasonable efforts must be made to notify the parent of the classroom removal and must be done by telephone, email, or other electronic means on the same day as the classroom removal;
2. Written notice will be provided within 24 hours from the classroom removal provided that if such 24 hour period does not end on a school day, it shall be extended to the corresponding time on the next school day;
3. Written notice will be in writing in the parent's native language if practicable; and will include a description of the incident, length of the classroom removal, and a statement that parents can request a conference to discuss the removal; and
4. The school will maintain a record of all classroom removals provided that such record shall not constitute part of the student's cumulative file.

**Conference Request<sup>1</sup>:**

At the parent's or student's request, the teacher and/or a school administrator will have a conference with the parent and/or student.

1. The school shall schedule the conference to occur within 48 hours of the parent's or student's request, provided that if such 48 hour period does not end on a school day, it shall be extended to the corresponding time on the second school day next following the pupil's removal, unless the parent or student agrees to a later date; and
2. Actual notice of the conference date shall be provided to the parent and the student.

**Short-Term In School or Out of School Suspension<sup>2</sup>**

Short-term suspensions are an extreme disciplinary measure to be used for behavior that cannot be dealt with using standard positive interventions. Short-term suspensions shall not take effect until a preliminary interview, notice and conference occur, except when a student's presence in school poses an ongoing danger to persons or property or an ongoing threat to the academic process, the student may be suspended prior to the informal conference provided the conference occurs within 2 school days of the start of the suspension. The aforesaid

<sup>1</sup> Ref: Education Law §3214(3-a)

<sup>2</sup> Ref: Education Law §3214(3)(b)

notice and opportunity for an informal conference shall take place prior to suspension of a student unless the student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable.

1. **Preliminary Interviews:** Where it is suspected that a student has engaged in conduct for which a suspension may be warranted, it is the responsibility of the Principal or their designee to take the required investigative steps and make a determination of possible discipline, including short term suspension, if warranted under the circumstances. The Principal or acting Principal shall take into account all of the factors listed in the section entitled, "Levels of Intervention & Disciplinary Responses" when making a preliminary recommendation about a disciplinary action.
2. **Notice to Parent:**
  - a. Principal (or designee) shall make every effort to reach the parent by telephone, email, or other electronic means to inform the parent of the student's referral for a suspension on the same day as the determination to seek a suspension;
  - b. Written notice will be delivered to the parent within one school day from the determination to seek a suspension;
  - c. Written notice will be in the parent's dominant language whenever practicable. If not practicable, all reasonable steps shall be taken to provide oral translation to the parent or legal guardian;
  - d. That notice shall be on an approved RCSD form and contain the following:
    - i. a description of the incident, including the section of the *Code of Conduct* the student allegedly violated;
    - ii. length of the possible suspension;
    - iii. a statement explaining the standard positive interventions and practices used, or if none was used, why this is the case, and explaining why the use of alternative exclusionary discipline may be justified under the circumstances;
    - iv. a statement informing the parent of their right to request an informal conference with the Principal;
    - v. a statement of the student's and parent's rights written in plain language, including the right to question a complaining witness, to obtain school records, to bring an attorney or advocate, the right to interpretation of the conference by a qualified interpreter or someone of the parent's choosing and the right to appeal;
    - vi. a statement of the means by which the student will be provided alternative instruction during the period of suspension;
    - vii. a statement that if the child has been arrested or if a criminal investigation is pending, any statement, written or oral, can be used against the student in a court of law;
    - viii. a list of free and low-cost attorneys and advocates in the area; and
    - ix. the procedures for appealing the disciplinary decision.
3. **Informal Conference:**
  - a. The informal conference is an opportunity to assess the facts surrounding the incident for which a suspension is possible, to determine whether a suspension is justified, to collaboratively devise satisfactory solutions for the student's return to their program and prevent further disruption of the student's education.

- b. The informal conference shall be scheduled as soon as possible, but no later than five school days from the date of the written notice unless the delay is at the parent's request.
  - c. Informal Conference Provisions:
    - i. The student and parent have the right to call witnesses and present documentary evidence, including audio and video recordings and to question a witness with firsthand knowledge of the incident.
    - ii. The student and parent may be represented by an attorney or an advocate.
    - iii. Upon request of the parent or student, the school shall provide interpretation services in their dominant language(s).
    - iv. The student and parent have the right to receive a written decision within one school day of the conference.
    - v. If the Principal determines short-term suspension is warranted, the written decision shall include the length of suspension, and procedures for appealing the decision, including the date by which the appeal must be submitted.
4. **Appeal of Short-Term Suspension Decision:**
- a. Students and parents can appeal a short-term suspension to the New York State Commissioner of Education.
  - b. Any appeal must be filed within 30 days of the decision following the suspension conference.
5. **Exception for emergencies:** If a student's presence in school poses an ongoing danger to persons or property or an ongoing threat of disruption to the academic process, a student may be removed immediately and the informal conference shall follow as soon after the student's removal as practicable, but in no case more than 48 hours after the removal. If immediate emergency removal from school is necessary, the school shall immediately notify the parent to determine the best way to transfer custody of the student to the parent.

