

**ADMINISTRATIVE PROCEDURES OF THE
MILWAUKEE PUBLIC SCHOOLS**

ADMINISTRATIVE PROCEDURE 8.32

STUDENT EXPULSION:

**HEARING CONDUCTED BY BOARD OF SCHOOL DIRECTORS OR DESIGNATED INDEPENDENT
HEARING OFFICER**

(1) HEARING PROCEDURES

- (a) The President or next ranking officer of the Board present at the time of the date set for hearing, or the designated Independent Hearing Officer (IHO), shall preside over the hearing.
- (b) The hearing shall be recorded in its entirety.
- (c) A transcript shall be made available upon the request of the Board or parent.

(2) THE PRESIDING OFFICER: DUTIES

- (a) At the beginning of the hearing, the presiding officer shall direct that the records show the appearances of the parties and their representatives, if any.
- (b) The presiding officer shall inquire of the student/parent/guardian whether the person wishes the meeting to be open to the public or closed. The student and parent/guardian should be told that the choice is strictly his/hers.
- (c) A copy of the notice of hearing which was served on the student/parent/guardian shall be filed with the Office of Board Governance.
- (d) The presiding officer shall announce that the Board takes official notice of its rules and policies and also those of the Administration.
- (e) The presiding officer may permit the distribution of documents or materials to be used during the course of the hearing to the Board members (designees) present and to opposing representatives, or these materials may be held until such time as the respective parties desire to use them.
- (f) The presiding officer, on behalf of the Board, does have the power to issue subpoenas.
- (g) All witnesses shall be sworn.
- (h) The presiding officer shall take full charge of the proceedings, over the conduct of the participants, the introduction of evidence, and the orderly direction of the proceedings. (The Board's IHO shall follow Robert's Rules of Order, except where in conflict with Board rules.)

(3) EVIDENCE

- (a) The presiding officer shall direct the flow of testimony and the presentation of evidence so that the Board's IHO may ultimately receive answers to the following:
 - 1. What are the pertinent facts?
 - 2. Has the student/parent/guardian been given every opportunity in the following respects?
 - a. to be present at the hearing;
 - b. to have separate representation;
 - c. to have received an initial written notice of the nature and extent of the charges in accordance with the provisions of Wisconsin State Statutes 119.25 and 120.13(1)(c);
 - d. to listen to and question witnesses (note: the opportunity to confront student witnesses shall not be afforded where there is a reasonable probability of reprisal against the student);
 - e. to examine the evidence against him/her;
 - f. to rebut the evidence submitted; and

- g. to show by reasonable means his/her position, defense or explanation of his/her conduct.
- (b) Formal rules regarding the receipt of evidence are not applicable to Board hearings. The presiding officer shall make rulings on the admissibility of evidence when objections are raised by either party or the Board's IHO. The presiding officer's ruling may be as follows:
1. The objection is sustained.
 2. The objection is overruled
 3. The answer may be permitted, subject to the objection being noted in the record.
- (c) The presiding officer may consider direct and circumstantial evidence in oral or written form.
- (d) All evidence which is relevant and is probative of the issues in controversy shall be admitted; however, evidence which is so irrelevant, repetitious, cumulative, misleading, confusing or prejudicial that its admission outweighs its probative value shall be excluded.
- (e) Hearsay and opinion evidence is admissible. The presiding officer shall determine its reliability and probative value.
- (f) The Fifth Amendment of the United States Constitution does not prohibit self-incriminating testimony in an administrative hearing; therefore, if either a party or a witness refuses to testify, the presiding officer may make an adverse inference from that refusal.
- (g) The presiding officer may permit closing arguments or statements by either party and also may limit those statements.
- (h) Arguments of the parties or their representatives are not evidence. They may be considered for their persuasive value but not as proof of facts asserted.

(4) DELIBERATIONS

- (a) The IHO shall retire into executive session and deliberate upon and consider the facts and supporting evidence offered at the hearing.
- (b) Based upon the evidence presented, the Board's IHO may expel a student if the Board the IHO finds by a preponderance of the evidence that:
1. the student is guilty of repeated refusal or neglect to obey Board or school rules; or
 2. the student knowingly conveyed, or caused to be conveyed, any threat or false information concerning an attempt, or alleged attempt being made e to destroy any school property by means of explosives; or
 3. the student engaged in conduct, while at school or while under the supervision of a school authority, which endangered the property, health, or safety of others, or at school under the supervision of a school authority; or
 4. the student, while not at school or while not under the supervision of a school authority, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority; or
 5. the student endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled; or
 6. the student who is at least 16 years old repeatedly engaged in conduct, while at school or while under the supervision of a school authority, that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or an activity supervised by a school authority, and that such conduct does not constitute grounds for expulsion under sec. 120.13(1)(c), and the interest of the school demands the student's expulsion; or
 7. the student, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 U.S.C. §921(a)(3); or

8. if the Board's IHO is satisfied that the interest of the school demands the expulsion (Wisconsin Statutes 120.13(1)(c)).

