

Rodney Freeman

Churchill, Manolis, Freeman,
Kludt & Burns, LLP

Short Term Suspension

RE: (Student) – Short Term Suspension

Dear (Parents):

As noted, your son has been suspended from school for ___ days due to his action (describe) which violate school rules. He is entitled to certain due process as relates to the deprivation of attending school and in that regard, he has been told of the charges against him and has been afforded an opportunity to respond to those charges. If you wish to discuss this matter further with me, please feel free to contact me during business hours at the school district.

Very truly yours,

Long Term Suspension

RE: (Student) – Long Term Suspension

Dear (Parents):

On Wednesday, October __, 201__, your son, (Student), was involved in an incident at the (Name) school building as set out in the enclosed written report of the incident and the witness statements. Your child committed disorderly conduct, assaulted the Middle School/ High School Principal, committed criminal mischief and intentional damage to school property as well as other acts of insubordination. His conduct as described in the Incident Report was in violation of school policies prohibiting that conduct as well as state laws.

I am enclosing a copy of the written report which includes the facts of the situation, the action, the reasons for the action and my recommendation, which is long term suspension for 90 days. This report will remain in the possession of the school board business manager and will be sealed and unavailable for review by individual school board members until the time set for a hearing.

I am recommending that your child be suspended, long term, from school for a period of 90 school days for violation of the (Name) School District policies as well as state law. He may re-enroll in the (Name) School District after the 90th school day of this long terms suspension.

(Parents), you have a right to request a hearing with the board of education in this matter. If you do not request the hearing or you waive the hearing, my action and recommendation shall be final. If you do request a hearing, I will give notice to each school board member of an appeal to the board for a hearing and we 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 you.

(Student's) records are available at the school for examination by you or your representative and you and your child may present witnesses at the hearing and (Student) may be represented by an attorney.

The school board shall conduct a 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 cope 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.

5.24:07:03:06. RIGHT OF APPEAL. The student may appeal an adverse decision by the school board to the circuit court.

If you have any further concerns or questions, with the matter, please contact me at the school at _____ or my cell at _____.

Very truly yours,

Expulsion

RE: (Student) - Expulsion

Dear (Parents):

On _____, 201__, your child, (Student), was involved in an incident at the (District Name) school building as set out in the enclosed written report of the incident and the witness statements. Your child committed disorderly conduct, assaulted the Middle School/ High School Principal, committed criminal mischief and intentional damage to school property as well as other acts of insubordination. His conduct as described in the Incident Report was in violation of school policies prohibiting that conduct as well as state laws.

I am enclosing a copy of the written report which includes the facts of the situation, the action, the reasons for the action and my recommendation, which is expulsion for one year. This report will remain in the possession of the school board business manager and will be sealed and unavailable for review by individual school board members until the time set for a hearing.

I am recommending that your child be expelled for one school year for violation of the District policies as well as state law. He may re-enroll in the (Name) School District next fall on October 10, 2014.

(Parents), you have a right to request a hearing with the board of education on this matter. I have scheduled the hearing for October ____, 201__, at ____ M. at the School building. You may, pursuant to the Administrative Rules of South Dakota waive the right to a hearing in writing to me if you so desire. If you do waive the hearing, the Board of Education will still consider the matter at its school board meeting on October ____, 201__.

Student records are available at the school for examination by you or your representative and you and (Student) may present witnesses at the hearing and (Student) may be represented by an attorney.

The school board shall conduct a 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 cope 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.

5.24:07:03:06. RIGHT OF APPEAL. The student may appeal an adverse decision by the school board to the circuit court.

If you have any further concerns or questions, with the matter, please contact me at the school at _____ or my cell at _____.

Very truly yours,

Suspension for Special Education Students

Rebecca Cain

Linda TUrner

If you have questions on the
interpretation of the special education
suspension rules, please contact your
school attorney.

This is a VERY Quick Overview

<http://doe.sd.gov/sped/pbis.aspx>

Can Special Education Students be Suspended?

- Yes,
 - First 10 days of suspension
 - Follow same procedures as general education students
 - Special education services do not HAVE to be provided but they CAN be provided



Document everything



- Length of suspension
- Reason for suspension
- Staff involved
- Types of behaviors

What Counts as a Day?

- **School day:** Any day, including a partial day, that students are attending school for instructional purposes.
 - Early out days = full day
 - Late start = full day
- What about suspensions that start at noon?
 - How do you take attendance for all students?
 - When do you take attendance?
 - What is counted as a full day/partial day for all students?
 - **Be CONSISTENT**
- **WARNING!** Is the student missing the same class every time?

What Counts as a Suspension?

- Anytime a student is removed for behavior reasons = Suspension
- If a parent is called in to bring student home = Suspension
- If a parent is called in to talk to the student and it is suggested by the school they bring the student home = Suspension
- What if the parent insists on bringing them home?