#### Long-Term Suspension (LTS) and Expulsion<sup>3</sup>

Long-term suspension and expulsion are extreme disciplinary alternatives to be used for behavior that cannot be resolved appropriately using standard positive interventions, a classroom removal, or a short-term suspension. Long-term suspensions and expulsions shall not take effect until an investigation, notice and a hearing occur in accordance with the following:

- 1. **Investigation:** When a student engages in conduct for which a long-term suspension or expulsion may be warranted, the Principal or their designee must investigate consistent with the requirements in #1 of short-term in-school or out-of-school suspension, above. The Principal shall take into account all of the factors identified under Levels of Intervention and Disciplinary Responses when making a preliminary recommendation about a disciplinary action. If the Principal determines that an LTS referral is appropriate, they shall inform the student of the referral for LTS and the reason for the referral.
- 2. **Notice to Parent:**

Schools must provide the following notice when a long-term suspension or expulsion is proposed:

- a. Principal (or designee) shall make every effort to reach the parent by telephone, email, or other

<sup>3</sup> Ref.: Education Law §3214(c)  
Education Law §310  
8 NYCRR Part 275

electronic means to inform the parent of the student's referral for a suspension on the same day as the determination to seek a suspension;

- b. Written notice will be delivered to the parent within one school day from the determination to seek a suspension or expulsion;
- c. Written notice will be in the parent's dominant language if practicable;
- d. That notice shall contain the following:
  - i. a description of the incident including the section of the *Code of Conduct* the student allegedly violated;
  - ii. length of the proposed suspension;
  - iii. a statement explaining the standard positive interventions and practices used, or if none was used, why this is the case, and explaining why the use of alternative exclusionary discipline may be justified under the circumstances;
  - iv. a statement of the student's and parent's rights written in plain language, including the right to fair hearing, the right to question the district's witnesses and to present testimony and other evidence on behalf of the student, to obtain school records, to bring an attorney or advocate to the hearing, the right to interpretation of the hearing by a qualified interpreter or someone of the parent's choosing, and the right to appeal;
  - v. a description of the alternative education that will be provided to the student until such time as a determination has been made with respect to whether or not the student is guilty of the charge, and any applicable penalty has been imposed.
- e. The Long-Term Suspension Hearing Office shall send notice to the parent that includes:
  - i. a date, time and location for a fact-finding hearing;
  - ii. a statement that if the child has been arrested or if a criminal investigation is pending, that any statement, written or oral, can be used against the student in a court of law;
  - iii. a list of free and low-cost attorneys and advocates in the area; and the procedures for appealing the disciplinary decision.

**3. Hearing:**

- a. The hearing is an opportunity for an impartial and neutral hearing officer to determine if the school can meet its burden of proof to sustain the charge(s), and if the proposed suspension or expulsion is appropriate.
- b. The hearing shall occur within five school days of the date of suspension, unless the parent requests a later date. If the hearing occurs after the fifth day following the suspension without the parent consenting to the delay, the student shall be returned to their regular program until such time as the hearing is held and the Superintendent or their designee has made a decision regarding the charge(s).

**c. Hearing Provisions:**

- i. Hearings shall be conducted by a neutral and impartial hearing officer. Upon appointment, all hearing officers are authorized to administer oaths and issue subpoenas in conjunction with the proceedings before them.
- ii. The school must prove the alleged student behavior by competent and substantial evidence.
- iii. School cannot rely exclusively on hearsay evidence to meet its burden of proof.
- iv. Students and parents have the right to call witnesses and present documentary evidence including, but not limited to, witness statements, incident reports, and audio and video recordings; and to question persons with information related to the incident.
- v. Students and parents have the right to request and, upon request, the District must require, the presence and testimony of witnesses who are school staff.
- vi. Students and parents have the right to request the presence and testimony of witnesses who are safety or law enforcement staff on campus, and the school shall take all reasonable steps to ensure their presence.
- vii. Students and parents have the right to request the presence and testimony of other students or witnesses to the event, and the school shall take all reasonable steps to ensure their presence.
- viii. Students and parents have the right to representation by an attorney or an advocate.
- ix. The hearing officer shall consider only the evidence presented at the hearing and shall make findings of fact and recommendations to the Superintendent or their designee as to the appropriate measure of discipline. The proposed suspension or expulsion may be dismissed, reduced, or upheld.
- x. The hearing officer must dismiss the proposed suspension if they determine:
  - 1) The suspension was imposed for a behavior for which suspension is prohibited under the *Code of Conduct*.
  - 2) The school did not present sufficient evidence to meet its burden of proof.
  - 3) The suspension was not appropriate, considering the factors listed in this *Code*.
- xi. The hearing officer or superintendent's designee may dismiss or reduce the proposed suspension if they determine:
  - 1) The school did not impose graduated and proportionate discipline, unless the conduct that resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
  - 2) The suspension was not appropriate given the facts as presented at the hearing.
  - 3) The school did not follow the due process procedures in this subsection.
- xii. Upon request of the parent or student, the school shall provide interpretation services in the parent's native language.