(c) If the Board's IHO has determined that the student is not guilty, the Board's IHO should reject the Administration's request for the order of expulsion of the student and should restore the student to his/her position within the school system and order that his/her records with respect to the incident for which he/she was charged be expunged of any reference thereto.

(d) If the Board's IHO has determined that the student is guilty, the Board's IHO should decide whether the student should be expelled. The Board's IHO shall also determine the duration of the expulsion. If the Board's IHO determines that the student is guilty but expulsion is not warranted, the Board's IHO will direct the Administration to provide an appropriate program for admonishing the student for his/her acts.

(e) Students expelled from the Milwaukee Public Schools for non-violent offenses shall be offered educational services in an MPS alternative, partnership, or charter school; in the CESA #1 Virtual School; in a special MPS educational Program; or in another MPS or MPS-authorized program.

(f) Additional procedures will apply for students who have been diagnosed as having special education needs as set forth in separate Board policy.

(5) WAIVER

(a) The student/parent/guardian may waive an expulsion hearing by submitting oral or written communication to the Administration or Board; by failing to appear at the hearing; or by leaving the hearing, once having appeared, before the hearing is concluded.

(b) Notwithstanding such waiver in the above form or any other way, the Board's IHO shall conduct hearings prior to expelling any student, whether or not the student/parent/guardian is present; however, similar procedures will be followed during the course of the hearing as if the student/parent/guardian were present at the time of the hearing. Further, the student/parent/guardian not being present to request that the hearing be closed, the same shall be open.

(c) Prior to the conclusion of a hearing where the student/parent/guardian was not present either partially or totally, the record shall disclose every step that was taken by the Administration to ensure the presence of the student/parent/guardian, including notices that were given and in what form.

(6) BOARD REVIEW OF EXPULSION ORDERED BY AN INDEPENDENT HEARING OFFICER

(a) Within 30 days after the date on which the Independent Hearing Officer order has issued an order, the Board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the Independent Hearing Panel shall be enforced while the Board reviews the order. If the order contains one or more early reinstatement conditions, and an appeal has been timely filed challenging the relatedness of the early reinstatement condition(s) to the reason for the pupil's expulsion, the Board may include in its review of the expulsion order a determination regarding the relatedness of the early reinstatement condition(s) to the reasons for expulsion in the Board's expulsion decision.

(b) While the decision of the Board is appealable to the State Superintendent under section 119.25(2)(b), Stats., the determination regarding the relatedness of the condition(s) for early reinstatement to the reasons for the expulsion is final and not subject to appeal. Within 15 days after the date on which the expulsion order is issued, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian, may appeal the determination regarding whether an early reinstatement condition specified in the expulsion order is related to the reasons for the pupil's expulsion to the school board. The decision of the Board regarding that determination is final and not subject to appeal.

(c) If the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian believes that the expelled student has met the early reinstatement condition(s), the pupil/parent/guardian may request the superintendent or designee — who shall be someone other than a principal, administrator or teacher in the pupil's school — to determine whether the condition(s) have been met. If the early reinstatement condition(s) have been met, the pupil may be reinstated. The determination of the superintendent, or designee, is final and not subject to appeal.

(7) NOTICE OF BOARD ACTION

The student/parent/guardian shall be informed in writing of the findings of fact and action taken. Any order of expulsion shall also include a statement that the student or the parent or guardian may appeal the expulsion to the State Superintendent and that an appeal may be taken within 30 days from a decision of the State Superintendent to the Circuit Court of Milwaukee County.

(8) OPEN/CLOSED HEARINGS

(a) Unless the student/parent/guardian requests otherwise, the hearing shall be open to the public. To ascertain the will of the student/parent/guardian and to ensure such participant of his/her right to either type of hearing, the presiding officer should put the question at the beginning of the hearing to such student/parent/guardian.

(b) When the hearing is requested to be closed, those permitted to remain during the course of the hearing are as follows: student, parent, guardian and/or representative; Board members, Independent Hearing Officer, administrators, personnel involved, and administrative representatives; witnesses for both parties; and relatives.

