

## STUDENT DISCIPLINARY HEARING GUIDE

**Due Process.** The right to due process in disciplinary proceedings is applicable in all instances where the behavior of the student is being evaluated for possible suspension or expulsion. The student must always be treated with fundamental fairness, has a right to be fully informed about his/her alleged breach of behavior and must be provided with an opportunity to respond to such charges. In imposing discipline on students, Tennessee School Districts must be fully aware of the due process rights guaranteed to students by Tennessee Code Annotated as well as federal law and constitutional due process.

**Informal Hearings.** Most discipline problems not leading to long-term suspension or expulsion are resolved at the building level through an informal hearing involving the student, parent/guardian and teacher or building administrator. During the hearing, the student and parent/guardian hear the charges, evidence and consequences. The student tells his/her side of the story. Various problems-solving strategies may be used.

**Formal Hearings.** A disciplinary Hearing Authority (DHA) will conduct hearings for students who have been suspended, expelled or remanded for more than ten (10) school days. The Board shall appoint members to the DHA which shall consist of \_\_\_\_\_ members, (maximum number must not exceed total membership of Board) at least two (2) of which shall be licensed employees of the board, appointed to one (1) year terms and subject to reappointment. Board members shall not serve on the DHA.

The director of schools shall appoint a chairman of the DHA from the members appointed by the Board. The chairman shall perform the following duties:

1. Identify the members of the DHA assigned to hear each individual case;
2. Prepare and disseminate the minutes of each meeting;
3. Set the time, place and date for each hearing;
4. Notify appropriate persons of each meeting within forty-eight (48) hours of receiving notification of the suspension/expulsion; and
5. Sign and maintain a copy of minutes of meeting.

Each hearing shall be conducted by at least three (3) members of the DHA, one of which must be a licensed employee of the Board. The hearing must be held, a decision must be rendered, and notification of the decision must be provided to the parents and/or student and the principal no later than ten (10) days after the beginning of the suspension/expulsion. Notification of the decision shall include a statement of the right of either party within five (5) days after receiving the decision to request a review by the Board.

The DHA may take the following disciplinary actions:

1. Affirm the decision of the school principal;
2. Order removal of the suspension/expulsion unconditionally;
3. Order removal of the suspension/expulsion upon such terms and conditions as it deems reasonable;
4. Remand the student to alternative placement; or

5. Suspend/Expel/Remand the student for a specified period of time.\*

If a review of the hearing is requested by either the student or principal, the Board shall either review the record or grant a second hearing.

If the Board chooses to review the record it shall:

1. Affirm the decision of the hearing authority; or
2. Modify the decision to a lesser penalty\*; or
3. Grant a hearing before the Board.

If the Board chooses to grant a hearing, it may:

1. Affirm the decision of the hearing authority; or
2. Modify the decision in any manner\*; or
3. Impose a more severe penalty than that of the hearing authority.

\* Note: Zero-tolerance offenses set forth in statute (firearms, drug possession and battery upon a school employee) require mandatory calendar year expulsion or assignment to alternative placement for a calendar year unless modified by the director of schools.

### **Who Will Be Present?**

Unless specified otherwise, student disciplinary hearings are closed. Those present will be the District's hearing officer, principal or designee, student, parent or guardian and counsel, if desired. Witnesses, if any, will be present only during the period of their individual testimony. Witnesses will be requested to give testimony, but they cannot be compelled to appear.

### **The Hearing Agenda**

- If the student is represented by an attorney, it is recommended that an attorney also represent the school administration.
- The hearing officer opens the hearing by explaining the hearing process and ground rules and by answering any procedural questions. The hearing officer is in charge of the hearing and controls the proceedings. The hearing officer should call upon each person in attendance to introduce him/herself and explain the role he/she will be performing at the hearing.
- The administrator gives an explanation of why the hearing is being held, information about the student and the specific statements of the charge and the disciplinary action recommended. The administrator presents a brief opening statement to explain the charges against the student, the rule or regulation violated, the evidence to be presented, and the disciplinary action being recommended. The student or his representative will then be an opportunity to present an opening statement.

- The building administrator presents evidence of the charges, including witnesses written statements and exhibits. The student or his representative may challenge any evidence and question witnesses.
- The student and/or his/her advocate, responds to the charges and presents witnesses, exhibits and any written statements. The school administrator may challenge the evidence and question witnesses.
- Both the building administrator and the student and/or his/her advocate should be given an opportunity to present a closing statement.
- After both sides have presented their case, the DHA will make a decision based solely on the evidence presented in the hearing and informs the group of the decision process. The DHA has the authority to affirm the decision of the principal, order removal of the suspension unconditionally or upon such terms and conditions as it deems reasonable, assign the student to an alternative program, or night school, or suspend the student for a specified period of time.
- The chair dismisses the group after all questions have been answered and explaining the appeal procedure.
- A written record of the proceedings, including a summary of the facts and the reasons supporting the decision shall be made by the DHA.

### **The Appeal Process**

- The student, principal, principal-teacher or assistant principal may within five (5) days of the decision request review by the board of education, provided that local school board policy may require an appeal to the director of schools prior to a request for review before the board.
- If the student fails to request a timely review, the decision shall be final.
- The board of education, based upon a review of the record, may grant or deny a request for a board hearing and may affirm or overturn the decision of the hearing authority with or without a hearing before the board; provided that the board may not impose a more severe penalty than imposed by the hearing authority without first providing an opportunity for a hearing before the board.
- The action of the board shall be final.

- Since student discipline information is protected under state and federal law, boards should consult their local attorney to determine specifically how a hearing must be conducted to protect the privacy rights of the student.

### **Student/Parent/Guardian Rights**

- The right to inspect, in advance of the hearing, the evidence that the suspending school administrator intends to submit.
- The right to a closed hearing.
- The right to be represented by an attorney or other counsel.
- If the student represents himself or herself or is represented by a parent or guardian, the hearing authority will make certain no advantage is taken of the person's unfamiliarity with the hearing process.
- The right to present evidence, including the testimony of witnesses.
- The right to challenge the evidence, including the testimony of witnesses, presented by the school administrator.
- The right to request review of the decision of the hearing authority to the Board of Education within five (5) days after receiving the hearing authority's decision.