- xiii. Students and parents have the right to receive written notification of the determination of guilt or lack thereof and penalty, if guilt is determined. If the Superintendent or their designee determines a long-term suspension or expulsion is warranted, the written decision shall include the length of suspension, the conduct for which the student has been found guilty, and procedures for appealing the decision, including the date by which the appeal must be submitted.
- xiv. The written decision shall be sent to the student/parent within three school days after the Superintendent's designee receives the penalty determination.
- xv. An accurate and complete record of the hearing shall be maintained by the school, but no stenographic record shall be required and an audio or video recording shall be deemed a satisfactory record. Students and parents shall have a right to request and receive this record at no cost.

#### 4. Appeal Provisions:

- a. Parents or students can appeal the decision to suspend within 30 school days from the date the parent receives the Superintendent's suspension determination letter;
- b. A written decision on appeal, including the rationale for the decision, will be issued within 30 school days of the filing of the appeal;
- c. The appeal will consider whether the record demonstrates that the student's rights were violated during the investigation, hearing, or appeal process;
- d. The decision on appeal must be based solely on the hearing record;
- e. The suspension or expulsion can be upheld, overturned or reduced; and
- f. The Board of Education must overturn the suspension if it determines:
  - i. The record does not contain sufficient evidence to support the finding.
  - ii. The suspension was imposed for a behavior for which suspension is prohibited in the school's *Code of Conduct*.
  - iii. The record demonstrates that the school did not follow the due process procedures in this subsection.
  - iv. The suspension was not appropriate considering the factors listed under the Levels of Intervention and Disciplinary Responses.
- g. The Board of Education may overturn or reduce the suspension if it determines:
  - i. The school did not impose graduated and proportionate discipline, unless the conduct which resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
  - ii. The suspension was not appropriate given the facts as presented at the hearing.
- h. If the family disagrees with the Board's decision, an appeal may be submitted to the New York State Commissioner of Education within 30 days of the Board's decision.



**Students Entering District Who are Currently Long-Term Suspended or Expelled<sup>4</sup>**

1. **Investigation:** When a student engages in conduct for which a long-term suspension or expulsion may have been warranted at their previous District, the Superintendent or their designee must request the suspension referral from previous District. The Superintendent or their designee will investigate the long-term suspension by reviewing the previous District's records of the incident. The Superintendent or their designee shall take into account all of the factors identified under Levels of Intervention and Disciplinary Responses when determining a disciplinary action. The Superintendent will make the decision to overturn or uphold the previous District's long-term suspension within 5 school days of the student's enrollment.

2. **Notice to Parent:**

The District must provide the following notice when the previous District's long-term suspension or expulsion is being proposed to be upheld:

- a. Superintendent (or designee) shall make every effort to reach the parent by telephone, email, or other electronic means to inform the parent of the student's referral for a suspension on the same day as the determination to uphold the previous District's suspension;
- b. Written notice will be delivered to the parent within one school day from the determination to seek a suspension or expulsion;
- c. Written notice will be in the parent's dominant language if practicable;
- d. That notice shall contain the following:
  - i. a description of the incident including the section of the *Code of Conduct* the student allegedly violated;
  - ii. length of the proposed suspension;
  - iii. a statement of the student's and parent's rights written in plain language, including the right to fair hearing, and to present testimony and other evidence on behalf of the student, to obtain school records, to bring an attorney or advocate to the hearing, the

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<sup>4</sup> Ref.: Education Law §3214(c)  
Education Law §310  
8 NYCRR Part 275

right to interpretation of the hearing by a qualified interpreter or someone of the parent's choosing, and the right to appeal;

- iv. a description of the alternative education that will be provided to the student until such time as a determination has been made with respect to whether or not the student is guilty of the charge, and any applicable penalty has been imposed.
- e. The Long-Term Suspension Hearing Office shall send notice to the parent that includes:
  - i. a date, time and location for a fact-finding hearing;
  - ii. a statement that if the child has been arrested or if a criminal investigation is pending, that any statement, written or oral, can be used against the student in a court of law;
  - iii. a list of free and low-cost attorneys and advocates in the area; and the procedures for appealing the disciplinary decision.