(Note: At the request of either party, the presiding officer shall sequester the witnesses. The presence of relatives is discretionary with the presiding officer. Discretion to exclude should not be exercised unless it appears that the relatives are likely to be disruptive of the hearing. Such relatives may be permitted to stay until such disruption is manifest.)

(9) DISCIPLINE

The Board's IHO will tolerate no disruptions during the hearing. Persons deliberately disrupting hearings will be ordered by the presiding officer to desist from disrupting the meeting or may be removed.

(10) SUPERINTENDENT

The Superintendent (where his/her action or recommendation is presently under review by the Board) shall not attend or be present during the deliberations of the Board's IHO following the hearing.

(11) COUNSEL/ATTORNEY

(a) The attorney/designee presenting the Administration's recommendation to the Board's IHO may present the evidence to the Board's IHO and assist the Board's IHO in arriving at a fair decision on the basis of evidence fairly presented to the Board's IHO. The attorney for the Administration shall not appear during the deliberations of the Board's IHO, either on request or as a matter of routine.

(b) The attorney/designee presenting the Administration's case will not, during the course of the hearing, be the adviser of the Board IHO. An attorney from the City Attorney's office/designee, acting solely as representative of the Board, may be present at the time of the hearing and during deliberations to advise the Board IHO relative to questions the Board IHO may have in its procedures or decisions.

(12) EX PARTE COMMUNICATIONS

Once a hearing has been requested and a right to it established, ex parte communications (contracts between the Board or one of its members and only one party) should be scrupulously avoided.

(13) REVOCATION OF THE EARLY REINSTATEMENT CONDITIONS

(a) If a pupil who has been granted early reinstatement violates an early reinstatement condition that the pupil was required to meet after his/her early reinstatement, but before the expiration of the term of expulsion, the superintendent or designee (who may be a principal, administrator, or teacher in the pupil's school) may revoke the pupil's early reinstatement. Before revoking the pupil's early reinstatement, the superintendent, or designee, shall advise the pupil of the reason for the proposed revocation - including the early reinstatement condition(s) alleged to have been violated; provide the pupil an opportunity to present his or her explanation of the alleged violation; and make a determination that the pupil violated the early reinstatement condition(s) and that revocation of the pupil's reinstatement is appropriate.

(b) If the superintendent, or designee, revokes the pupil's early reinstatement, the superintendent, or designee, shall give prompt written notice of the revocation and the reason for the revocation, including the early reinstatement condition(s) violated, to the pupil and, if the pupil is a minor, to the pupil's parent or guardian, unless a timely written request for a conference is made in accordance with the paragraph immediately below. When a pupil's early reinstatement is revoked, the pupil's expulsion shall continue to the expiration of the term of the expulsion specified in the expulsion order unless the pupil/parent/guardian and the school board agree in writing to modify the expulsion order.

(c) Within five (5) school days after the revocation of a pupil's early reinstatement, the pupil or, if the pupil is a minor, the pupil's parent or guardian may request a conference with the superintendent or his/her designee (who shall be someone other than the principal, administrator, or teacher in the pupil's school). If a conference is requested, it shall be held within five (5) school days of receipt by the superintendent, or designee, of the written request.

(d) If, after the conference, the superintendent, or designee, determines that the pupil did not violate an early reinstatement condition or that the revocation was inappropriate, the pupil shall be reinstated to school under the same reinstatement condition(s) as in the expulsion order, and the early reinstatement revocation shall be expunged from the pupil's record. If the superintendent, or designee, finds that the pupil violated an early reinstatement condition and that the revocation was appropriate, he or she shall mail copies of the decision to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The decision of the superintendent, or designee, is final and not subject to appeal.

(14) REINSTATEMENT OF EXPELLED STUDENTS

Expelled students will be reinstated at the termination of the expulsion period. The Administration will notify the parent/guardian in writing of the need to have a reinstatement conference. This notification will take place two weeks prior to the expiration of the expulsion period. Failure of the parent/guardian to respond to a reinstatement conference request will result in the Administration's issuing a school assignment for the student. The parent/guardian and the receiving school will be notified in writing of the school assignment.

History: Adopted 6-30-75; Revised 1980, 5-22-82, 1-30-01, 1-31-02, 8-28-08
Legal Ref.: W.S. 119.25, 120.13
Cross Ref.: Admin. Policy 8.32 Student Expulsion

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