

CHAPTER 127

PROCEEDINGS, PROHIBITIONS, POLICIES

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127.26 CITATION.

Sections 127.26 to 127.39 may be cited as "The Pupil Fair Dismissal Act."

History: *1Sp1997 c 4 art 7 s 10*

127.27 DEFINITIONS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. **Expulsion.** "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.** "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 non-custodial 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.** "Pupil" means any student:

- (1) without a disability under 21 years of age; or
- (2) with a disability until September 1 after the child with a disability becomes 22 years of age;
- (3) and who remains eligible to attend a public elementary or secondary school.

Subd. 8. **School.** "School" means any school defined in section 120.05, subdivision 2.

[For text of subd 9, see M.S.1996]

Subd. 10. **Suspension.** "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. Each suspension action shall include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon 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 up to 15 days. In the case of a pupil with a disability, a suspension may not exceed ten school days. The school administration shall implement alternative educational services to the extent that suspension exceeds five days. A separate administrative conference is required for each period of suspension.

Subd. 11. **Alternative educational services.** "Alternative educational services" may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptations, special education services as indicated by appropriate assessment, homebound instruction, or enrollment in another district or in an alternative learning center under section 124C.45.

History: *1Sp1997 c 4 art 7 s 11-16*

127.281 EXCLUSION AND EXPULSION OF PUPILS WITH A DISABILITY.

When a pupil who has an individual education plan is excluded or expelled under sections 127.26 to 127.39 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 individual education plan within five school days of commencing an expulsion, exclusion, or a suspension.

History: *1Sp1997 c 4 art 7 s 17*

127.29 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 materially and substantially disrupts the rights of others to an education; or

(c) willful conduct that endangers the pupil or other pupils, or surrounding persons, or property of the school.

History: *1Sp1997 c 4 art 7 s 18*

127.30 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. 1a. 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. 2. 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 sections 127.26 to 127.39, 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. 3. Notwithstanding the provisions of subdivisions 1 and 2, 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.

History: *1Sp1997 c 4 art 7 s 19-22*

127.31 EXCLUSION AND EXPULSION PROCEDURES.

[For text of subd 1, see M.S.1996]

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 sections 127.26 to 127.39;
- (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 children, families, and learning;
 - (2) examine the pupil's records before the hearing;
 - (3) present evidence; and
 - (4) confront and cross-examine witnesses.

[For text of subs 3 to 5, see M.S.1996]

Subd. 6. [Repealed, 1Sp1997 c 4 art 7 s 58]

Subd. 7. 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. 8. 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.

[For text of subs 9 to 12, see M.S.1996]

Subd. 13. 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. 14. 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 children, families, and learning of the basis and reason for the decision.

Subd. 15. **Admission or readmission plan.** A school administrator shall prepare and enforce an admission or readmission plan for any pupil who is suspended, excluded, or expelled from school. The plan may include measures to improve the pupil's behavior 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.

History: 1Sp1997 c 4 art 7 s 23-28

127.311 GOOD FAITH EXCEPTION.

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.

History: 1Sp1997 c 4 art 7 s 29

127.32 APPEAL.

A party to an exclusion or expulsion decision made under sections 127.26 to 127.39 may appeal the decision to the commissioner of children, families, and learning 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.

In an appeal under this section, the commissioner may affirm the decision of the agency or may reverse or modify the decision if the substantial rights of the petitioners may 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 127.311;
- (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 of evidence presented at the hearing. 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 127.33.

History: *1Sp1997 c 4 art 7 s 30*

127.33 JUDICIAL REVIEW.

The decision of the commissioner of children, families, and learning made under sections 127.26 to 127.39 is subject to judicial review under sections 14.63 to 14.69. The decision of the commissioner is stayed pending an appeal under this section.

History: *1Sp1997 c 4 art 7 s 31*

127.36 REPORT TO COMMISSIONER OF CHILDREN, FAMILIES, AND LEARNING.

Subdivision 1. Exclusions and expulsions. The school board shall report each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of children, families, and learning. This report shall include a statement of alternative educational services given the pupil before beginning exclusion or expulsion proceedings, and the reason for, the effective date, and the duration of the exclusion or expulsion.

Subd. 2. Report. 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.

History: *1Sp1997 c 4 art 7 s 32*

127.37 NOTICE OF RIGHT TO BE REINSTATED.

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.

History: *1Sp1997 c 4 art 7 s 33*

127.38 POLICIES TO BE ESTABLISHED.

(a) The commissioner of children, families, and learning shall promulgate guidelines to assist each school board. Each school board shall establish uniform criteria for dismissal and

adopt written policies and rules to effectuate the purposes of sections 127.26 to 127.39. The policies shall emphasize preventing dismissals through early detection of problems. The policies shall recognize the continuing responsibility of the school for the education of the pupil during the dismissal period. The alternative educational services, if the pupil wishes to take advantage of them, must be adequate to allow the pupil to make progress towards meeting the graduation standards adopted under section 121.11, subdivision 7c, and help prepare the pupil for readmission.

(b) An area learning center under section 124C.45 may not prohibit an expelled or excluded pupil from enrolling solely because a district expelled or excluded the pupil. The board of the area learning center may use the provisions of The Pupil Fair Dismissal Act to exclude a pupil or to require an admission plan.

(c) The commissioner shall actively encourage and assist school districts to cooperatively establish alternative educational services that offer instruction to pupils who are dismissed from school for willfully engaging in dangerous, disruptive, or violent behavior, including for possessing a firearm in a school zone.

History: *1Sp1997 c 4 art 7 s 34*

127.465 HAZING POLICY. .

Subdivision 1. **Definitions.** (a) "Hazing" means committing an act against a student, or coercing a student into committing an act, that creates a substantial risk of harm to a person in order for the student to be initiated into or affiliated with a student organization.

(b) "Student organization" means a group, club, or organization having students as its primary members or participants.

Subd. 2. **Model policy.** The commissioner of children, families, and learning shall maintain and make available to school boards a model policy on student or staff hazing that addresses the requirements of subdivision 3.

Subd. 3. **School board policy.** Each school board shall adopt a written policy governing student or staff hazing. The policy must apply to student behavior that occurs on or off school property and during and after school hours. The policy must include reporting procedures and disciplinary consequences for violating the policy. Disciplinary consequences must be sufficiently severe to deter violations and appropriately discipline prohibited behavior. Disciplinary consequences must conform with sections 127.27 to 127.39. Each school must include the policy in the student handbook on school policies.

History: *1Sp1997 c 4 art 7 s 35*