### 3. Hearing:

- a. The hearing is an opportunity for an impartial and neutral hearing officer to determine if the school can meet its burden of proof to sustain the charge(s), and if the proposed suspension or expulsion is appropriate.
- b. The hearing shall occur within five school days of the date of the Superintendent's decision unless the parent requests a later date. If the hearing occurs after the fifth day following the suspension without the parent consenting to the delay, the student shall be returned to their regular program until such time as the hearing is held and the Superintendent or their designee has made a decision regarding the charge(s).
- c. **Hearing Provisions:**
  - i. Hearings shall be conducted by a neutral and impartial hearing officer. Upon appointment, all hearing officers are authorized to administer oaths and issue subpoenas in conjunction with the proceedings before them.
  - ii. The previous District's evidence, if any, received must be reviewed during the hearing to prove the alleged student behavior by competent and substantial evidence.
  - iii. The Hearing Officer cannot rely exclusively on the previous District's decision to suspend the student to meet their burden of proof.
  - iv. Students and parents have the right to call witnesses and present documentary evidence including, but not limited to, witness statements, incident reports, and audio and video recordings; and to question persons with information related to the incident.
  - v. Students and parents have the right to representation by an attorney or an advocate.
  - vi. The Hearing Officer shall consider only the evidence presented at the hearing and shall make findings of fact and recommendations to the Superintendent or their designee as to the appropriate measure of discipline. The proposed suspension or expulsion may be dismissed, reduced, or upheld.
  - vii. The Hearing Officer must dismiss the proposed suspension if they determine:

- 1) The suspension was imposed for a behavior for which suspension is prohibited under the *Code of Conduct*.
  - 2) The previous District did not present sufficient evidence to meet its burden of proof, including lack of paperwork beyond the description of the incident.
  - 3) The suspension was not appropriate, considering the factors listed in this *Code*.
- viii. The Hearing Officer or Superintendent's designee may dismiss or reduce the proposed suspension if they determine:
- 1) The previous District did not impose graduated and proportionate discipline, unless the conduct that resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
  - 2) The student suspension length given by the previous District is excessive or does not align with the *Code of Conduct*.
  - 3) The suspension was not appropriate given the facts as presented at the hearing.
- ix. Upon request of the parent or student, the District shall provide interpretation services in the parent's native language.
- x. Students and parents have the right to receive written notification of the determination of guilt or lack thereof and penalty, if guilt is determined. If the Superintendent or their designee determines a long-term suspension or expulsion is warranted, the written decision shall include the length of suspension, the conduct for which the student has been found guilty, and procedures for appealing the decision, including the date by which the appeal must be submitted.
- xi. The written decision shall be sent to the student/parent within three school days after the Superintendent's designee receives the penalty determination.
- xii. An accurate and complete record of the hearing shall be maintained by the school the student will attend, but no stenographic record shall be required and an audio or video recording shall be deemed a satisfactory record. Students and parents shall have a right to request and receive this record at no cost.

#### 4. Appeal Provisions:

- a. Parents or students can appeal the decision to suspend within 30 school days from the date the parent receives the Superintendent's suspension determination letter;
- b. A written decision on appeal, including the rationale for the decision, will be issued within 30 school days of the filing of the appeal;
- c. The appeal will consider whether the record demonstrates that the student's rights were violated during the investigation, hearing, or appeal process;
- d. The decision on appeal must be based solely on the hearing record;

- e. The suspension or expulsion can be upheld, overturned or reduced; and
- f. The Board of Education must overturn the suspension if it determines:
  - i. The record does not contain sufficient evidence to support the finding.
  - ii. The suspension was imposed for a behavior for which suspension is prohibited in the school's *Code of Conduct*.
  - iii. The record demonstrates that the school did not follow the due process procedures in this subsection.
  - iv. The suspension was not appropriate considering the factors listed under the Levels of Intervention and Disciplinary Responses.
- g. The Board of Education may overturn or reduce the suspension if it determines:
  - i. The school did not impose graduated and proportionate discipline, unless the conduct which resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
  - ii. The suspension was not appropriate given the facts as presented at the hearing.
- h. If the family disagrees with the Board's decision, an appeal may be submitted to the New York State Commissioner of Education within 30 days of the Board's decision.

### **Access to Schools**

Except in cases of emergency, if a Principal desire to restrict a family member's access to the school, the Principal's supervisor must first authorize such action. The Principal must specify in writing to the restricted family member the explanation for restriction, duration and conditions of any restriction (i.e., must make advance appointment or be escorted within the building).



Full Code of Conduct (Policy 1400)  
<https://www.rcsdk12.org/policy>