What About In School Suspension (ISS)

Currently does not count towards the 10 days if:

1. Student is afforded the opportunity to **continue** to appropriately participate in the **general curriculum**
 2. The student continues to **receive IEP services** AND
 3. Student **continues to participate with nondisabled peers** to the extent they would have in their current placement
- ❖ If these three things are not occurring, it should be considered OSS and would count towards the 10 days
 - ❖ Talk with your school attorney to get their interpretation of this rule.

ALSO...

- Applies to students SUSPECTED of having a disability
 - If evaluation process has started
 - Parents have requested and evaluation
- Does NOT apply if:
 - Parent has refused evaluation
 - Student was evaluated and not found to have a disability

Be Proactive

- Is there a behavior plan?
- Is it working?
- What supports can be put in place?
- Do we need to make changes to the IEP?

After 10 days of suspension You **MUST provide services**

- ❖ Days 1-10= No services-unless school chooses to provide
- ❖ Day 11 and beyond=Services



Change of Placement
Zone

On the 11th Day of Suspension

- **Services MUST be provided**
- **School Decides** on a case-by-case basis:
 - ❖ Is there a Change of Placement (COP)?
(**COP** means the bundle of **services being provided in the IEP**, not necessarily the physical placement)
 - 1) The removal is for more than **ten consecutive** school days; or
 - 2) The student is subjected to a series of removals that constitutes a **pattern** because:
 - ✓ length of removal
 - ✓ proximity of the removals to each other and,
 - ✓ behavior is similar
 - Example: 3 days for fighting, 5 days for disrespect, 3 days for yelling at teacher, all in October
 - Example: 3 days for fighting in Sep, 5 days for fighting in Nov, 3 days for fighting in January

On the 11th Day of Suspension

- **Services MUST be provided**
- **School and teachers** determine:
 - ❖ What educational services the student is to receive so they can
 - Continue to participate in the **general curriculum**, although in another setting **AND**
 - Progress toward meeting **IEP goals**

COP RULE

24:05:26:02.01. Change of placement for disciplinary removals. For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The student is subjected to a series of removals that constitute a pattern because:
 - (a) They cumulate to more than ten school days in a school year;
 - (b) Of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another; and
 - (c) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

School Decides “No, it is not a COP”

- No pattern or
- Not one removal over 10 days
- ***School and teachers*** determine services
 - ❖ What student needs to:
 1. **Participate** in the general curriculum **AND**
 2. **Progress** toward IEP goals

School Decides “Yes, it is a COP”

- **IEP Team** must :
 - ❖ Provide Procedural Safeguards Notice to guardians
 - ❖ Conduct a **Manifestation Determination** within 10 school days of **decision** to change placement.
 - The MD meeting must be held within 10 school days of the decision to change the child’s placement because of a code of conduct removal
 - Not when that suspension is over or
 - When that suspension hits the 10th day

Manifestation Determination

- **IEP Team** will go through the MD process
 - ❖ Review all documents in the file
 - ❖ Only have to consider the disability that the student is coded under
- Document:
 - ❖ Was the behavior a direct result of a **failure to implement the IEP?**
 - Remember: If **behavior plan is part of the IEP** then the team must consider if it was implemented correctly
 - ❖ Was the behavior **caused by** or did it have a direct and substantial relationship to the students **disability?**

Team Decides “**Yes**, the behavior is a manifestation of the disability or the IEP was Not Implemented Correctly”

- The IEP Team must:

- ❖ Conduct and **Functional Behavior**

- Assessment** if one has not been conducted or review the existing one

- ❖ Implement a new **Behavior Support Plan** or modify the existing one **AND**

- ❖ **Return student to previous placement**

If Team Decides “**No**, the behavior is NOT a manifestation of the disability and the IEP was Implemented Correctly”

- What educational services the student is to receive so they can:
 - ❖ Continue to participate in the **general curriculum, although in another setting** AND
 - ❖ Progress toward meeting the IEP goals, AND
 - ❖ Receive, as appropriate, a **Functional Behavior Assessment** and **Behavior Support Plan** and modifications to address the behavior violations so it does not recur.

45 Day Removal

- Even if there is a finding of a manifestation of disability, school districts have the option of removing students to an interim alternative educational setting for up to 45 school days for:
 - (1) weapon offense,
 - (2) drug offense
 - (3) serious bodily injury

Serious Bodily Injury

- The term “serious bodily injury” is defined under federal law and 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; and
- *This should be contrasted with the term “bodily injury” under federal law, means— (The injuries listed below do not provide grounds for a 45 day change of placement unless they also meet the more serious injury definitions described above.)*
 - *a cut, abrasion, bruise, burn, or disfigurement;*
 - *physical pain;*
 - *illness;*
 - *impairment of the function of a bodily member, organ, or mental faculty; or*
 - *any other injury to the body, no matter how temporary.*

Keep Parents Involved and Informed



Document Everything!



Additional Resources

- <http://doe.sd.gov/oess/sped-pbis.aspx>
- Behavior De-escalation Training
 - This fall - GoSignMeUp
- Northern Plains Law Conference
 - September 25 & 26
 - Rapid City, SD

Questions?

- Rebecca.cain@state.sd.us
- 280-3568
- Special Education Region Representative
 - <http://doe.sd.gov/sped/>